Transmittal

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On October 24, 2008 the Board of Governors of the Federal Reserve System issued the final rules to amend Regulation C (Home Mortgage Disclosure) to revise the rules for reporting price information on higher-priced loans.

Rules and Regulations

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FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1321]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff interpretation.

SUMMARY: The Board is publishing final rules to amend Regulation C (Home Mortgage Disclosure) to revise the rules for reporting price information on higher-priced loans. The rules are being conformed to the definition of ''higher-priced mortgage loan'' adopted by the Board under Regulation Z (Truth in Lending) in July of 2008. Since 2004, Regulation C has required lenders to collect and report the spread between the annual percentage rate (APR) on a loan and the yield on Treasury securities of comparable maturity if the spread is equal to or greater than 3.0 percentage points for a first-lien loan (or 5.0 percentage points for a subordinate-lien loan). Under the final rule, a lender will report the spread between the loan's APR and a survey-based estimate of APRs currently offered on prime mortgage loans of a comparable type if the spread is equal to or greater than 1.5 percentage points for a first-lien loan (or 3.5 percentage points for a subordinate-lien loan).

DATES: The final rule is effective October 1, 2009. Compliance is mandatory for loan applications taken on and after that date and for loans that close on and after January 1, 2010 (regardless of their application dates).

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, or Paul Mondor, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background on HMDA and Regulation C

The Home Mortgage Disclosure Act (HMDA), enacted in 1975, requires depository and certain for-profit, nondepository institutions to collect, report to regulators, and disclose to the public data about originations and purchases of home mortgage loans (home purchase and refinancing) and home improvement loans, as well as loan applications that do not result in originations (for example, applications that are denied or withdrawn). HMDA data can be used to help determine whether institutions are serving the housing needs of their communities. The data help public officials target public investment to attract private investment where it is needed. HMDA data also assist in identifying possible discriminatory lending patterns and in enforcing antidiscrimination statutes.

The Board's Regulation C implements HMDA. The data reported under Regulation C include, among other items, application date; loan type, purpose, and amount; the property location and type; the race, ethnicity, sex, and annual income of the loan applicant; the action taken on the loan application (approved, denied, withdrawn, etc.), and the date of that action; whether a loan is covered by the Home Ownership and Equity Protection Act (HOEPA); lien status (first lien, subordinate lien, or unsecured); and certain loan price information.[1]

Regulation C's requirement to report loan price information took effect beginning with the collection of data for calendar year 2004. 67 FR 7222 (Feb. 15, 2002); 67 FR 30771 (May 8, 2002); and 67 FR 43218 (June 27, 2002). Institutions must report the difference between a loan's APR and the yield on Treasury securities of comparable maturity if that difference is equal to or greater than 3.0 percentage points for a first-lien loan, or 5.0 percentage points for a subordinate-lien loan. This difference is known as the rate spread. The Treasury yield used is as of the 15th day of the month most closely preceding the date the loan's interest rate was set by the institution for the final time before closing (rate-lock date). The Board provides Treasury yields for various maturities, via the Federal Financial Institutions Examination Council (FFIEC) Web site, to assist institutions in calculating the rate spread.

[1] Institutions report these data to their supervisory agencies on an application-by-application basis using a register format. Institutions must make their loan/application registers available to the public, with certain fields redacted to preserve applicants' privacy. The Federal Financial Institutions Examination Council (FFIEC), on behalf of the supervisory agencies, compiles the reported data and prepares an individual disclosure statement for each institution, aggregate reports for all covered institutions in each metropolitan area, and other reports. These disclosure statements and reports are also available to the public.

II. Summary of Final Rule

On July 30, 2008, the Board published a proposed rule that would amend Regulation C's requirement to report price information. 73 FR 44189 (July 30, 2008). The Board is publishing final amendments to Regulation C to adopt a method for determining when the rate spread is reported that is similar in concept to Regulation C's current method but different in the particulars. The final rule, like the current rule, sets a threshold above a market rate to trigger reporting. But the market rate the Board is adopting is different, and therefore so is the threshold. Instead of yields on Treasury securities of comparable maturity, the rule uses a survey-based estimate of market APRs for the lowest-risk prime mortgages, referred to as the ''average prime offer rate,'' for comparable types of transactions.

The survey the Board will rely on for the foreseeable future is the Primary Mortgage Market Survey® (PMMS) conducted by Freddie Mac. The Board will conduct its own survey if it becomes appropriate or necessary to do so. The reporting threshold is set at 1.5 percentage points above the applicable average prime offer rate for first-lien loans, and 3.5 points above the applicable average prime offer rate for subordinate-lien loans. The lender reports the difference between the transaction's APR and the average prime offer rate on a comparable type of transaction if the difference is equal to or greater than the threshold.

The final rule will provide pricing data on higher-priced mortgage loans reported under Regulation C that are

more consistent with prevailing mortgage market pricing over time, which will make data reporting more predictable. The rule also will facilitate regulatory compliance by conforming the test for rate spread reporting under Regulation C to the definition of higher-priced mortgage loans under Regulation Z.

III. Reasons for Improving HMDA Rate Spread Reporting

When the Board first adopted Regulation C's rate spread reporting requirement, the objective was to cover substantially all of the subprime mortgage market while generally avoiding coverage of prime loans. Since the requirement went into effect, HMDA reporters and others have on various occasions identified shortcomings of the Treasury yield benchmark. In July of 2008, the Board proposed changing the rate spread reporting benchmark. The proposed new benchmark was a market-based estimated average of prime mortgage rates, derived from the PMMS. A lender would report the spread between the loan's APR and the survey-based estimate of average APRs currently offered on prime mortgage loans of a comparable type if the spread is equal to or greater than 1.5 percentage points for a first-lien loan (or 3.5 percentage points for a subordinate-lien loan). This approach would track the pricing-based coverage test for the new protections for higher-priced mortgage loans under Regulation Z, adopted by the Board in July of 2008. 73 FR 44522 (July 30, 2008).

A. Drawbacks of Using Treasury Security Yields

Although there are advantages to using Treasury yields to set the threshold for reporting price information, there also are significant drawbacks. Advantages include the facts that Treasuries are traded in a highly liquid market, Treasury yield data are published for many different maturities and can easily be calculated for other maturities, and the integrity of published yields is not subject to question. For these reasons, Treasuries are also commonly used in federal statutes for benchmarking purposes.

As recent events have highlighted, using Treasury yields to set the APR threshold for HMDA rate spread reporting has two major disadvantages. The most significant disadvantage is that the spread between Treasuries and mortgage rates changes in both the short term and in the long term. Moreover, the truly comparable Treasury security for a given mortgage loan can be difficult to determine accurately.

