

# CONSUMER COMPLIANCE OUTLOOK®

A FEDERAL RESERVE SYSTEM PUBLICATION FOCUSING ON CONSUMER COMPLIANCE TOPICS

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## HMDA DATA COLLECTION AND REPORTING: KEYS TO AN EFFECTIVE PROGRAM

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The Home Mortgage Disclosure Act (HMDA), as implemented by Regulation C, requires<sup>1</sup> financial institutions subject to the law and regulation (HMDA reporters) to collect and report certain data fields about applications, originations, and purchases of “covered loans.”<sup>2</sup> It is important that HMDA reporters accurately collect and report HMDA data because of the critical purposes for which the data are used. For example, examiners use HMDA data for fair lending examinations, compliance examinations, and Community Reinvestment Act (CRA) examinations, while public officials use the data for making decisions about distributing public-sector investments.<sup>3</sup> Policymakers also review and analyze HMDA data for insights into the mortgage market. Given the importance of accurate data for these purposes, the tolerance threshold for the percentage of errors requiring the reporter to resubmit its data is low, ranging from 2.5 percent to 10 percent, depending on the number of HMDA loans reported.<sup>4</sup> Errors exceeding the tolerance can result in data resubmission, examination delays, regulatory violations, and civil money penalties.<sup>5</sup>

HMDA data collection and reporting can be challenging. HMDA reporters must collect multiple data fields, some of which have nuanced requirements. For example, prequalifications are not reported, while applications for a home purchase loan in preapproval programs generally are. Similarly, the “action taken” field has multiple options with particular requirements, such as reporting the action taken as “withdrawn” only when the applicant withdraws the application before a credit decision is made to approve or deny the application or before the file is closed because it is incomplete.<sup>6</sup> It is therefore not surprising that HMDA violations were among the top 10 compliance violations cited by Federal Reserve examiners even before the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd–Frank Act) and its implementing regulations required HMDA reporters to begin collecting additional data fields beginning in January 2018 and made changes to some of the existing fields.

Technical changes, frequent violations, and the need for accurate data underscore the importance of discussing ways that reporting institutions can strengthen their HMDA data collection, verification, and reporting processes. This article discusses sound practices identified by examiners and suggests compliance management program improvements to help financial institutions strengthen their HMDA collecting and reporting practices. The article’s suggestions should be considered in the context of the size, complexity, and risk profile of the HMDA reporter. We begin by discussing the role of the board of directors

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# MORTGAGE SERVICING: MANAGING CHANGE

BY KATIE E. RINGWALD, SUPERVISORY EXAMINER, FEDERAL RESERVE BANK OF ST. LOUIS

Finding a realtor?

House hunting?

Receiving an accepted offer?

For homeowners, the journey from deciding to purchase a home to closing the transaction involves many steps. But experienced homeowners know that obtaining the keys to a new home is only the beginning. Over time, the homeowner will have to perform routine maintenance and deal with unexpected repairs.

Lenders must comply with numerous compliance regulations beginning when they receive a mortgage loan application and ending when they sign the loan agreement. However, similar to a homeowner's responsibilities, compliance obligations for the loan servicer (whether or not the lender is also the servicer) begin at closing. Depending on the terms of the loan agreement and regulatory requirements, the servicer is required to perform routine tasks and respond to anticipated and unanticipated changes. For example, forbearance and modification requests can spike in response to a crisis, such as the 2008 financial crisis or the recent pandemic. As a result, servicing resources may be strained, work may need to be performed remotely, and critical third-party providers may experience similar disruptions.

This article reviews some important aspects of routine mortgage loan servicing, including adjustable-rate mortgage (ARM) rate adjustments, private mortgage insurance monitoring, and annual escrow account analysis. This article will also discuss sound practices mortgage loan servicers can implement to help manage and adapt to unexpected changes, such as those seen through the recent COVID-19 crisis.

## Adjustable-Rate Mortgage Rate Adjustments

ARMs have different servicing considerations than fixed-rate loans because, during the term of the loan, the rate periodically resets according to the terms of the loan agreement. ARM loan schedules can be set up in a variety of ways, using different indexes, margins, initial fixed-rate periods, and subsequent adjustment frequencies. Moreover, interest rate caps in the loan agreement may limit changes and impose rounding rules. As a result of these factors, Federal Reserve examiners and other regulators continue to identify ARM rate adjustment errors. For example, in 2019, the Consumer Financial Protection Bureau (Bureau) settled with a financial institution for "failing to promptly enter interest rate adjustment loan data for ARM loans into its servicing system. ... [and therefore sending monthly statements] that sought to collect inaccurate principal and interest payments."<sup>1</sup> Given the potential for noncompliance, servicers of ARM loans should implement risk management strategies to ensure compliance.

In addition, with some exceptions, each rate adjustment requires disclosure to the borrower in advance of the rate change.<sup>6</sup> The notice must provide certain information, such as an explanation that the interest rate and payment will change, the effective date of the change, and the current and new interest rates and payments. Rate adjustment notices are generally required to be provided 60 to 120 days before the first adjusted payment is due.<sup>7</sup> However, in addition to the standard adjustment notice, the first rate adjustment during the life of the loan generally requires an additional advance disclosure 210 to 240 days before the first adjusted payment is due.<sup>8</sup> While this first notice is similar to other adjustment notices, it also includes special information such as a phone number for consumers to call if they anticipate not being able to make their new payments, alternatives to paying at the new rate, and ways to access homeownership counseling organizations.<sup>9</sup>

### Private Mortgage Insurance Monitoring

For conventional loans with less than a 20 percent down payment, private mortgage insurance (PMI) is typically required and most commonly paid for through monthly premiums added to the mortgage payments. According to recent survey data from the National Association of Realtors, 57 percent of noncash homebuyers make a down payment of less than 20 percent of the purchase price, so PMI is frequently required.<sup>10</sup>

In 1998, Congress enacted the Homeowners Protection Act (HPA) to provide consumer protections for fixed- and variable-rate residential mortgage loans subject to PMI.<sup>11</sup> The HPA governs, among other things, the date on which the borrower with a good payment history (as defined in §4901(4) of the HPA) has the right to cancel PMI (defined in the HPA as the *cancellation date*) and the date on which the servicer *must* cancel PMI (defined in the HPA as the *termination date*). For both fixed- and variable-rate loans, the cancellation date is the date on which the principal balance reaches 80 percent of the original home value (i.e., an 80 percent loan-to-value (LTV) ratio), based on either the original amortization schedule or the actual payments the borrower has made. For example, if the borrower made extra principal payments, the cancellation date would be earlier than the date based on the amortization schedule.<sup>12</sup> The HPA defines the *termination date* as the date when the principal loan balance is scheduled to reach 78 percent of the home's original value (i.e., a 78 percent LTV), provided the borrower has a good payment history.<sup>13</sup> The HPA also provides that if PMI was not cancelled on the cancellation or termination dates, it must be cancelled by the final termination date, which §4902(c) defines as the first day of the month immediately following the date of the midpoint of the loan amortization period, provided the borrower is current on payments. In summary, the borrower may cancel the PMI when the LTV is



## Examiner Insight: Sunset of London Inter-Bank Offered Rate (LIBOR)

Servicers of adjustable-rate mortgage loans should ensure they are adequately prepared for the sunset of the LIBOR, a commonly used index, by the end of 2021. The Federal Financial Institutions Examination Council's Joint Statement on Managing the LIBOR Transition<sup>2</sup> underlines the importance of understanding the legal, operational, and other risks faced as a result of the LIBOR transition, stating “[t]ransition plans should identify affected consumer loan contracts, highlight necessary risk mitigation efforts, and address development of clear and timely consumer disclosures regarding changes in terms.” In addition, the Bureau is amending Regulation Z to address the sunset of LIBOR<sup>3</sup> and has issued Frequently Asked Questions to address LIBOR transition topics and regulatory questions under the existing Regulation Z.<sup>4</sup>

Finally, on November 30, 2020, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency issued an interagency statement on the LIBOR transition, which included this statement:

Given consumer protection, litigation, and reputation risks, the agencies believe entering into new contracts that use USD LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks and will examine bank practices accordingly. Therefore, the agencies encourage banks to cease entering into new contracts that use USD LIBOR as a reference rate as soon as practicable and in any event by December 31, 2021.<sup>5</sup>

scheduled to or actually reaches 80 percent, and the servicer must automatically cancel PMI when the LTV reaches 78 percent. If PMI was not cancelled by these dates, the servicer must cancel it no later than the loan's midpoint based on the amortization schedule.

To ensure that PMI is cancelled consistent with the HPA's requirements, it is important for servicers to maintain controls and monitoring mechanisms to track the loan balance relative to the home's original value and appropriately respond to requests for PMI cancellation or cancel it automatically by the termination date.



