

[Federal Register: May 20, 1994]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 27

[Docket No. 94-09]

RIN 1557-AB33

Fair Housing Home Loan Data System

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing a final rule amending its Fair Housing Home Loan Data System (FHHLDS). This final rule enhances the OCC's ability to use data collected under the Home Mortgage Disclosure Act (HMDA) in fair lending examinations and reduces recordkeeping requirements on national banks that are currently required to maintain duplicative information under both the FHHLDS and the HMDA. In order to relieve duplicative recordkeeping for those national banks, this final rule replaces the current FHHLDS monthly recordkeeping requirement with the HMDA Loan/Application Registers already maintained by national banks, which will be required to be updated on a quarterly basis. In order to improve the OCC's ability to use HMDA data in fair lending examinations, this final rule requires that all national banks subject to the HMDA, including those banks not subject to the FHHLDS, maintain information on the HMDA Loan/Application Registers on a quarterly basis. National banks that are not subject to the HMDA requirements will continue to be subject to the original FHHLDS recordkeeping requirement, which will be updated quarterly under this final rule. The intended effect of this final rule is to improve the OCC's supervision of national banks while also reducing a duplicative recordkeeping burden on affected national banks.

EFFECTIVE DATE: June 20, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Riedman, Fair Lending Specialist, Compliance Management Division, (202) 874-4446; or F. John Podvin, Jr., Attorney, Bank Operations and Assets Division, (202) 874-4460, Office of the Comptroller of the Currency, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is amending 12 CFR part 27, pursuant to 12 U.S.C. 93a, to improve its ability to use HMDA data in fair lending examinations of national banks and reduce burden on national banks. The final rule requires that HMDA Loan/Application Registers be updated quarterly, requires the reason(s) for loan

denial be indicated on the HMDA Loan/Application Registers and relieves the requirement to maintain duplicative records for those national banks that currently maintain records under both the FHHLDS and the HMDA, 12 U.S.C. 2801 et seq.

Background

On November 2, 1979, the OCC published a final rule (1979 final rule) in the Federal Register (44 FR 63084), which implemented 12 CFR part 27. The 1979 final rule provided a basis for a more effective fair housing monitoring program for home loans. The 1979 final rule established new recordkeeping requirements and a data collection system for monitoring national bank compliance with the Fair Housing Act (Title VIII of the Civil Rights Act of 1968), 42 U.S.C. 3601 et seq. and the Equal Credit Opportunity Act, 15 U.S.C. 1691 et seq.

In August 1989, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), section 1211, Public Law 101-73, 103 Stat. 183 (12 U.S.C. 2803) amended the HMDA. On December 15, 1989, the Federal Reserve Board published a final rule (FRB final rule) in the Federal Register (54 FR 51356). The FRB final rule implemented a revised version of 12 CFR part 203 (Regulation C), which is the implementing regulation for the HMDA. Under the FRB final rule, certain national banks and their majority-owned mortgage banking subsidiaries must maintain individual loan application registers and forward them annually to the appropriate OCC office.

In response to FIRREA and the FRB final rule, the Office of Thrift Supervision (OTS) and the Federal Deposit Insurance Corporation (FDIC) amended their regulations concerning home loan activity to make them similar to Regulation C.

OCC Proposed Rule

On May 10, 1993, the OCC issued a notice of proposed rulemaking, pursuant to 12 U.S.C. 93a, to amend the FHHLDS. See 58 FR 27484. In its proposed rule, the OCC recognized that national banks subject to the recordkeeping requirements of both the FHHLDS and the HMDA were required to maintain duplicative information on home loan activity. The OCC proposal sought to relieve the duplicative recordkeeping burden on these banks without affecting banks that are not subject to the HMDA, but currently are subject to the monthly recordkeeping requirement in the FHHLDS.

