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October 15, 2019

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Docket No. CFPB-2019-0020; Home Mortgage Disclosure (Regulation C) Data Points and Coverage

Ladies and Gentlemen:

The American Bankers Association, Bank Policy Institute, Consumer Bankers Association, Housing Policy Council, and Mortgage Bankers Association (the "Associations"), on behalf of our respective members, appreciate the opportunity to respond to the Consumer Financial Protection Bureau's (the "Bureau") Advance Notice of Proposed Rulemaking on the Home Mortgage Disclosure Act ("HMDA") (Regulation C) Data Points and Coverage (the "ANPR").[1] The initiation of this rulemaking process, to evaluate these key aspects of Regulation C, is a welcome step to ensure that the goals of HMDA are fulfilled with a properly tailored regulation and data collection.

I. Introduction

We appreciate the Bureau's attention to the ongoing challenges experienced by financial institutions to comply with Regulation C, as amended by the Bureau's 2015 final rule ("2015 HMDA Rule").[2] We also appreciate the Bureau's willingness to reconsider the mandatory cost-benefit analysis by evaluating the balancing of the burdens of data collection and reporting under the 2015 HMDA Rule with the value of the data reported. While we support modifications to Regulation C that further HMDA's purposes, this must be done with due consideration of the costs and burdens on institutions relative to the value of additional data reporting. With appropriate balancing, the Bureau can alleviate the regulatory burdens related to HMDA data collection and reporting while still fulfilling the objectives of HMDA.

This balancing, however, requires data on the cost of data collection and reporting, which the Bureau observes, few commenters provide.[3] First, *Section II* of the letter provides data on the

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[1] Home Mortgage Disclosure (Regulation C), 84 Fed. Reg. 20049 (May 8, 2019).
[2] Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128 (Oct. 28, 2015).
[3] *See, e.g.*, Home Mortgage Disclosure (Regulation C), 84 Fed. Reg. 20972, 21011 (May 13, 2019).

regulatory burden on mortgage lenders and servicers. To address the Bureau's direct solicitation for cost data, the Associations partnered with STRATMOR Group[4] to conduct a survey to identify the precise burden associated with HMDA compliance (the "Survey"). These results are intended to provide a clear and comprehensive picture of the unique cost and burdens borne by banks under the expanded HMDA reporting requirements. *Section III* of the letter provides an overview of the Survey and key results.

Section IV of the letter responds to the Bureau's specific questions from the ANPR based on the Survey and additional input from our members.

II. Regulatory Burden

In the nine years since enactment of the Dodd-Frank Act, the Bureau has issued at least 31 major rulemakings affecting mortgage origination and servicing—a staggering rate of regulatory change that has significantly increased the complexity, risk, and cost of mortgage lending and has inhibited banks' and mortgage companies' ability to serve their customers. The cost to originate a mortgage loan for mid-sized banks has nearly doubled from approximately $4,800 in 2008 to approximately $9,000 in 2018, according to data from the Mortgage Bankers Association and the STRATMOR Peer Group Roundtable Benchmarking Program.

Data from ABA's annual Real Estate Lending Surveys corroborate this trend and demonstrate the adverse impact of this ever-increasing layering of regulatory requirements on banks:

- In 2017, 77% of responding banks reported a "moderate to extreme" negative impact stemming from mortgage regulation, with 22% reporting "extreme" impact. Last year, even after most rules had been implemented, 58% still reported a "moderate to extreme" negative impact stemming from regulation, with 9% reporting "extreme" impact.
- In 2017, 96% of responding banks reported higher mortgage-specific compliance costs as a result of Dodd-Frank Act regulations. In 2018, 63% of respondents report that the institution's mortgage-specific compliance costs continued to increase in 2018; another 36% report that they have just "leveled out" in 2018.
- In 2017, 83% of respondents reported they had to hire additional staff as a direct result of new regulations; in 2018, this number remained high at 43%.
- In 2017, 97% of respondents reported increased legal/regulatory consulting costs; these costs continued to increase in 2018 for 69% of respondents.

As the Survey results demonstrate, compliance with the 2015 HMDA Rule has added to these regulatory burdens.

[4] The STRATMOR Group is an independent consulting, analytics, and advisory services firm that specializes in mortgage banking.

III. Survey: Methodology and Key Results

a. Methodology and Respondent Profile

As previously explained, to respond to the ANPR, the Associations engaged STRATMOR Group to survey members to gather data that would be useful in answering the questions posed by the Bureau's ANPR. The Survey was conducted from June 20 through July 26, 2019.

The final sample of Survey respondents included 182 lenders that were primarily banks or bank owned/affiliated mortgage entities (93%).[5] Using the population of bank lenders in HMDA, which was 2,951 in 2018, the findings of this survey are generally representative of the overall population of banks with a 95% confidence level and a 7.5% margin of error. Survey respondents are a representative cross-section of banks in terms of asset size, as well as mortgage volume (HMDA reportable units).

b. Key Results

The Survey results highlight the costs of implementation and ongoing reporting, and they identify certain data points for which the burden does not outweigh the benefit. Attached to this letter as Appendix A is the complete Survey report, which we summarize below.

1) <u>The initial costs to implement the 2015 HMDA Rule have been substantial for institutions of all sizes and profiles.</u>

The cost to implement the 2015 HMDA Rule was astoundingly high, and the continuing compliance costs impose strong upward pressures on what consumers pay on a per-transaction basis. In addition, the burdens compel additions to lender staff levels, inflating institutional expenditures generally.

To implement the 2015 HMDA Rule, 46% of the Survey respondents increased technology full-time employees ("FTEs"),[6] with larger lenders, on balance, more likely to have added technology FTEs. For those that increased technology FTEs, the primary reasons were to update the loan origination systems ("LOS") and relevant software and fields. The majority of surveyed lenders (61%) purchased new software to implement the 2015 HMDA Rule and spent an average of $412,874 on that software.

In addition to increases in internal staffing and purchases of necessary software, many lenders also relied on outside vendors to implement the 2015 HMDA Rule. 37% of respondents

[5] With respect to the Survey structure and responses, we note the following—(1) not every respondent answered every question; (2) sample sizes are noted throughout the survey's slide presentation; and (3) opportunity was given for free-form comments.

[6] Technology FTEs include individuals working in the technology development, testing, maintenance and support groups. For banks, this may include FTE in the Bank technology areas that are assigned to mortgage on a direct basis or on a project basis.

engaged a vendor[7] for implementation of the Rule, spending an average of $335,966 on technology vendors and an average of $87,228 on non-technology vendors. When examining vendor costs by size of lender, lenders with less than 1,000 reportable HMDA units spend an average of $10,890 on vendors, while lenders with more than 50,000 reportable HMDA units spent an average of $3.4 million on vendors. This equates to an average cost of $21-$40 per loan on vendor services alone.

2) <u>Lenders continue to devote significant resources to ongoing compliance with the 2015 HMDA Rule.</u>

The additional expenses and staff allocations committed to HMDA data collection, scrubbing, analysis, and reporting are continuous—in short, the reporting of accurate data requires constant bank expenditure, year after year. Moreover, the collection and reporting of accurate data is challenging, resulting in, high training costs and elevated salaries for employees assigned to HMDA compliance.

Survey data show that lenders devote significant staffing resources to HMDA compliance. For example, for a lender with fewer than 1,000 HMDA reportable units, the average number of full-time employees dedicated to HMDA reporting is 3.3. Assuming an average FTE cost of $65,000 annually, ongoing annual personnel costs are $214,500 for a lender with limited mortgage lending activity (fewer than 1,000 units), and that figure excludes any cost allocation for time spent by loan officers and fulfillment personnel in the process. For a lender that reports between 1,000 and 5,000 units, the average number of FTEs jumps to 6.01, or an average cost of $390,650.

While 35% of lenders added technology FTEs for ongoing reporting, 70% of lenders added non-technology FTEs for the continual work associated with reporting.[8] Lenders that report between 10,000 and 50,000 units had the largest percentage increase in non-technology FTEs, with 70% of respondents in that category reporting increasing non-technology FTEs by at least 10%. The main reasons for adding non-technology FTEs were assuring integrity of data and general compliance review work. Slightly less than half of respondents (46%) indicated that they use dedicated software to report HMDA, incurring an average *annual* cost of $88,281.

3) <u>The burden of reporting several new data fields outweighs the benefits of those data fields in furthering HMDA's objectives.</u>

The Survey also shows that the burden of reporting some new data fields far outweighs the benefits of those particular data fields. Respondents clearly indicated that many of the newly required reporting fields are of limited value for monitoring whether they are effectively serving the housing needs of their communities and identifying possible discriminatory lending patterns.

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[7] Vendors would include such categories as legal, training, software development and integration, and LOS development.

[8] Non-technology FTEs include individuals working in any non-technology area which supported HMDA implementation including compliance, legal, post-closing, training, sales or sales administration, and fulfillment areas such as processing, underwriting or closing.

For example, the free-form race and ethnicity fields were ranked low in terms of usefulness and high in terms of burden of collecting and reporting, as these data points cause borrower confusion and staff has difficulty collecting the information correctly. Moreover, in its report on the new and revised data points, the Bureau notes, "These free-form text fields were sparsely populated. About one percent of the applicants filled in the free-form fields for race and ethnicity."[9] Therefore, these data cannot be used even for aggregate statistical analysis, so *any* burden imposed by their collection and reporting would outweigh their contribution toward achieving HMDA's objectives.

In response to the Bureau's requests for comment, we provide additional details on specific data items and reporting requirements.

IV. Responses to Specific Requests for Comment

1. **Please identify any new data point or any data point revised to require additional information from the list above for which the cost of collecting and reporting the information does not justify the benefit that the information collected and reported provides in furthering the purposes of HMDA. For each such data point:**
   - i. **Please describe the nature and magnitude of any operational challenges in collecting and reporting the required information.**
   - ii. **What ongoing costs are incurred in collecting and reporting the required information? Has the Bureau's new web-based data submission and edit check system affected ongoing costs of collecting and reporting the required information? If so, how and how much? To what extent are the data point's requirements aligned with industry standards, and how does that affect ongoing costs of collecting and reporting the required information?**
   - iii. **Would financial institutions generally collect the required information in the ordinary course of business absent Regulation C requirements? If so, what are the incremental costs associated with reporting the required information? If not, what are the costs associated with collecting and reporting the required information?**
   - iv. **How much value does the data point provide in furthering the purposes of HMDA?**

While the Survey does not allocate ongoing costs to individual data points, it does provide an overarching picture regarding the significant reporting burdens of HMDA data.[10]

Based on the results of the Survey as well as the Bureau's own analyses of the 2018 HMDA data, we have identified certain data points for which the burden of collecting, maintaining and reporting substantially outweighs the benefits the information provides. We identify and discuss each of these data points below, and urge the Bureau to eliminate these items from Regulation C. The data points we designate for removal generally meet three criteria:

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[9] Consumer Fin. Prot. Bureau, Introducing New and Revised Data Points in HMDA: Initial Observations from New and Revised Data Points in 2018 HMDA 22 (Aug. 2019), https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf [hereinafter CFPB New Data Report].

[10] See Section III.b above for a general discussion regarding implementation and ongoing costs related to the 2015 HMDA Rule.

(i) the information is not required by the statute; (ii) the information gathered provides marginal value, for example because the data point applies to a limited number of records or tends to be sparsely populated, when compared to the overwhelming operational costs that financial institutions must incur to gather and report; and (iii) the information is highly complex and unsuited for compliance purposes.

Further, for those reporting requirements that the Bureau retains under Regulation C, we urge, at minimum, full harmonization of the definitions and calculations of data points across the multiple mortgage regulations, including HMDA, the Equal Credit Opportunity Act, and the TILA-RESPA Integrated Disclosure rule ("TRID").

