

# 2018 Interagency Fair Lending Hot Topics

Outlook Live Webinar – December 3, 2018

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# Overview

- **Redlining Litigation: *United States v. KleinBank***
  - *Lucy G. Carlson, Deputy Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice*
- **Fair Lending Reviews: Assessing Fair Lending Risk**
  - *Tara Oxley, Chief, Fair Lending and CRA Examinations, Federal Deposit Insurance Corporation*
- **Pricing Risks**
  - *Kathryn Ray, Assistant Director, Community and Consumer Law, Office of the Comptroller of the Currency*

# Overview *(continued)*

- **Marital Status Discrimination**
  - *Matthew Nixon, Program Officer, Office of Consumer Financial Protection, National Credit Union Administration*
- **Disability and Maternity Leave Discrimination**
  - *Westra Miller, Senior Attorney, Fair Lending Enforcement Division, Division of Consumer and Community Affairs, Federal Reserve Board*
- **HMDA Update**
  - *Tim Lambert, Senior Counsel, Office of Fair Lending & Equal Opportunity, Bureau of Consumer Financial Protection*



# **Redlining Litigation: *United States v. KleinBank***

*Lucy G. Carlson, Deputy Chief  
Housing and Civil Enforcement Section  
Civil Rights Division  
U.S. Department of Justice*