The Treasury-mortgage spread can change for at least three different reasons. First, credit risk may change on mortgages, even for the highest-quality borrowers. For example, credit risk may increase during economic downturns. Second, competition for prime borrowers can increase, tightening spreads, or decrease, allowing lenders to charge wider spreads. Third, movements in financial markets can affect Treasury yields but have no effect on lenders' cost of funds or, therefore, on mortgage rates. For example, Treasury yields fall disproportionately more than mortgage rates during a ''flight to quality.''

Recent events illustrate how much the Treasury-mortgage spread can swing. The spread averaged about 170 basis points in 2007 but increased to an average of about 220 basis points in the first half of 2008. In addition, the spread was highly volatile in this period, swinging as much as 25 basis points in a week. Thus, the spread may vary significantly from time to time, and long-term predictions of future spreads are highly uncertain. Such changes in the Treasury-mortgage spread mean that rate spreads for loans with identical credit risk are reported in some periods but not in others, contrary to the objective of consistent and predictable coverage over time.

Adverse consequences of volatility in the spread between mortgage rates and Treasuries could be reduced simply by setting the regulatory threshold at a high enough level to ensure exclusion of all prime loans. But a threshold high enough to accomplish this objective would likely fail to meet another, equally important objective of covering essentially all of the subprime market. Instead, the Board is adopting a benchmark index that more closely follows mortgage market rates and therefore should make reporting more consistent and predictable.

The second major disadvantage of using Treasury yields to set the threshold is that the truly comparable Treasury security for a given mortgage loan can be difficult to determine accurately. Regulation C approximates the ''comparable'' Treasury security on the basis of maturity: a loan is matched to a Treasury security with the same contract term to maturity. For example, the regulation matches a 30-year mortgage loan to a 30-year Treasury security. This method, however, does not account for the fact that very few loans reach their full maturity, and it causes significant distortions when the yield curve changes shape.[2] These distortions can bias coverage, sometimes in unpredictable ways, and consequently might influence the preferences of lenders to offer certain loan products in certain environments.

For example, variable-rate mortgage loans typically are priced based on expected maturities that are closer to the loans' initial, fixed-rate periods than to their full, nominal terms. Especially in a sharply rising yield curve environment, lenders may be biased toward offering such products because their pricing terms are established by reference to their expected *actual* maturities and, therefore, would tend to remain well below a set threshold over yields on Treasury securities that match their much longer, nominal maturities. By adopting benchmarks that more closely track mortgage market rates and matching loans to benchmarks by product type, rather than solely by contractual term to maturity, the Board expects to reduce such disparities between mortgage loan pricing and the applicable benchmarks because those benchmarks already will reflect the expected maturities on which lenders base their pricing.

B. Reasons for Following the Regulation Z Final Rule

As noted above, the Board's objective in setting the rate spread reporting threshold has been to cover subprime mortgages and generally to avoid covering prime mortgages. The same purpose underlies the definition of ''higher-priced mortgage loan'' that the Board adopted under Regulation Z. For the reasons discussed above, the Board believes the definition adopted under Regulation Z, when applied to Regulation C, will better achieve this purpose and ensure more consistent and more useful HMDA data. Moreover, using the same definition in both Regulation Z and Regulation C will reduce compliance burdens.

IV. The Board's Final Rule

A. Public Comment on the Proposed Rule

The Board requested comment on (1) the proposal to change the reporting benchmark from Treasury yields to average prime offer rates; (2) the Board's plan to use the Freddie Mac PMMS to estimate average prime offer rates, including comment on whether there are more appropriate sources of data; (3)

[2] Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner (2006), ''Higher-Priced Home Lending and the 2005 HMDA Data,'' *Federal Reserve Bulletin,* vol. 92 (September 8), pp. A123–66.

the method the Board proposed to use to derive average prime offer rates from the PMMS data, which was published as Attachment I to the proposal; (4) the proposed 1.5 and 3.5 percentage point thresholds; (5) the proposed timing for rate spread determination (rate-lock date, with weekly updating of the average prime offer rate benchmarks); (6) the proposed implementation date of the amendments; and (7) the costs and benefits of the proposal generally.

The Board received 21 comment letters on the proposal. Commenters were virtually unanimous in support of changing the reporting benchmark from Treasury yields to average prime offer rates, as well as the use of the PMMS to estimate average prime offer rates. Industry commenters largely agreed that use of the same test under Regulations C and Z would reduce regulatory burden. Nearly all commenters agreed that the proposed changes would result in more accurate HMDA data. And most commenters agreed with the proposed thresholds over average prime offer rates of 1.5 and 3.5 percentage points for first-lien and second-lien loans, respectively. Finally, the majority of commenters favored, or did not object to, the continued use of the rate-lock date as the best time for rate spread determinations. Some industry commenters expressed concern that weekly updates of average prime offer rates would increase burdens on HMDA reporters. These commenters were not opposed to weekly updating, *per se*, but rather as an additional aspect of the substantial, overall burden arising from the proposal.

Industry commenters strongly opposed the proposed implementation date of January 1, 2009. A joint comment letter filed by five industry trade associations argued that their members would be unable to implement all the necessary systems changes and conduct necessary staff training by the proposed effective date. Industry commenters also raised various issues relating to timing and calculation methodology under the Board's proposal for deriving average prime offer rates from the PMMS data. The timing and methodology issues are discussed below, in parts IV.D and IV.E, respectively. The implementation date is discussed in part V.

B. Rates From the Prime Mortgage Market

To address the principal drawbacks of Treasury security yields, discussed above, the Board proposed a rule that relies instead on benchmarks that more closely track rates in the prime mortgage market. The Board is adopting the use of average prime offer rates substantially as proposed. The final rule defines an ''average prime offer rate'' as an APR derived from average interest rates, points, and other pricing terms offered by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. Comparing a transaction's APR to this average prime offer rate (defined as an APR), rather than to an average offered contract interest rate, should make reporting more accurate and consistent because both rates, rather than just one of them, will reflect the total cost of credit that an APR represents. If the spread between a loan's APR and the average prime offer rate for a comparable transaction is equal to or greater than 1.5 percentage points for a first-lien loan, or 3.5 percentage points for a subordinate-lien loan, the lender must report the difference under Regulation C. The basis for selecting these thresholds is explained further below, in part IV.C.

To facilitate compliance, the final rule and commentary provide that the Board will derive average prime offer rates from survey data according to a methodology it will make publicly available, and the Board will publish these rates in two tables (one each for variable-rate and non-variable-rate loans) on the FFIEC's Web site on at least a weekly basis. The methodology published as Attachment I to this **Federal Register** notice, which will appear together with the tables on the Web site, provides that comparable transactions are determined by the initial, fixed-rate period for variable-rate loans and by term to maturity for non-variable rate loans. The tables will set forth average prime offer rates for each of 14 products (six variable-rate and eight non-variable-rate loans), and the methodology provides assignment rules for all other initial, fixed-rate periods or terms to maturity, as applicable. The methodology will remain on the Web site along with the tables. Should it be revised in the future, the Board will republish it as revised at least several months before such revisions become effective.