Automated Underwriting System Used and Result

The 2015 HMDA Rule requires financial institutions to report the name of the automated underwriting system ("AUS") used to evaluate the application and the result generated by that AUS.[11] This data point raises reporting complexities that cannot be easily resolved and often lead to inconsistent reporting. Survey respondents ranked AUS and result as one of the least useful data points, slightly below the free-form race/ethnicity fields. They also indicated these data were moderately difficult to collect, and obstacles to collection reduce the usefulness of the data.

An institution should report these data only if it used an AUS to evaluate the application. However, not all electronic tools would be covered under this requirement; in order for a system to be an AUS, the system must provide a result regarding both the applicant's credit risk and the eligibility of the loan to be originated, purchased, insured, or guaranteed by a securitizing entity. Creditors often run data through multiple AUSs at multiple times in the origination. All AUSs perform automated analysis of mortgage loan applications and evaluate its supporting data (e.g., credit reports) for purposes of qualification. However, AUSs also are used to ascertain the general "quality" of an application and whether applications conform to originator or investor guidelines and requirements. As such, an applicant's financial information may be run through an AUS at various points in the application/origination process and for various reasons. The regulation cannot adequately reconcile this diversity of AUS usages without imposing very complex rules to guide reporting.

Further, AUS calculations often are used for purposes that fall outside of the objectives of HMDA. Frequently, an AUS will integrate loan pricing possibilities across a lender's entire portfolio or product set so that there can be a holistic comparison of the best option for the consumer. These systems also may identify the full range of terms that are available for the customer. In such instances, the use of AUS is intended to inform product choice, not underwriting,

Further complicating matters, not only may lenders use multiple AUSs, they also may rely on various versions of the AUS offered by an investor or system provider. In addition, there may be "grades" of automated systems, so that in any one year, a lender may see the same AUS

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[11] 12 C.F.R. § 1003.4(a)(35)(i).

"brand" be upgraded from version 3.0 to 3.5. These variations cannot be distinguished adequately for purposes of HMDA reporting.

As a result, lenders identify this data point as problematic and highly prone to error. The data point is likely to yield inconsistent or misleading data, which cannot provide useful information for fair lending analysis or for research studies using HMDA data. In light of its limited value, we recommend that this data point be eliminated.

Additional Fields for Race and Ethnicity

The 2015 HMDA Rule includes expanded reporting of race and ethnicity, with up to five fields for each data point. Members overwhelmingly find these race and ethnicity fields to be significantly complex and provide limited benefit both from a data integrity and data analysis perspective. In particular, the challenge of collecting this information, from a practical level (e.g., difficulties assessing the race and ethnicity through telephone or other similar interactions) largely defeats any corresponding benefit that the Bureau could have in collecting this information. Moreover, even if the Bureau were to find such a benefit in this data, the existing guidelines do not provide enough clarity and continue to lead to inconsistent interpretations, and therefore inconsistent reporting, of the sub-ethnicity codes. Additionally, the data requirement causes borrower confusion and leads to placing consumers in difficult and uncomfortable situations. These sub-fields overwhelmingly provide significantly limited meaningful detail and are particularly burdensome on lenders and correspondingly on borrowers from whom the information is requested.

The Bureau's analyses show that these additional fields are rarely used. "The vast majority of applicants selected one race, with the exception of applicants who selected American Indian or Alaska Native (in which case only a modest majority selected one race)."[12] For ethnicity, "for most applicants, only one field of ethnicity was used (95.1 percent). Only about five percent used two ethnicity fields."[13] This limited data cannot be used for meaningful analysis to further the HMDA's objectives.

The Bureau's report shows that these additional fields are rarely used, yet they cause confusion for lenders and borrowers as well as inconsistency in collecting and reporting. As discussed in more detail in response to Question 2, similar conclusions must be drawn in regards to the free-form text fields. Removing these additional fields will reduce the associated burdens without negatively impacting HMDA's objectives.

Discount Points and Lender Credits

The 2015 HMDA Rule requires lenders to report the points paid to the creditor to reduce the interest rate.[14] The data point directly corresponds to item from Line A.01 of the Closing Cost Details page of TRID's Closing Disclosure.[15] In addition, the newly-required "lender credits" data point is defined as the amount of lender credits disclosed on the TRID Closing

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[12] CFPB New Data Report, *supra* note 9, at 20.
[13] *Id.*
[14] 12 C.F.R. § 1003.4(a)(19).
[15] *Id.* § 1026.38(h)(3).

Disclosure at the “Lender Credits” line of Block J (TOTAL CLOSING COSTS) of the “Closing Cost Details” Section.

We believe the compendium of new pricing data fields added by the 2015 HMDA Rule are of limited utility. The new pricing fields, such as discount points, lender credits, origination charges, interest rate, and total loan costs, were intended to generate information on the price that consumers pay for mortgages and information on the tradeoffs between rates, points, and fees. With these new data points, the Bureau hoped to improve the understanding of disparities in pricing outcomes beyond that permitted by the current rate spread data field. While a well-intended objective, it is duplicative as the information embedded in the rate spread field by itself allows regulators and researchers to appropriately understand relevant pricing outcomes and achieves the broader purposes of HMDA. Therefore, the marginal value of the new data points is too limited to justify retention.

Moreover, in terms of market comparisons, data on discount points and lender credits can be misleading for multiple reasons. First, the total discount points paid by consumers are interrelated with lender credits and can often be offset by such lender credits. The lender credit data point, however, is defined by TRID and does not necessarily designate a uniform set of payments or financial benefits “given to” the consumer. Under TRID, a lender credit can include a lender-provided pricing incentive, a balance reapportionment that reflects a "cure" for a tolerance violation, or lender offsets to closing costs and/or amounts to be paid at closing. In addition, lender credits on the closing disclosure can be either “specific credits” (meaning the credit is earmarked for a service included in the “Paid by Others” column), or “general credits” (indicating a dollar value for a credit placed on the Lender Credit line in Section J). Any analysis of lender credits across transactions and across populations is therefore subject to multiple definitional variances that are not appropriate for comparison. The interplay of these two fields and the varying elements they may include mean that pricing analyses can never be conclusive unless actual details of the specific transactions are dissected. Such definitional divergence in the data will lead to hazy interpretations of HMDA aggregate figures.

The Bureau recognizes this point in its initial report of the aggregate data,[16] observing that Lender Credits, as disclosed on the Closing Disclosure and reported under HMDA, may include lender credits given to borrowers for reasons other than choosing a higher interest rate in exchange for reduced upfront costs. As the Bureau notes, “the lender credits reported under HMDA may not perfectly mirror the definition of the Discount Points reported under HMDA and thus should not be viewed as the equivalence of the negative direction, i.e., being negative discount points.”[17]

Moreover, discount points are highly variable. Some lenders do not offer them as options at all. Among the lenders that offer discount points, the precise interest rate reduction received for buying points is not formulaic—the discount will vary across lenders, across markets, and/or over time. In addition, “buying” points can afford consumers with varying tax benefits across depending on the location of the property. Discount points, therefore, are unreliable for price

[16] CFPB New Data Report, *supra* note 9, at 82-83.
[17] *Id.* at 83.

comparisons as they involve market, lender, and consumer choices and tradeoffs that are inappropriate for analyses related to the fairness and distribution of mortgage credit. The same applies to lender credits. As described by the Bureau in consumer information pages, "[t]he exact increase in your interest rate depends on the specific lender, the kind of loan, and the overall mortgage market. Sometimes, you may receive a relatively large lender credit for each 0.125% increase in your interest rate paid. Other times, the lender credit you receive per 0.125% increase in your interest rate may be smaller."[18]

Pricing comparisons are extremely difficult, even impossible, to analyze because of differences in markets, product types, and most importantly, the "complex behaviors of borrowers and lenders."[19] This complexity impedes the utility of the granular pricing data. To achieve HMDA's objectives, which are to monitor broad patterns in access to and pricing of mortgage credit, and to identify lenders or circumstances that may require a targeted fair lending examination, the existing rate spread measure is more than appropriate.

In addition, information on discount points is not generally included in loan origination program software. Accordingly, discount point information manually calculated and entered into HMDA compliance systems. 59% of Survey respondents report that they had to make manual updates or calculations to report discount point data; and 53% report they had to make additional calculations to report the data.

In light of its low marginal value and the significant compliance burdens associated with collecting these items, we recommend their elimination from the HMDA Loan Application Register ("LAR").

Total Units in Security Property

The 2015 HMDA Rule requires a lender to report the number of individual dwelling units related to the property securing the covered loan. For an application, the lender must report the number of individual dwelling units related to the property that is offered as security for the covered loan.[20] Institutions continue to report compliance difficulties in reporting total units for certain types of properties, particularly with respect to manufactured home communities, condominium developments, and cooperative housing developments.

Compliance with this data point is problematic as it requires interpretive decisions by reporting institutions. Compliance staff must review property descriptions and make judgments calls on such details as detached units to the subject property. Often, they must reconcile appraisal descriptions that refer to "accessory units" without further description regarding occupancy or purpose of the unit. The simple question of "Is it a shed, a pool house, or a guest room," introduces the risk of an error and compliance violation. When there is any uncertainty, reporting institutions must handle the doubt with human intervention to manually document the

[18] Consumer Fin. Prot. Bureau, Ask CFPB: What are (discount) points and lender credits and how do they work? https://www.consumerfinance.gov/ask-cfpb/what-are-discount-points-and-lender-credits-and-how-do-they-work-en-136/ (accessed Oct. 15, 2019).
[19] CFPB New Data Report, *supra* note 9, at 80.
[20] *See* 12 C.F.R. § 1003.4(a)(31).

reasoning behind the given HMDA classification selected, and this must be consistent with institution precedent and internal policy and procedure.

Achieving reliable regulatory instructions on this data point would require long and technical agency directions that would ultimately depend on the vagaries of consumer use of an individual dwelling. The regulatory result would be added complexity with no clear advancement of overall HMDA objectives. We appreciate the FFIEC's current instructions that financial institution may rely on the best information readily available to it at the time action is taken, but lingering uncertainties or subsequent mistakes are always resolved against the reporting institution in examinations. Close to 50% of our survey respondents assert that this item requires manual updates and calculations on collected data, and 71% report difficulty in collecting it correctly. Given its limited utility, we recommend elimination of the data point from the HMDA LAR.

Manufactured Homes: Secured Property Type and Land Property Interest

Our members consistently find the data fields related to manufactured homes – the secured property type and land property interest – to be difficult to report with little, if any, benefit in furthering the purposes of HMDA. Survey respondents found that this data was difficult to collect with accuracy, particularly because the lender often relies on information provided by the customer. Additionally, lenders reported that this information is not collected in the normal course of business and it requires manual updates. Further, both of these data points ranked high for lack of usefulness, as lenders found that there were a limited number of records to which these fields pertain, and these fields do not enhance the lenders' understandings of whether they are fairly meeting the mortgage credit needs of their communities. Manufactured home loans typically have low margins and many lenders originate a very small number of these loans. The Bureau's data shows that of the 7.7 million mortgage loans originated in 2018, only 171,700 were manufactured home loans. Due to the small set of loans to which these data fields apply, combined with the burdens of collecting and reporting and the lack of usefulness, we recommend elimination of these data points and their replacement with a flag to indicate whether the loan is secured by a manufactured home.