## Examiner Insights: CARES Act Guidance on Servicing

In response to the COVID-19 crisis, the Federal Reserve Board, the Bureau, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the State Banking Regulators (agencies) issued the Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act (Statement).<sup>21</sup> The statement specifically addresses servicers' obligations with respect to the annual escrow statements in light of the pandemic:

The agencies ... understand that annual escrow statements typically generate a high volume of calls. The agencies recognize that this may cause challenges for servicers' call center operations. Thus, as of April 3, 2020 and until further notice, the agencies do not intend to take supervisory or enforcement action against servicers for delays in sending the annual escrow statements required by Regulation X, 12 CFR 1024.17(i), provided that servicers are making good faith efforts to provide these statements within a reasonable time.<sup>22</sup>

This flexible supervisory and enforcement approach applies regardless of whether a borrower is experiencing a financial hardship due — directly or indirectly — to the COVID-19 emergency.

The Bureau also issued servicing guidance on the same date addressing other servicing issues titled "The Bureau's Mortgage Servicing Rules FAQs related to the COVID-19 Emergency."<sup>23</sup> These FAQs acknowledged that for borrowers facing financial difficulties during the crisis, the presence of a shortage in their escrow account may be troubling. The FAQs noted that while servicers are required under Regulation X to explain how a customer will pay for any shortage or deficiency, they are not required to collect it.<sup>24</sup>

The communications servicers provide to borrowers and the way servicers respond to customer inquiries are also a vital aspect of servicing loans with PMI. In 2018, the Bureau identified instances in which borrowers who requested PMI cancellation were denied their requests even though they had reached 80 percent LTV by making extra principal payments. While the borrowers in these instances had not satisfied all the requirements to cancel the PMI, the servicer's responses to these requests misrepresented the requirements to end the PMI and did not accurately communicate the reasons the servicer denied the borrowers' requests. The Bureau therefore found the communications were deceptive.<sup>14</sup> It is important that bank communications and disclosures concerning PMI are clear and not deceptive.

The HPA also regulates loan modifications. Under §4902(d), if a loan with a PMI is modified, the cancellation date, termination date, and final termination date must be recalculated to reflect the modified terms/conditions of the loan. See *Fried v. JPMorgan Chase & Co.*, 850 F.3d 590 (3d Cir. 2017)(analyzing whether original or updated property value is used to recalculate PMI dates for modified loans).

### Annual Escrow Account Analysis

As noted in a 2018 *Consumer Compliance Outlook* article,<sup>15</sup> examiners continue to observe violations of escrow compliance. Before establishing an escrow account, an institution must conduct an initial escrow account analysis to determine the amount the borrower must deposit into the escrow account at inception and the amount of the borrower's periodic payments into the escrow account.<sup>16</sup>

The institution must also prepare and deliver an initial escrow account statement to the borrower.<sup>17</sup> Subsequent to the initial escrow account analysis and statement provided to borrowers, servicers must conduct an annual escrow account analysis to review the account history and projections; determine whether a shortage, surplus, or deficiency exists; adjust the account; and send an annual statement to the borrower.<sup>18</sup>

As with ARM interest rate adjustments, errors identified in the escrow account analysis may result from inaccuracies in one of the several key pieces of information needed to calculate the shortage, surplus, or deficiency. Such key information includes projected disbursement dates and amounts, the account computation period, and the amount of cushion maintained in the account.<sup>19</sup>

Furthermore, escrow account statements are required to contain specific information for the borrower, such as the amount of the monthly mortgage payment and the amount of the payment added to the escrow; the total amount paid into and out of the account during the past year; and an explanation of how any surplus, shortage, or deficiency will be handled.<sup>20</sup>

Escrow analysis errors, or simply omissions of required information, can result in inaccurate or incomplete disclosures.

### Loss Mitigation

When borrowers experience difficulties making loan payments, servicers may choose to implement various loss mitigation strategies to help borrowers avoid foreclosure within the strictures of Regulation X's loss mitigation requirements.<sup>25</sup> Some loss mitigation options include forbearance programs that temporarily pause mortgage payments and loan modifications. Certain regulatory compliance requirements may be triggered depending on the specific option selected.

For example, a servicer may agree to a forbearance program that allows a borrower to defer payments for a specified number of months and then initiate a repayment plan to bring the account current. Or a creditor may opt for a more formal loan modification, either initially or following a period of deferred payments.

In the context of flood insurance, modifications to a designated loan (i.e., a loan secured by a building or mobile home located in a special flood hazard area in which flood insurance is available)<sup>26</sup> may be a triggering event for flood insurance requirements if the modification makes, increases, renews, or extends a loan (commonly known as MIRE). On May 6, 2020, the Board of Governors of the Federal Reserve System issued guidance to address this issue, noting that a loan modification to extend the loan term is a triggering event, requiring lenders and servicers to comply with certain flood insurance requirements.<sup>27</sup>

Other considerations when comparing loss mitigation options include the treatment of escrow accounts and PMI discussed previously. While a servicer may choose to allow a borrower to defer escrow payments, it will need to conduct an escrow account analysis after the deferment period and consider how subsequent shortages will be repaid.

### Sound Practices

This article discussed some of the servicing requirements warranting review to ensure compliance. Examiners have observed sound practices at many financial institutions that can help mitigate compliance risk in these areas. Some effective controls include:

- conducting regular, targeted compliance reviews;
- maintaining policies and procedures that align with the complexity of the institution;
- implementing robust and responsive training programs; and
- carefully using monitoring systems, software, and third-party vendors.



## Examiner Insights: Strain on Servicers from COVID-19 Servicing Requests

Many servicers received an unanticipated volume of forbearance and modification requests at the start of the COVID-19 crisis. This high volume of requests put a strain on many compliance programs that may not have had the resources available initially to manage these requests. Banking regulators acknowledged this through an April 3, 2020, Joint Statement, stating: “[m]ortgage servicers play a vital role in assisting consumers when they face challenges in paying their mortgages, and the agencies understand that the current crisis could pose temporary business disruptions and challenges for mortgage servicers, including staffing challenges, that could impede their ability to assist consumers at this critical time.”<sup>28</sup>

Additionally, because of the increased volume of forbearance and modification requests, some servicers less familiar with working with borrowers to accommodate these requests may not have anticipated the domino effect that deferments may have on other aspects of loan compliance. Sound practices, discussed next, can help servicers manage unexpected changes such as the increase in deferments.

### Compliance Reviews

Loan terms may require periodically calculating new payment amounts, interest rates, and escrow account balances, and then communicating these changes to borrowers at various required time frames. When subject to such servicing requirements, banks may find that targeted reviews can promote compliance by verifying computational and disclosure accuracy.

Effective compliance reviews of ARM interest rate adjustments compare the terms of the loan agreement and initial disclosures with the calculated interest rate adjustments. While many servicers use automated software to calculate interest rate adjustments, most software still requires some manual input. If any ARM loan terms have been improperly input into the servicing software, the new interest rate may be miscalculated. Additionally, verifying the correct data (the correct index value, for example) that were used to calculate a rate adjustment is especially important for servicers with multiple ARM products. In

addition to verifying the interest rate calculations, effective ARM loan reviews ensure compliance with requirements for interest rate adjustment notices, including the content, format, and timing of notices.

Similarly, effective escrow compliance reviews verify that:

- Data used for the analysis are accurate, including to ensure that the cushion used complies with regulatory limits and loan documents;
- The projected disbursements are based on previous tax statements/insurance amounts;
- The identified shortage, surplus, or deficiency is treated appropriately; and
- Customer disclosures are timely and comply with all requirements for content and formatting.

**WITH THE POTENTIAL COMPLEXITIES INVOLVED IN MORTGAGE LOAN SERVICING, SOFTWARE SYSTEMS CAN BE AN EFFECTIVE TOOL TO MANAGE RISK.**

When a compliance review identifies an error, a sound compliance program will determine its root cause, assess the pervasiveness of the error, take appropriate corrective action, and prevent future errors by addressing the underlying cause. Follow-up reviews will validate the efficacy of corrective actions.

#### *Policies, Procedures, and Training*

Detailed, comprehensive, and accurate written servicing procedures and robust training programs can be particularly effective for mitigating compliance risk, particularly for institutions with higher servicing volumes. Mortgage servicing employees knowledgeable about specific product characteristics, regulatory compliance requirements, and a bank's internal systems and processes are more likely to perform their functions consistent with compliance expectations. For customer-facing staff, in particular, the ability to articulate clear and compliant responses to customer inquiries can help prevent misinformation and even potential mistreatment of customers, especially in the event

of an unexpected outside change that may cause an increase in customer requests (such as the increase in requests for loan modifications seen during the COVID-19 crisis).

The most effective training programs will include both initial and ongoing training, and training targeted to review findings, business/product changes, or unique outside situations, such as regulatory changes or the onset of a crisis. Proactive training programs can help prevent compliance issues.

#### *Systems, Software, and Vendors*

With the potential complexities involved in mortgage loan servicing, software systems can be an effective tool to manage risk. For example, an automated tickler system may be used to effectively monitor the timing of interest rate adjustments, and software may be used to accurately calculate the amount of shortage, surplus, or deficiency in an escrow account. While it can be an effective tool, software typically does not eliminate the potential for human error when inputting data, and software may need to be periodically updated and tested. Performing additional testing after any software updates is a sound practice to ensure the correct parameters are still in use.