In its proposed rule, the OCC sought to amend the FHHLDS to relieve the duplicative recordkeeping requirement for banks subject to both FHHLDS and HMDA by replacing the recordkeeping requirement on monthly home loan activity, currently located at Sec. 27.3(a), with the existing requirement in the HMDA and Regulation C. Regulation C generally requires that national banks (and their majority-owned mortgage banking subsidiaries) with an office or branch located in a metropolitan statistical area (MSA) or primary MSA, as defined by the Office of Management and Budget (OMB), and with total assets greater than \$10 million as of December 31 of the preceding calendar year, maintain information on home loan activity.

Under the proposal, national banks subject to the HMDA would maintain the information in a format similar to that prescribed under Regulation C (Loan/Application Register or LAR), except that (1) if a loan is denied, the reason(s) for denial are required to be entered on the Loan/Application Register; and (2) all the required information is

entered on the Loan/Application Register within 30 calendar days after final disposition of the loan application.

The OCC proposal retained the existing monthly recordkeeping requirements in the FHHLDS for national banks that are not subject to the HMDA and Regulation C. The OCC proposal also retained the remaining provisions of the FHHLDS, which authorize the Comptroller to use his or her discretion in requiring national banks to maintain a Fair Housing Inquiry/Application Log or to complete Home Loan Data Submission Forms if the Comptroller has reason to believe that a national bank is engaging in discriminatory practices. Also, several clarifying amendments to Sec. 27.7 were proposed. These changes made Sec. 27.7 conform with the proposed amendments to the recordkeeping requirements in Sec. 27.3(a). The proposal also stated that the OCC is studying the FHHLDS to determine what data are most effective in identifying discrimination in home lending, to identify the most effective and least burdensome method for collecting home loan data, and to develop an improved statistical model that will enhance its ability to analyze home loan data.

The OCC invited public comment on any aspect of the proposed rule for a 60 day period ending on July 9, 1993. The OCC specifically sought comment on the issue of whether the recordkeeping burden imposed by the proposal was minimal. The OCC received 44 comment letters from banks, bank holding companies, trade groups and the OMB. Forty-one commenters expressed general support for the proposed rule; however, several of these same commenters objected to specific provisions of the proposal. Two commenters made recommendations without expressing support for or opposition to the proposed rule. The OMB did not express support for or opposition to the proposed rule.

Pursuant to 12 U.S.C. 93a, this final rule revises the proposed rule based on the 44 comment letters and makes other changes to clarify the requirements in the proposed rule.

Review of Comments

The following is a discussion of the issues raised by the commenters, the OCC's responses to those issues, and a summary of changes made to the proposed rule.

A. Update Requirement

The proposed rule stated that a national bank subject to the HMDA was required to record all information on the HMDA-LAR within 30 calendar days after the final disposition of the loan application (i.e., the application is denied, withdrawn, or the loan closes).

Commenters in favor of the 30-day update requirement included both small and large national banks. Generally, these banks indicated that they were already updating their LARs within the 30-day time period. One comment letter from a bank trade association agreed and stated that the 30-day update requirement would not impose a significant additional burden on banks.

Commenters opposed to the 30-day update requirement also included small and large national banks. These commenters suggested that the OCC extend the 30-day period to various lengths of time, including: 45 days, 60 days, and quarterly. These commenters stated that they would have to change their current recordkeeping procedures in order to comply with the 30-day update requirement, resulting in an increase in recordkeeping burden. Some of the specific problems or concerns cited

by these commenters include the following:

<bullet> Banks with many branches generally submit home loan data monthly to a central location for entry onto the bank's central LAR. In order to meet the 30-day requirement, branches would have to submit the information bi-weekly.

<bullet> Some banks do not input the geo-coding information (i.e., state, county, MSA and census tract codes) because it is time consuming and can be managed better by automated systems operated by third-party specialists. Because this process is expensive, it is done on a quarterly basis. These banks also stated that it would be very expensive to bring this process in-house.

<bullet> Banks will have a problem assuring data accuracy on a 30 day, loan-by-loan basis. A longer updating time frame will allow more time for editing and correcting the data.

<bullet> A group of commenters recommended that the OCC consider the impact the 30-day update requirement may have on small national banks that do not have automated reporting systems.