2. **The 2015 HMDA Rule requires financial institutions to complete free-form text fields for certain data points when certain circumstances are met. For each free-form text field required by the 2015 HMDA Rule:**
    i. **What are the costs of providing information through the free-form text field?**
    ii. **What are the benefits of providing information through the free-form text field?**
    iii. **Are there better alternatives to providing information than through the free-form text field?**

The 2015 HMDA Rule introduced free form text fields for five data fields, all of which are excluded from the public data set: race; ethnicity; name and version of credit scoring model; reason for denial; and automated underwriting system used and result. These free form text fields are consistently problematic and require a significant amount of resources to ensure accuracy and consistency while providing little, if any, benefit in furthering the purposes of HMDA. For example, the free form text field for reason for denial allows up to 255 characters, and ensuring the text entered into that field is accurate and consistent requires a time-consuming manual process placing a significant burden on lenders with little to no benefit for the regulators.

We urge the Bureau to eliminate the requirement to collect and report all free form text fields from the HMDA data set. Their removal would substantially reduce the burden on reporting institutions and would have no negative impact in furthering the purposes of HMDA.

The Survey emphasizes the challenges presented by the free-form text fields. Of all the new discretionary data fields, lenders ranked these as the most difficult to collect. In regards to the free form race and ethnicity fields, close to half of the lenders indicated high or moderately high difficulty in collecting and reporting. An overwhelming majority of the lenders viewed the free form race and ethnicity fields as causing borrower confusion, while a similar proportion reported that staff struggled to collect the information correctly. This is especially true for transactions that occur on the telephone rather than in person, and there are significant issues with how this collection occurs.

Lenders also ranked these fields among the lowest on usefulness, with nearly two thirds of lenders indicating low or limited usefulness for the free form race and ethnicity fields. Low usefulness was attributed fairly equally to several factors: (i) limited number of records to which these fields pertain; (ii) the fields fail to enhance the lender's understanding of how it is serving its borrowers or communities; and (iii) the inability of these fields to enhance the lender's understanding of the borrower's credit profile or otherwise contribute to underwriting or pricing of the loan.

The Bureau's own data confirms the limited usefulness of these free-form text fields. In regards to the free form text fields for race and ethnicity, these fields "were sparsely populated. About one percent of the applicants filled in the free-form fields for race or ethnicity."[21] Not only does the sparse response imply limited usefulness due to lack of information being added, it also introduces the potential of response bias, such that information collected in relation to a particular group would not be representative of the group as a whole. Additionally, the Bureau found that different applicants used different words to convey the same information in the free-form text fields. This limited data cannot be used for meaningful analysis to further the purposes of HMDA. In short, it is abundantly clear – the free-form text fields for race and ethnicity provide no benefits yet impose substantial burdens.

For credit scoring model, the Bureau reported that "an overwhelming majority of those filling in this free form text field named some other variation of FICO scoring models and versions not listed in the standard enumeration of the 2018 FIG, most commonly FICO9."[22] There is no clear benefit to having this information, and it appears that FICO9 could be added to the standard enumeration of the FIG, which therefore would account for the "overwhelming majority" of those that filled in this free form text while eliminating the significant burden of using the free form fields.

[21] CFPB New Data Report, *supra* note 9, at 22.
[22] *Id.* at 47-48.

Given the Survey results and the Bureau's own findings, we recommend elimination of the free-form fields. It is abundantly evident that the costs of collecting and reporting these fields outweigh any benefits they may provide in furthering the purposes of HMDA.

3. **Are there other considerations the Bureau should take into account in deciding whether to propose to eliminate or revise any new data point or revised data point from the 2015 HMDA Rule?**

We appreciate the Bureau seeking input on other considerations for which the Bureau should account to decide whether to propose to eliminate or revise any new or revised data point from the 2015 HMDA Rule. We raise several issues in response to this question including the data collection requirements under HMDA applying to open-end lines of credit and the disclosure of certain HMDA data fields.

Data Collection and Reporting on Open-End Lines of Credit Do Not Further the Purpose of HMDA.

We urge the Bureau to eliminate the requirement for collection and reporting data on open-end lines of credit (HELOCs). These data are of low utility, insufficient to justify the outsized costs associated with their collection and submission.

Notably, it was the 2015 HMDA Rule, not the Dodd-Frank Act that imposed data collection and reporting requirements on certain dwelling-secured, open-end lines of credit, including home-equity lines of credit. The Bureau's decision to collect this data does little to advance the statutory objectives of HMDA.

Open-end credit generally is not used to support housing related needs, and therefore, provides less pertinent information regarding whether lenders serve the housing credit needs of their communities. While a modest percentage of HELOCs are used for home improvements, many of these loans are used to finance educational needs, to purchase vehicles, to help in a financial emergency, to consolidate outstanding debt, and for other purposes unrelated to housing. Therefore, this additional data collection provides little information about whether lenders are serving the housing credit needs of their communities.

In fact, the purpose of a HELOC is often difficult, or impossible to ascertain. Often a borrower will list several reasons, or none at all, for applying for a HELOC. Contrasted to closed-end mortgages, the purpose of the HELOC has little, if any, impact on pricing or underwriting decisions.

Other significant limitations on the use of these data arise because closed- and open-end mortgage products are fundamentally too different to effectively fit into a uniform data collection framework. In other words, the notion that HELOCs and closed-end mortgages can be usefully packaged together within a single data collection framework seems misguided. One problem is that factors important to the evaluation of credit risk of a HELOC overlap only partly with those most relevant to the credit risk of a first-lien mortgage. For example, the borrower's credit line utilization rate and the proportion of the borrower's total mortgage debt that resides in the HELOC are both important risk factors for a HELOC. However, these have little relevance to the credit risk of a closed-end mortgage.

Another problem is that, while neither closed- nor open-end mortgage transactions are homogeneous in nature, the sources of heterogeneity differ between them. Thus, data items included in HMDA to account for heterogeneity in the features of closed-end products only partly address heterogeneity of open-end products. For example, a lender may offer a fee reduction or special interest rate to generate HELOC applications, and the interest rate on a HELOC may vary with the amount drawn. HELOCs also vary with respect to lengths of both the draw and amortization periods, which may or may not be mutually exclusive.

This variation curtails the usefulness of the open-end credit data points for fair lending analysis. For example, if a lender offers a fee reduction or special interest rate to generate HELOC applications, then two similarly situated borrowers may have HELOCs with different rates and fees as a result of the time of application—not fair lending concerns.

Moreover, because of the fundamental differences between closed- and open-end mortgage products, incorporating the latter into HMDA requires a multiplicity of special instructions that apply to them. One obvious example is combined LTV, which for HELOCs can be defined in either of two ways: with the numerator equal to the first lien balance as of the origination date of the HELOC, plus the HELOC credit line, or as the sum of first lien balance plus HELOC drawn amount as of the origination date of the HELOC. Thus, a special instruction is required to differentiate these. Other examples of special instructions for open-end products abound in the HMDA Reporting Guide. This plethora of special instructions greatly increases reporting burden, increasing data checking and monitoring costs for both HMDA reporters and consumer compliance examiners.

In short, collection and reporting on data related to open-end lines of credit impose significant burdens while not furthering the purposes of HMDA. The data does not provide useful information about the availability of mortgage credit, pricing patterns, or disparities that would indicate that additional analysis is needed to assess fair lending issues. Indeed, the Bureau's analysis of the 2018 HMDA data examines the data on closed and open-end mortgage transactions separately, a clear indication that Bureau researchers recognize that the inclusion of HELOC data with the aggregate HMDA data may dilute and impair the legitimacy of the conclusions drawn from such data while imposing costly compliance requirements on lenders. This is the reason that the Federal Reserve Board made HELOC reporting optional. We urge the Bureau to eliminate open-end collection and reporting requirements under Regulation C.

Continuing Concerns Regarding Public Release of Certain Data Points

While we recognize and appreciate the Bureau's announcement that it will address privacy issues through an Administrative Procedure Act rulemaking to be initiated next year, it is impossible to separate privacy concerns from a discussion of the respective value and burdens of individual data points.[23] The 2015 HMDA Rule assumes diffuse community benefits from the disclosure of this data, but the potential for infringement of individual privacy due to the

[23] For a more complete discussion of our privacy concerns, *see* Letter from Am. Bankers Ass'n (ABA), Consumer Bankers Ass'n (CBA), Consumer Mortg. Coal. (CMC), Hous. Policy Council (HPC), Mortg. Bankers Ass'n (MBA) to Monica Jackson, The Bureau (Nov. 24, 2017), https://www.aba.com/Advocacy/commentletters/Documents/Joint-cl-HMDA112417.pdf.

disclosure of individual data points must be considered. We believe that any attempt to weigh the costs and benefits of particular data points or the HMDA data collection regime generally, that does not consider the potential costs imposed on the individual consumer through the possible dissemination of sensitive non-public information, is insufficient.[24]

Given the ease of consumer re-identification, the Bureau should assume that information disclosed under HMDA will eventually be linked to individual loan applicants.[25] This assumption is only strengthened by the constant advances in machine learning, artificial intelligence and experience applying these technologies to the HMDA dataset. We appreciate the prudent redactions from the public data set the Bureau has made to date with these concerns in mind and encourage a holistic review of the public benefits versus the individual risks of public disclosure.

Finally, our members take their data protection responsibilities extremely seriously and endeavor to protect all consumer information in their possession. Any discussion of the costs and benefits of reporting specific HMDA data points should also be mindful of the reality that centralizing data from different systems increases the risk of harm from a data breach. HMDA requires pulling information from different systems into a centralized file to report the aggregated data set. This process increases both the value of that particular data set to malicious actors and the possible impacts of a data breach both at rest and in transmission. The potential costs and benefits of reporting HMDA data should attempt to quantify this potential risk.

We look forward to working with the Bureau as it develops its proposed rulemaking on the public disclosure of HMDA data to find a better approach that meets the goals of HMDA while protecting consumers.

4. **Are there new or revised data points under the 2015 HMDA Rule for which more explanation is needed to clarify the collection and reporting requirements? If so, please identify any data point for which additional clarity could reduce the costs associated with collecting and reporting the data and improve the value of the data in furthering the purposes of HMDA.**

As a first request, and in light of the on-going changes and clarifications to HMDA rules and regulations, the Associations respectfully ask that the Bureau afford institutions with continued leniency during the course of its HMDA-related examinations, as it has done previously in policies announced in 2017. Our members request proper consideration of the significant systems and operational challenges that persist in complying with the revised regulations. As such, we urge the regulators to maintain the policy of not requiring data resubmission unless data errors are "material," and not assessing penalties with respect to errors in data collected in 2019 and reported in 2020.

Our members appreciate the Bureau and FFIEC agencies past approach to HMDA examinations of the 2018 HMDA data collection and reporting process that permitted financial institutions an opportunity to identify gaps in their good faith implementation efforts and that

[24] Note that this is not an argument for making this data unavailable to regulators. The Bureau and other regulators have the supervisory authority to require production of all data in the HMDA data set and more upon demand.
[25] *See* comments referenced in fn. 23 for a more thorough discussion of re-identification risk.

allowed them to make improvements in their HMDA compliance management systems for future years. These so-called "diagnostic examinations" were of considerable relief to affected institutions and helped advance and incentivize proper implementation of these reporting requirements—a benefit to all stakeholders.

Second, we have compiled a list of questions and suggestions from our members regarding needed clarifications on the collection and reporting requirements of the 2015 HMDA Rule. That list is attached as Appendix B to this letter. We note that this is not a complete, inclusive list, and we expect additional questions and suggestions from our member companies. We look forward to working with the Bureau to address the questions and suggestions in Appendix B, as well as additional issues that need clarification to reduce costs and improve the integrity, quality, and value of the data.

The Bureau seeks to comments to assess the extent to which requiring reporting of information on business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling imposes burdens on financial institutions and furthers HMDA's purposes.