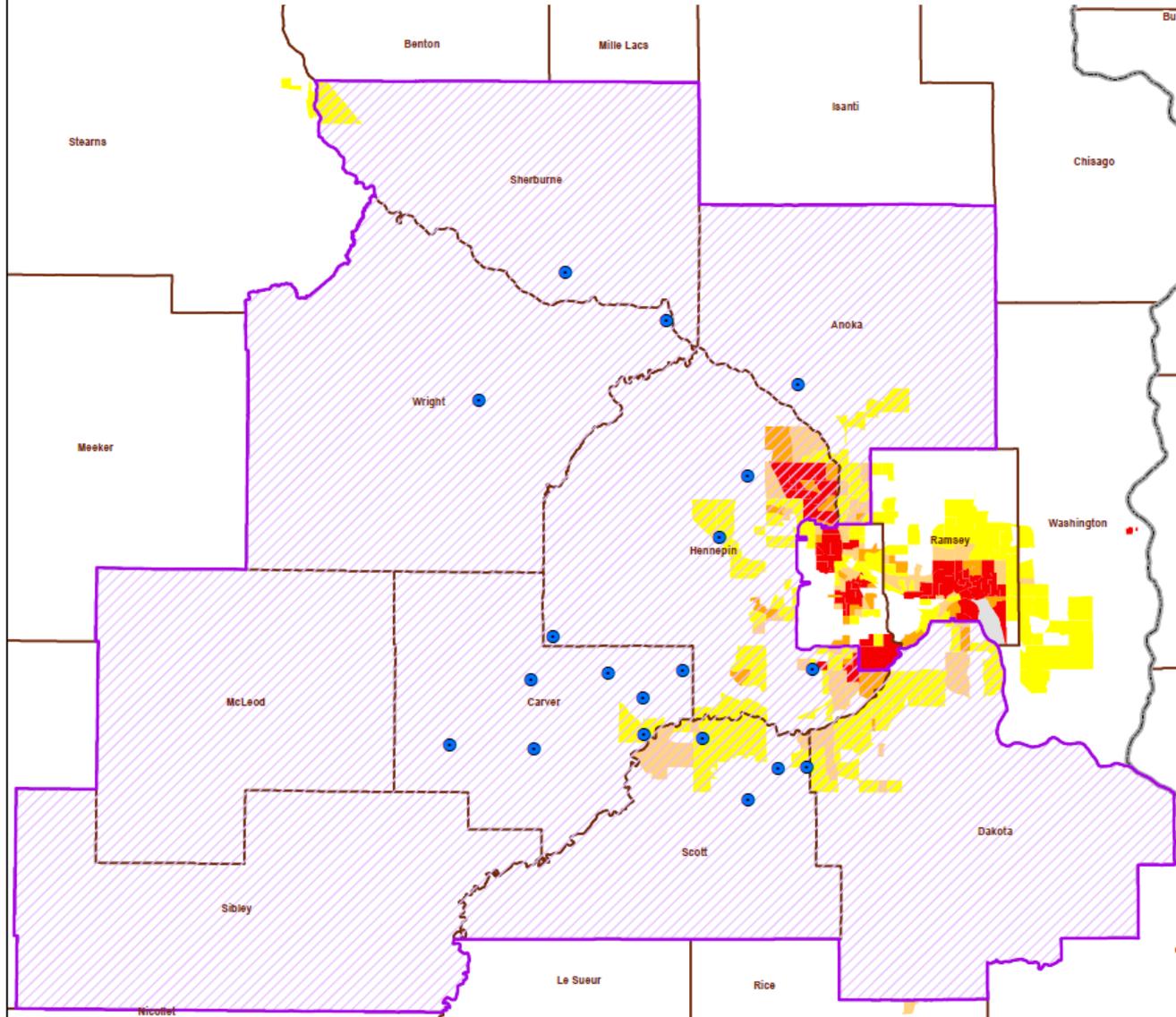
# Investigation

- Opened in 2015
- Based on Attorney General's independent enforcement authority (not referred by a regulator)

# Complaint

- Very similar to past redlining complaints filed by DOJ
- Four main categories of allegations
  - CRA Assessment Area
  - Branch locations
  - Marketing targeted to white areas
  - Statistical analyses of applications and originations

# KleinBank (MN) CRA Assessment Area and Branch Locations



- KleinBank Locations
- KleinBank CRA Assessment Area
- State Boundaries
- County Boundaries

**Percent All Minority Population by Tract**

- <= 20%
- > 20% AND <= 30%
- > 30% AND <= 40%
- > 40% AND <= 50%
- > 50%
- Unpopulated

# Motion to Dismiss

KleinBank: “[T]he government fails to allege any facts showing that KleinBank intended to engage in the disparate treatment practice of redlining”

United States’ response: factual allegations, taken together, establish an inference of discriminatory intent

- CRA assessment area
- Marketing
- Branching
- Statistical analyses (from two geographies)

# Magistrate Judge's Report and Recommendation

- “[T]he United States has plead sufficient facts showing circumstantial evidence of disparate treatment under the FHA and ECOA, and the inference of discriminatory intent derived from that evidence cuts in the United States’ favor . . . .”

# Motion to Dismiss

KleinBank: bank's regulator examined for redlining and gave favorable ratings; therefore the United States is estopped from bringing a redlining claim

United States' response:

- FDIC did not conduct a redlining examination
- regardless, Attorney General has independent authority

# Magistrate Judge's Report and Recommendation

- Rejected bank's estoppel argument
- Satisfactory CRA rating does not prevent the Attorney General from filing suit

# District Judge's Order

- Adopted Report and Recommendation, denied bank's motion to dismiss
- Many allegations necessarily require intent:
  - Bank drew its lending boundaries to exclude majority-minority areas
  - Purposeful avoidance of majority-minority areas
  - Decisions regarding where to market services

# Settlement

- Similar to past redlining settlements
- Goal of the settlement is to expand KleinBank's business in the previously redlined areas to remediate the harm of redlining

# Settlement *(continued)*

- Expand CRA Assessment Area
- One new full-service branch
- \$300,000 to advertising, outreach, financial education, and credit repair
- \$300,000 loan subsidy fund
- Community Development Officer
- Fair lending training
- Annual reporting

# Fair Lending Reviews: Assessing Fair Lending Risk

*Tara L. Oxley, Chief*

*Fair Lending and CRA Examinations  
Federal Deposit Insurance Corporation*

# FDIC Conducts Risk-Focused Compliance Examinations

- From the FDIC Compliance Examination Manual:
  - “FDIC compliance examinations blend risk-focused and process-oriented approaches. Risk-focusing involves using information gathered about a financial institution to direct FDIC examiner resources to those operational areas where compliance errors present the greatest potential risks of having a negative impact on bank customers, resulting in consumer harm.”