In response to these comments and in the interest of minimizing recordkeeping burden on national banks, the OCC replaced the 30-day update requirement with a quarterly update requirement in the final rule. The final rule states that a national bank subject to the HMDA is required to record all information on the HMDA-LAR within 30 calendar days after the end of each calendar quarter.

The OCC also changed the update requirement for non-HMDA banks that are required to maintain the FHHLDS's monthly home loan activity report. Under the proposed rule, non-HMDA banks that receive 50 or more home loan applications a year were required to maintain home loan data in a report that was updated monthly, within 10 working days after the close of the month, in a format consistent with the bank's recordkeeping procedures. Under this final rule, that report is updated quarterly, within 30 calendar days after the end of each calendar quarter, in a format consistent with the bank's recordkeeping procedures. This change will make both HMDA banks and non-HMDA banks subject to the same updating requirement.

B. Reasons for Denial

Under the proposed rule, a national bank subject to the HMDA was required to maintain the reason(s) for denying a loan application.

The commenters in favor of the reasons for denial requirements generally stated that they were already voluntarily providing the reason(s) for denial. Several commenters also stated that it was a good idea to require the reasons for denial in order to better monitor the bank's lending activity and compliance with fair housing statutes.

The commenters opposed to the reason(s) for denial requirement provided various reasons for their opposition. One commenter stated that the nine HMDA codes are too limited to fully explain the reason(s) for the denial and that the true reason(s) for the denial can be found by examiners in the loan file. Another commenter stated that the FDIC does not require the reason(s) for denial in its regulation. Finally, another commenter preferred the treatment under Regulation C, which states that providing the reason(s) for denial is optional. See 12 CFR 203.4(c).

After considering these comments, the OCC determined that the final rule will retain the requirement that national banks maintain the reason(s) for denying a loan application for the following reasons. The OCC believes that requiring the reason(s) for denial will improve both

the OCC's and national banks' monitoring of lending activity and compliance with fair housing statutes. The OCC notes that the OTS also requires the reason(s) for denial in its regulation, codified at 12 CFR 528.6(d)(2)(viii).

Several commenters suggested that the OCC include provisions in the final rule requiring national banks to use the nine HMDA codes when entering the reason(s) for denial. Another commenter suggested that the OCC devise a key of various reason(s) for denial based upon a list used in adverse action notices under the Equal Credit Opportunity Act. Based on these comments, the OCC determined that HMDA codes are needed for consistency. The final rule requires national banks to use the nine HMDA codes provided in Regulation C.

C. Recordkeeping Burden Comments

In the proposed rule, the OCC specifically requested comments on the issue of whether the recordkeeping burden imposed by the proposal was minimal. Commenters stating that burden would be increased under the proposal were substantially outnumbered by commenters stating that burden would be decreased.

Many commenters stated generally that the proposal would reduce recordkeeping burden. Several commenters referred to the reduction in staff hours and resources used in recording homeloan information. Another commenter stated that those resources could be used in other areas if the proposal was adopted.

Commenters stating that burden would be increased generally focused on the 30-day update requirement and the burden associated with changing procedures to meet the proposed time period. The OCC changed the 30-day update requirement in the proposed rule to a quarterly update requirement in the final rule to alleviate the potential burden increase identified by these commenters.

D. Accuracy of the Data

While the proposed rule was silent on the issue of data accuracy, several commenters were concerned about this issue. One commenter stated that currently the bank employed procedures to check the accuracy of the data annually, just before the bank must report its HMDA data. The commenter stated that the 30-day update requirement would require a significant change in the bank's procedures in order to ensure that the data are accurate. Another commenter suggested that a bank should only be held to a standard of reasonable diligence and good faith as to the accuracy of the data prior to the annual filing.