The Bureau seeks information to assist in deciding whether to propose to exclude such transactions from HMDA's requirements, including information about the following:

5. **The value that data on such transactions provides in serving HMDA's purposes;**

6. **Other benefits associated with reporting such transactions; and**

7. **The burden imposed by the requirement to report data on such transactions.**

Answer to Questions 5-7

Some of the Associations are submitting a letter focusing exclusively on multifamily and commercial mortgage lending. As such, we incorporate by reference that comment letter, and emphasize the following key points made in that letter.

Business-to-Business Multifamily Loans

The substantial regulatory burden of HMDA reporting of business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling (business-to-business multifamily loans) more than outweighs the potential value of such data in serving HMDA purposes. Potential HMDA value is minimal because: (i) most HMDA data fields are inapplicable to business-to-business and/or multifamily loans; (ii) much of the HMDA data on loan terms and underwriting (e.g., data on non-amortizing features) does not have the same information value in a commercial-lending context because of differences in common loan structures and in underwriting; (iii) data on multifamily affordable units paints an incomplete and potentially misleading picture of actual affordability and may be publicly available outside of HMDA; and (iv) any HMDA value served by location data in multifamily lending is outweighed by privacy risk to borrowers (e.g., 2018 HMDA data showed 19,172 Census tracts with only one or two multifamily loans reported). Moreover, the extensive materials accompanying the Bureau's release of the 2018 HMDA data related almost exclusively to single-family HMDA data, as the materials focused on data fields that are inapplicable to business-to-business or multifamily lending.

Moreover, the corresponding collective burden on the entire multifamily lending industry (including 2,828 depository and non-depository lenders) that must implement a HMDA reporting regime designed with consumer lending in mind to commercial multifamily lending far outweighs any value added by this data. The Survey demonstrates that the regulatory burden of reporting CLTV in a commercial context and reporting multifamily affordable units is exceptionally burdensome.[26]

For these reasons, we believe that an appropriate result of this rulemaking should be a determination that multifamily loans should be exempt from HMDA.

In addition to reflecting an appropriate balance of benefits and burden, the exemption of multifamily loans from Regulation C would be fully consistent with the intent of Congress. For example, Congress named the statute the *Home Mortgage* Disclosure Act and enacted it to respond to congressional findings regarding "home financing." Multifamily loans are not "home mortgages" or "home financing." The Dodd-Frank Act designated HMDA to be a "federal *consumer* financial law" and an "enumerated *consumer* law," and transferred HMDA from the Federal Reserve to the *Consumer* Financial Protection Bureau, a new federal agency created by Dodd-Frank to focus on "*consumer* financial products and services." Multifamily loans and other business- or commercial purpose loans are not "consumer financial products or services," and business-entity borrowers are not "consumers." Accordingly, amending Regulation C to multifamily loans would be fully in harmony with the intent of Congress.[27]

Business- or Commercial-Purpose Loans

At a broader level, the Associations urge the Bureau to reassess the decision to cover business- and commercial-purpose loans made to purchase, refinance or improve a dwelling, through a similar lens. Similar to the discussion above, business or commercial loans are not the type of "home-financing" that HMDA was enacted to address. That is, the findings of Congress upon which HMDA was enacted concern failures "to provide adequate *home financing* to

[26] STRATMOR Survey, slides 17-18 (2019) (CLTV ranked third most difficult data field, behind only Free form race/ethnicity fields and Multifamily affordable units. Narrative responses related to multifamily lending included: "*Affected Commercial Loans mostly*:" "*Value relied on not available in commercial LOS-lender must manually enter and struggle with including all collateral*"); slides 16 and 21 (*Multifamily affordable units* ranked second most difficult date field. Narrative comments included: "*There is no place to verify which units are 'affordable' even HUD said they didn't like this reporting requirement*." "*No one besides full time HMDA employees understands this field and requires questions to the customer after closing, which is not professional*." "*This only affects the commercial area and is a manual input by lenders*." "*Requirements are onerous and not easily understood by staff*." "*Particularly with withdrawn and denied applications, information may not be available since it is typically not collected by the loan officer, can be validated only through an appraiser or other underwriting confirmation*." … "*Difficult for lenders to understand how to properly enter this HMDA data and more guidance is needed or field removed manual data entry*.").

[27] For purposes of our recommendation, we believe that loans secured by mixed-use multifamily properties should be considered to be another form of multifamily loan, so that a HMDA exemption for loans secured by multifamily properties would apply equally to loans secured by mixed-use multifamily properties.

qualified applicants on reasonable terms and conditions."[28] Nothing in HMDA pronounces an intent to cover business lending by private sector market players.

Outside of legislative intent, the Bureau should consider that commercial purpose loans are originated differently than residential mortgage loans, and do not generally fit the template set forth under Regulation C. Commercial- and business-purpose loans are typically provided to non-natural persons, and as such, there can be no collection of race, ethnicity, age or sex data. As a result, for example, any fair lending analysis that might be based on these protected factors therefore not be operative. In addition, many of the data points collected under Regulation C, including QM status, credit score and debt to income ("DTI") ratio, are irrelevant to commercial purpose loans.

Note also that in the commercial context, lenders structure deals in varying ways. Lenders will consider different kinds of collateral at various points in the loan process. Commercial lenders will often require a residential property as additional collateral out of an "abundance of caution," notwithstanding that the loan has a business purpose that is unrelated to the property. This typical financing practice does not serve as a good reference point for understanding whether lenders are properly serving their community's housing needs by providing adequate *home financing* to qualified applicants on reasonable terms and conditions.

In addition, commercial lending programs are often proprietary, and are negotiated among business-savvy market players. Often, lending considerations are more complex than just assuring repayment by the customer. Such loans are structured with multiple non-housing considerations in mind, including the business viability of the applicant's venture, mitigation of risks associated with the property or business, market and loan terms, as well as the needs of the investor. Again, this is several steps away from the lending HMDA was enacted to address.

More importantly, however, the reporting of commercial-purpose transactions adds significant layers of burdens. The data collection and reporting in commercial- or business-purpose loans are demanding because new systems must be created that operate separately, but in tandem with, the lender's residential systems. There are various reasons for this, including differences in staff that typically handle commercial vs. residential mortgage loans; different licensing and registration requirements for loan originators; different business processes in commercial lending; customer relations and negotiations that are entirely distinct; different LO compensation requirements; different application, documentation and other processes; different underwriting; and differences in where within the organization that credit decisions are handled; among others.

In short, commercial and business transactions are not similar to residential transactions, and as such, lenders are forced to establish entirely separate reporting processes or to purchase dedicated software that focuses on this type of lending alone, if available. The dual compliance systems that must be set up at lending institutions, and the early-process detection systems that must assure that loan applications are correctly channeled through the appropriate compliance system, are extremely expensive and duplicative, for no sufficient reason.

[28] 12 U.S.C. § 2801(a) (emphasis added).

Accordingly, any earnest effort to reduce burdens should also consider eliminating HMDA reporting of commercial- and business-purpose lending generally.

V. Conclusion

We support the Bureau's efforts to appropriately tailor Regulation C in a manner that balances the fundamental objectives of HMDA, while also ensuring that it is not done in a manner that creates unnecessary and undue burdens on reporting institutions.

While this ANPR focuses on the relevant, reportable data elements currently required under Regulation C, we also ask the Bureau to revisit its requirements relating to the frequency of data reporting. Specifically, beginning in 2020, the 2015 HMDA Rule will require quarterly reporting for any institution that reported a combined total of at least 60,000 applications and covered loans in the preceding calendar year. Quarterly reporting imposes a significant ongoing compliance burden, which will substantially increase the ongoing compliance burdens shown in the Survey. The burdens of quarterly reporting outweigh the benefits, especially considering that such data is likely to have significantly more errors than data reported annually, as it will not be subject to the rigorous scrubbing typically performed prior to the annual submission of the data. We urge the Bureau to remove the quarterly data reporting requirement and keep all HMDA covered institutions on the same reporting schedule.

The Associations look forward to working with the Bureau as it moves forward with this ANPR and any other associated rulemakings to modify Regulation C. The Associations appreciate the opportunity to comment on the ANPR. If you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

American Bankers Association

Bank Policy Institute

Consumer Bankers Association

Housing Policy Council

Mortgage Bankers Association

APPENDIX B
Questions and Recommendations

Definitions

1. *Question Re: 12 C.F.R. § 1003.2(e) – Covered Loan*

We are making a loan and structuring it as a non-revolving line of credit in which the customer can draw down the line for one year and then it will term out over 15 years based on the amount the customer drew on the loan. The loan proceeds will be used to purchase rental properties; however, at closing, we will not be disbursing any funds. The loan will be HMDA reportable once the customer draws down the loan and we file a mortgage on the property. How do we report this loan for HMDA if we do not have any dwelling at time of closing but will have dwellings later on?

2. *Question Re: 12 C.F.R. § 1003.2(f) and official interpretation 2(f)-4 – Dwelling*

More clarification is needed to understand the term "primary use" as used in the definition of a "dwelling" for a property that is mixed-use. For example, assume there is a transaction where the subject property contains 70 mobile home pads, 150 RV pads, and 18 apartments. Would such a mixed property be a HMDA-reportable loan for multifamily community? The official interpretation suggests a property that is used for both residential and commercial purposes (such as a building that has apartment and retail units) would count as a "dwelling" if the property's primary use is residential. Official interpretation of 2(f)-4. The confusion in the example above is whether the transaction could be exempt from HMDA due to the amount of rent received from the RV pads, which could be more than the rent received from the mobile homes and apartments. Does the "primary use" rule set forth in the "dwelling" definition apply only to the determination of whether one building is primarily residential (such as when there is a building with a store and a residential apartment in it), or can there be an affirmative determination on primary use where, as set forth in this example, there is land that has two one-family units and 4 commercial buildings on it?

3. *Question Re: 12 C.F.R. § 1003.2(f) and comment (2)(f)-4 – Dwelling – Mixed-Use Properties*

The HMDA rules address mixed-use properties and how to determine if the property is a commercial property or residential property, but they do not address multiple properties with different uses. Assume a commercial loan will be secured by 6 dwellings and 40 lots. The purpose of the commercial loan is to purchase those 6 dwellings and 40 lots. Would this loan be HMDA reportable?

Can we use our own determination for this loan, where there are multiple properties with different uses, similar to a scenario with mixed-use properties? In the example above, the majority of the collateral are lots. Could I rely on that majority to say this commercial loan is not HMDA reportable? Alternatively, if instead of lots, they were 40 commercial properties, could I use the same logic and say this loan is not HMDA reportable because the majority of the collateral is commercial? Or, does this rationale only apply to mixed-use properties?

Covered Loans

4. Recommendation Re: 12 C.F.R. §§ 1003.2(g), 3(c)(11) & (12) – Assumptions and Successors in Interest

Transactions involving assumptions and successors in interest (SII) are generally processed by servicers. Such entities are not otherwise HMDA reporters, but must report when the need arises to process these particularized transactions. *See* 12 C.F.R. § 1003.2(g), 1003.3(c)(11) & (12). It is a substantial compliance burden on servicers who do not otherwise originate loans to be required to report on these exceptional cases. We recommend that assumptions and SII transactions be excluded from the threshold number of transactions that must be originated in each of the two preceding years for HMDA reporting to be required.

5. Recommendation Re: 12 C.F.R. § 1003.4(a) and Official Interpretation 4(a)-2 – Assumptions

Regulation C currently provides no explicit guidance on whether a holder, servicer, or sub-servicer should report assumptions. *See* Official interpretation of 4(a)-2. Where a transaction involves more than one institution, we recommend that the rules should provide certainty that if more than one entity is involved in processing the assumption request, the entity that should report the transaction is the entity that would notify the new borrower of the decision to approve or not approve the assumption. This approach provides a clear and consistent rule for such reporting requirements.