As noted above, the survey the Board intends to use for the foreseeable future is Freddie Mac's PMMS, which contains weekly average rates and points offered by a representative sample of creditors to prime borrowers seeking a first-lien, conventional, conforming mortgage and who would have at least 20 percent equity. The PMMS contains pricing data for four types of transactions: ''1-year ARM,'' ''5/1-year ARM,'' ''30-year fixed,'' and ''15-year fixed.'' PMMS pricing data for ARMs are based on ARMs that adjust according to the yield on one-year Treasury securities; the pricing data include the margin and the initial rate. These data are updated every week and are published on Freddie Mac's Web site (*see http://www.freddiemac.com/dlink/html/PMMS/display/PMMSOutputYr.jsp*).

The Board will use the pricing terms from the PMMS, such as interest rate and points, to calculate an APR (consistent with Regulation Z, 12 CFR 226.22) for each of the four types of transactions that the PMMS reports. These APRs will be the average prime offer rates for transactions of those types. The Board will derive APRs for other types of transactions from the loan pricing terms available in the survey. The method of derivation the Board will use is being published as Attachment I to this **Federal Register** notice and will be published on the FFIEC's Web site along with the tables of average prime offer rates.

The methodology statement in Attachment I will be implemented substantially as it was proposed, except that some further details have been added for additional clarity and to address some technical issues raised by commenters. These technical issues are discussed below, in parts IV.E and IV.F. The Board will continue to review the methodology statement following publication of this **Federal Register** notice, to ensure that it is as clear and useable as possible, and may make further revisions before it is published on the FFIEC's Web site along with the tables of average prime offer rates. The Board expects to publish both the tables and the methodology statement, as it will be implemented when this final rule becomes effective on October 1, 2009, on the FFIEC's Web site by early January of 2009.

C. Thresholds for Rate Spread Reporting

The Board is adopting thresholds of 1.5 percentage points above the average prime offer rate for a comparable transaction for first-lien loans and 3.5 percentage points for second-lien loans, as proposed. These thresholds are the same as those adopted under Regulation Z's definition of ''higher-priced mortgage loan'' in the July final rule. 73 FR 44522 (July 30, 2008).

As discussed above, the rate spread reporting requirement was intended to cover the subprime market and generally exclude the prime market, and in the face of uncertainty it is appropriate to err on the side of covering somewhat more than the subprime market. Based on available data, it appears that the existing thresholds capture all of the subprime

market and a portion of the alt-A market. Based also on available data, the Board believes that the thresholds it is adopting also will cover all of the subprime market and a portion of the alt-A market. The Board considered loan-level origination data for the period 2004 to 2007 for subprime and alt-A securitized pools. The proprietary source of these data is FirstAmerican Loan Performance.[3] The Board also ascertained from a proprietary database of mostly government-backed and prime loans (McDash Analytics) that coverage of the prime market during the first three quarters of 2007 at these thresholds would have been very limited. The Board recognizes that the recent mortgage market disruption began at the end of this period, but it is the latest period the Board has been able to study in this database.

The Board is adopting a threshold for subordinate-lien loans of 3.5 percentage points. This is consistent with the existing rule under Regulation C, which sets the threshold over Treasury yields for these loans two percentage points above the threshold for first-lien loans. *See* 12 CFR 203.4(a)(12). The Board recognizes that it would be preferable to set a threshold for second-lien loans above a measure of market rates for second-lien loans, but a suitable measure of this kind does not appear to exist. Although data are very limited, the Board believes it remains appropriate to apply the same difference of two percentage points to the thresholds above market mortgage rates. Commenters explicitly endorsed, or at least raised no objection to, this approach.

Some commenters raised issues relating to the scope of coverage for ''higher-priced mortgage loans'' under Regulation Z. For example, commenters suggested either exempting from coverage, or providing higher thresholds for, certain loan product types, such as loans exceeding the Fannie Mae and Freddie Mac maximum loan size (jumbo loans) and loans under Federal Housing Administration (FHA) programs. Suggestions relating to the scope of coverage were considered and addressed in the Board's final rule under Regulation Z. 73 FR 44522, 44536–44537; 44539 (July 30, 2008).

[3] Annual percentage rates were estimated from the contract rates in these data using formulas derived from a separate proprietary database of subprime loans that collects contract rates, points, and annual percentage rates. This separate database, which contains data on the loan originations of eight subprime mortgage lenders, is maintained by the Financial Services Research Program at George Washington University.

The Board remains aware that the spread between prime conforming and prime jumbo loans currently is unusually wide. If this spread remains wider than it historically has been when the final rule takes effect, the rule will cover some prime jumbo loans. While covering prime jumbo loans is not the Board's objective, the Board does not believe that it should set the threshold at a higher level to avoid what may be only temporary coverage of these loans relative to the long-time horizon for this rule. The Board also continues to believe that establishing various thresholds for various different product types would make the regulation inordinately complicated and subject it to frequent revision, which would not be in the interests of those who report HMDA data or those who use them. The Board will continue to monitor the overall market and relative pricing spreads between submarkets to ensure that the benefits of simplicity and stability offered by the rule as adopted continue to outweigh the disadvantages of sometimes inadvertently capturing rate spread data on loans to which the rule is not intended to apply.

D. Timing of Determining the Rate Spread

When Benchmarks Become Effective

Regulation C currently determines the Treasury yield benchmark as of the 15th of the month before the rate-lock date. This rule will determine the applicable benchmark for a transaction more frequently. The final rule requires a creditor to use the most recently available average prime offer rate as of the rate-lock date. As the PMMS is updated weekly, the Board will also update average prime offer rates weekly. The Board expects that using a more current benchmark will improve reporting accuracy without significantly increasing regulatory burden.

To address concerns raised by industry commenters over their ability to apply timely the most recent benchmarks, the final rule includes additional explanation, in appendix A, as to the meaning of ''most recently available.'' The Board generally will update the tables each Friday morning, but the new benchmarks will be dated to indicate when they are effective, and the effective date will be subsequent to the date of publication. The ''most recently available'' average prime offer rates are those most recently effective *as of* the date the rate is set. The Board's intention is that updates to the tables made each Friday will be effective the following Monday, as reflected in the methodology statement published as Attachment I to this **Federal Register** notice. For example, new average prime offer rates applicable during the week of Monday through Sunday, October 12–18, 2009, would be posted on the FFIEC's Web site on Friday, October 9, but they would be dated October 12. Loans that are locked in on October 9 through 11, including loans locked in on October 9 after the benchmarks dated October 12 have been posted, would be compared to the average prime offer rates for comparable transactions dated October 5 (assuming the loan application was made on or after October 1). In unusual situations, such as public holidays falling on a Friday, the Board may not publish new benchmarks on that day. Whenever new benchmarks are published, however, they always will be dated subsequent to the date of publication, so that lenders will not be required to apply new benchmarks the same day they are published. For consistency's sake, lenders may not apply new benchmarks before the Monday following publication, even if their systems are capable of applying the new benchmarks earlier.