In addition, servicers should be prepared to update software in response to unexpected changes. For example, even with automated systems, servicers who worked with borrowers to accommodate forbearance requests during the COVID-19 crisis may have needed to take additional steps to ensure that they complied with the CARES Act.<sup>29</sup>

Moreover, some servicers may choose to outsource specific servicing responsibilities, such as PMI monitoring, to third-party vendors. In this instance, a servicer should consider that it retains responsibility for ensuring compliance when making decisions regarding the appropriate level of vendor management oversight. Depending on the level of risk, vendor management oversight may include frequent monitoring and evaluation of the vendor's performance.<sup>30</sup> If a servicer identifies a compliance issue caused by the vendor, the servicer is responsible for communicating and working with the vendor to correct the issue.

#### **Conclusion**

An Internet search for a "home maintenance checklist" yields millions of results detailing routine tasks homeowners should perform seasonally or annually. In the meantime, appliances may break, a roof may be damaged, or high winds could unexpectedly bring down a tree. Mortgage loan servicing is similar: Servicers must manage the routine aspects of servicing but be prepared for unexpected challenges. In addition to the specific servicing aspects detailed above, other routine aspects such as flood monitoring,<sup>31</sup> credit

reporting, periodic statements, late fees, and servicing transfers all may impact servicing on an ongoing basis throughout the loan term. Furthermore, unexpected changes can affect servicing requirements.

The sound practices to manage routine compliance risk noted in this article can also serve institutions during unexpected crises. Effective, proactive loan servicing programs are more

easily able to adapt to changes,<sup>32</sup> especially in times of crisis. Maintaining an effective loan servicing program requires strong procedures and controls because events can occur during the servicing of the loan, such as a loan modification, that trigger regulatory requirements. Specific issues and questions should be raised with your primary regulator. ■

## ENDNOTES

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<sup>1</sup> See Consumer Financial Protection Bureau Settles with BSI Financial Services (CFPB, March 29, 2019).

<sup>2</sup> See Joint Statement on Managing the LIBOR Transition (FFIEC, July 1, 2020).

<sup>3</sup> See Amendments to Facilitate the LIBOR Transition (Regulation Z)(CFPB, June 4, 2020).

<sup>4</sup> See “LIBOR Transition FAQs” (CFPB, June 4, 2020). The Federal Reserve’s safety and soundness publication for community banks also published a recent article on the LIBOR transition. See Loren Lozano, “Steps to Prepare for the Cessation of LIBOR” *Community Banking Connections* (Third Issue 2020).

<sup>5</sup> Statement on LIBOR Transition (November 30, 2020).

<sup>6</sup> See 12 C.F.R. §1026.20(c).

<sup>7</sup> See 12 C.F.R. §1026.20(c)(2).

<sup>8</sup> See 12 C.F.R. §1026.20(d)(2).

<sup>9</sup> See 12 C.F.R. §1026.20(d).

<sup>10</sup> See *Realtors Confidence Index Survey* (National Association of Realtors Research Group, May 2020).

<sup>11</sup> See 12 U.S.C. §4901 et seq.

<sup>12</sup> See 12 U.S.C. §4901(2), 4902(a).

<sup>13</sup> See 12 U.S.C. §4901(2), 4902(b).

<sup>14</sup> *Supervisory Highlights* (CFPB Issue 18, Winter 2019), pp. 7–8.

<sup>15</sup> Richele S. Brady, “Escrow Accounting Rules: Are You in Compliance?” *Consumer Compliance Outlook* (Second Issue 2018).

<sup>16</sup> See 12 C.F.R. §1024.17(c)(2).

<sup>17</sup> See 12 C.F.R. §1024.17(i).

<sup>18</sup> See 12 C.F.R. §1024.17(c)(3).

<sup>19</sup> These terms are defined in the definition section of Regulation X, 12 C.F.R. §1024.17(a).

<sup>20</sup> See 12 C.F.R. §1024.17(g).

<sup>21</sup> See Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act on April 3, 2020.

<sup>22</sup> The statement clarifies, however, that servicers must continue to comply with the requirements concerning timely disbursements from escrow accounts in Regulation X, 12 C.F.R. §1024.17(k).

<sup>23</sup> See The Bureau’s Mortgage Servicing Rules FAQs Related to the COVID-19 Emergency (Updated April 3, 2020).

<sup>24</sup> See Endnote 22, pp. 9–10.

<sup>25</sup> See Regulation X, 12 C.F.R. Part 1024, Subpart C.

<sup>26</sup> See 12 C.F.R. §208.25(b)(5).

<sup>27</sup> See CA letter 20-7, Flood Insurance Compliance in Response to the Coronavirus. The FDIC issued similar guidance. See Frequently Asked Questions for Financial Institutions Affected by the Coronavirus Disease 2019 (FDIC, May 27, 2020).

<sup>28</sup> See Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act, p. 1.

<sup>29</sup> Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116-136 (March 27, 2020).

<sup>30</sup> See CA letter 13-21, Guidance on Managing and Outsourcing Risk.

<sup>31</sup> See CA letter 20-7, Flood Insurance Compliance in Response to the Coronavirus.

<sup>32</sup> See Allison Burns, “Promoting Effective Change Management,” *Consumer Compliance Outlook* (Second Issue 2019).

## HMDA DATA COLLECTION AND REPORTING: KEYS TO AN EFFECTIVE PROGRAM

and management, provide a brief overview of the law's requirements, and finish by reviewing sound practices to improve compliance.

### Role of the Board of Directors and Senior Management

For HMDA reporters, management is responsible for ensuring procedures are in place to collect and maintain accurate data regarding each loan application, loan origination, and loan purchase that must be reported. Further, the board and management also need to ensure the institution provides individuals assigned responsibility for preparing and maintaining the data-appropriate training regarding the regulatory requirements, resources, and tools needed to report complete and accurate HMDA data.

#### Data Collection

Sound practices for successful data collection include creating effective procedures, providing useful tools to staff members responsible for HMDA data collection, and delivering comprehensive training. The following strategies are suggested to help achieve an effective HMDA program.

#### Procedures

Successful data collection starts with developing HMDA data collection procedures. Effective HMDA procedures document processes for identifying all HMDA reportable transactions and develop consistent approaches for identifying the underlying source of information for reporting data fields on the HMDA loan application register (LAR) to ensure accurate data collection.

### Overview of the Law's Requirements

#### Who Must Report

First, the institution must be a *financial institution* as defined by Regulation C. Although HMDA applies to both depository and nondepository financial institutions, this article only addresses the requirements for depository institutions.

- **Asset-Size Threshold.** On December 31 of the preceding year, the institution meets the requisite asset-size threshold, which is published annually in the *Federal Register*. For data collection in 2020, the current asset threshold is \$47 million.
- **Location Test.** On December 31 of the preceding year, the institution had a home or branch location located in a metropolitan statistical area (MSA).
- **Loan Activity Test.** During the preceding calendar year, the institution originated at least one home

purchase loan or refinance of a home purchase loan secured by a first lien on a one- to four-unit dwelling.

- **Federally Related Test.** The institution is (a) federally insured; (b) federally regulated; or (c) originated at least one home purchase or refinance of a home purchase loan that was secured by a first lien on a one- to four-unit dwelling and (i) was insured, guaranteed, or supplemented by a federal agency or (ii) was intended for sale to the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).
- **Loan-Volume Threshold.** Effective July 1, 2020, the institution meets or exceeds either the closed-end mortgage loan or the open-end line of credit loan-volume threshold in each of the two preceding calendar years. Currently, an institution that originated at least 100 closed-end mortgage loans in each of the two preceding calendar years,<sup>7</sup> or originated at least 500 open-end lines of credit in each of the two preceding calendar years meets or exceeds the loan-volume threshold for the respective loan category. The open-end line credit threshold of 500 is temporary with the permanent 200-loan threshold effective on January 1, 2022 (i.e., data collection would occur in 2022, with reporting in 2023).<sup>8</sup>

#### Identifying HMDA Reportable Transactions

Once an institution confirms it is covered by HMDA, the next step in the data collection and reporting process is to identify all HMDA reportable transactions. The Dodd–Frank Act amendments that became effective in January 2018 changed which transactions are deemed covered by HMDA and Regulation C and therefore reportable. Generally speaking, unless a transaction is expressly excluded under 12 C.F.R. §1003.3(c), an institution subject to HMDA must report all consumer closed-end mortgage loans and open-end lines of credit secured by a dwelling.<sup>9</sup> For business or commercial-purpose loans secured by a dwelling, the loan is reportable only if it can be categorized as a refinancing, home improvement, or home purchase loan.<sup>10</sup> The 2018 amendments also modified the definitions of *institutional coverage*<sup>11</sup> and *transactional coverage*.<sup>12</sup> In addition, the 2018 Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA)<sup>13</sup> partially exempted some HMDA reporters from collecting most of the newer HMDA fields added by the Dodd–Frank Act and implementing regulations.<sup>14</sup>

Over- or underreporting transactions on the HMDA LAR

can lead to noncompliance. Further, HMDA requires the collection of government monitoring information (GMI), which includes the race, ethnicity, and sex of the applicant(s) for the transactions reported on the HMDA LAR. An institution that incorrectly determines whether HMDA applies to a particular transaction could collect GMI when it is not required, or fail to collect it when it is, resulting in examination violations and potential fair lending issues.<sup>15</sup>