# Examiners Assess Fair Lending Risk at Each Compliance Examination

- Examiners scope for fair lending risk by:
  - Assessing an institution's inherent fair lending risk
  - Where more than minimal inherent risk exists, reviewing the discrimination risk factors and assessing an institution's CMS for fair lending
  - If discrimination risk factors have not been fully mitigated, considering such as a possible focal point

# Assessing an Institution's Inherent Fair Lending Risk

- Examiners develop an institutional overview to gain a complete understanding of the institution's operations by:
  - Reviewing a variety of documents
  - Conducting interviews/engage in discussions with management
  - Reviewing assessment area/market area
- Examiners determine if there is more than minimal inherent risk
  - If there is more than minimal inherent risk, additional analysis is required
  - If there is minimal fair lending risk, the fair lending review will conclude

# Reviewing Discrimination Risk Factors/ Assessing an Institution's CMS

- Examiners select products with the greatest amount of risk
- Examiners review the discrimination risk factors and consider whether the institution has mitigated the identified risk
  - Typically, mitigating factors result from the strength of an institution's fair lending CMS

# Completing the Scoping Process: Selecting Focal Points

- Examiners prioritize focal points based on:
  - High number and/or relative severity of risk factors
  - High data quality and other factors affecting the likelihood of obtaining reliable examination results
  - High loan volume and the likelihood of widespread risk to applicants and borrowers
  - Low quality of compliance program

# Resources

- [FDIC Compliance Examination Manual](#)
  - [Fair Lending Scope and Conclusions Memorandum](#)
- [Interagency Fair Lending Examination Procedures](#)
  - [Compliance Management Analysis Checklist \(in Appendix\)](#)
- [Technical Assistance Video on Managing Fair Lending Risk](#)

# Pricing Risks

*Kathryn Ray, Assistant Director  
Community and Consumer Law  
Office of the Comptroller of the Currency*

# Overview

- Pricing risks arising from:
  - Brokers and other third-party originators
  - Pricing discount or exception programs

# Third-Party Originators

- Risks associated with broker and other third-party originator relationships:
  - Policies that allow for broad pricing discretion
  - Failure to conduct proper monitoring of whether third parties are following bank policies
  - Failure to take appropriate action when bank's policies are not being followed
  - Failure to monitor whether bank's policies result in differences correlated with prohibited basis characteristics

# Pricing Exceptions and Discount Programs

- Programs operate by providing discounts on fees or rates
- Depending on the program design, discounts may be available to customers who meet certain qualifications
- Such programs can pose additional fair lending risk if inadequately designed or monitored

# Pricing Exceptions and Discount Programs *(continued)*

- Risk associated with pricing exception and discount programs include:
  - Exception and discount programs that are not well defined
  - Exceptions that are not adequately tracked and monitored
    - A large volume of exceptions can create fair lending risk, especially if correlated with prohibited basis characteristics
  - Inadequate or incomplete documentation of borrowers' qualifications for any particular discount pricing program
  - Inadequate monitoring of data
    - Monitoring data can help ensure the exception or discount program does not result in disparities based on a prohibited basis

# Compliance Management Systems

- A bank's CMS should be appropriate for its volume of lending, its lending policies and procedures, its product offerings, and its lending footprint. Factors to consider include:
  - Lending policies and procedures
  - Training materials and guidance
  - Exception monitoring and oversight
  - Fair lending self evaluations
  - Provisions for taking appropriate and timely corrective action if an issue is discovered

# Resources

- [OCC Bulletin 2013-29, Third-Party Relationships](#)
- [OCC Bulletin 2017-21, Frequently Asked Questions to Supplement OCC Bulletin 2013-29](#)
- [Comptroller's Handbook, Fair Lending](#)