When the Rate Is Set

Industry commenters suggested that the time the rate is set should be flexible enough to accommodate differing methods of locking in rates used by mortgage lenders. Specifically, they stated that some lenders employ a ''base rate plus rate adjusters'' system, whereby a lender may lock in the ''base rate'' as well as various ''rate adjusters'' that may or may not apply, depending on loan factors to be determined subsequently (such as an appraisal that results in a different loan-to-value ratio than previously expected). Thus, although the ''base rate'' has been locked in on a certain date, and all potentially applicable ''rate adjusters'' also may be locked in, the rate still may change afterwards if the applicability of any ''rate adjuster'' changes.

The Board's intent was not to alter the current meaning of when the rate is set for the final time before closing. If a loan's rate may change, for any reason, then it has not yet been set for the final time before closing. Accordingly, the Board's final rule leaves the relevant discussion of when the rate is set, in appendix A, unchanged in this regard.

E. Determination of ''Comparable Transaction''

Assignment Rules

The proposal stated that the Board's tables of average prime offer rates would indicate how to determine what

constitutes a ''comparable transaction'' for purposes of matching a mortgage loan's APR to the appropriate benchmark. Some commenters interpreted the methodology statement's assignment rules as matching loans for which the tables contain no exact match to the benchmark of the next longest term. This interpretation was not the Board's intent.

The Board's intent was to preserve the assignment rules currently applicable under HMDA. Under those rules, a loan with a term not represented among the Treasury security terms listed in the table matches to the Treasury security with the term closest to the loan's term, and when a loan has a term exactly halfway between two Treasury security terms it matches to the Treasury security with the shorter of the two terms. The methodology statement that is published with this final rule (Attachment I to this **Federal Register** notice) and that will accompany the tables on the FFIEC's Web site is revised to clarify the correct assignment rules for the new tables of average prime offer rates, which track the existing assignment rules for the existing table of Treasury yields.

Interpolation Methodology

Industry commenters also recommended a revision to the proposed method for interpolating estimated APRs for loan products for which PMMS data are not available. The methodology requires calculating ''Treasury spreads'' (the difference between the PMMS-reported rates and corresponding Treasury yields) as a first step towards estimating rates for other products, before ultimately calculating APRs for those other products. The Board proposed calculating the necessary Treasury spreads as the PMMS-reported initial rates for one- and five-year variable-rate loans minus the average yields on one- and five-year Treasury securities, respectively. These one- and five-year spreads are used as inputs in estimating APRs for loan products not included in the PMMS survey. These commenters suggested instead calculating a ''relative'' spread by dividing the PMMS-reported rates by the corresponding Treasury yields. In structuring the calculation of Treasury spreads as absolute rather than proportional, the Board intended to mirror the manner in which the mortgage industry builds incremental prepayment and credit risk into loan pricing. For this reason, the Board is retaining the calculation as proposed.

Unusual Loan Products

Some commenters sought clarification on how to determine comparable transactions for certain unusual loan product types, such as step-rate loans, loans with balloon payments, and loans with temporary, interest-only payment terms. The Board believes that the rule as structured addresses all loan product types. Regulation Z already provides guidance for the calculation of APRs on loans with unusual payment terms. The APR calculated and disclosed according to those rules is to be compared to the average prime offer rate for comparable transactions. If the APR is higher than it would be in the absence of any unusual payment terms, the Board sees no reason for establishing special rules for such products under the new rate spread reporting test. Determination of ''comparable transactions'' depends solely on two factors: (i) Whether the loan is variable-rate or not; and (ii) the length of the initial, fixed-rate period (if variable-rate) or the term to maturity (if non-variable-rate).

F. Technical Issues

APR Calculation—Payment Schedule Assumptions

In the methodology statement for deriving and estimating APRs from PMMS data the Board included an assumption that monthly payments would be rounded to whole cents, thus likely requiring an odd final payment amount. The Board's intent was to track the way mortgage lenders actually calculate APRs on their transactions. But rounding payment amounts to whole cents necessarily requires having a loan amount, which is not the case for the hypothetical transaction underlying the PMMS data. Therefore the Board is revising the methodology statement to provide that the calculation should assume all payments are equal, even if this results in payment amounts that include fractions of cents. This revision applies only to the calculation of hypothetical APRs from PMMS data for use as average prime offer rates; it does not affect lenders' ability to calculate APRs for disclosure purposes using payment amounts in whole cents, pursuant to Regulation Z. *See* 12 CFR 226.17(c)(3)(i).

HOEPA Status Reporting—§ 203.4(a)(13)

Although the Board did not propose to revise § 203.4(a)(13), some commenters pointed out that, as a result of the amendments to Regulation Z in the Board's July 30, 2008 final rule, the language in § 203.4(a)(13) now could be considered ambiguous. Section 203.4(a)(13) requires the reporting of ''[w]hether the loan is subject to the Home Ownership and Equity Protection Act of 1994.'' Until the July 30, 2008 final rule, this unambiguously referred to loans subject to the original protections of HOEPA, implemented through Regulation Z's § 226.32, 12 CFR 226.32. The July final rule, however, created a new § 226.35 of Regulation Z, 12 CFR 226.35, which affords certain protections for mortgage loans that meet or exceed its coverage test (the same test that is implemented for HMDA rate spread reporting purposes by this final rule). As the Board created the § 226.35 protections pursuant to its authority under HOEPA, 15 U.S.C. 1639(l)(2), the commenters expressed concern that loans that are subject to those new protections could be seen as being ''subject to'' HOEPA.

Appendix A to Regulation C, Paragraph I.G.3, requires reporting if a loan is subject to HOEPA, ''as implemented in Regulation Z (12 CFR 226.32).'' To eliminate any possibility of misinterpretation, however, the Board is revising the language of § 203.4(a)(13) to conform to the existing rule, as expressed in appendix A.

V. Effective Date

The Board proposed an effective date of January 1, 2009. Industry commenters expressed serious concerns, however, that the proposed effective date would afford too little time, and would generate substantial costs, to implement the necessary systems changes and staff training. For the following reasons, the Board is adopting an effective date of October 1, 2009.

Under the July 30, 2008 final rule, the Regulation Z amendments concerning higher-priced mortgage loans are effective on October 1, 2009 and apply to loans for which applications are taken on or after that date. In the proposed rule, the Board sought to avoid changing rules for HMDA rate spread reporting during a calendar year. But, as the proposal noted, if the Board were to make compliance with this final rule mandatory January 1, 2010, from October through December of 2009 lenders would have to comply with two different rules for identifying higher-priced mortgage loans. These reasons led the Board to propose a January 1, 2009 effective date.