#### *Transactional Requirements<sup>16</sup>*

HMDA reporting requirements apply to loans or applications that satisfy the following requirements:

- A consumer open- or closed-end loan secured by a dwelling;
- A business-purpose loan secured by a dwelling that is a refinance, home purchase, or home improvement loan, as those terms are defined in §1003.2(i), (j), and (p), respectively; and
- The application or loan is not on the list of excluded transactions in 12 C.F.R. §1003.3(c), which includes:
  - Loans originated or purchased by the financial institution acting in a fiduciary capacity;
  - Loans secured by a lien on unimproved land;
  - Temporary financing;
  - Purchase of an interest in a pool of otherwise covered loans;
  - Purchase of solely the right to service loans;
  - Purchase of loans as part of a merger or acquisition;
  - Loans in which the total dollar amount is less than \$500;
  - Purchase of partial interest in an otherwise covered loan;
  - Loans used primarily for agricultural purposes;
  - Loans made primarily for business or commercial purposes, unless the transaction is also a home improvement loan, home purchase loan, or refinancing; and/or
  - A transaction that proposed to provide or did provide new funds in advance of being consolidated in a New York State consolidation, extension, and modification agreement.<sup>17</sup>

#### *Partial Exemption<sup>18</sup>*

The EGRRCPA partially exempted certain HMDA reporters. In particular, reporters that were insured depository

institutions or insured credit unions and originated fewer than 500 closed-end mortgage loans or open-end lines of credit in each of the two preceding calendar years do not have to collect and report most of the new fields added by the CFPB's 2015 final rule implementing the Dodd–Frank Act amendments to HMDA. But even if a HMDA reporter is partially exempt, it must still collect and report the nonexempt data points. We list the exempt fields in Table 1 (The Effect of EGRRCPA's Partial Exemption for Certain HMDA Data Points) along with the fields that all HMDA reporters are still required to collect.

To qualify for the partial exemption, an institution must:

- Be an insured credit union or an insured depository institution;<sup>19</sup> that has not been rated either “needs to improve record of meeting community credit needs” during each of its two most recent CRA examinations or not rated “substantial noncompliance in meeting community credit needs”<sup>20</sup> on its most recent CRA examination;
- Originate fewer than 500 closed-end mortgage loans in each of the two preceding calendar years (to be partially exempt for its closed-end loans);<sup>21</sup> or
- Originate fewer than 500 open-end lines of credit in each of the two preceding calendar years (to be partially exempt for its open-end lines of credit).<sup>22</sup>

The open- and closed-end exemptions operate independently from each other; an institution may qualify for one partial exemption but not the other.

Further, business lines other than those offering traditional residential mortgages may offer credit extensions that require the institutions to collect and report HMDA data. For example, the commercial loan department may originate purchase-money loans for multifamily buildings such as apartment, cooperative, or condominium buildings. Originating HMDA-reportable transactions in multiple business lines makes identifying and collecting data more challenging, and staff in nonmortgage origination business lines may not be as mindful of HMDA requirements in day-to-day operations. Table 2 (Business Lines and Reportable Transactions) depicts the business lines that often offer loans subject to HMDA as well as the types of HMDA-reportable transactions often found within each business line. As a reminder, this table is illustrative; other types of loans may be HMDA reportable.

Institutions have different methods of ensuring that they accurately identify HMDA-reportable transactions. At some institutions, lenders are initially responsible for identifying HMDA-related applications, and the compliance department confirms lenders identified all covered applications by comparing the new loan list with the HMDA LAR.

**Table 1: The Effect of EGRRCPA’s Partial Exemption for Certain HMDA Data Points**

EGRRCPA’s Partial Exemption List	
Covered by the Partial Exemption	Not Covered by the Partial Exemption
Universal Loan Identifier	Application Date
Property Address	Loan Type
Rate Spread	Loan Purpose
Credit Score	Preapproval
Mandatorily Reported Reasons for Denial	Construction Method
Total Loan Costs or Total Points and Fees	Occupancy Type
Origination Charges	Loan Amount
Discount Points	Action Taken
Lender Credits	Action Taken Date
Interest Rate	State
Prepayment Penalty Term	County
Debt-to-Income Ratio	Census Tract
Combined Loan-to-Value Ratio	Ethnicity
Loan Term	Race
Introductory Rate Period	Sex
Non-Amortizing Features	Age*
Property Value	Income
Manufactured Home Secured Property Type	Type of Purchaser
Manufactured Home Land Property Interest	HOEPA Status
Multifamily Affordable Units	Lien Status
Application Channel	Number of Units
Mortgage Loan Originator Identifier	Legal Entity Identifier
Automated Underwriting System	
Reverse Mortgage Flag	
Open-End Line of Credit Flag	
Business or Commercial Purpose Flag	

\*The Age field was added by §1094 of the Dodd–Frank Act, but the EGRRCPA amendment did not include this field in the partial exemption, so even banks qualifying for the partial exemption must still collect and report this new field.

**Table 2: Business Lines and Reportable Transactions**

Business Line		
Consumer	Commercial	Agricultural
<p>All closed- and open-end, consumer-purpose loans secured by a dwelling, such as:</p> <ul style="list-style-type: none"> <li>• Mobile home loans</li> <li>• Home improvement loans</li> <li>• HELOCs</li> <li>• Refinance of a dwelling-secured loan</li> <li>• Personal loan secured by a dwelling</li> </ul>	<p>Business purpose, dwelling-secured, open- and closed-end loans that are home improvement loans, home purchase loans, or a refinancing,* such as:</p> <ul style="list-style-type: none"> <li>• Purchase of a multifamily rental property</li> <li>• Refinancing of a dwelling-secured loan into a new dwelling-secured loan</li> </ul>	<p>Open- and closed-end loans for primarily agricultural purposes are excluded</p>

\*The prior version of Regulation C used a “purpose” test (refinance, purchase, or home improvement loan) for all loans to determine if a loan was HMDA reportable. The purpose test now only applies to dwelling-secured loans with a business or commercial purpose.

Larger reporters often use automated systems to identify HMDA-reportable transactions. It is also important that financial institutions have a process to track nonoriginated loan applications, such as denied, withdrawn, approved but not accepted, or incomplete applications that have a HMDA purpose. If an institution has a largely manual HMDA process, a centralized review of all nonoriginated loan applications can help ensure the institution reports nonoriginated applications appropriately.

The Bureau has published a chart to help clarify when a loan is secured by a lien on a dwelling, which we list in Table 3 (HMDA Transactional Coverage Chart):<sup>23</sup>

**Sound Practices**

*Ensuring Accurate Data Collection*

After identifying HMDA reportable transactions, an institution’s next step is to collect accurate data. This step requires attention to detail because of the large number of data fields collected for each application and a solid understanding of HMDA’s requirements, given the complexity of the regulation and certain HMDA transactions. Additionally, depending on the capabilities of the bank’s application and loan systems, data are not always readily accessible to be collected, especially when multiple business lines and staff are involved in providing data. Because of these factors, some banks have found that developing staff with

specialized HMDA proficiency improves HMDA compliance.

Deciding how an organization will handle certain HMDA scenarios, such as determining the specific information to report (for which the regulation allows some latitude), eliminates guesswork and ensures consistency across business lines. Some examples of situations in which the bank should determine in advance how it will respond include:

- Using the date of the adverse action notice to determine the action taken date for denied applications (rather than using the date of the decision to deny the application, which could be a different date);
- Using the date the lender receives the application as the application date for originated loans (rather than the date on the application which could be different);
- Determining which credit bureau score to report if more than one score was used in making the credit decision because the regulation requires that only one of the scores used be reported.

Centralizing data collection can be an effective way to reduce reporting errors by reducing the number of people in the data collection process. As part of the centralized process, financial institutions may designate a HMDA subject matter expert (SME) to serve as the central point of contact for data collection and reporting. A well-trained SME can serve as a reliable resource for all individuals

**Table 3: HMDA Transactional Coverage Chart**

Single-Family Structures	Multifamily Structures	Mixed-Use Purposes
<b>Dwelling<sup>†</sup></b>	<b>Dwelling</b>	<b>Dwelling</b>
<ul style="list-style-type: none"> <li>• Principal residences</li> <li>• Second homes</li> <li>• Vacation homes</li> <li>• Manufactured homes or other factory built homes</li> <li>• Investment properties</li> <li>• Individual condominium units</li> <li>• Detached homes</li> <li>• Individual cooperative units</li> </ul>	<ul style="list-style-type: none"> <li>• Apartment buildings or complexes</li> <li>• Manufactured home communities</li> <li>• Condominium buildings or complexes</li> <li>• Cooperative buildings or complexes</li> </ul>	<ul style="list-style-type: none"> <li>• Mixed-use property if primary use is residential</li> <li>• Properties for long-term housing and related services (such as assisted living for senior citizens or supportive housing for people with disabilities)</li> <li>• Properties for long-term housing and medical care if primary use is residential</li> </ul>
<b>Not a Dwelling</b>	<b>Not a Dwelling</b>	<b>Not a Dwelling</b>
<ul style="list-style-type: none"> <li>• Transitory residences</li> <li>• Recreational vehicles</li> <li>• Boats</li> <li>• Campers</li> <li>• Travel trailers</li> <li>• Park model RVs</li> <li>• Floating homes</li> <li>• Houseboats</li> <li>• Mobile homes constructed before June 15, 1976</li> </ul>	<ul style="list-style-type: none"> <li>• Transitory residences</li> <li>• Hotels</li> <li>• Hospitals and properties used to provide medical care (such as skilled nursing, rehabilitation, or long-term medical care)</li> <li>• College dormitories</li> <li>• Recreational vehicle parks</li> </ul>	<ul style="list-style-type: none"> <li>• Mixed-use property if primary use is not residential</li> <li>• Transitory residences</li> <li>• Structures originally designed as dwellings but used exclusively for commercial purposes</li> <li>• Properties for long-term housing and medical care if primary use is not residential</li> </ul>

<sup>†</sup> Dwelling means a residential structure, whether or not attached to real property. See §1003.2(f) and comments 2(f)-1 through-5.

involved in HMDA data collection processes.