# Marital Status Discrimination

*Matthew Nixon, Program Officer  
Office of Consumer Financial Protection  
National Credit Union Administration*

# Agenda

- ECOA Prohibited Bases
- Marital Status Considerations
- Marital Status Discrimination Example

# Equal Credit Opportunity Act

## PROHIBITED BASES

Race or Color

Religion

National Origin

Sex

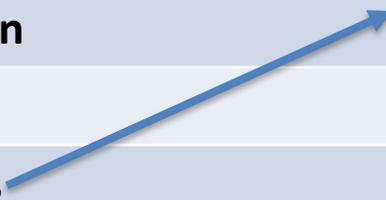
Marital Status

Age

Receipt of Income from Public Assistance Program

Use of Consumer Credit Protection Act

**Marital Status**



# Marital Status Considerations

## Regulation B Signature Rules

- Signature rules ensure that qualified applicants are able to obtain credit in their own names
- When an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested

# Marital Status Considerations

## Regulation B Signature Rules *(continued)*

- When an applicant requests individual credit but does not meet a creditor's standards, the creditor may require a cosigner, guarantor, endorser, or similar party - but cannot require that it be the spouse

# Marital Status Considerations

## Regulation B Signature Rules *(continued)*

- Signature rule exceptions are provided for:
  - State law
  - Community property states
  - Personal guarantees on business credit

# Marital Status Considerations

## Regulation B Requests for Information

- A creditor may not request any information concerning the spouse or former spouse of an applicant unless:
  - Spouse permitted to use account
  - Spouse contractually liable on account
  - Applicant relying on spouse's income as basis for repayment
  - Community property state, or
  - Applicant relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment

# Marital Status Considerations

## Regulation B Requests for Information

*(continued)*

- Unsecured credit – a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state
- Secured credit – a creditor may inquire about the applicant's marital status, but shall use only the terms *married*, *unmarried*, and *separated*

# Marital Status Considerations

## Regulation B Requests for Information *(continued)*

- A creditor may ask about credit-related information which may indirectly disclose marital status. For example:
  - obligation to pay alimony, child support, or separate maintenance income
  - source of income for repayment
  - information on disclosed obligations
  - ownership of assets

# Marital Status Discrimination

## Common Characteristics

- NCUA's recent marital status discrimination cases share the following common characteristics:
  - Occurred in consumer credit programs that used risk-based lending
  - Two parties involved in credit transactions
  - Loans were priced differently based on marital status

# Marital Status Discrimination

## Discriminatory Policy Example

*When determining the interest rate for a loan, if two or more scores are offered, the credit union will observe the following criteria: If the loan has joint signers, the rate will be based on the higher of the two scores unless the joint signers are not married, then the rate will be based on the primary borrower.*

# Disability and Maternity Leave Discrimination

*Westra Miller, Senior Attorney  
Fair Lending Enforcement Section  
Division of Consumer and Community Affairs  
Federal Reserve Board*

# Overview

- The Federal Reserve's Fair Lending Authority
- The Federal Reserve's Referrals to the DOJ
- Disability and Maternity Leave Discrimination
  - Applicability of Fair Lending Laws
  - Fact Patterns that Elevate Fair Lending Risk
  - Actions to Reduce Risk
- Resources

# The Federal Reserve's Fair Lending Authority

- The Federal Reserve Board supervises:
  - Over 800 state member banks (SMBs)
  - SMBs above \$10B for compliance with the Fair Housing Act
  - SMBs of \$10B or less for compliance with the Fair Housing Act, the Equal Credit Opportunity Act (ECOA), and Regulation B
- The Bureau of Consumer Financial Protection (BCFP) supervises institutions above \$10B for compliance with the ECOA and Regulation B
- Thus, the Federal Reserve and the BCFP share supervision authority for fair lending in mortgages for SMBs above \$10B