The Board recognizes that several factors would make compliance by January 1, 2009 especially difficult and costly for industry. First, as commenters pointed out, HMDA reporters must capture two additional data elements to apply the new test: (i) Whether the loan is variable-rate or not; and (ii) if variable-rate, the initial, fixed-rate

period. While these data usually reside in lenders' origination systems, they may be difficult to access, capture, and import into HMDA compliance systems; many industry commenters indicated that these are two separate, non-integrated systems and that creating the necessary interfaces between them will be an extensive and costly project. Second, industry commenters stated that the period over the end of one year and the beginning of the next year is a particularly challenging timeframe in which to implement changes to HMDA reporting systems, as it coincides with annual reporting under HMDA and other laws and regulations. During this period, lenders generally ''freeze'' their systems to ensure that their reports for the just-completed year are complete and accurate, in compliance with current rules, thus introducing new rules is particularly challenging in this timeframe. Third, mortgage lenders face a number of other compliance-driven systems changes during the proposed timeframe.[4]

As noted above, the new protections for higher-priced mortgage loans under Regulation Z become effective October 1, 2009. As the coverage test necessary to determine whether those protections apply is identical to the HMDA rate spread reporting test adopted here, the Board has concluded that making the HMDA test effective on the same date will impose little additional burden on HMDA reporters.

For the foregoing reasons, the Board is adopting an effective date of October 1, 2009. Lenders will use the new rate spread reporting test on loans for which applications are taken on and after October 1, 2009 and for all loans consummated on or after January 1, 2010 (regardless of their application dates). To help data users identify loans closed in 2009 and reported using the new rule, the Board will add a notation to each such loan in the publicly available data reported for 2009. The mandatory compliance with the new rule for all loans consummated on and after January 1, 2010 will eliminate the need for such notations in years after 2009. Thus, for loans for which applications were taken before October 1, 2009 and that are consummated in 2009, the revised rules do not apply. Lenders will apply the existing rate spread reporting test, using Treasury security yield benchmarks, for those loans. For loans for which applications were taken before October 1, 2009 and that are consummated in 2010 or later, the revised rules apply.

[4] The joint, industry trade groups' comment letter recited six other current sources of significant compliance systems changes, including certain FHA program changes, changes to Regulation Z necessitated by the Mortgage Disclosure Improvement Act of 2008, Title V of Division B of the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2654, approved July 30, 2008, and numerous state law changes.

VI. Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR Part 1320 Appendix A.1), the Board has reviewed the final rule under the authority delegated to the Board by Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0247.

The information collection requirements of this rule appear in 12 CFR part 203. The information collection is mandatory under 12 U.S.C. 2801–2810. It generates data used to help determine whether financial institutions are serving the housing needs of their communities, to help target investment, to promote private investment where it is needed, and to provide data to assist in identifying possibly discriminatory lending patterns and in enforcing antidiscrimination statutes.

The respondents are all types of financial institutions that meet the tests for coverage under the regulation. Under the Paperwork Reduction Act (PRA), however, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks, their subsidiaries, subsidiaries of bank holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631). Other federal agencies account for the paperwork burden for the institutions they supervise. Respondents must maintain their loan/application registers and modified registers for three years, and their disclosure statements for five years.

The Board has determined that the data collection and reporting are required by law; completion of the loan/application register, submission to the Board, and disclosure to the public upon request are mandatory. The data, as modified according to the regulation, are made publicly available and are not considered confidential. Information that might identify an individual borrower or applicant is given confidential treatment under exemption 6 of the Freedom of Information Act, 5 U.S.C. 552(b)(6).

On July 30, 2008, a notice of proposed rulemaking (NPR) was published in the **Federal Register**. 73 FR 44189 (July 30, 2008). The NPR indicated that current burden estimates for Regulation C would not change, other than a one-time increase in burden to modify HMDA reporters' systems. No comments specifically addressing the burden estimate were received. Therefore, the current burden estimates will remain unchanged. The current total annual burden to comply with the provisions of Regulation C continues to be estimated at 156,910 hours for 680 Federal Reserve-regulated institutions that are deemed to be respondents for the purposes of the PRA. The reporting, recordkeeping, and disclosure burden for this information collection is estimated to vary from 12 to 12,000 hours per respondent per year, with an average of 242 hours for state member banks and an average of 192 hours for mortgage banking subsidiaries and other respondents. This estimated burden includes time to gather and maintain the data needed, review the instructions, and complete the register. The Board estimates that respondents regulated by the Federal Reserve will take, on average, 16 hours (two business days) to revise and update their systems to comply with the new threshold for rate spread reporting. This one-time revision will increase the burden by 10,880 hours to 167,790.

The Board has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0247), Washington, DC 20503.

VII. Regulatory Flexibility Analysis

In accordance with section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing a final regulatory flexibility analysis for the proposed amendments to Regulation C. The RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or certify that the final rule will not have a significant economic impact on a substantial number of small entities. An entity is considered ''small'' if it has $165

million or less in assets for banks and other depository institutions; and $6.5 million or less in revenues for non-bank mortgage lenders, mortgage brokers, and loan servicers. The Board did not receive any comments contending that the proposed rule would have a significant impact on various businesses or on its initial regulatory flexibility analysis. Based on its analysis and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities.

A. Statement of the Need for, and Objectives of, the Final Rule

The Board is adopting amendments to Regulation C to make the rules for reporting higher-priced loans in the annual HMDA data consistent with the definition of ''higher-priced mortgage loan'' in the amendments to Regulation Z (Truth in Lending) that the Board adopted in final form on July 30, 2008. The amendments are intended to reduce regulatory burden by allowing mortgage lenders to use a single definition of higher-priced loan, rather than different definitions under the two regulations. The amendments are also intended to result in more useful HMDA data because the new definition of higher-priced loan uses a survey-based estimate of market mortgage rates as the benchmark for reporting.

The purpose of HMDA is to provide to public officials, and to the public, information to enable them to determine whether lending institutions are fulfilling their obligations to serve the housing needs of their communities. The purpose of the law is also to assist public officials in determining the distribution of public sector investments in a manner designed to improve the private investment environment. 12 U.S.C. 2801(b). HMDA data also assist in identifying possibly discriminatory lending patterns and in enforcing antidiscrimination statutes. HMDA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 12 U.S.C. 2804(a).

The act expressly states that the Board's regulations may contain ''such classifications, differentiations, or other provisions * * * as in the judgment of the Board are necessary and proper to effectuate the purposes of [HMDA], and prevent circumvention or evasion thereof, or to facilitate compliance therewith.'' 12 U.S.C. 2804(a). The Board believes that the amendments to Regulation C discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

The Board did not receive any comments contending that the proposed rule would have a significant impact on various businesses or on its initial regulatory flexibility analysis.