Additionally, the institution’s procedures should help ensure compliance with Regulation C’s requirement that a covered institution record a transaction on the LAR within calendar days after the end of the calendar quarter, in which it takes final action on the transaction (such as origination or purchase of a loan or denial of an application).

*Tools*

Providing tools for staff, such as flow charts, worksheets,

and industry materials, can also aid in the collection process. Flow charts may include guidance that helps staff decide whether a transaction is HMDA reportable. HMDA worksheets are an effective way for helping staff collect data on all key fields during the loan application process. Worksheets may include references on where to find information in the loan file or reminders about HMDA’s requirements. For example, the worksheet may indicate where to find gross income in the file, depending on the loan type, and could include a reference of when income should be reported as not applicable. Cheat sheets may remind staff how to geocode the collateral securing the

loan. Finally, providing copies of industry guidance, such as the *HMDA Getting it Right!* booklet or the Bureau's *HMDA Small Entity Compliance Guide*, also helps staff understand HMDA data collection requirements, especially when they encounter unfamiliar or complex transactions.

Many banks find that using an automated collection process reduces the burden of compiling HMDA data. Automated collection offers a consistent process, using the information entered during loan origination as source documentation for HMDA data. The level of automation may vary from bank to bank, usually depending on factors such as origination volume and institutional complexity. Some financial institutions use their loan processing system to determine geocodes. Other institutions use data collection software to compile the entire LAR. Examples of automated processes for the new HMDA data fields include calculating the applicant's age based on birthdate as opposed to staff manually entering the date or using software that automates the process of extracting HMDA data from the lender's origination software to ensure the information is in the correct format for the HMDA LAR prior to submitting it.

### *Training*

Regular in-depth training is an effective tool to ensure staff understand HMDA data collection requirements. Whether using a centralized or decentralized process, or a hybrid of both, it is important that all staff members involved in the process understand reporting requirements and that the bank applies collection procedures consistently. Effective training reflects each individual's role in the collection process and provides sufficient detail to aid staff in identifying the transactions to be reported and the data to collect. Effective training also helps staff understand regulatory requirements and internal HMDA procedures. Regular training helps staff stay up to date on the rules and helps create consistency among business lines and staff involved in the HMDA process.

Training is particularly beneficial for some of HMDA's more complicated requirements in which data reporting errors are more common. Some training topics that could be addressed are:

- How to properly report denials, withdrawals, and multiple use loans;
- The nuances in reporting data fields that depend on specific calculations, such as borrower age, borrower credit score, and origination fees/closing costs; and
- The interface between the core system and the automated collection software.

### *Data Verification*

Before submitting its HMDA data, an institution can perform a comprehensive review to verify the accuracy of the data collected compared with the source documentation within

the loan files to identify and correct any errors and increase the accuracy of the reported information. Depending on the volume of data collected, this process may involve testing through sampling. An effective verification process gives the financial institution an opportunity to measure the accuracy of its collection and reporting processes and identify weaknesses that may exist. The verification should also test the effectiveness of processes used to identify all applicable HMDA loans and nonoriginated applications.

The data review can be conducted internally or by a reputable third-party vendor. The strength of the institution's data collection processes should determine the scope and frequency of the review. The risk of HMDA noncompliance may be greater for institutions with a high origination volume or a decentralized collection process. Reviews may uncover errors that can range from simple typographical errors to more significant procedural errors that could lead to systemic reporting violations, data scrubs, and resubmission. If the review identifies errors, the institution should correct the data prior to submission. When weaknesses are noted, the severity of the weaknesses should be assessed and appropriate corrective actions taken to address the root cause. A thorough data verification process provides a much-needed last line of defense for HMDA reporters.

### *Data Reporting*

In addition to data collection, institutions can also develop procedures and training for individuals responsible for reporting collected HMDA data. An institution reporting fewer than 60,000 covered loans and applications in the preceding calendar year must submit its prior year's LAR to its primary federal regulator by March 1.<sup>24</sup> Institutions reporting more than 60,000 covered loans and application in the preceding calendar year must submit the data within 60 calendar days after the end of each quarter, except the fourth one.<sup>25</sup> But note, as discussed in Endnote 27, the Bureau and the Federal Reserve have temporarily relaxed enforcement of the quarterly reporting requirement. A separate and complete LAR must be transmitted for each covered institution. For example, one LAR must be submitted for a bank and a separate LAR for a subsidiary of the bank. A number of tools are available to ensure the LAR meets submission standards.

The LAR must be submitted electronically as a text file using the *HMDA Filing Platform* (the platform) from the Federal Financial Institutions Examination Council (FFIEC).<sup>26</sup> The platform will automatically check the file for syntactical, validity, quality, and macro edits. If there are any errors, the system will notify the institution immediately. Any errors must be corrected at the source level, and the entire LAR must be uploaded again. Once the completed LAR has been uploaded, an approved representative must certify it and mark it as complete. Questions around the filing process can be answered at the FFIEC's website at <https://ffiec.cfbp.gov/>, which provides a number of tools to assist institutions,

**Table 4: Sound HMDA Practices**

<b>Ways to Strengthen the HMDA Process</b>	
Board and Senior Management Oversight — <b>Tone at the Top</b>	<ul style="list-style-type: none"> <li>• Recognize the inherent risk of the HMDA process</li> <li>• Provide necessary human and capital resources                             <ul style="list-style-type: none"> <li>○ Commit on the front end to save human resources and capital on the back end</li> </ul> </li> </ul>
Policies, Procedures, and Limits — <b>Standardized Processes</b>	<ul style="list-style-type: none"> <li>• Detailed policies and procedures to ensure a consistent and repeatable process. Procedural examples include:                             <ul style="list-style-type: none"> <li>○ Application date and action taken date</li> <li>○ Credit score</li> <li>○ Points/fees</li> </ul> </li> </ul>
Policies, Procedures, and Limits — <b>Training</b>	<ul style="list-style-type: none"> <li>• Regular training specific to the individual contributor’s role in the process</li> <li>• Identify and train for difficult situations in the process</li> <li>• Include training when regulatory changes and/or procedural weaknesses are noted</li> </ul>
Policies, Procedures, and Limits — <b>Tools</b>	<ul style="list-style-type: none"> <li>• Flow charts/worksheets/cheat sheets for staff</li> <li>• <i>HMDA Getting it Right!</i></li> <li>• Annual Filing Instruction Guide</li> </ul>
Risk Monitoring and Management Information Systems — <b>Risk-based Monitoring</b>	<ul style="list-style-type: none"> <li>• Risk monitoring process commensurate with institutional risk; establish a lead or SME with ownership of the process</li> <li>• Monitor new applications to determine if they are HMDA reportable</li> </ul>
Internal Controls — <b>Data Verification</b>	<ul style="list-style-type: none"> <li>• Develop an autonomous verification process to review source documents; do not rely on information on HMDA worksheets</li> </ul>
Internal Controls — <b>Automation</b>	<ul style="list-style-type: none"> <li>• Know how the institution’s core system interfaces with its HMDA data collection software</li> </ul>

including the Filing Instruction Guide, the Supplemental Guide for Quarterly Filers, and the Self-Service Knowledge Portal, which answers frequently asked questions on HMDA.

Institutions that report a small volume of covered loans can use the *LAR Formatting Tool* to help create an electronic file for submission.<sup>27</sup>

Navigating the nuances of HMDA collection and reporting can be challenging, especially because of the changes that became effective in 2018. Table 4 (Sound HMDA Practices) lists the processes we have observed at institutions with effective HMDA data collection and reporting processes.

While this list is not exhaustive, most institutions can implement these practices, regardless of the size and structure of the HMDA program. It is important to determine the institution's risk profile, assess the level of knowledge within the institution, commit the necessary resources to the process, and apply the practices best suited for the level of risk and resources.