# The Federal Reserve's Referrals to DOJ

- Pursuant to the ECOA, if the Board has reason to believe there is a pattern or practice of discrimination, the Board must refer the matter to the DOJ
- The Federal Reserve has referred a number of matters to the DOJ, including matters regarding:
  - ✓ Redlining
  - ✓ Pricing
    - Mortgages
    - Mortgage Discount Points
    - Unsecured Loans
    - Direct and Indirect Auto Loans
  - ✓ Underwriting
    - Maternity Leave Discrimination
    - Disability Discrimination
  - ✓ Spousal Signatures
  - ✓ Credit Reporting

# Applicability of Fair Lending Laws

- Disability
  - ECOA prohibits discrimination on the basis of receipt of public assistance, including but not limited to programs such as
    - Social Security Disability Insurance (SSDI)
    - Supplemental Security Income (SSI)
  - Fair Housing Act prohibits discrimination on the basis of disability
- Maternity leave
  - ECOA prohibits discrimination on the basis of sex
  - Fair Housing Act prohibits discrimination on the basis of both sex and familial status

# Disability-Related Fact Patterns that Can Elevate Fair Lending Risk

- The bank has different verification requirements for applicants who receive disability income
  - Requires verification of disability (e.g., a letter from a doctor, medical records, or other information)
  - Requires verification of continuation of receipt of disability income for set time period (e.g., a special letter from SSA or a letter from a doctor)
- The bank does not have policies or procedures specifying how disability income should be treated or has inconsistent policies
  - Allows loan officers the discretion to determine what information is collected, such as information about the nature of the disability
  - Does not provide training regarding appropriate documentation for disability income

# Disability-Related Fact Patterns that Can Elevate Fair Lending Risk *(continued)*

- The bank does not monitor its underwriting policies to ensure consistent application of a policy
- The bank fails to make reasonable accommodations
  - Fails to accommodate requests to have a third party present or other non-fundamental alterations

# Maternity Leave-Related Fact Patterns that Can Elevate Fair Lending Risk

- The bank does not have policies or procedures specifying how maternity leave should be treated or has inconsistent policies
  - Allows loan officers the discretion to determine how leave should be classified
  - Does not provide training
- The bank does not monitor its underwriting policies to ensure consistent application of a policy

# Reducing Fair Lending Risk

- Documentation of Disability Income
  - Have policies and procedures regarding the appropriate documentation of disability income
  - Document the reasons for these policies and procedures
  - Specify that, for Social Security disability income, generally no other proof of source and amount of income is needed beyond the benefits award letter when there is no defined expiration date
- Reasonable Accommodations
  - Have policies and procedures to address requests for reasonable accommodations
  - Document the reasons for these policies and procedures

# Reducing Fair Lending Risk *(continued)*

- Avoiding Maternity Leave Discrimination
  - Have policies and procedures regarding the verification of an applicant's employment status and income while on FMLA-protected leave
  - Document the reasons for these policies and procedures
- Include these topics in fair lending monitoring and fair lending training to applicable staff

# Federal Reserve Resources

- [Consumer Compliance Outlook](#) – Federal Reserve publication dedicated to consumer compliance
- [Outlook Live](#) – Federal Reserve webinars on consumer compliance topics
- [Consumer Compliance Supervision Bulletin](#) – Federal Reserve publication providing high-level summaries of issues
- [Community Banking Connections](#) – Federal Reserve publication and website dedicated to providing guidance, resources and tools for community banks
- [CA Letter 09-6: Interagency Fair Lending Examination Procedures](#) and [Appendix](#)
- [CA Letter 13-19: Community Bank Risk-Focused Consumer Compliance Supervision Program](#)



# HMDA Update

*Tim Lambert, Senior Counsel  
Office of Fair Lending & Equal Opportunity  
Bureau of Consumer Financial Protection*

# Disclaimer

The information included in this presentation is current as of December 3, 2018.