C. Description and Estimate of Small Entities To Which the Proposed Rule Would Apply

The final rule will apply to all institutions that are required to report under HMDA. The Board does not have complete data on the asset sizes of all HMDA reporting institutions. Through data from Reports of Condition and Income (''Call Reports'') of depository institutions and certain subsidiaries of banks and bank holding companies, however, the Board can determine numbers of small entities among those categories. For the majority of HMDA respondents that are non-depository institutions exact asset size information is not available. The Board has somewhat reliable estimates based in large measure on self-reporting from approximately five percent of the non-depository respondents. Based on the best information available for each category of respondent, the Board makes the following estimate of small entities that will be affected by this final rule: Of all HMDA respondents in 2008 (for 2007 activities), which number approximately 8,625, approximately 4,520 had total domestic assets of $165 million or less and thus would be considered small entities for purposes of the Regulatory Flexibility Act. The Board believes that the economic impact on these small entities is not significant.

D. Reporting, Recordkeeping, and Other Compliance Requirements

HMDA reporting is a routine activity for all HMDA respondents, large and small. The changes implemented by this final rule impose a new requirement on HMDA respondents to obtain a publicly available index (average prime offer rates derived from PMMS data) and use it to apply a reporting threshold test to their loan originations. That requirement, however, replaces an existing requirement that is very similar but for the index used. The burden of complying with the new requirement should not differ significantly from the existing burden of complying with the requirement it replaces; that existing burden is addressed in the PRA discussion in part VI above. As is also discussed in the PRA analysis, the Board expects the one-time burden of converting HMDA respondents' systems to employ the new index to average 16 hours (two business days).

E. Steps Taken To Minimize the Economic Impact on Small Entities

The Board solicited comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with the proposed rule. No comments were received.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

■ 2. Section 203.4 is amended by revising paragraphs (a)(12) and (a)(13) to read as follows:

§ 203.4 Compilation of loan data.

(a) * * *

(12)(i) For originated loans subject to Regulation Z, 12 CFR part 226, the difference between the loan's annual percentage rate (APR) and the average prime offer rate for a comparable transaction as of the date the interest rate is set, if that difference is equal to or greater than 1.5 percentage points for loans secured by a first lien on a dwelling, or equal to or greater than 3.5 percentage points for loans secured by a subordinate lien on a dwelling.

(ii) ''Average prime offer rate'' means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage loans that have low-risk pricing characteristics. The Board publishes average prime offer rates for a broad range of types of transactions in tables updated at least weekly, as well as the methodology the Board uses to derive these rates.

(13) Whether the loan is subject to the Home Ownership and Equity Protection Act of 1994, as implemented in Regulation Z (12 CFR 226.32).

* * * * *

■ 3. In Appendix A to Part 203, under I. Instructions for Completion of Loan/Application Register, paragraphs I.G.1.a., I.G.1.d., I.G.1.e., and I.G.2. are revised to read as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

I. Instructions for Completion of Loan/ Application Register

* * * * *

G. Pricing-Related Data

1. Rate Spread

a. For a home-purchase loan, a refinancing, or a dwelling-secured home improvement loan that you originated, report the spread between the annual percentage rate (APR) and the average prime offer rate for a comparable transaction if the spread is equal to or greater than 1.5 percentage points for first-lien loans or 3.5 percentage points for subordinate-lien loans. To determine whether the rate spread meets this threshold, use the average prime offer rate in effect for the type of transaction as of the date the interest rate was set, and use the APR for the loan, as calculated and disclosed to the consumer under § 226.6 or 226.18, as applicable, of Regulation Z (12 CFR part 226). Current and historic average prime offer rates are set forth in the tables published on the FFIEC's Web site (*http://www.ffiec.gov/hmda*) entitled ''Average Prime Offer Rates—Fixed'' and ''Average Prime Offer Rates—Adjustable.'' Use the most recently available average prime offer rate. ''Most recently available'' means the average prime offer rate set forth in the applicable table with the most recent effective date as of the date the interest rate was set. Do not use an average prime offer rate before its effective date.

d. Enter the rate spread to two decimal places, and use a leading zero. For example, enter 03.29. If the difference between the APR and the average prime offer rate is a figure with more than two decimal places, round the figure or truncate the digits beyond two decimal places.

e. If the difference between the APR and the average prime offer rate is less than 1.5 percentage points for a first-lien loan and less than 3.5 percentage points for a subordinate-lien loan, enter ''NA.''

2. *Date the interest rate was set.* The relevant date to use to determine the average prime offer rate for a comparable transaction is the date on which the loan's interest rate was set by the financial institution for the final time before closing. If an interest rate is set pursuant to a ''lock-in'' agreement between the lender and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. If a rate is re-set after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the rate is re-set for the final time before closing. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing.

* * * * *

■ 4. In Supplement I to Part 203, under *Section 203.4—Compilation of Loan Data, 4(a) Data Format and Itemization, Paragraph 4(a)(12) Rate spread information*, paragraph 4(a)(12)–1 is removed, and new heading *Paragraph 4(a)(12)(ii)* and new paragraphs 4(a)(12)(ii)–1, 4(a)(12)(ii)–2, and 4(a)(12)(ii)–3 are added to read as follows:

Supplement I to Part 203—Staff Commentary

* * * * *

Section 203.4—Compilation of Loan Data

4(a) Data Format and Itemization

* * * * *

Paragraph 4(a)(12) Rate spread information.

Paragraph 4(a)(12)(ii).

1. *Average prime offer rate.* Average prime offer rates are annual percentage rates derived from average interest rates, points, and other loan pricing terms offered to borrowers by a representative sample of lenders for mortgage loans that have low-risk pricing characteristics. Other pricing terms include commonly used indices, margins, and initial fixed-rate periods for variable-rate transactions. Relevant pricing characteristics include a consumer's credit history and transaction characteristics such as the loan-to-value ratio, owner-occupant status, and purpose of the transaction. To obtain average prime offer rates, the Board uses a survey of lenders that both meets the criteria of § 203.4(a)(12)(ii) and provides pricing terms for at least two types of variable-rate transactions and at least two types of non-variable-rate transactions. An example of such a survey is the Freddie Mac Primary Mortgage Market Survey®.

2. *Comparable transaction.* The rate spread reporting requirement applies to a reportable loan with an annual percentage rate that exceeds by the specified margin (or more) the average prime offer rate for a comparable transaction as of the date the interest rate is set. The tables of average prime offer rates published by the Board (*see* comment 4(a)(12)(ii)–3) indicate how to identify the comparable transaction.