The OCC believes that updating quarterly rather than monthly will reduce the burden of ensuring the accuracy of the data entered onto the LAR. The OCC notes that Regulation C already contains a provision relating to data accuracy. Regulation C provides that an error in compiling or recording loan data is not a violation of the HMDA or Regulation C if it was unintentional and occurred despite the maintenance of procedures reasonably adapted to avoid such errors. See 12 CFR 203.6(b). The OCC believes that this standard is adequate and does not need to be restated. National banks subject to the HMDA that do not have this type of procedure in place should develop a procedure to meet this standard.

E. Compliance Alternatives

Under the proposed rule, national banks subject to the HMDA could not comply with the monthly recordkeeping requirement by completing the monthly home loan activity report in Sec. 27.3(a)(2). Similarly, non-HMDA national banks could not comply with the monthly recordkeeping requirement by maintaining a HMDA-LAR in accordance with the requirements in Sec. 27.3(a)(1).

One commenter suggested that all banks be given an alternative to comply with the FHHLDS monthly recordkeeping requirement by using either the HMDA-LAR or the monthly home loan activity report. Two other commenters suggested that non-HMDA banks be allowed to record their monthly home loan activity in the HMDA-LAR format in order to take advantage of available on-line automated systems for LAR preparation rather than requiring them to maintain a handwritten monthly home loan activity report.

The OCC believes that not all banks should be given a compliance alternative, particularly in light of the change to a quarterly update requirement in the final rule. However, the OCC believes that national banks not subject to HMDA should be allowed to comply with the quarterly recordkeeping requirement by maintaining either the monthly home loan activity report or the HMDA-LAR, in accordance with this final rule. This alternative will allow non-HMDA national banks that are subject to the FHHLDS to take advantage of available on-line automated systems for LAR preparation. The final rule reflects this change.

F. Frequency of Reporting

The proposed rule addressed only maintenance of home loan data and did not include provisions on the filing or reporting of the data. One bank was concerned that, while not stated as a purpose of the proposal, the increased processing and editing of the LAR could be the foundation for increasing the frequency of filing the HMDA data from the current annual requirement. According to the commenter, increased filing ran the risk of presenting an unrealistic snapshot of the bank's lending performance.

The quarterly recordkeeping requirement in Sec. 27.3(a) is a records maintenance requirement and not a reporting requirement. The reporting requirement for the HMDA is located in Regulation C at 12 CFR 203.5(a). Changes in the frequency of reporting or filing HMDA data, if any, would be made to Regulation C, a FRB regulation.

G. Retroactivity

One commenter recommended that the final rule be promulgated on a retroactive basis, effective January 1, 1993. The OCC declines to accept the commenter's recommendation. While the OCC believes that the final rule reduces recordkeeping burden, certain national banks must be given time to change their procedures to comply with these requirements. Therefore, the final rule will become effective June 20, 1994.

H. Differences Between the FHHLDS and HMDA

Five commenters pointed out differences between the FHHLDS and the HMDA. One commenter submitted two exhibits detailing differences in coverage and information requirements. Another commenter suggested that the two systems should be subject to the same reporting standards. A

third commenter suggested that the definition of ``home loan'' be the same for both regulations. Another commenter suggested that the loans covered in 12 CFR 202.13(a) should be used as a guide for the FHHLDS. Finally, one commenter pointed out that the FHHLDS does not have a mechanism to deal with cases where a mail or telephone applicant for a loan declines to provide information regarding race or sex. The commenter pointed out that Regulation C has this type of mechanism.

As noted in the proposed rule, the OCC is studying the FHHLDS to determine what data are most effective in identifying discrimination in home lending, to identify the most effective and least burdensome method for collecting home loan data, and to develop an improved statistical model that will enhance our ability to analyze home loan data. The OCC is considering, but chose not to implement these commenters' suggestions into this final rule because of the necessity and importance of enhancing the HMDA data and reducing regulatory burden as soon as possible. However, the issues raised by the commenters will be considered further in the context of the OCC's ongoing study of the FHHLDS. After the study is complete, the OCC expects to publish in the Federal Register a notice of proposed rulemaking to explain any further proposed changes to the FHHLDS.