6. Question Re: 12 C.F.R. § 1003.2(g) and comment 2(g) – Impact of Merger/Acquisition

We are in negotiations to purchase a financial institution that is a HMDA reporter but does not report HELOCs. We are a HMDA reporter and are required to report HELOCs.

I understand that since we are both subject to HMDA, data collection is required for the entire year of the merger, and we as the surviving entity, may file either a consolidated submission or separate submissions for that year of the merger.

However, my question is how does this affect the HELOC data? We had planned to report the two LARs separately, however, how do we handle the HELOC's for the institution we are acquiring? If they become legally ours as of October 1, do we have to start reporting the acquired institution's HELOCs at that time? Additionally, as of October 1 do all of the loans for the acquired institution, not just the HELOCs, come to our LAR? If so, will the acquired institution only report their LAR from Jan 1 through October 1 of 2018?

7. Exemption for Certain Commercial Purpose Loans/Lines - § 1003.3(c)(10)

When the CFPB released its final rule in 2015, the prefatory comments to § 1003.3(c)(10) adopted the treatment of trusts in Regulation Z's Comment 3(a)-10, which treats loans involving trusts as commercial purpose, unless they are (a) for tax or estate planning purposes, or (b) land trusts.

It is not uncommon for business borrowers to hold business assets in trust. When such an applicant makes a request that clearly appears to be for commercial purposes, it is not clear whether the lender must undertake this same analysis to determine whether a loan is "truly" commercial purpose, or whether it should instead be treated as consumer purpose. We urge that the Bureau clarify elements concerning the treatment of trusts in these regulations.

From a HMDA perspective, the issue impacts not only the reporting of Occupancy under § 1003.4(a)(6), but other fields as well, including, but not limited to whether the loan is reported as Business/Commercial Purpose under § 1003.4(a)(38). Indeed, this issue will affect whether the loan or application is even reportable, since business purpose loans are reportable only if they are for Home Purchase, Home Improvement or Refinancing under § 1003.4(a)(3).

8. ***Recommendation Re: 12 C.F.R. § 1003.4(a) and Official Interpretation 4(a)-5 – Repurchased Loan***

Lenders should only report the expanded data points on repurchased loans that were originated on or after January 1, 2018.

9. ***Recommendation Re: 12 C.F.R. § 1003.4(a) and Official Interpretations 4(a)-2 through -4 – HFA Bond Program Loans***

Regulation C must be tweaked to correct an oddity regarding the reporting of originations of HFA bond program loans. In such program, because Housing Finance Agencies will purchase a loan if originated, the current commentaries concerning pre-closing reviews may prevent the lender from reporting the origination. *See* Official Interpretation 4(a)-2-4. For financial institutions with Community Reinvestment Act (CRA) obligations, the inability to report these originations makes it more difficult to obtain CRA credit, because only transactions that are reported under HMDA are included in the home mortgage loan category. The current rules therefore may be discouraging lenders from participating in these programs and may be causing harm to low to moderate income (LMI) households and geographies. We recommend a clarification that if a participating lender in a Housing Finance Agency's bond program makes a decision to approve an application, but the Housing Finance Agency requires that it review the application before closing, the lender should be permitted to report the transaction.

Loan Purpose and Characteristics

10. ***Recommendation Re: 12 C.F.R. §§ 1003.3(c)(10), (4)(a)(3) & (35) – Business or Commercial Purpose***

Many creditors who make loans secured by 1-4 family properties treat them as consumer loans and provide Regulation Z disclosures. This is because there would be considerable risk in failing to provide Regulation Z disclosures if in fact the transaction was primarily for consumer credit. Section 1026.3(c) of Regulation Z and its related commentary, which distinguish between consumer credit and credit for business purposes, do not clearly address many situations that are common in mortgage lending. Aside from the purchase of 3-4 family rental property (which is clearly primarily for a business or commercial purpose) in nearly all other situations it is very difficult to determine whether a loan is primarily for a business or commercial purpose from the information collected on the Uniform Residential Mortgage Application. Aside from HMDA, creditors may have no reason to try to apply the Regulation Z guidelines to determine if loans are primarily for a business or commercial purpose. The Business/Commercial field is not particularly useful for loans on 1-4 family properties. Creditors in their consumer departments generally follow Fannie/Freddie guidelines on whether the property is a primary residence, second home, or investment property and the Occupancy field will explain differences in underwriting and pricing.

We suggest that institutions should be permitted to assume for transactions secured by 1-4 family properties that the loan is not primarily for a business or commercial purpose, other than a loan to purchase a 3-4 family property that is secured by that property. We further suggest that regulation be clarified by stating that institutions may rely upon the applicant's statement of whether or not the loan or line is primarily for a business or commercial purpose for the reporting of that field and determining whether a loan for an "Other" purpose (not purchase, refinancing, or home improvement). Finally we suggest revising validity edits V672-V676 to permit institutions that have provided a Closing Disclosure to report Total Loan Costs, Origination Charges, Discount Points, and Lender Credits when the transaction is reported as primarily for a business or commercial purpose.

11. Question Re: 12 C.F.R. § 1003.4(a)(1)(ii) – Application Date

A customer applied for a mortgage without identifying a property. Our institution does not have a formal preapproval program. The customer chose a property at a later date and the application received "an approve/eligible" decision contingent on verification of income, assets, and appraisal. What application date should be reported on the LAR? Should it be the date the customer initially applied or the date the property was chosen and received an "approve/eligible" decision? Also, the customer withdrew the application due to the seller not extending the sales contract. Should the application be reported as withdrawn since required underwriting conditions were not met?

12. Question Re: 12 C.F.R. § 1003.4(a)(3) – Loan Purpose

Borrower is "buying out" her husband's interest in a 1-4 family dwelling that was "free and clear." Property was already in joint ownership names prior to this loan and once loan originates it will be in the wife's name individually following a divorce settlement. Would we report this transaction as a "Purchase" or as "Other" for HMDA?

13. Question Re: 12 C.F.R. § 1003.4(a)(3) – Loan Purpose

Comment 4(a)(3)-1 permits the institution to rely on the applicant's statement regarding the use of the loan funds. In some cases, however, the applicant may provide unclear or non-committal responses (e.g., "I may use the money for X, but I'm not sure yet"). It is not clear how to handle this situation, and in some cases (e.g., purchased loans, denied loans), it may be difficult to obtain further clarification. Should the institution report only clear, committal responses? Or should the institution report any reason provided, even if non-committal?

14. Recommendation Re: 12 C.F.R. § 1003.4(a)(13) – HOEPA Status

The Bureau should eliminate reporting requirements pertaining to HOEPA Status. *See* 12 C.F.R. § 1003.4(a)(13). In light the panoply of pricing data now imposed under new HMDA requirements, this data element has been rendered pointless. Hardly any loans made in today's market are HOEPA loans. It is not clear what benefit is gained by knowing whether a loan that is not a HOEPA loan is or is not within the scope of HOEPA. It is however a significant compliance burden because now the determination has to be made on every loan.

***15. Question Re: 12 CFR* § 1003.4(a)(13) – High Cost Loans Under HOEPA**

Our institution has a longstanding policy against originating or purchasing HOEPA High Cost loans. As a result, most – if not all – our LAR entries will be reported as non-High Cost. In some cases, however, we may identify that an error was made in the initial calculations, resulting in an inadvertent High Cost origination (or a required repurchase of an inadvertent High Cost loan). It is unclear whether this should be considered an error, given that we maintain good faith procedures to avoid making or purchasing such loans.

***16. Question Re: 12 CFR* § 1003.4(a)(13) – High Cost Loans Under HOEPA**

In a purchase or repurchase situation, it is unclear whether we can rely on the high cost calculation that was performed at the original loan origination.

17. Question Re: 12 C.F.R. § 1003.4(a)(25) – Loan Term

Under 12 C.F.R. § 1003.4(a)(25), addressing loan term reporting for HMDA purposes, the provisions suggest that the only time "NA" can be used is when the covered loan or application contains no definite term, such as a reverse mortgage. Other interpretations, by software and other non-bank providers, indicate that "NA" can be used for the loan term for both a denied and withdrawn application. This interpretive confusion is important and requires an explicit answer from the Bureau.

18. Question Re: 12 C.F.R. § 1003.4(a)(26) – Introductory Rate Period

There are questions on Introductory Rate Period scenarios under 12 C.F.R. § 1003.4(a)(26). It is unclear what is reported when financial institutions offer HELOC products that do not have any introductory rates and contain variable rates tied to the Prime Rate. The first change date is unknown because the institution cannot know when the Prime Rate will change. We understand that reporting "N/A" is not an option. Some financial institutions will report "1" because the official interpretations state that financial institutions must report "1" if the introductory interest rate period could have been less than one whole month under the proposed terms. Official interpretation of 4(a)(26)-5. However, this language does not address what happens if there is no introductory rate period. Is it acceptable to report "0" as there is no introductory rate period?

Financial Institution's Action

19. Question Re: 12 C.F.R. § 1003.4(a)(8)(i) and official interpretation 4(a)(8)(i)-13 – Action Taken – Conditional Approvals

More guidance is needed concerning "Time of Credit Decision" and approvals conditioned upon requalifying. *See* Official interpretation of 4(a)(8)(i)-13. We note that when "conditions" involve underwriting or creditworthiness, then the approval is not a credit decision approving the loan. On the other hand, if the "condition" is a customary commitment or closing condition, then the approval may be a credit decision approving the loan. Such conditions are common and often not cleared until just before the closing date. These requirements intersect other regulations, as financial institutions may risk violating the ATR/QM rule if the condition is not included because the applicant must be able to afford the loan at the interest rate and/or fully-indexed rate. Data integrity would be improved if there were clear guidance on this issue. We urge that the Bureau clarify instances of conditions where approval may be revoked if the fully indexed rate and/or initial rate increases and applicant no longer qualifies. Is this an underwriting or creditworthiness condition, or is it a customary commitment or closing condition?

20. Question Re: 12 C.F.R. § 1003.4(a)(8)(i)(B) – Application Denied

Assume situation of a mortgage application that received conditional approval subject to the customer improving their credit score. Before we could review the applicant's credit score again, the applicant relocated and decided not to proceed with the loan. Would this be considered a denial, as the applicant did not meet the underwriting conditions or approved but not accepted because the applicant decided not to proceed with the request? This application was included in our HMDA reporting as a denied application based on commentary from the HMDA FAQs, as the customer did not satisfy the underwriting conditions. However, upon further review, we do not think this should be a denial as the applicant withdrew the request before the bank was able to make a credit decision.

21. Recommendation Re: 12 C.F.R. §§ 1003.4(a)(4) & (8) – Preapproval and Action Taken

As set forth in the compliance questions above, there is ongoing confusion regarding preapprovals and the fields "Preapproval" and "Action Taken." *See* 12 C.F.R. §§ 1003.4(a)(4),(8). In instances where loan applications begin with a preapproval request and result in an origination, the institution would report in the Preapproval field "1-Preapproval Requested," and in the Action Taken field, would report "1- Originated." But if the application began with a preapproval request and the preapproval request was approved but the loan was subsequently denied (because, for example, the property was unacceptable), V613 of the Filing Instructions Guide prevents that transaction from being reported accurately. The denied transaction "involved a request for a preapproval" to the same extent as the originated transaction so one would expect that the Preapproval field would also be reported as "1-Preapproval Requested." But V613 prevents reporting the Action Taken as "3-Denied." Reporting the Action Taken as "7-Preapproval Request Denied" would not be appropriate because the preapproval request was not denied.

In addition, once a property is submitted, whether before or after a decision on the preapproval request, the application is deemed to have moved beyond the preapproval stage. For most purposes, it is treated no differently than an application that was originally submitted with a property. A final credit decision cannot be made until the property is underwritten. There seems to be no logical reason why such applications with a submitted property should not be reported if they are withdrawn or closed for incompleteness.