3. *Board tables.* The Board publishes on the FFIEC's Web site (*http://www.ffiec.gov/hmda*), in table form, average prime offer rates for a wide variety of transaction types. The Board calculates an annual percentage rate, consistent with Regulation Z (*see* 12 CFR 226.22 and part 226, appendix J), for each transaction type for which pricing terms are available from the survey described in comment 4(a)(12)(ii)–1. The Board estimates annual percentage rates for other types of transactions for which direct survey data are not available based on the loan pricing terms available in the survey and other information. The Board publishes on the FFIEC's Web site the methodology it uses to arrive at these estimates.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 20, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Attachment I—Methodology for Determining Average Prime Offer Rates

The calculation of average prime offer rates is based on the Freddie Mac Primary Mortgage Market Survey® (PMMS). The survey collects data for a hypothetical, ''best quality,'' 80% loan-to-value, first-lien loan for four mortgage products: (1) 30-year fixed-rate; (2) 15-year fixed-rate; (3) one-year variable-rate; and (4) five-year variable-rate.[5] Each of the variable-rate products adjusts to an index based on the one-year Treasury rate plus a margin and adjusts annually after the initial, fixed-rate period. This Methodology first describes all the steps necessary to calculate average prime offer rates and then provides a numerical example illustrating each step with the data from the week of May 19, 2008.

The PMMS collects nationwide average offer prices during the Monday through Wednesday period each week and publicly releases the averages on Thursday. For each loan type the average commitment loan rate and total fees and points (''points'') are reported, with the points expressed as percentages of the initial loan balance. For the fixed-rate products, the commitment rate is the contract rate on the loan; for the variable-rate products it is the initial contract rate. For the variable-rate products, the average margin is also reported.

The PMMS data are used to compute an annual percentage rate (APR) for the 30- and 15-year fixed-rate products. For the two variable-rate products, an estimate of the fully-indexed rate (the sum of the index and margin) is calculated as the margin (collected in the survey) plus the current one-year Treasury rate, which is estimated as the average of the close-of-business, one-year Treasury rates for Monday, Tuesday, and Wednesday of the survey week. If data are available for fewer than three days, only yields for the available days are used for the average. Survey data on the initial interest rate and points, and the estimated fully indexed rate, are used to compute a composite APR for the one- and five-year variable-rate mortgage products. *See* Regulation Z official staff commentary, 12 CFR part

[5] The ''30-year'' and ''15-year'' fixed-rate product designations refer to those products' terms to maturity. The ''one-year'' and ''five-year'' variable-rate product designations, on the other hand, refer to those products' initial, fixed-rate periods. All variable-rate products discussed in this Methodology have 30-year terms to maturity.

226, Supp. I, comment 17(c)(1)–10 (creditors to compute a composite APR where initial rate on variable-rate transaction not determined by reference to index and margin).

In computing the APR for all four PMMS products, a fully amortizing loan is assumed, with monthly compounding. A two-percentage-point cap on the annual interest rate adjustments is assumed for the variable-rate products. For all four products, the APR is calculated using the actuarial method, pursuant to appendix J to Regulation Z. A payment schedule is used that assumes equal monthly payments (even if this entails fractions of cents), assumes each payment due date to be the 1st of the month regardless of the calendar day on which it falls, treats all months as having 30 days, and ignores the occurrence of leap years. *See* 12 CFR 226.17(c)(3). The APR calculation also assumes no irregular first period or per diem interest collected.

The PMMS data do not cover fixed-rate loans with terms to maturity of other than 15 or 30 years and do not cover variable-rate mortgages with initial, fixed-rate periods of other than one or five years. The Board uses interpolation techniques to estimate APRs for ten additional products (two-, three-, seven-, and ten-year variable-rate loans and one-, two-, three-, five-, seven-, and ten-year fixed-rate loans) to use along with the four products directly surveyed in the PMMS.

The Treasury Department makes available yields on its securities with terms to maturity of, among others, one, two, three, five, seven, and ten years (*see http://www.treas.gov/offices/domestic-finance/debt-management/interest-rate/yield.shtml*). The Board uses these data to estimate APRs for two-, three-, seven-, and ten-year variable-rate mortgages. These additional variable-rate products are assumed to have the same terms and features as the one- and five-year variable-rate products surveyed in the PMMS other than the length of the initial, fixed-rate period.

The margin and points for the two- and three-year variable-rate products are estimated as weighted averages of the margins and points of the one-year and five-year variable-rate products reported in the PMMS. For the two-year variable-rate loan the weights are ¾ for the one-year variable-rate and ¼ for the five-year variable-rate. For the three-year variable-rate product, the weights are ½ each for the one-year and the five-year variable rate. For the seven- and ten-year variable-rate products, because they fall outside of the range between the one- and five-year PMMS variable-rate products, the margin and points of the five-year variable-rate product reported in the PMMS are used instead of calculating a weighted average.

The initial interest rate for each of the interpolated variable-rate products is estimated by a two-step process. First, ''Treasury spreads'' are computed for the two- and three-year variable-rate loans as the weighted averages of the spreads between the initial interest rates on the one- and five-year PMMS variable-rate products and the one- and five-year Treasury yields, respectively. The weights used are the same as those used in the calculation of margins and points. For seven- and ten-year variable-rate loans, because they fall outside of the range between the one- and five-year PMMS variable-rate products, the spread between the initial interest rate on the five-year PMMS variable-rate product and the five-year Treasury yield is used as the Treasury spread instead of calculating a weighted average. The second step is to add the appropriate Treasury spread to the Treasury yield for the appropriate initial, fixed-rate period. All Treasury yields used in this two-step process are the Monday-Wednesday close-of-business averages, as described above. Thus, for example, for the two-year variable-rate product the estimated, two-year Treasury spread is added to the average two-year Treasury rate, and for the ten-year variable-rate product the five-year Treasury spread is added to the average ten-year Treasury rate.

Thus estimated, the initial rates, margins, and points are used to calculate a fully-indexed rate and ultimately an APR for the two-, three-, seven- and ten-year variable-rate products. To estimate APRs for one-, two-, three-, five-, seven-, and ten-year fixed-rate loans, respectively, the Board uses the initial interest rates and points, but not the fully-indexed rates, of the one-, two-, three-, five-, seven-, and ten-year variable-rate loan products calculated above.

For any loan for which an APR of the same term to maturity or initial, fixed-rate period, as applicable, (collectively, for purposes of this paragraph, ''term'') is not included among the 14 products derived or estimated from the PMMS data by the calculations above, the comparable transaction is identified by the following assignment rules: For a loan with a shorter term than the shortest applicable term for which an APR is derived or estimated above, the APR of the shortest term is used. For a loan with a longer term than the longest applicable term for which an APR is derived or estimated above, the APR of the longest term is used. For all other loans, the APR of the applicable term closest to the loan's term is used; if the loan is exactly halfway between two terms, the shorter of the two is used. For example: For a loan with a term of eight years, the applicable (fixed-rate or variable-rate) seven-year APR is used; with a term of six months, the applicable one-year APR is used; with a term of nine years, the applicable ten-year APR is used; with a term of 11 years, the applicable ten-year APR is used; and with a term of four years, the applicable three-year APR is used. For a fixed-rate loan with a term of 16 years, the 15-year fixed-rate APR is used; and with a term of 35 years, the 30-year fixed-rate APR is used.