I. The OMB Comment

In an official comment, the OMB stated that ``the OCC should revise 12 CFR 27.3(b)(1)(xx) and 12 CFR 27.4(c)(5) so that the race and ethnic categories in its regulations are consistent with OMB Statistical Policy Directive No. 15, `Race and Ethnic Standards for Federal Statistics and Administrative Reporting.''' The effect of the suggested revisions is to change the way the regulation refers to various racial and ethnic groups. The OCC determined that the suggested technical revisions are in keeping with the intent of the proposal. Therefore, the OCC has adopted OMB's suggested revisions of Secs. 27.3(b)(1)(xx) and 27.4(c)(5) and has made conforming changes to Appendices II, III, and IV.

Paperwork Reduction Act

The collection of information contained in this final rule has been submitted to the Office of Management and Budget (OMB) under control number 1557-0159 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

For those banks required to submit Home Loan Data Submission Forms, pursuant to Sec. 27.7, the reporting burden for the estimated 13 banks filing reports will average approximately 100 hours annually, varying by the size and activity of the bank. The recordkeeping burden for the estimated 3,750 banks maintaining records will average approximately 1.3 hours annually.

Comments concerning the accuracy of these burden estimates and suggestions for reducing burden should be directed to the Office of the Comptroller of the Currency, Legislative, Regulatory, and International Activities, Attention: 1557-0159, 250 E Street SW., Washington, DC 20219, and the Office of Management and Budget, Paperwork Reduction Project (1557-0159), Washington, DC 20503.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a

significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation relieves an unnecessary duplicative recordkeeping burden on banks that are subject to the recordkeeping requirements of both the FHLDS and the HMDA.

Executive Order 12866

The OCC has determined that this regulation is not a significant regulatory action.

List of Subjects in 12 CFR Part 27

Civil rights, Credit, Fair housing, Mortgages, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 27 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 27--FAIR HOUSING HOME LOAN DATA SYSTEM

1. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1 et seq., 93a, 161, 481, and 1818; 15 U.S.C. 1691 et seq.; 42 U.S.C. 3601 et seq.; 12 CFR part 202.

2. In Sec. 27.3, paragraphs (a) and (b)(1)(xx) are revised to read as follows:

Sec. 27.3 Recordkeeping requirements.

(a) Quarterly recordkeeping requirement. (1) A bank that is required to collect data on home loans under part 203 of this title shall present the data on Federal Reserve Form FR HMDA-LAR or in an automated format in accordance with the instructions, except that:

(i) A bank shall maintain the reason(s) it denied a loan application, using the codes provided in part 203 of this title; and
(ii) A bank shall record all information required by this paragraph and part 203 of this title within 30 calendar days after the end of each calendar quarter.

(2) A bank that receives 50 or more home loan applications a year, as measured by the previous calendar year, and that is not required to collect data under paragraph (a)(1) of this section, shall record and maintain for each decision center the following information on home loan activity:

(i) Number of applications received for each of the following: Purchase; construction-permanent; refinance.

(ii) Number of loans closed for each of the following: Purchase; construction-permanent; refinance.

(iii) Number of loans denied for each of the following: Purchase; construction-permanent; refinance.

(iv) Number of loans withdrawn by applicant, for each of the following: Purchase; construction-permanent; refinance.

(3) The information required to be maintained under paragraph (a)(2) of this section shall be updated quarterly, within 30 calendar days after the end of each calendar quarter, in a format consistent with the bank's recordkeeping procedures.

(4) A bank exempted under paragraph (a)(2) of this section shall be covered by that requirement beginning the month following any quarter in which their average monthly volume of home loan applications exceeds four applications per month. Banks which are subject to this paragraph may discontinue keeping this information beginning the month following two consecutive quarters in which their average monthly volume of home loan applications drops to four or fewer applications per month. A bank which is otherwise exempted under this paragraph may be required upon notification received from the Comptroller, to record and maintain such information where there is cause to believe that the bank is not in compliance with the fair housing laws based on prior examinations and/or has substantive consumer complaints, among other factors.