### Conclusion

Implementing sound practices can help improve the HMDA data collection and reporting process. Whether the process

is centralized or decentralized, establishing and consistently applying collection, verification, and reporting processes will give bank staff a solid foundation for ensuring complete and accurate data collection and reporting. Combined with adequate training, effective job aids and timely HMDA data reviews, the institution can leverage these sound practices and develop a HMDA process that will strengthen its compliance management program. Specific issues and questions related to Regulation C should be raised with the institution's primary regulator. ■

## ENDNOTES

- <sup>1</sup> See 12 C.F.R. §1003.4(a).
- <sup>2</sup> See 12 C.F.R. §1003.2(e).
- <sup>3</sup> See 12 C.F.R. §1003.1(b); 12 U.S.C. §2801(b).
- <sup>4</sup> See Federal Reserve CA Letter 17-2 discussing revised FFIEC HMDA Examiner Transaction Testing Guidelines and thresholds for when data must be resubmitted.
- <sup>5</sup> See 12 C.F.R. §1003.6(a).
- <sup>6</sup> See Comment 4(a)(8)(i)-5.
- <sup>7</sup> See 12 C.F.R. §1003.3(c)(11). The change to the threshold to 100 HMDA loans was announced in April 2020 and made effective July 1, 2020. 85 *Federal Register* 28364 (May 12, 2020).
- <sup>8</sup> See 12 C.F.R. §1003.3(c)(12).
- <sup>9</sup> See 12 C.F.R. §1003.2(e). Before 2018, the regulation limited HMDA reporting to purchase, refinance, and home improvement loans secured by a dwelling. Effective January 1, 2018, the regulation expanded the coverage. Because consumer dwelling-secured loans can now have other purposes and still be covered, the purpose field was amended to add a new option "or for a purpose *other than* home purchase, home improvement, refinancing, or cash-out refinancing." 12 C.F.R. §1003.4(a)(3).
- <sup>10</sup> See 12 C.F.R. §1003.3(10).
- <sup>11</sup> See 12 C.F.R. §1003.2(g) and the related commentary. See also *A Guide to HMDA Reporting: Getting it Right!* p. 1.
- <sup>12</sup> See 12 C.F.R. §1003.2(e) and the related commentary. See also *A Guide to HMDA Reporting: Getting it Right!* p. 10.
- <sup>13</sup> See Public Law 115-174, 132 Stat. 1296 (2018) at Section 104. The open- and closed-end exemptions are independent of each other. For example, an institution reporting more than 500 closed-end HMDA loans and 100 open-end loans would be required to report the closed-end loans but would be exempt from reporting the open-end loans.
- <sup>14</sup> See *A Guide to HMDA Reporting: Getting It Right!* (2020), p. 29.
- <sup>15</sup> *Outlook* reviewed the interplay between HMDA and the Equal Credit Opportunity Act (ECOA) in the Fourth October 2013 issue: "Government Monitoring Information Requirements Under the HMDA and the ECOA."
- <sup>16</sup> See *A Guide to HMDA Reporting: Getting It Right!* (2020), p. 29.
- <sup>17</sup> For additional information on this exclusion, see comment 3(c)(13)-1.
- <sup>18</sup> See *A Guide to HMDA Reporting: Getting It Right!* (2020), p. 29.
- <sup>19</sup> See 12 C.F.R. §1003.3(d)(1)(iv)(2), (3).
- <sup>20</sup> See 12 C.F.R. §1003.3(d)(6).
- <sup>21</sup> See 12 C.F.R. §1003.3(d)(3) and Comment 3(d)(3)-1.
- <sup>22</sup> See 12 C.F.R. §1003.3(d)(3) and Comment 3(d)(3)-1.
- <sup>23</sup> See CFPB's HMDA transactional coverage.
- <sup>24</sup> See 12 C.F.R. §1003.5(a)(1)(i).
- <sup>25</sup> See 12 C.F.R. §1003.5(a)(1)(ii). Note, however, that in March 2020, the Consumer Financial Protection Bureau announced that in response to the COVID-19 pandemic, "until further notice, the Bureau does not intend to cite in an examination or initiate an enforcement action against any institution for failure to report its HMDA data quarterly" for institutions reporting 60,000 or more covered loans." The Federal Reserve Board made a similar announcement. See CA letter 20-6.
- <sup>26</sup> The *HMDA Filing Platform* is available on the FFIEC website.
- <sup>27</sup> The *LAR Formatting Tool* is available on the FFIEC website.

# CONNECTING COMMUNITIES WEBINAR SERIES

The Connecting Communities webinar series is a Federal Reserve System initiative intended to provide a national audience with timely insights and information on emerging and important community and economic development topics. The webinar series complements existing Federal Reserve Community Development outreach initiatives that are conducted through the 12 Reserve Bank regional offices and at the Federal Reserve Board of Governors in Washington, D.C.

## Strategies for Addressing Financial Services Fraud

On October 8, 2020, Connecting Communities hosted a webinar on Strategies and Resources for Addressing Financial Services Fraud During the COVID-19 Pandemic. Financial fraud is a major economic problem that affects millions of people annually. According to the Federal Trade Commission (FTC), consumers reported losing approximately \$1.9 billion to fraudulent activities and scams in 2019. As a result of the COVID-19 pandemic and the economic contraction that followed, consumer complaints about fraud in bank accounts, credit cards, and prepaid cards have increased. As of July 20, 2020, the FTC estimated that \$90.04 million had been lost to coronavirus-related fraud alone. Lower-income and older Americans, especially those receiving Economic Impact Payments through the federal government's Coronavirus Aid, Relief, and Economic Security (CARES) Act, may be particularly susceptible to fraud.

During the session, speakers provided an overview of financial services fraud, including recent data trends. Speakers also shared stories about fraud in lower-income and older households and provided information about key resources available to community-based organizations and consumers seeking assistance.

## Speakers included:

**Colleen Tressler**, Senior Project Manager, Bureau of Consumer Protection, Federal Trade Commission;

**Michael Herndon**, Deputy Assistant Director, Office of Older Americans, Consumer Financial Protection Bureau;

**Robin McKinney**, CEO, CASH Campaign of Maryland;

**Kathy Stokes**, Director of Fraud Prevention Programs, AARP;

**Matuschka Lindo Briggs**, Director of Special Projects and Strategic Support, Federal Reserve Bank of St. Louis (Moderator).

The archived webinar and presentation slides are available at <https://bit.ly/fedcall-fraud>.

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## FEDERAL RESERVE BOARD ISSUES ADVANCED NOTICE OF PROPOSED RULEMAKING TO MODERNIZE THE COMMUNITY REINVESTMENT ACT

On September 21, the Board of Governors of the Federal Reserve System (Board) issued an Advance Notice of Proposed Rulemaking (ANPR) that invites public comment on an approach to modernize the Board's regulations that implement the Community Reinvestment Act (CRA) by strengthening, clarifying, and tailoring them to reflect the current banking landscape and better meet the core purpose of the CRA. The ANPR seeks feedback on ways to evaluate how banks meet the needs of low- and moderate-income communities and address inequities in credit access.

**The ANPR, a fact sheet, and other supporting documents are available on the Board's website at <http://bit.ly/CRA-ANPR>.** In addition, Board staff prepared a memo for the Governors summarizing the ANPR at <http://bit.ly/cra-memo>.

Comments can be submitted on the Board's website at <http://bit.ly/reg-comment> or by sending an email to [comments@federalreserve.gov](mailto:comments@federalreserve.gov). When submitting comments, reference Docket R-1723 and RIN 7100-AF94. The comment period closes on February 16, 2021.



**The Federal Reserve Board has created a resource page of COVID-19 resources and supervisory actions, which is available at**

<https://www.federalreserve.gov/covid-19.htm>

**The Consumer Financial Protection Bureau (Bureau) issues a no action letter (NAL) to Bank of America (BOA) for its small-dollar credit product.** On November 5, 2020, the Bureau approved BOA's application for a NAL for Balance Assist, its small-dollar credit product. The Bureau's 2019 NAL policy allows the Bureau to issue a formal letter indicating that it will not initiate a supervisory or enforcement action against a company for providing a product or service based on the specific facts and circumstances in the company's NAL application. BOA's application was based on a NAL the Bureau issued in May 2020 to the Bank Policy Institute (BPI), a banking trade group, for a template for certain small-dollar credit products. The template application outlined a number of product features and guardrails, including prohibiting rollovers, balloon payments, late fees, or prepayment penalties. BOA's application represented that the NAL for Balance Assist conformed to the features and guardrails in the BPI template. BOA's application indicated that Balance Assist allows a customer to borrow up to \$500 at a total cost of \$5 with repayment in three equal monthly installments. BOA's application also generally describes eligibility criteria for the product.

**The Bureau issues a final rule creating implementing regulations for the Fair Debt Collection Practices Act (FDCPA).**

On November 30, 2020, the Bureau published a final rule in the *Federal Register* to create implementing regulations for the FDCPA, which regulates debt collectors' practices in collecting consumer debts. Currently, the FDCPA lacks implementing regulations to clarify its requirements. The Dodd-Frank Act specifically provided the Bureau with FDCPA rulemaking authority. The Bureau has now used this authority to create comprehensive implementing regulations, including official commentaries that elaborate on provisions of the rule. The final rule focuses on communications between debt collectors and consumers and addresses communication methods that were not operable in 1977 when the FDCPA was enacted, such as various types of electronic communications. The final rule delineates restrictions on debt collector communications with consumers, provides examples of conduct that would be considered harassing, abusive, or oppressive in violation of the FDCPA, and sets a cap on phone calls that establishes a rebuttable presumption for a debt collector's compliance (or noncompliance) with the FDCPA's telephone call provisions. The rule also addresses a range of other issues including, but not limited to, debt collector communications when the debtor is deceased, debt transfers, and recordkeeping requirements.