This presentation does not represent legal interpretation, guidance, or advice of the Bureau. While efforts have been made to ensure accuracy, the presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements. This document does not bind the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.

# Data Points – At a Glance

## Preexisting data points (including modified and unmodified data points)

- |                                                                                                                                                                   |                                                                                                                                                                         |                                                                                                                                                                               |                                                                                                                                               |                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Legal Entity Identifier</li> <li>• Universal Loan Identifier</li> <li>• Application Date</li> <li>• Loan Type</li> </ul> | <ul style="list-style-type: none"> <li>• Loan Purpose</li> <li>• Preapproval</li> <li>• Construction Method</li> <li>• Occupancy Type</li> <li>• Loan Amount</li> </ul> | <ul style="list-style-type: none"> <li>• Action Taken</li> <li>• Action Taken Date</li> <li>• State</li> <li>• County</li> <li>• Census Tract</li> <li>• Ethnicity</li> </ul> | <ul style="list-style-type: none"> <li>• Race</li> <li>• Sex</li> <li>• Income</li> <li>• Type of Purchaser</li> <li>• Rate Spread</li> </ul> | <ul style="list-style-type: none"> <li>• HOEPA Status</li> <li>• Lien Status</li> <li>• Reason for Denial</li> </ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------|

## Data points identified in the Dodd-Frank Act

- |                                                                                                                                  |                                                                                                                          |                                                                                                                 |                                                                                                            |                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Property Address</li> <li>• Age</li> <li>• Credit Score</li> <li>• Loan Term</li> </ul> | <ul style="list-style-type: none"> <li>• Total Loan Costs, or Total Points and Fees</li> <li>• Property Value</li> </ul> | <ul style="list-style-type: none"> <li>• Prepayment Penalty Term</li> <li>• Introductory Rate Period</li> </ul> | <ul style="list-style-type: none"> <li>• Non-Amortizing Features</li> <li>• Application Channel</li> </ul> | <ul style="list-style-type: none"> <li>• Mortgage Loan Originator NMLSR Identifier</li> </ul> |
|----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|

## Data points added under the Bureau's discretionary authority

- |                                                                                                                                                       |                                                                                                                  |                                                                                                                                                 |                                                                                                                                                  |                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Origination Charges</li> <li>• Discount Points</li> <li>• Lender Credits</li> <li>• Interest Rate</li> </ul> | <ul style="list-style-type: none"> <li>• Debt-to-Income Ratio</li> <li>• Combined Loan-to-Value Ratio</li> </ul> | <ul style="list-style-type: none"> <li>• Manufactured Home Secured Property Type</li> <li>• Manufactured Home Land Property Interest</li> </ul> | <ul style="list-style-type: none"> <li>• Total units</li> <li>• Multifamily Affordable Units</li> <li>• Automated Underwriting System</li> </ul> | <ul style="list-style-type: none"> <li>• Reverse Mortgage</li> <li>• Open-End Line of Credit</li> <li>• Business or Commercial Purpose</li> </ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|

# New HMDA Partial Exemptions in Section 104(a) of EGRRCPA

- Signed into law May 24, 2018.
- “With respect to an insured depository institution or insured credit union, the requirements of [HMDA section 304(b)(5) and (b)(6)] shall not apply with respect to closed-end mortgage loans if the insured depository institution or insured credit union originated fewer than 500 closed-end mortgage loans in each of the 2 preceding calendar years.”
- Same language with respect to open-end lines of credit.
- Exception: Insured depository institutions with poor CRA exam histories must still comply with section 304(b)(5) and (b)(6).
- Definitions: “Insured credit union” and “insured depository institution” are defined as in 12 U.S.C. 1752 and 1813.

# HMDA Section 304(b)(5)

- “(5) the number and dollar amount of mortgage loans grouped according to measurements of—
  - (A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);
  - (B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;
  - (C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and
  - (D) such other information as the Bureau may require.”