V613 currently forces financial institutions to either suppress the reporting of applications that involve a preapproval request that are withdrawn or closed for incompleteness after the property is selected or to report the action taken on all applications and inaccurately report that the application did not involve a preapproval request.

We recommend revisions to V613 to clarify that—(i) If an application begins with a preapproval request the institution may always report 1-Preapproval Requested, and (ii) If the application begins with a preapproval request and a property is subsequently submitted, the transaction may be reported regardless of the final action taken, using action taken codes 1-5.

22. Recommendation Re: 12 C.F.R. § 1003.4(a)(8)(ii) – Action Taken Date

With regard to the field concerning "Action Taken Date," the rules generally allow financial institutions the option of using the funding or acquisition date as the action taken date. We believe the current requirement to report the year of closing is an unnecessary complication that does not appear to provide any real benefit, because the difference between closing and funding is usually only a few days. We recommend that financial institutions should have the option of reporting the origination in year that it is funded or acquired.

23. Recommendation Re: 12 C.F.R. § 1003.4(a)(8)(ii) – Action Taken Date

It is unclear what to report when final action occurs after a rate change has already occurred. Our approach thus far has been as follows:

- If further rate changes are possible, report the number of months between the final action in question, and the date of the next possible change.
- If all possible rate change events have already occurred, treat the loan as having a fixed rate, and report "N/A" as a result.

It would be helpful is the Bureau clarified this area.

Applicant/Borrower and Property Characteristics

24. Recommendation Re: 12 C.F.R. § 1003.4(a)(6) – Second Residence and Investment Property

There is ongoing vagueness in rules pertaining to second residences, investment properties, and occupancy types. *See* 12 C.F.R. § 1003.4(a)(6). Under Fannie underwriting guidelines, a "second home" must be a single-family property. If the applicant or borrower intends to occupy a property with more than one unit for a portion of the year, the loan will be underwritten and priced as "investment" property. We offer that allowing financial institutions to report the occupancy as investment would lessen the compliance burden and make the occupancy field more useful because it would more often correspond to how loans are actually underwritten and priced. We would urge clarifications to Regulation C that when the property has more than one unit and is not the applicant or borrower's principal residence, the institution may report the occupancy as "Investment" even if the applicant or borrower may occupy it for a portion of the year.

25. Question Re: 12 C.F.R. § 1003.4(a)(7) – Loan Amount

Regulation C states that for applications that are denied, closed for incompleteness, or withdrawn, the loan amount reported is the "amount initially requested." I have 3 questions/statements:

a) If a change of circumstance is completed to change the loan amount, LTV, or program (for example) and the loan is denied with that change, wouldn't you report the information for which the loan was denied and not the initial request?

b) Same scenario but the loan is withdrawn or closed incomplete – would you report the initial loan amount?

c) The document titled "DTI: The "Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart – Version 1.2" and published on February 1, 2018 states that financial institutions should report the DTI up to 2 decimal places but should only use decimal places if the ratio relied upon uses decimal places. We utilize a system for underwriting some of our loans that rounds DTI to a whole number. If the AUS result is our source document for the DTI, should we report the rounded DTI on the system feedback certificate or use the unrounded number that the underwriter used in calculating the ratio?

26. Question Re: 12 C.F.R. § 1003.4(a)(7) – Loan Amount

I have a question about HMDA loan amount, and what loan amount needs to be reported when the action taken is withdrawn, file closed for incompleteness and denied. In addition, I would like some clarification on how a change of circumstance (borrower requests to change loan amount) changes the amount the borrower originally applied for and if the borrower's requested change should be reported instead of what was originally applied for.

This is my understanding of the regulation: 1. General rule: the financial institution reports the amount of the covered loan (on the legal obligation) or the amount applied for, as applicable. 2. For an application approved but not accepted, the financial institution reports the covered loan amount that was approved. 3. For files closed for incompleteness, withdraws, the financial institution reports the amount for which the applicant applied. 4. For denials, the financial institution reports the amount for which the applicant was denied. Can the Bureau confirm this interpretation?

Additionally, clarification is needed for the following scenarios:

Scenario #1:

Applicant applies for $105,000.00, then requests to increase the loan amount to $120,000.00. We do not have a documented change of circumstance form in the file that client requested we increase their loan amount to $120,000.00, however, under our institution's procedures, the loan amount can only be changed due to a client request. The client then withdraws the application or the file is closed for incompleteness. Would we report the higher loan amount the client requested for $120,000.00 or would we report the $105,000.00 the client originally applied for?

Scenario #2:

Applicant applies for $105,000.00, then requests to decrease the loan amount to $90,000.00. We do not have a documented change of circumstance in the file that client requested we decrease their loan amount to $90,000.00, however, under our institution's procedures, the loan amount can only be changed due to a client request. This client then withdraws the application or the file is closed for incompleteness. Would we report the $105,000.00 the client originally applied for or would we report the $90,000.00 the client requested?

From an examiner prospective, is it sufficient for our procedures to state that loan amounts are only increased or decreased per borrower request, or must the applicant's request for a loan amount change be documented using a change of circumstance form? Or would it be appropriate to print two applications in the file, one for the client's original application and a final application at fallout (withdrawn, closed for incompleteness) that reflects the new loan amount the client requested?

27. Question Re: 12 C.F.R. §§ 1003.4(a)(10)(iii) and (a)(23) – Income and DTI

On some dwelling secured loans, both personal purpose and business purpose, lenders may utilize both Net Cash Flow for income purposes as well as Debt Service Coverage Ratio instead of a DTI for evaluating borrowers. For purposes of reporting income, it appears that some lenders may report "NA" if the loan is business purpose or multifamily. However, if the loan is personal purpose, and the lender calculates a total income figure that is not gross annual income as set forth in the rule, would it be acceptable to report "NA" in such circumstance? If a lender's underwriting evaluation relies on Debt Service Coverage Ratio, would it be appropriate to report "NA" since there is no reliance on DTI to make the credit decision?

28. Question Re: 12 C.F.R. §§ 1003.4(a)(10)(iii) and (a)(23) – Income and DTI

We have a loan where the gross annual income and DTI used in making the credit decision is a negative figure. Our software provider will not allow us to enter a negative figure. I contacted them and they plan to issue an update to correct the income field to provide the capability of entering a negative number. However, for the DTI field, we are only permitted to enter "0" or a number (not negative). In this situation, should lenders report the negative DTI or "0"?

In the preamble to the 2017 final HMDA amendments, the Bureau seems to say that a negative gross income can be listed on the LAR. It says, "Finally, the Bureau notes that the 2015 HMDA Final Rule and the 2018 FIG do not include any language that would bar a financial institution from reporting an applicant's gross annual income as "0" or even a negative number when that is the accurate figure that it relied on."

29. Question Re: 12 C.F.R. § 1003.4(a)(23) – Income and DTI

What are we supposed to report for DTI if our lender used the guarantor's income in underwriting the loan? Borrower is starting a new law firm and has no income for his new start-up so the lender used the guarantor's income for the loan. We report "N/A" for income but what about DTI?

30. Question Re: 12 C.F.R. § 1003.4(a)(23) – Income and DTI

There appears to be a potential inconsistency on how "income" and "debt-to-income" are reported for non-natural persons. For Income, Comment 4(a)(10)(ii)(4) instructs institutions to report "N/A" if the applicant "OR" co-applicant is a non-natural person. For DTI, Comment 4(a)(23)-5 instructs institutions to report "N/A" only if the applicant "AND" co-applicant are non-natural persons. Can the Bureau instruct on handling the inconsistency.

31. Question Re: 12 C.F.R. § 1003.4(a)(23) – Income and DTI

The regulation makes repeated reference to "gross income." Two questions arise—

- Many lenders rely on net income figures, rather than gross income, to underwrite their loans. It is not clear whether the regulation permits reporting of this "net income" figure (which is what was actually "relied upon"), or whether net income must always be "grossed up" for HMDA reporting purposes.
- To the extent that the regulation permits the reporting of net, rather than gross, income, it is also not clear how institutions should handle income amounts which – after deductions of expenses – are negative numbers.

32. Question Re: 12 C.F.R. § 1003.4(a)(23) and official interpretation 1003.4(a)(8)(i)-5 – DTI for Approved but Withdrawn Application

We are inquiring on how to complete the DTI field when an applicant withdraws after we approved the credit application, but before all underwriting or closing conditions have been met. For example: An applicant loan request has been approved but the applicant has not provided evidence to support the listed current income. Before any notice of incompleteness is issued, the consumer withdraws his application.

Per the official interpretation of 1003.4(a)(8)(i)-5, the financial institution is to report this situation as withdrawn. ("A financial institution also reports application withdrawn if the financial institution provides a conditional approval specifying underwriting or creditworthiness conditions, pursuant to the official interpretation of 4(a)(8)(i)-13, and the application is expressly withdrawn by the applicant before the applicant satisfies all specified underwriting or creditworthiness conditions.)

For withdrawn applications, there is a conflict in how to report the DTI. One suggests the DTI is to be provided if known and relied upon; the other states it should be reported as "NA" even if known or calculated. The HMDA Reporting, Getting it Right, page 26, (Link to the Guide: https://www.ffiec.gov/hmda/guide.htm) suggests that the DTI should be reported if a consumer withdraws after a credit decision has been made but before all underwriting or closing conditions have been met.

On the other hand, the Filing Instructions Guide from February 2018 (page 125) states that there will be a validity error if we report a DTI on a loan that we code as withdrawn and that the Debt-to-Income Ratio must be reported as "N/A."

Can you confirm which of the two statements is governing our recurring situation?

33. Question Re: 12 C.F.R. §§ 1003.4(a)(23)-(24) – DTI and CLTV

12 C.F.R. §§ 1003.4(a)(23)-(24) does not provide guidance as to how many decimal places should be used for the HMDA DTI Ratio and the CLTV Ratio. The FIG Guide also doesn't provide specifics, but it does give an example that if the DTI ratio that is relied on is 42.95, then report 42.95 and not 43. We don't know if this example means that we should then only use two (2) decimal places on the LAR. Can we use only two decimal places on the LAR for the DTI and CLTV Ratios, even though internal documentation uses three (3) decimal places for underwriting, or do we need to use three (3) decimal places for these ratios?

The 2019 FIG states for DTI "Use decimal places only if the ratio relied upon uses decimal places. The HMDA Platform can accept up to 15 decimal places and can accept negative numbers for Debt-to-Income Ratio." It appears you can use as many decimal places up to 15.

In addition, for CLTV "Use decimal places only if the ratio relied upon uses decimal places. The HMDA Platform can accept up to 15 decimal places for the Combined Loan-to-Value Ratio." It appears you can use as many decimal places up to 15.

34. Question Re: 12 C.F.R. § 1003.4(a)(15) – Credit Score

More clarification is needed for the credit score provisions under 12 C.F.R. § 1003.4(a)(15). The official interpretation states that lenders should report the name and version of the credit-scoring model for the score reported. Official interpretation of 4(a)(15)-2. This is not clear when applied to industry practice, however, as credit scores come in "versions" or "series" that do not well align with reporting instructions. In light of the varying sub-versions of credit scores, the Bureau should clarify that reporting the principal version of any credit score is sufficient, and that sub-versions do not need to be identified. Some examiners have opined that correct reporting requires the name of the sub-version in the free form text field for HMDA. This approach will lead to needless errors and misclassifications.

35. Question Re: 12 C.F.R. § 1003.4(a)(15) – Credit Score

Can code 8888 ("not applicable" or "NA") be used for credit score reporting in an "employee loan"? Since the income can be reported as "NA" on such loans, it would follow that the same can be done for credit score as well.