The four APRs derived directly from PMMS product data, the ten additional APRs estimated from PMMS data in the manner described above, and the APRs determined by the foregoing assignment rules are the average prime offer rates for their respective comparable transactions. The PMMS data needed for the above calculations generally are available on the Freddie Mac Web site (*http://www.freddiemac.com/dlink/html/PMMS/display/PMMSOutputYr.jsp*) on Thursday of each week. APRs representing average prime offer rates for the 14 products derived or estimated as above are posted in tables on the FFIEC Web site the following day. Those average prime offer rates are effective beginning the following Monday and until the next posting takes effect.

Numerical Example

The week of May 19 through 25, 2008 is used to illustrate the average prime offer rate calculation Methodology. On Thursday May 15, Freddie Mac released the following PMMS information reflecting national mortgage rate averages for the three day period May 12 through May 14 (each variable is expressed in percentage points):

30-year fixed-rate:
Contract rate—6.01
Fees & Points—0.6
15-year fixed-rate:
Contract rate—5.60
Fees & Points—0.5
Five-year variable-rate:
Initial rate—5.57
Fees & Points—0.6
Margin—2.75
One-year variable-rate:
Initial rate—5.18
Fees & Points—0.7
Margin—2.75

The Freddie Mac survey contract rate and points for the 30-year and 15-year

fixed-rate mortgages are used to compute APRs for these two products:

30-year fixed-rate—6.07
15-year fixed-rate—5.68

As a preliminary step in calculating APRs for the one-year and five-year variable-rate products, average close-of-business Treasury yields for the three days in which the survey was conducted are calculated (the three yields summed before dividing by three are the close-of-business yields reported for May 12th, 13th, and 14th):

One-year Treasury—(2.01+2.08+2.11)/3=2.07
Two-year Treasury—(2.30+2.57+2.53)/3=2.43
Three-year Treasury—(2.54+2.70+2.78)/3=2.67
Five-year Treasury—(3.00+3.17+3.22)/3=3.13
Seven-year Treasury—(3.34+3.49+3.50)/3=3.44
Ten-year Treasury—(3.78+3.90+3.92)/3=3.87

The fully-indexed rate for the one-year variable-rate mortgage is calculated as the one-year Treasury yield plus the margin: 2.07+2.75=4.82 Because both variable-rate products in the PMMS data use the same margin, the fully-indexed rate for the five-year variable-rate mortgage is the same number: 2.07+2.75=4.82 (since each adjusts to the 1-year treasury).

The initial rate, points, and fully-indexed rate are used to compute APRs for the one-year and five-year variable-rate products:

One-year variable-rate—4.91
Five-year variable-rate—5.16

Data for the interpolated two-year and three-year variable-rate mortgages are calculated as weighted averages of the figures for the one- and five-year variable-rates, which are used in conjunction with the yields on the two- and three-year Treasuries as follows:

Two-year variable-rate:
Initial rate—[3×(5.18–2.07)+1×(5.57–3.13)]/4+2.43=5.37
Fees & Points—[3×.7+1×.6]/4=.7
Margin—[3×2.75+1×2.75]/4=2.75
Fully-indexed rate—2.07+2.75=4.82
Three-year variable-rate:
Initial rate—[2×(5.18–2.07)+2×(5.57–3.13)]/4+2.67=5.45
Fees & Points—[2×.7+2×.6]/4=.7
Margin—[2×2.75+2×2.75]/4=2.75
Fully-indexed rate—2.07+2.75=4.82

The foregoing initial rates, points, margins, and fully-indexed rates are used to calculate APRs for the two- and three-year variable-rate products:

Two-year variable-rate—4.97
Three-year variable-rate—5.03

Data for the seven-year and ten-year variable-rate products are estimated using the survey data for the five-year variable-rate product and yields on the seven- and ten-year Treasuries:

Seven-year variable-rate:
Initial rate—(5.57–3.13)+3.44=5.88
Fees & Points—=.6
Margin—=2.75
Fully-indexed rate—2.07+2.75=4.82
Ten-year variable-rate:
Initial rate—(5.57–3.13)+3.87=6.31
Fees & Points—=.6
Margin—=2.75
Fully-indexed rate—2.07+2.75=4.82

The foregoing initial rates, points, margins, and fully-indexed rates are used to calculate APRs for the seven- and ten-year variable-rate products:

Seven-year variable-rate—5.40
Ten-year variable-rate—5.85

The initial rate and points of the variable-rate mortgages calculated above are used to estimate APRs for fixed-rate products with terms to maturity of ten years or less:

One-year fixed:
Initial rate—5.18
Fees & Points—.7
APR—6.49
Two-year fixed:
Initial rate—5.37
Fees & Points—.7
APR—6.06
Three-year fixed:
Initial rate—5.45
Fees & Points—.7
APR—5.92
Five-year fixed:
Initial rate—5.57
Fees & Points—.6
APR—5.82
Seven-year fixed:
Initial rate—5.88
Fees & Points—.6
APR—6.06
Ten-year fixed:
Initial rate—6.31
Fees & Points—.6
APR—6.44

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 303

Financial Education Programs That Include the Provision of Bank Products and Services; Limited Opportunity To Resubmit Comment

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of limited opportunity to resubmit comment.

SUMMARY: The FDIC invites the commenter who filed a public comment at *www.regulations.gov* on July 9, 2008, relating to the FDIC's Interim Final Rule and Request for Comment involving ''Financial Education Programs That Include the Provision of Bank Products and Services'' to resubmit to the FDIC his or her comment relating to this action. We are taking this action because due to a technical software error, a public comment submitted via *www.regulations.gov* was not transmitted to the FDIC. Therefore, the FDIC will provide this commenter with a limited opportunity to resubmit his or her comment to the FDIC on or before November 24, 2008.

DATES: The commenter whose comment was not transmitted to the FDIC in accordance with the situation described above may resubmit his or her comment on or before November 24, 2008.

ADDRESSES: The affected commenter may submit his or her comment by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal*. Follow instructions for submitting comments on the FDIC's Web Site.
- *E-mail: Comments@FDIC.gov*. Include ''Resubmitted Comments'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429
- *Hand Delivery/Courier:* Guard Station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Public Inspection:* All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or *aajohnson@fdic.gov*.

SUPPLEMENTARY INFORMATION: In January 2003, the interagency eRulemaking Program launched *www.regulations.gov* to provide citizens with an online portal to learn about proposed regulations and to submit their comments on the rulemaking process. For the first time, American citizens could access and comment on all proposed Federal regulations from a single Web site.

A software problem at *www.regulations.gov* resulted in the non-transmittal of public comments to