# HMDA Section 304(b)(6)

- “(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—
  - (A) the value of the real property pledged or proposed to be pledged as collateral;
  - (B) the actual or proposed term in months of any introductory period after which the rate of interest may change;
  - (C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;
  - (D) the actual or proposed term in months of the mortgage loan;
  - (E) the channel through which application was made, including retail, broker, and other relevant categories;
  - (F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008 [12 USCS § 5102];
  - (G) as the Bureau may determine to be appropriate, a universal loan identifier;
  - (H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;
  - (I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and
  - (J) such other information as the Bureau may require.”

# Implementation of Section 104(a) of EGRRCPA

The Bureau plans to implement section 104(a) using a two-stage approach:

1. Initial interpretive and procedural rule issued on August 31, 2018 ([2018 interpretive rule](#)) without notice and comment, followed by
2. Legislative rulemaking with notice and comment to:
  - a. Update Regulation C, and
  - b. Address other issues that require notice and comment.

# 2018 Interpretive Rule – Optional Reporting

- Permissible optional reporting of data covered by the partial exemptions
  - An insured depository institution or insured credit union has the option to voluntarily report exempt data points for transactions that qualify for a partial exemption.
  - An insured depository institution or insured credit union that opts to voluntarily report an exempt data point must report all data fields that the specific data point comprises.
  - Data fields associated with each data point are outlined in the Filing Instructions Guide.

# 2018 Interpretive Rule – Transactions Counted in Thresholds

- Which loans or lines of credit count towards the partial exemptions' thresholds
  - For purposes of the partial exemptions, “closed-end mortgage loan” and “open-end line of credit” mean only those loans or lines of credit that would otherwise be reportable under HMDA.
  - The 2018 interpretive rule specifies that a “closed-end mortgage loan” is any closed-end mortgage loan as defined in 12 CFR § 1003.2(d) that is not excluded under § 1003.3(c)(1) through (10) or (13), and that “open-end line of credit” is any open-end line of credit as defined in § 1003.2(o) that is not excluded under § 1003.3(c)(1) through (10).

# 2018 Interpretive Rule – Data Covered Under the Partial Exemptions

- Which data points are covered (not required) under the partial exemptions

- Universal Loan Identifier (ULI)
- Property Address
- Rate Spread
- Credit Score
- Mandatorily Reported Reasons for Denial
- Total Loan Costs or Total Points and Fees
- Origination Charges
- Discount Points
- Lender Credits
- Interest Rate
- Prepayment Penalty Term
- Debt-to-Income Ratio
- Combined Loan-to-Value Ratio
- Loan Term
- Introductory Rate Period
- Non-Amortizing Features
- Property Value
- Manufactured Home Secured Property Type
- Manufactured Home Land Property Interest
- Multifamily Affordable Units
- Application Channel
- Mortgage Loan Originator Identifier
- Automated Underwriting System
- Reverse Mortgage Flag
- Open-End Line of Credit Flag
- Business or Commercial Purpose Flag

# 2018 Interpretive Rule – Non-Universal Loan Identifier

- Requirement to use a non-universal loan identifier if a partially exempt institution chooses not to use ULI
- The non-universal loan identifier may be composed of up to 22 characters to identify the covered loan or application, which:
  - May be letters, numerals, or a combination of letters and numerals;
  - Must be unique within the insured depository institution or insured credit union; and
  - Must not include any information that could be used to directly identify the applicant or borrower.

# 2018 Interpretive Rule – Negative CRA Examination History

- Clarification regarding the exception to the partial exemptions for negative CRA examination history
- For the purposes of determining whether the CRA exception applies to an insured depository that would otherwise qualify for a partial exemption, the CRA examination assessment must be made as of December 31 of the preceding calendar year.
  - For example, an insured depository institution that received a rating of “substantial noncompliance” on its most recent CRA examination, which occurred on or before December 31, 2019 would not be eligible for the partial exemptions in 2020.
  - Likewise, an insured depository institution that received a rating of “needs to improve record of meeting community credit needs” on each of its two most recent CRA examinations that occurred on or before December 31, 2019 would not be eligible for the partial exemptions in 2020.