The FDCPA generally only applies to debt collectors collecting debts on behalf of another and not to creditors collecting their own accounts. See 15 U.S.C. §1692a(6)(A). However, the final rule has provisions that may affect creditors. For example, the new 12 C.F.R. §1006.6(b) provides that debt collectors may communicate with a consumer by email, using an address the creditor provided, if the

creditor notifies the consumer about this and satisfies certain other requirements. The rule was effective on November 30, 2021. The Bureau expects to issue a second final rule in late 2020 focusing on FDCPA consumer disclosures.

**Agencies propose regulation to codify their 2018 statement on the role of supervisory guidance.**

On November 5, 2020, the Board of Governors of the Federal Reserve System, the Bureau, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration published a rulemaking proposal in the *Federal Register* outlining and confirming the agencies' use of supervisory guidance for regulated institutions. The proposal would codify, with certain clarifications, the concepts set forth in the September 2018 Interagency Statement Clarifying the Role of Supervisory Guidance (statement), which clarified the distinction between laws and regulations and supervisory guidance. See Federal Reserve Supervision and Regulation letter SR 18-5/Consumer Affairs letter CA 18-7. The proposal would confirm that, unlike a law or regulation, supervisory guidance does not have the force and effect of law, and the agencies do not take enforcement actions or issue supervisory criticisms based on noncompliance with supervisory guidance. Instead, supervisory guidance outlines supervisory expectations and priorities, or articulates views about appropriate practices for a given subject area. The comment period closed on January 4, 2021.

**The Bureau issues a final rule to extend the January 10, 2021, sunset date of the Government-Sponsored Enterprise (GSE) Qualified Mortgage (QM) provision (GSE Patch) and a related rulemaking proposal to amend the definition of the General QM.**

On October 20, 2020, the Bureau published a final rule in the *Federal Register* to extend the January 10, 2021, expiration date for the temporary QM provision known as the GSE Patch until the mandatory compliance date of any final amendments to the definition of a General QM. In 2013, the Bureau temporarily created the GSE Patch to provide QM status to residential mortgages eligible for purchase or guarantee by either of the GSEs. This temporary QM provision provided more flexible underwriting standards than the General QM provision (i.e., no quantitative debt-to-income (DTI) limit) and therefore helped to facilitate credit availability when the Bureau first implemented the ability-to-repay (ATR) requirement of the Dodd-Frank Act, for which QM is one way to comply. The Bureau's final ATR and QM rule in 2013 provided that the GSE Patch would expire on January 10, 2021, or when the GSEs exit conservatorship, whichever occurred earlier.

However, in 2019, the Bureau's statutorily required, five-year assessment of its ATR and QM rule found that GSE Patch loans still accounted for a large share of mortgage originations in the market. The Bureau expressed concern that many loans would either not be made or made at a higher price after the GSE Patch expired. Thus,

\* Links to the announcements are available in the online version of *Outlook* at [consumercomplianceoutlook.org](https://www.consumercomplianceoutlook.org).

this final rule provides that the GSE Patch will not expire until the mandatory compliance date of any final amendments made to the General QM provision or when the GSEs exit conservatorship, whichever occurs first. The Bureau's proposed amendment to the General QM is discussed next.

**Proposal to Amend the Definition of a General QM.** On July 10, 2020, the Bureau published a rulemaking proposal in the *Federal Register* to amend the definition of a General QM, which provides, among other requirements, that a borrower's DTI cannot exceed 43 percent. In accordance with the final rule to extend the sunset date for the GSE patch, the Bureau proposes to eliminate the 43 percent DTI limit in the General QM and replace it with priced-based thresholds that would be tiered by loan amount and lien position. The Bureau expressed concern that the scheduled expiration of the GSE patch would significantly reduce access to responsible, affordable credit for creditworthy borrowers whose DTI exceeds 43 percent. The Bureau found that a loan's price, measured by the spread between the loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction, provides an alternative measure of creditworthiness and can be a strong indicator of a borrower's ability to repay the loan than DTI alone. Accordingly, the Bureau proposes to eliminate the 43 percent DTI limit and replace it with a price-based approach. The proposal also eliminates the requirement that a creditor use Appendix Q of Regulation Z to consider and verify a consumer's income and debt obligations and replaces it with other standards.

Under the proposal, a first-lien loan would generally qualify for QM status (assuming the other existing general requirements for a General QM are satisfied, such as the product-feature restrictions and points and fees limits) if the loan's APR exceeds APOR for a comparable transaction by less than 2 percentage points as of the date the interest rate was set. Higher thresholds would apply to subordinate lien loans and loans with smaller loan amounts. In addition, the proposal would retain the existing framework for determining whether a QM receives a safe harbor or rebuttable presumption for complying with the ATR requirement: First-lien loans with an APR that exceeds APOR by less than 150 basis points, or by less than 350 basis points for a subordinate lien loan, would be deemed to conclusively comply with the ATR requirement (i.e., safe harbor), while loans with spreads in excess of this threshold but below the upper limit would have rebuttable presumption of compliance with the ATR requirement. The comment period closed on September 8, 2020.

**The Bureau proposes to create a new category of QMs based on a loan's seasoning.** On August 28, 2020, the Bureau published a proposed rulemaking in the *Federal Register* to create a new category of QMs based on the seasoning of the loan. Under the proposal, a mortgage loan would qualify as a Seasoned QM if it meets the following requirements:

- It is a first-lien, fixed-rate residential mortgage with fully amortizing payments and no balloon payment;
- The loan term does not exceed 30 years;
- The total points and fees do not exceed specified limits;
- The loan is held in portfolio for the full 36-month seasoning period; and
- The loan meets specific performance metrics during the seasoning period, such as having no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days.

The Seasoned QM is intended, in part, to help prevent disruption in the residential mortgage market when the GSE QM Patch expires by providing another type of QM. The comment period on this proposal closed on October 1, 2020.

**The Bureau issues a report assessing the TILA-RESPA Integrated Disclosure rule.** On October 1, 2020, the Bureau issued a comprehensive report assessing the effectiveness of the Truth in Lending Act and the Real Estate Settlement Procedures Act integrated disclosure rule (commonly known as TRID). This report was issued pursuant to §1022(d) of the Dodd–Frank Act, which requires the Bureau to publish a report assessing “significant rules” (a term the Dodd–Frank Act does not define) within five years of their effective dates. Since TRID became effective in October 2015, consumers receive a Loan Estimate form at application and a Closing Disclosure form at closing. Key findings include, among others:

- In laboratory testing, the TRID forms improved consumers' abilities to locate key mortgage information and compare the features and costs of different mortgage offers. The data were mixed on whether TRID improved consumer shopping.
- Mortgage originators estimated they spent about \$146 per mortgage to implement TRID, including information technology systems, policies, and training.
- Real estate closing companies estimate the one-time costs of implementing the rule was about \$39 per closing and additional ongoing operational costs of \$100 per closing.
- Purchase closing times lengthened by about 13 percent after the rule became effective but returned to typical durations within two years.
- Overall, TRID did not cause significant disruptions to application volumes.
- Originations of home purchase mortgages and refinance mortgages dropped in the first two months after the rule's effective date but quickly recovered.

## FAIR HOUSING ACT (FHA)

**A federal district court temporarily enjoins the Department of Housing and Urban Development (HUD) from implementing its amendments to its Fair Housing Act regulations concerning the disparate impact standard.** *Massachusetts Fair Housing Center v. Department of Housing and Urban Development* (HUD) (D. Mass. No 20-cv-11765-MGM October 25, 2020). In 2015, the Supreme Court held that disparate impact claims are permissible under the FHA and clarified the standards and burdens of proof for bringing such claims. *Texas Dep't of House. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015). In light of this decision, HUD issued a final rule to amend its implementing regulations for the FHA. 85 *Federal Register* 60288 (September 24, 2020). The rule was scheduled to become effective on October 26, 2020, but a community group filed suit to enjoin HUD from implementing the rule.

The plaintiff argued, among other issues, that the final rule violated the Administrative Procedure Act because it was arbitrary and capricious. See 5 U.S.C. §706(2)(A) (providing that arbitrary or capricious agency action can be challenged in court). The district court agreed. The court observed that several elements of the rule do not appear in any judicial decision and were not merely incorporating the Supreme Court's new standards into the regulation, such as the amended regulation's requirement that a plaintiff's pleading identify a challenged policy that is arbitrary, artificial, and unnecessary to achieve a valid interest (24 C.F.R. §100.500(b)(1)), as well as an "outcome prediction" defense (24 C.F.R. §100.500(d)(2)(i)).