36. Question Re: 12 C.F.R. § 1003.4(a)(15) – Credit Score

The current rule and commentary does not address the reporting of credit scores when the application involves a mixture of natural, and non-natural, applicants. For example, Comment 4(a)(15)-3 notes that if there are two or more applicants, and the institution relies on only one score, the institution reports that score as bellowing to the applicant or first co-applicant, at the institution's discretion. However, if both the applicant and first co-applicant are non-natural persons, Comment 4(a)(15)-7 instructs the institution to report "N/A". Suppose, however, that the applicant and first co-applicant are non-natural persons, but the institution relies upon a credit score for the second co-applicant, who is a natural person. It is unclear whether the institution should report the credit score at all, and if so, whether it should be reported for the non-natural applicant, or for the non-natural first co-applicant.

37. Question Re: 12 C.F.R. § 1003.4(a)(15) – Credit Score

It is unclear whether the institution should report a score that was relied upon, but which does not belong to an applicant. For example, in a commercial loan made solely to a corporation, but subject to a guarantee by the corporation's principal officer, the institution might obtain and rely on the officer's credit score, even though the officer has no direct liability. The issue is somewhat complicated by inconsistent terminology between the Home Mortgage Disclosure Act itself, and its underlying regulation, Regulation C: while the Act requires collection of credit scores of "applicants" and "mortgagors", it defines neither of those terms. Arguably, a guarantor could be considered an "applicant" or "mortgagor". The text of Regulation C, however, uses neither term, instead stating that lenders must report "the credit score or scores relied on in making the credit decision", arguably suggesting that any score that factored into the lender's decision must be reported.

38. Question Re: 12 C.F.R. §§ 1003.4(a)(24) and (a)(28) - CLTV

Questions arise regarding proper reporting of property value and CLTV for commercial HMDA applications. Under the rules, a financial institution reports the property value and the CLTV it relied on in making its credit decision. *See* 12 C.F.R. §§ 1003.4(a)(24) and 1003.4(a)(28).

However, in many commercial loan cases, the financial institution does not receive an appraisal when it makes the credit decision, so the property value and CLTV may be unknown. In such instances, they make a "conditional" approval that might, for example, state "An appraisal will be ordered with LTV not to exceed 75% of cost or appraised value, whichever is less. The purchase price is $199,900 for a loan to cost of 75%. Loan amount is $149,925.00." In instances where the institution does not receive the appraisal until "after" the conditional credit decision is made, what property value and CLTV should be reported for LAR purposes? In this case, do we report $199,900 as the property value and 75.000% as the CLTV no matter what the "final" property value or CLTV might be post-appraisal? This appears to be the correct outcome under the following advice, set forth in the Official interpretation of 4(a)(28)-1—"If the financial institution relied on the purchase price of a property when calculating the loan-to-value ratio, it reports the purchase price as the property value."

39. Recommendation Re: 12 C.F.R. §§ 1003.4(a)(10)(iii), (15), (21), (23), (24), & (28) – Fields determined at the time of credit decision

Lenders are experiencing ongoing difficulties with rules concerning fields determined at the time of credit decision. The determination of the time that a credit decision is made affects many of the reported fields including the fields listed below.

- Income
- Credit Score
- Interest Rate (if approved not accepted)
- DTI Ratio
- CLTV Ratio
- Property Value

We note that during a loan's processing phase, there are often minor changes in these values that have no impact on how the loan is underwritten or priced. In addition, determining the time of a credit decision approving the application is especially difficult. When a conditional approval is issued, it will not be considered a credit decision unless and until it is not subject to any underwriting or creditworthiness conditions. It is not always easy to track the point in time when the last underwriting or creditworthiness condition has been satisfied and a credit decision approving the loan has been made. We recommend that the Bureau provide tolerances for fields that are determined as of the time of a credit decision.

40. Recommendation Re: 12 C.F.R. §§ 1003.4(a)(10)(iii), (15), (21), (23), (24), & (28) – Fields determined at the time of credit decision

In some cases, a piece of information may be present in loan data or files, but not actually "relied upon". For example, an underwriter may have obtained, but never actually considered, a property valuation. These fields include:

- Gross Annual Income (§ 1003.4(a)(10)(iii))
- Credit Score (§ 1003.4(a)(15))
- Debt-to-Income Ratio (§ 1003.4(a)(23))
- Combined Loan-to-Value Ratio (§ 1003.4(a)(24))
- Property Value (§ 1003.4(a)(28))

Our approach thus far has been to err on the side of reporting, excluding the data only where it seems clear that the information was not used. It would be helpful, however, to have more clarity (e.g., allowing institutions to report "NA" absent clear evidence – based on credit policy or decline reasons, for example – that the information was, in fact, relied upon).

41. Recommendation Re: 12 C.F.R. §§ 1003.4(a)(27) – Balloon Payments, Interest Only Payments, Negative Amortization or "Other Non-Fully Amortizing Features"

For purchased loans, it is unclear whether the institution should report these features as they existed at the time of loan origination, or, if the loan has been modified, as they exist at the time of purchase.

Government Monitoring Information

42. Question Re: GMI and Sample Data Collection Form

Clarity is needed in the Sample Data Collection Form section regarding the Government Monitoring Information "To Be Completed by Financial Institution (for an application taken in person)." It appears that the only circumstance where the "yes" box is checked is if the applicant/borrower checked the box "I do not wish to provide this information." Stated differently, would lenders check the "no" box if application is taken in person and the applicant selects an ethnicity, race and sex?

43. Question Re: GMI and Sample Data Collection Form

The 2015 HMDA Rule added new subcategories and free form "other" boxes for race and ethnicity. The implementation of these categories has been challenging for bankers and frustrating for applicants, particularly in applications taken by phone. On average, these new requirements have added 2-3 minutes to the GMI collection process for every phone-based application:

- Informal guidance received from the Bureau's HMDA Help line has been that in a phone application, the institution must always present every category and subcategory, regardless of the applicant's previous responses. Thus, bankers must recite every option in every call, even where the applicant states at the outset that he/she "doesn't want to provide any of that information", or reports at the outset that he/she is "100% Hispanic, nothing else". This is frustrating for both bankers and customers.

- Similarly, the current instructions to repeat the "I do not wish to provide this information" option for each category is needlessly duplicative, since the introductory disclosure makes clear that providing the information is optional.
- Bureau guidance has also been that institutions must record all responses provided, even if the responses seem illogical. In an attempt to comply, bankers are frequently using one or more of the new free form boxes to capture even nonsense, offensive or other remarks, despite clearly having no bearing on race or ethnicity (e.g., "blonde haired, blue eyes", "Martian")
- "Native Hawaiian or Pacific Islander" have led to particular confusion, since they must be presented as both a subcategory, and as a component of an aggregate category ("Native Hawaiian or Other Pacific Islander")
- In the prefatory materials to the 2015, it included Footnote 285, detailing the Census Bureau's definitions for race and ethnicity terminology (e.g., the Census instructions note that "White" includes "people who … reported entries such as Irish, German, Italian, Lebanese, Arab, Moroccan, or Caucasian.") This has led to confusion over whether these same definitions are meant to apply to Regulation C's race/ethnicity designations.

It would be helpful to have more clarity on the proper handling of these points.

44. Question Re: GMI and Sample Data Collection Form

In some cases, GMI data is collected by third parties (for example, a correspondent lender who takes applications for loans, then sells such loans to a reporting institution). It remains unclear what liability the institution bears for errors/discrepancies in this situation. For example, if the third party indicates that the application was submitted by mail, yet also reports that GMI was collected on the basis of visual observation, it is not clear whether the reporting institution has any obligation to seek clarification.

45. Question Re: Sample Data Collection Form

Our software vendor recently completed an update to fix some issues with HMDA. Prior to the change, when an application was taken via the internet or phone, the Demographic Information Addendum would populate with nothing checked off for the three questions that ask if the race, sex and ethnicity were collected on the basis of visual observation or surname. The three questions answered as "No" and the corresponding fields on the HMDA Report would come out as a "2" Not collected on the basis of visual observation or surname.

Now, if we don't check off "No" for if the race, sex and ethnicity were collected by visual observation or surname, the corresponding field on the HMDA Report is coming out as a "3" Not Applicable.

Is it permissible for the Demographic Info Addendum to be completed with three "No's" on the application for loans that were NOT taken face to face in order to get the corresponding fields to come out as a "2"?

It appears to be clear from the FIG that the based on visual observation question needs to be completed and only use "NA" for entities. However, there is general confusion about this because the GMI collection form is worded in such a way to lead one to believe that this should only be answered "yes" if the customer really is in front of you.

Pricing Outcomes and Components

46. Recommendation Re: 12 C.F.R. § 1003.4(a)(12) – Rate Spread

We urge certain rectifications to provisions affecting "Rate Spread" and the date the interest rate is set ("the rate set date"). The regulation currently indicates that if there is a rate lock agreement, the rate set date is the date the institution "exercises discretion in setting the rate for the final time before final action is taken." *See* Official interpretation of 4(a)(12)-5. It further states that if no rate lock is issued, the rate set date is "the date on which the institution sets the rate for the final time before final action is taken." *Id*. Where an institution has a consistent practice for determining the date of the rate sheet to be used, these requirements may result in using an artificial rate set date to determine the rate spread, rather than the actual pricing date the institution used. This may significantly affect the usefulness of rate spread data. The current rule, by focusing only on the interest rate, fails to consider that lenders offer consumers a number of different interest rate and discount point combinations and lets consumers change their mind on which particular combination is desired. Such a change usually causes only a small change in the APR, but it may significantly change the rate set date and the average prime offer rate (APOR).

We recommend that the regulations be amended to provide that if an institution has a consistent practice as to the date of the rate sheet it uses to set the interest rate, then the institution can use the date of that rate sheet as the date the interest rate is set for the purpose of determining the APOR.

47. Question Re: 12 C.F.R. § 1003.4(a)(12) – Rate Spread

If a lender's system calculates a non-rounded APR, but the lender rounds the APR in its Reg Z disclosures, which should the lender use to calculate and report Rate Spread?

Reg C requires that institutions report the difference between the loan's APR and average prime offer rate. Comment 4(a)(12)-3 instructs the institution to use the APR "calculated and disclosed" pursuant to Regulation Z (§§ 1026.18 or 1026.38 for closed-end loans, and § 1026.6 for open-end credit). Often, however, there's a difference between APRs "calculated" under Reg Z and APRs "disclosed" under Reg Z. For example, the lender's system might calculate the APR accurately under Reg Z, with the result carried out to several decimal places. The lender's disclosures, however, will round this figure, as also permitted or required by Reg Z:

- For most closed-end loans, § 1026.38 requires that the Closing Disclosure round the APR to three decimal places.
- For open-end credit, §1026.14 permits APR rounding (yet unlike § 1026.38, stops short of requiring it).

In this situation, if the lender uses the rounded APR on the disclosure, its Rate Spread calculation will also be rounded. But if the lender uses its system calculated APR, the Rate Spread will have additional decimals. The Filing Instructions Guide appears to contemplate this:

- Specification 2-59 instructs the institution to enter the result as a percentage, to at least three decimal places. Numbers calculated beyond three decimal places "may either be reported beyond three (3) decimal places or rounded or truncated to three (3) decimal places".

- The 2019 FIG goes even further, allowing up to 15 decimals.

The distinction would seem to have little impact on analysis of the HMDA data, since the rounding will usually be less than a single basis point.

Our question, then, is the true meaning of Reg C Commentary's instruction to use the APR "calculated and disclosed pursuant to Regulation Z". Must the lender use only the rounded APRs that was "disclosed" under Reg Z? Or may the lender instead use the non-rounded APR "calculated" under Reg Z?

