

## Special Alert: CFPB Proposes Amendments to 2015 HMDA Rule

On April 13, the Consumer Financial Protection Bureau (CFPB) issued a [proposal](#) to amend the 2015 Home Mortgage Disclosure Act (HMDA) rule. The changes are primarily for the purpose of clarifying data collection and reporting requirements, and most of the clarifications and revisions would take effect in January 2018. Comments on the CFPB's proposal are due 30 days after publication in the *Federal Register*.

The CFPB describes the changes as being non-substantive in nature, noting that the proposal is meant to provide "clarifications, technical corrections, or minor changes." While we describe the more significant proposed amendments below in greater detail, highlights of the proposal include:

- Clarification of the definitions of "automated underwriting system," "closed-end mortgage loan" (specifically, extension of credit), "dwelling" (specifically, multifamily residential structures and communities), "home improvement loan," and "home purchase loan" (specifically, construction and permanent financing)
- Permission for institutions to report "not applicable" for loan purpose and the loan originator's Nationwide Mortgage Licensing System and Registry ID when reporting certain purchased loans originated before Regulation Z's loan originator rules took effect
- Clarification of the exclusions for temporary financing and construction loans, commercial or business purpose loans, financial institutions that do not meet the loan-volume threshold, and new funds in advance of consolidation with New York State consolidation, extension, and modification agreements (CEMA)
- Provision of a safe harbor for bona-fide errors related to incorrect census tract reporting if the institution properly uses the geocoding tool published on the CFPB website

### I. Revised Definitions and Related Commentary

#### a. Automated Underwriting System (AUS)

The proposal would clarify that a system that otherwise meets the definition and was developed by a securitizer that has since ceased securitization activities is an AUS for purposes of HMDA. The additional revisions proposed also would provide guidance for financial institutions that are not certain whether a system was developed by a securitizer, government insurer, or guarantor.

#### b. Closed-End Mortgage Loan

The 2015 HMDA rule defines a "closed-end mortgage loan" as: (i) a dwelling; (ii) secured by an extension of credit; (iii) that is not an open-end line of credit. Commentary to the definition indicates that, for example, some installment land sales contracts are not extensions of credit if the land contract provides that, upon default, the contract terminates, all previous payments will be treated as rent, and the borrower is not obligated to make further payments. The proposed rule would remove this example

because the CFPB states in the preamble to the proposal that whether an installment land sales contract is an extension of credit depends on the facts and circumstances surrounding such a transaction.

**c. Dwelling**

The Bureau proposes to revise the commentary for the term “dwelling” to: (i) indicate that a loan secured by five or more separate dwellings in more than one location is a loan secured by a multifamily dwelling; and (ii) include a descriptive example.

**d. Home Improvement Loan**

The proposal would amend the commentary to clarify that a loan to finance improvements on the commercial portion of a mixed-use multifamily dwelling is *not* a home improvement loan pursuant to the rule, but a loan to improve commercial space in a dwelling other than a multifamily dwelling (e.g., a doctor’s office or a daycare center located in a non-multifamily dwelling) would be a home improvement loan.

**e. Home Purchase Loan**

The proposed rule would amend the commentary to: (i) clarify that a loan or line of credit is considered temporary financing and excluded from the definition of “home purchase loan” if the loan or line of credit is designed to be replaced by separate permanent financing extended to the same borrower at a later time; and (ii) state that a construction-only loan or line of credit is also considered temporary financing and excluded from reporting if extended to a person *exclusively* to construct a dwelling for sale.

**II. Revisions to Data Points**

The proposed rule clarifies the collection and reporting requirements for a number of data points including the following:

**a. Universal Loan Identifier (ULI)**

In addition to non-substantive revisions, the proposal would add a clarifying statement to the commentary providing that if a financial institution previously assigned a covered loan with a ULI or reported a covered loan with a ULI, any financial institution that purchases the loan must report the previously assigned or reported ULI. The proposal would further add an illustration to demonstrate how a financial institution complies with HMDA when a covered loan was not assigned a ULI at origination (e.g., purchased loans originated before the effective date of the 2015 HMDA rule).

**b. Ethnicity, Race, and Sex**

The proposal revises the instructions for reporting aggregated and disaggregated ethnic and racial data, primarily clarifying how a financial institution reports data when an applicant selects one or more ethnicity and/or race designations/categories. Specifically, the proposal would amend Appendix B to clarify that: (i) an applicant is not required to select an aggregate category as a precondition to selecting a subcategory; (ii) if an applicant selects a subcategory but does not select the applicable aggregate category, a financial institution should not report the aggregate category; (iii) an applicant need not select “other” to provide an unlisted subcategory; (iv) a financial institution must report every subcategory

selected, except where more than five subcategories are selected; and (v) a five-ethnicity maximum and related instructions apply similarly to the five-race maximum and related instructions that are currently set forth in the 2015 HMDA rule.