The district court also took issue with the rule's requirement that a plaintiff establish that "a less discriminatory policy or practice exists that would serve the defendant's identified interest (or interests) in an equally effective manner without imposing materially greater costs on, or creating other material burdens for, the defendant." Additionally, the court criticized HUD for conflating the burden of proof for a plaintiff at the pleading stage and the prima facie burden to win the lawsuit. The district court found that these changes to the prior rule would "effectively neuter" disparate impact liability and were not justified. Finally, the court rejected HUD's assertion that the rule was implemented to provide greater clarity, finding that the rule raised more questions than it answered. The court temporarily enjoined HUD from implementing the rule while the court conducted further proceedings to consider whether to make the temporary injunction permanent.

## REGULATION X — REAL ESTATE SETTLEMENT PROCEDURES ACT (RESPA)

**The Fourth Circuit rejects a lawsuit against a real estate team for an alleged kickback scheme in violation of RESPA §8(b) because the plaintiffs failed to demonstrate they suffered an injury sufficient for standing.** *Baehr v. Creig Northrop Team, P.C.*, 953 F.3d 244 (4th Cir. 2020). The plaintiffs purchased their home in 2008, and their real estate agent said Lakeview Title Company would provide the title insurance. The agent did not disclose that Lakeview paid monthly marketing fees to the agent's real estate brokerage firm. The plaintiffs' class action lawsuit alleged that the monthly marketing payments were actually "kickbacks" prohibited under RESPA §8(b), and they were deprived of fair and impartial competition by the alleged scheme. The Fourth Circuit affirmed the district court's summary judgment order dismissing the case because the plaintiffs did not suffer a concrete injury sufficient to establish injury-in-fact sufficient for Article III standing. In particular, the alleged "deprivation of impartial and fair competition between settlement service providers" was not deemed to be an "intangible harm" conferring standing under Article III when "untethered from evidence that it increased settlement costs." Invoking *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), the court noted that a mere statutory violation is insufficient to establish concrete injury. The court noted the plaintiffs did not allege any monetary harm, they had no interest in seeking alternative settlement service providers or title agencies (they "set forth no evidence that impartial and fair competition was even relevant to their decision to obtain settlement services" from the title company at issue), and they were admittedly satisfied with the services they received. The court also rejected plaintiffs' other legal theories, including that the real estate brokerage firm owed them a fiduciary duty to remit the kickbacks they received; the court found a fiduciary relationship did not exist under Maryland state law in the circumstances of this case.

\* Links to the court opinions are available in the online version of *Outlook* at [consumercomplianceoutlook.org](https://consumercomplianceoutlook.org).



## FAIR CREDIT REPORTING ACT (FCRA)

**Eleventh Circuit dismisses a class-action lawsuit alleging a statutory violation of the Fair and Accurate Credit Transactions Act (FACTA) amendments to the FCRA because the plaintiff did not show the violation caused harm to establish standing.** *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917 (11th Cir 2020) (*en banc*). Congress enacted the FACTA as an amendment to the FCRA to help prevent identity theft by prohibiting merchants that accept credit cards or debit cards from printing more than the last five digits of card numbers or the expiration date on receipts. 15 U.S.C. §1681c(g).

In *Muransky*, the plaintiff received a receipt from the retailer Godiva displaying the first six and last four digits of his 16-digit credit card number, which is too many digits under the FACTA. He filed a class-action lawsuit seeking statutory damages of \$1,000 per violation. A prior three-judge panel of the Eleventh Circuit found that a receipt displaying too many credit card numbers caused harm in terms of the increased risk of identity theft and allowed a \$6.3 million class-action settlement to proceed. *Muransky v. Godiva Chocolatier, Inc.* 918 F. 3d 102 (11th Cir. 2019).

On review of the panel’s decision *en banc*, the Eleventh Circuit found that plaintiffs alleging a statutory violation must establish that they suffered actual harm, whether tangible or intangible, or a material risk of harm to establish standing. The court rejected the plaintiff’s argument that the violation alone established direct harm, referencing the Supreme Court’s decision in *Spokeo, Inc., v. Robins External Link*, 136 S. Ct. 1540 (2016), which requires that plaintiffs alleging a violation of a statute must have suffered a “concrete” and particularized injury-in-fact to establish standing under Article III of the Constitution.

The court stated that under *Spokeo*, a “bare procedural violation, divorced from any concrete harm’ is not enough to establish an Article III injury.” The court also rejected the plaintiff’s argument that he suffered an increased risk of identity theft, holding that a conclusory allegation of increased risk alone was insufficient, and that he was required to allege facts that if accepted “plausibly allege a material risk, or significant risk, or substantial risk, or anything approaching a realistic danger.”

**Fifth Circuit affirms dismissal of lawsuit alleging consumer reporting agencies (CRAs) violated the FCRA by failing to investigate and correct a missing trade line from the plaintiff’s credit report.** *Hammer v. Equifax Info. Servs., L.L.C.*, 974 F.3d 564 (5th Cir. 2020). In 2010, the plaintiff obtained a credit card from Capital One Bank and maintained the account in good standing. In 2017, Experian and Equifax stopped reporting this trade line on his credit report. After filing multiple disputes with these CRAs, they eventually added the trade line, but Equifax removed it a week later. The plaintiff alleged that, as a result, his credit score dropped, he was denied a credit card and mortgage, and he was offered a high interest rate on another mortgage.

His lawsuit alleged the two CRAs violated §1681e(b) of the FCRA (15 U.S.C. §1681e(b)), which provides: “[w]henver a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”

The court found that not reporting a credit line did not violate §1681e(b) because “a credit report does not become inaccurate whenever there is an omission, but only when an omission renders the report ‘misleading in such a way and to such an extent that it can be expected to adversely affect credit decisions.’” The court noted that users of credit reports are aware that these reports do not always contain all of a consumer’s credit information and concluded that the omission of a single credit item does not render the report inaccurate or misleading.

The plaintiff also alleged that the CRAs violated §1681i(a) of the FCRA (15 U.S.C. §1681i(a)) by failing to investigate his dispute that his Capital One account was omitted from his consumer report. Section 1681i(a) provides the right to dispute the “completeness or accuracy” of any information in a consumer report and requires a CRA to investigate whether the information is inaccurate. The court found that the dispute right only applies to the completeness of items in the report — and not the completeness of the report itself — and therefore did not apply to his omitted trade line.

# REGULATORY CALENDAR

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
01/01/22	Reg. C	Final rule establishing 200 loans as the permanent Home Mortgage Disclosure Act (HMDA) data reporting threshold for open-end lines of credit
11/30/21	Reg. F	Final rule creating implementing regulations for the Fair Debt Collection Practices Act
12/28/20	Reg. Z	Final rule to extend the sunset date for the temporary GSE QM loan definition
11/05/20	N/A	Proposed interagency statement on role of supervisory guidance
10/20/20	12 C.F.R. Part 1041	Final rule revoking the underwriting requirements for payday, vehicle title, and certain high-cost installment loans
09/21/20	Reg. BB	Advanced notice of proposed rulemaking seeking comment on framework to modernize the Federal Reserve Board's implementing regulation for the Community Reinvestment Act
08/21/20	Reg. Z	Proposed rule to create the new Qualified Mortgage category for Seasoned Loans
08/04/20	Reg. Z	Proposed rule under the Economic Growth, Regulatory Relief, and Consumer Protection Act to create new exemption from escrow requirements for higher-priced mortgage loans
07/21/20	Reg. E	Final rule that permits insured institutions to estimate the exchange rate for a remittance transfer and increases exemption threshold from 100 to 500 remittance transfers per year

† Because proposed rules do not have an effective date, we have listed the *Federal Register* publication date.

EFFECTIVE DATE OR PROPOSAL DATE†	IMPLEMENTING REGULATION	REGULATORY CHANGE
07/10/20	Reg. H	Proposed revisions to interagency questions and answers regarding flood insurance
07/01/20	Reg. X	Interim final rule to require servicers to offer COVID-19-related loss mitigation options based on the evaluation of an incomplete loss mitigation application
07/01/20	Reg. C	Final rule increasing HMDA reporting threshold for closed-end loans from 25 to 100
07/01/20 (most provisions)	Reg. CC	Final rule implementing required adjustments to the Expedited Funds Availability Act's dollar amounts
06/26/20	Reg. Z	Interpretive rule to update the definition of “underserved area” that applies to certain provisions of Regulation Z to reflect amendments to Regulation C on which the definition is based
06/18/20	Reg. Z	Proposed rule to address the effect of the sunset of LIBOR on sections of Regulation Z
05/04/20	Reg. X/Reg. Z	Interpretive rule regarding the application of certain provisions in the TILA-RESPA Integrated Disclosure Rule and Regulation Z Right of Rescission Rules in light of the COVID-19 pandemic
04/28/20	Reg. D	Interim final rule eliminating the six-per-month limit on transfers and withdrawals from savings deposits
04/27/20	Reg. E	Interpretive rule that government pandemic relief payments are not subject to prohibition against compulsory electronic fund transfers
03/03/20	Reg. F	Proposed rule requiring debt collectors to disclose when the statute of limitations has expired for the debt they are attempting to collect

† Because proposed rules do not have an effective date, we have listed the *Federal Register* publication date.

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## CALENDAR OF EVENTS

*Outlook* regularly publishes upcoming compliance events that may be of interest to our readers. Because most events have been canceled in response to the COVID-19 pandemic, we are not listing events for this issue. We will resume publishing events when the pandemic has subsided and events are rescheduled.

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