48. Recommendation Re: 12 C.F.R. § 1003.4(a)(19) – Points Paid to the Creditor to Reduce the Rate

In most cases, points to reduce the rate are paid by the borrower. In some cases, however, they may also be paid by the lender, the seller of a property, or some other third party. Our understanding is that the Bureau interprets this requirement as coving all points paid, regardless of source. However, that is not entirely clear from the regulation itself.

Regulation C references the Loan Estimate and Closing Disclosure requirements of Regulation Z, but those sections are also unclear. Reg Z section 1026.37 discusses disclosure of discount points "that the consumer will pay", and while section 1026.38 requires disclosure of all amounts, it also references back to the Loan Estimate rules. The Bureau's Small Entity Compliance Guide, and FFIEC's HMDA: Getting it Right! guide both point to the "total on Line A.01" of the Reg Z Closing Disclosure. However, that line reports borrower-paid, seller-paid and third-party paid items separately, without totaling them together.

Anecdotally, we believe a number of institutions and vendors have found this topic confusing. To avoid this confusion and ensure data consistency, the Bureau should clarify the scope of this requirement.

49. Recommendation Re: 12 C.F.R. § 1003.4(a) – Interest Rate

It is somewhat unclear how to report the interest rate in Correspondent lending, particularly for ARMs. Where the lender underwrites and approves ARM loans for our Non Delegated Correspondents, but the loan does not get presented for purchase, we report these loans on the LAR as "Approved Not Accepted." At the time of Underwriting, our underwriter will rely upon the rate presented to the lender by the Correspondent, but will not know whether the loan has been is locked by the Correspondent with the Consumer. The lender will also often have no knowledge whether the Correspondent has provided a Loan Estimate or Closing Disclosure to the consumer. Finally, because Correspondents have flexibility to negotiate interest rates, the rate approved by the institution may not be the same as the rate negotiated with the consumer.

With no disclosures available to the underwriter, and no certainty of the actual rate agreed to by the consumer, we believe it is appropriate to consider rate "unknown" at the time of approval and thus, report the fully indexed rate, but clarification would be helpful on this point.

50. Recommendation Re: 12 C.F.R. § 1003.4(a)(18) – Origination Charges

We recommend that the Bureau modify the data point of total origination charges. Specifically, we believe that total origination charges should not be a reportable field for purchased covered loans and instead should be reported as not applicable. The total origination charges for a loan is unrelated to the purchasing of the loan and provides no insight into these loans. This would align total origination charges with several other data fields for purchased covered loans related to origination, such as application date, ethnicity, race, sex, age, income, credit score, debt-to-income ratio, combined loan-to-value ratio, loan purpose, rate spread, application channel, and automated underwriting system.

51. Recommendation Re: 12 C.F.R. §§ 1003.4(a)(12), (17) – (21) – Pricing Information on Approved But Not Accepted Applications

The Bureau should eliminate reporting of pricing information on "Approved But Not Accepted" applications. For these applications pricing information is not reliable because pricing often has not been finalized, and any price statement is generated only to have something to report for HMDA. For HELOCs, using pricing information from the generic disclosure given at application pursuant to 12 C.F.R. §1026.40 results in a Rate Spread that is very likely to be substantially different than if the account was opened. We urge that the Bureau remove requirements that lenders collect and report the following fields for Approved But Not Accepted applications:

- Rate Spread
- Total Loan Costs/Total Points & Fees
- Origination Charges
- Discount Points
- Lender Credits
- Interest Rate

<u>AUS and Result</u>

52. Question Re: 12 C.F.R. § 1003.4(a)(35) – AUS and Result

Our Director of Fair & Responsible Banking is concerned that the mortgage department is not reporting an AUS and Result on applications that do not end up as originations. The Mortgage department's decision on how to report this area is that although there are multiple AUS runs from the beginning of an application, it's not considered to be an official AUS recommendation until it is run by the Underwriter and the application is approved. That is the AUS relied upon when making the decision. For denied, withdrawn, and any incomplete applications, we are reporting "NA" for the AUS used for the credit decision and the AUS result.

53. Question Re: 12 C.F.R. § 1003.4(a)(35) – AUS and Result

How should we report FHA HMDA loans for the underwriting piece? We run desktop underwriter (DU) for FHA to get the total scorecard. Should we report Total Scorecard or DU? Our DU gives us an approved/eligible. The results do not indicate "an accept" as per the FHA total scorecard results. For HMDA, we are reporting AUS engine as Total Scorecard and approved eligible (who are getting Q632) because we are not using Accept.

54. Question Re: 12 C.F.R. § 1003.4(a)(35) – AUS and Result

We use loan prospector (LP) and DU but it includes TOTAL Scorecard, do we report DU or LP as AUS system #1 and TOTAL Scorecard under system #2 or just report LP or DU? This seems to be an area of confusion in the industry.

55. Question Re: 12 C.F.R. § 1003.4(a)(35) – AUS and Result

We run conforming loans through DU and receive a response 1-15. We can also receive the response with 'observations' that, per FNMA, requires the underwriter to disregard the DU response and manually underwrite.

For this scenario, we selected 1 (DU) for the AUS and 16 (Other) for the AUS response and reported 'manually underwrite' in the AUS Free Form field since we view FNMA's response as manually underwrite.

We are receiving a Q643 edit, which states that if the AUS system is DU, the response should be 1-7, or 15.

I would like your opinion as to whether or not reporting 16 with a free form comment is appropriate in this scenario.

56. Recommendation Re: 12 C.F.R. § 1003.4(a)(35) – AUS and Result

The regulators must clarify reporting requirements concerning proprietary AUS systems. AUS systems may be designed by securitizers, insurers, or guarantors to be used by many different creditors. These systems are designed to produce clear results as to whether loans may be securitized, insured, or guaranteed, and such systems have significant impact on the market as a whole. Proprietary AUS systems are often designed to manage an institution's process flow and often they may run eligibility requirements and credit checks without producing clear "results." They also have little impact on the market as whole. An institution may use multiple proprietary systems where one system evaluates credit and another system evaluates eligibility. In short, if an institution uses an AUS that is only used by it and its affiliates, that AUS system is not a reportable AUS system.

In addition, the current rule provides that when multiple AUS results are obtained that the institution must follow a specified hierarchy to determine which result to report. The problem is that the hierarchy often has an institution report an AUS and AUS result that it did not rely upon. This makes the AUS fields less useful, and it places an unnecessary compliance burden on financial institutions to track AUS results that they do not use. We would advise that the Bureau permit financial institutions that have received AUS results from more than one AUS to report the AUS that was actually relied upon when evaluating the application.

Construction/Permanent Loans

57. Question Re: 12 C.F.R. § 1003.4(a)(8)(ii) – Action Taken Date – Construction/Permanent Loans

More clarity is needed on reporting of construction-to-permanent loans. Do financial institutions report the closing date or the date the loan converts to permanent financing? Please note that construction loans will automatically convert to permanent financing after the construction is complete, and that date is often unascertainable at the time of reporting.

58. Question Re: 12 C.F.R. §§ 1003.4(a)(8)(ii), (a)(26), (a)(27) – Action Taken Date; Introductory Rate Period; Non-Amortizing Features – Construction/Permanent Loans

I need clarification please. We purchase one-time construction permanent loans that are modified prior to our purchase. These loans have a 12-month interest only (fixed) period during construction and then modify to an amortizing fixed rate at completion. For HMDA reporting, the Bureau's reference chart indicates for "Introductory Rate Period" we are to enter "NA" for purchased loans, however, for "Non-Amortizing Features" it appears that we still enter "Code 1" for interest only payments. Is that correct?

Further, when we report these loans are we correct in reporting the data from the initial closing? At construction completion, the correspondent modifies the loan prior to our purchase with a modification in interest rate, for example. It seems odd to report the loan amount at purchase (which could be different from the initial loan amount) yet report everything else from closing.

This has been quite the conundrum because HMDA does not specifically address construction permanent loans.

59. Question Re: 12 C.F.R. §§ 1003.4(a)(17) - (20) – Loan Costs, Origination Charges, Discount Points, and Lender Credits – Construction/Permanent Loans

I am in need of an opinion regarding the reporting of loan costs, origination charges, etc. on the HMDA LAR for construction/permanent loans.

We have a one-time close construction/permanent product. When the home is completed, we modify the loan to permanent financing and use that date as our origination date for HMDA purposes. The modification is just that – a modification. No new disclosures are generated or provided to the customer at that point. All disclosures are generated and provided at the closing that is done right before construction begins.

Our HMDA specialist posed a question regarding the Loan Costs, Points and Fees, Origination Charges (Borrower Paid), Discount Points Paid to Reduce Rate and Lender Credits. Since we do not issue a new CD at the time of modification and the CD is the source document to obtain most of these "costs", we are trying to obtain guidance on whether or not we report the "cost" from the CD that was provided at closing. The duration of these loans is typically 9 plus months and sometimes the closing and the modification occur in different years – this fact may not even matter, but it's causing us to scratch our heads.

Other

60. Recommendation Re: Official Interpretations: 4(a)(12)-9, 4(a)(17)(i)-3, 4(a)(19)-3, 4(a)(20)-3, and 4(a)(21)-1 – Corrected Disclosures

The Bureau must fix regulatory provisions concerning reporting in instances where lenders issue corrected disclosures. *See* Official interpretations of 4(a)(12)-9, 4(a)(17)(i)-3, 4(a)(19)-3, 4(a)(20)-3, and 4(a)(21)-1. In general, if a lender finds an error in a field before reporting, it corrects that field and reports accurate information. However, for the rate spread and for the pricing fields that are taken from TILA disclosures, the accurate corrected values may not be reported if the correction occurs in the following year. When the corrected disclosure is provided in the following year, it would lessen the compliance burden if the institution had the option of reporting the corrected values, and it would improve accuracy.

For HELOCs, the current commentary for rate spread addresses corrected HELOC disclosures, but the current commentary for interest rate does not address corrected HELOC disclosures. The rules should be the same for both fields.

61. Recommendation Re: 12 C.F.R. § 1003.4(a)(34) – NMLS

The Bureau should add clarity to HMDA requirements regarding the reporting of NMLS numbers in instances where there may be multiple mortgage loan originators. We ask that the Bureau adopt a rule that clarifies that if both a mortgage broker's MLO and creditor's MLO have been assigned to the transaction, then either one may be designated as the loan originator with primary responsibility under the reporting institution's written policies.

62. Recommendation Re: 12 C.F.R. §§ 1003.5(c) & (d) – Written Notice of Availability of HMDA Data

With regard to the "Written Notice of Availability of HMDA Data," the Bureau should remove the requirement to provide a written notice of the availability of HMDA data and instead require the institution to provide the Bureau's web site address orally or in writing. As a practical matter, anyone requesting access to HMDA data is aware of the nature of that data. The written notice directs the requester to the Bureau's web site, www.consumerfinance.gov/hmda. The notice is essentially identical to the lobby sign that is posted in the same office and does not add any useful information to the information on the sign. Once a requester is made aware of the fact that the data is now made available online, a simple Google search will identify the Bureau's site.

63. Question Re: 12 C.F.R. §§ 1003.4(16) – Reason for Denial

Under Comment 4(a)(16)-1, the institution reports up to four principal reasons for the denial. Under Comment 4(a)(16)-3, if the institution provides an adverse action notice pursuant to Regulation B, the institution should report the reasons provided on the notice for HMDA purposes. Regulation B, however, does not limit the number of reasons that may be contained in an adverse action notice, and some institutions provide Regulation B notices with more than four reasons. When this occurs, there is no guidance on how to identify the four "principal" reasons from the notice.