#### **c. Action Taken**

The proposal would clarify the reporting requirements for counteroffers as they relate to guidance regarding conditional approvals. Specifically, the proposed commentary would provide that if an applicant agrees to proceed with an institution's counteroffer, the counteroffer would take the place of the prior application, and, consistent with this, the financial institution would report the action taken on the application under the terms of the counteroffer. This would be a change from longstanding guidance regarding counteroffers. The proposal calls for inclusion of a clarifying example.

#### **d. Property Address**

The proposal would clarify the reporting instructions if the following information about the property securing the loan is unknown: (i) property address; (ii) state; (iii) county; and (iv) census tract.

#### **e. Income Data**

The CFPB proposed to clarify that a financial institution does not include in "income" reported under 1003.4(a)(10)(iii) the amounts derived from the annuitization or depletion of assets. However, the proposal would not apply this exclusion to the requirement to report the monthly debt-to-income ratio relied on in making the credit decision (12 C.F.R. § 1003.4(a)(23) of the 2015 HMDA rule).

#### **f. Rate Spread**

The CFPB proposed the following revisions to the commentary related to reporting the rate spread:

- The addition of clarifying language to account for the CFPB's removal of the methodology statement for calculating the average prime offer rate (APOR)
- Language explaining that the CFPB publishes tables of current and historic APORs by transaction type and the methodology statement on the CFPB website (in addition to the FFIEC website)
- A statement clarifying that the APR for open-end lines of credit is calculated pursuant to Regulation Z § 1026.6 and not § 1026.40
- Clarification of the reporting requirements for certain price information for applications or preapproval requests that are approved but not accepted, and where only the loan estimate or other early disclosures have been provided under Regulation Z (*i.e.*, 12 C.F.R. §§ 1026.17, 1026.37, and 1026.40)
- The addition of guidance to address the requirements and procedures for reporting a new APR due to corrected disclosures provided under Regulation Z

#### **g. Credit Score**

The CFPB proposed to amend the commentary to clarify certain reporting requirements if there are multiple credit scores and/or multiple applicants or borrowers. Specifically, the proposed rule would: (i) clarify that if more than one credit scoring model is used and a composite score is relied on, the composite score is reported, noting that multiple scoring models were used; and (ii) explain that where an institution obtains or creates and relies on a single credit score for two or more applicants or borrowers, the institution may report that score for the applicant, and may report “not applicable” for the co-applicant, or, vice-versa.

**h. Total Loan Costs/Total Points and Fees/Origination Charges/Discount Points/Lender Credits/Interest Rate**

The proposal would clarify the reporting procedures if a corrected closing disclosure is provided to the consumer as required under Regulation Z.

**i. Combined Loan-To-Value Ratio (CLTV)**

The proposal would add a comment to explain that where multiple properties are involved, the institution reports the CLTV ratio relied on, regardless of which property was used in the CLTV calculation.

**j. Introductory Rate Period**

The proposal would add a new comment to explain the reporting requirements if a covered loan or application includes an introductory rate that is calculated in a manner other than months. Compliance, in this event, would be achieved by reporting the equivalent number of whole months.

**III. Clarification of Exclusions**

The proposal clarifies the exclusions for:

- Temporary financing and the treatment of certain construction-only loans, including loans to construct homes for sale, or lines of credit as temporary financing
- Commercial or business purpose loans (unless they are made to purchase, refinance, or improve a dwelling) as the exclusion relates to mixed-use dwellings
- Financial institutions that do not meet a loan-volume threshold in “either” (as opposed to “each”) of the two preceding calendar years. This clarification has been informally discussed by CFPB staff on numerous occasions, including in [CFPB’s July/August 2016 HMDA webinar](#)

The CFPB proposed two other related changes. The proposal would permit institutions that do not meet the coverage test in a given year to voluntarily report data for those loans that would be covered if the institution had met the coverage test.

In addition, the proposal addresses how to report certain new extensions of credit made in connection with CEMAs. The proposed rule would exclude from reporting preliminary transactions providing new funds prior to consolidation as part of a New York CEMA transaction, but only if final action on the consolidation was taken in the same calendar year as final action on the application for new funds.

If you have questions about the amendments or other related issues, visit our [Consumer Financial Protection Bureau](#) practice for more information, or contact a Buckley Sandler attorney with whom you have worked in the past.