(5) A bank required to maintain information under paragraph (a)(2) or (a)(4) of this section may choose to comply with the quarterly recordkeeping requirement by maintaining information in accordance with paragraph (a)(1) of this section.

(b) * * *

(1) * * *

(xx) Race/national origin of applicant(s) using the categories: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; White, not of Hispanic origin; Hispanic; Other.
* * * * *

3. In Sec. 27.4, paragraph (c)(5) is revised to read as follows:

Sec. 27.4 Inquiry/Application Log.

* * * * *

(c) * * *

(5) Race/national origin of the inquirer(s) or applicant(s) using the categories: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; White, not of Hispanic origin; Hispanic; Other. In the case of inquiries, this item shall be noted on the basis of visual observation or surname(s) only. In the case of applications, the information shall be obtained pursuant to Sec. 27.3(b)(2).

* * * * *

4. In Sec. 27.7, paragraph (b), the introductory text for paragraph (c), and paragraph (d) are revised to read as follows:

Sec. 27.7 Availability, submission and use of data.

* * * * *

(b) Prior to a scheduled bank examination, the Comptroller may request the information maintained under Sec. 27.3(a). A bank required to maintain information under Sec. 27.3(a)(2) shall submit the information to the Comptroller on the form prescribed in appendix I of this part. A bank which is exempt from maintaining the information required under Sec. 27.3(a) shall notify the Comptroller of this fact in writing within 30 calendar days of its receipt of the Comptroller's

request.

(c) If, upon review of the information maintained under Sec. 27.3(a), the Comptroller determines that statistical analysis prior to examination is warranted, the bank will be notified.

* * * * *

(d) If there is cause to believe that a bank is in noncompliance with fair housing laws, the Comptroller may require submission of additional Home Loan Data Submission Forms. The Comptroller may also require submission of the information maintained under Sec. 27.3(a) and Home Loan Data Submission Forms at more frequent intervals than specified in paragraphs (b) and (c) of this section.

5. A heading is added preceding Appendix I to read as follows:

Appendixes to Part 27

6. Appendix II is revised to read as follows:

Appendix II--Information for Government Monitoring Purposes

The following language is approved by the Comptroller of the Currency and will satisfy the requirements of 12 CFR part 27. It may be inserted to complete the ``Information for Government Monitoring Purposes'' section of the Residential Loan Application Form (FHLMC Form 65/FNMA 1003) or may be used separately. This information may also be provided orally by the applicant.

The following information is requested by the Federal Government if this loan is related to a dwelling, in order to monitor the lender's compliance with equal credit opportunity and fair housing laws. You are not required to furnish this information, but are encourage to do so. The law provides that a lender may neither discriminate on the basis of this information, nor on whether you choose to furnish it. However, if you choose not to furnish it, under Federal regulations this lender is required to note race and sex on the basis of visual observation or surname. If you do not wish to furnish the above information, please initial below.

Borrower

I do not wish to furnish this information (initial)_____.

Race/National Origin

- {time} American Indian or Alaskan Native
- {time} Asian or Pacific Islander
- {time} Black, not of Hispanic origin
- {time} Hispanic
- {time} White, not of Hispanic origin
- {time} Other (specify)_____

Sex

- {time} Female
- {time} Male

Co-borrower

I do not wish to furnish this information (initial)_____.

Race/National Origin

{time} American Indian or Alaskan Native
{time} Asian or Pacific Islander
{time} Black, not of Hispanic origin
{time} Hispanic
{time} White, not of Hispanic origin
{time} Other (specify)_____

Sex

{time} Female
{time} Male

BILLING CODE 4810-33-P

6. Appendix III is revised to read as follows:

<GRAPHIC><TIFF>TR20MY94.003

BILLING CODE 4810-33-C

7. Appendix IV is revised to read as follows:

<GRAPHIC><TIF1>TR20MY94.004

<GRAPHIC><TIF2>TR20MY94.005

BILLING CODE 4810-33-C

Dated: May 16, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

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BILLING CODE 4810-33-P