# HMDA Data Filing Instructions Guide (FIG)—Exempt Data Entry

- The FIG was updated on August 31, 2018.
- If institutions qualify for, and want to take advantage of, a partial exemption under the 2018 interpretive rule, the revised FIG instructs institutions to, depending on the data point, enter “exempt” or “1111”, or leave the data field blank.
- Example: Paragraph 4(a)(28)—Property Value.

Enter, in dollars, the value of the property securing the covered loan or, in the case of an application, proposed to secure the covered loan, relied on in making the credit decision.

Example: If the property value is \$350,500, enter 350500.

- a. Enter “NA” if the requirement to report property value does not apply to the covered loan or application that your institution is reporting.
- b. Enter “Exempt” if, pursuant to the 2018 HMDA Rule, your institution is not reporting Property Value.

# December 2017

## HMDA Compliance Statement

- For HMDA data collected in 2018 and reported in 2019:
  - The Bureau\* does not intend to require data resubmission unless data errors are material.
  - The Bureau does not intend to assess penalties with respect to errors in data.
  - Examinations will be diagnostic to help institutions identify compliance weaknesses and will credit good faith compliance efforts.
- The Bureau intends to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule such as the institutional and transactional coverage tests and the rule's discretionary data points.

\*The other HMDA regulators issued similar statements.

# July 2018

## HMDA Compliance Statement

- Summarized May 2018 HMDA statutory changes.
- Announced that the changes would not affect the formatting of the HMDA LAR.
- Announced the introduction of exemption codes for data not submitted under the new partial reporting exemptions.
- Called attention to the December 2017 HMDA compliance statement.

\*The HMDA regulators all issued similar statements.

# Resources: FFIEC and BCFP

- [A Guide to HMDA Reporting: Getting It Right](#)
- BCFP [HMDA Implementation Page](#)
  - [Small Entity Compliance Guide](#)
  - Charts ([institutional coverage](#) and [transactional coverage](#))
- [Filing Instructions Guide](#)

# Resources: “Mini-FIG”

- [Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart](https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201710_cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart.pdf)

Effective August 31, 2018

**cfpb** Consumer Financial Protection Bureau

## Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart<sup>a</sup>

This chart is intended to be used as a reference tool for data points required to be collected, recorded, and reported under Regulation C, as amended by the HMDA Rules issued on October 15, 2015, and on August 24, 2017, and section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act as implemented and clarified by the interpretive and procedural rule issued on August 31, 2018 (2018 HMDA Rule).<sup>b</sup> Relevant regulation and commentary sections are provided for ease of reference. The chart also incorporates the information found in Section 4.2.2 of the 2018 Filing Instructions Guide and provides when to report not applicable or exempt, including the codes used for reporting not applicable or exempt from section 4 of the 2018 Filing Instructions Guide for ease of reference. This chart does not provide data fields or enumerations used in preparing the HMDA loan/application register (LAR). For more information on preparing the HMDA LAR, please see <http://www.consumerfinance.gov/hmda>.

Data point	Regulation C references	Description	Filing instructions <sup>c</sup>	Reporting “Not Applicable” <sup>d</sup> or “Exempt” <sup>e</sup>
(1) Legal Entity Identifier (LEI)	<a href="#">§ 1003.4(a)(1)(O)(A)</a>	Identifier issued to the financial institution (FI) by a utility endorsed by the Global LEI Foundation or LEI Regulatory Oversight Committee	Enter your financial institution’s LEI. <i>Example:</i> If your institution’s LEI is 10Bx939c5543TqA1144M, enter 10Bx939c5543TqA1144M.	

1 REPORTABLE HMDA DATA: A REGULATORY AND REPORTING OVERVIEW REFERENCE CHART – VERSION 1.3, 8/31/18

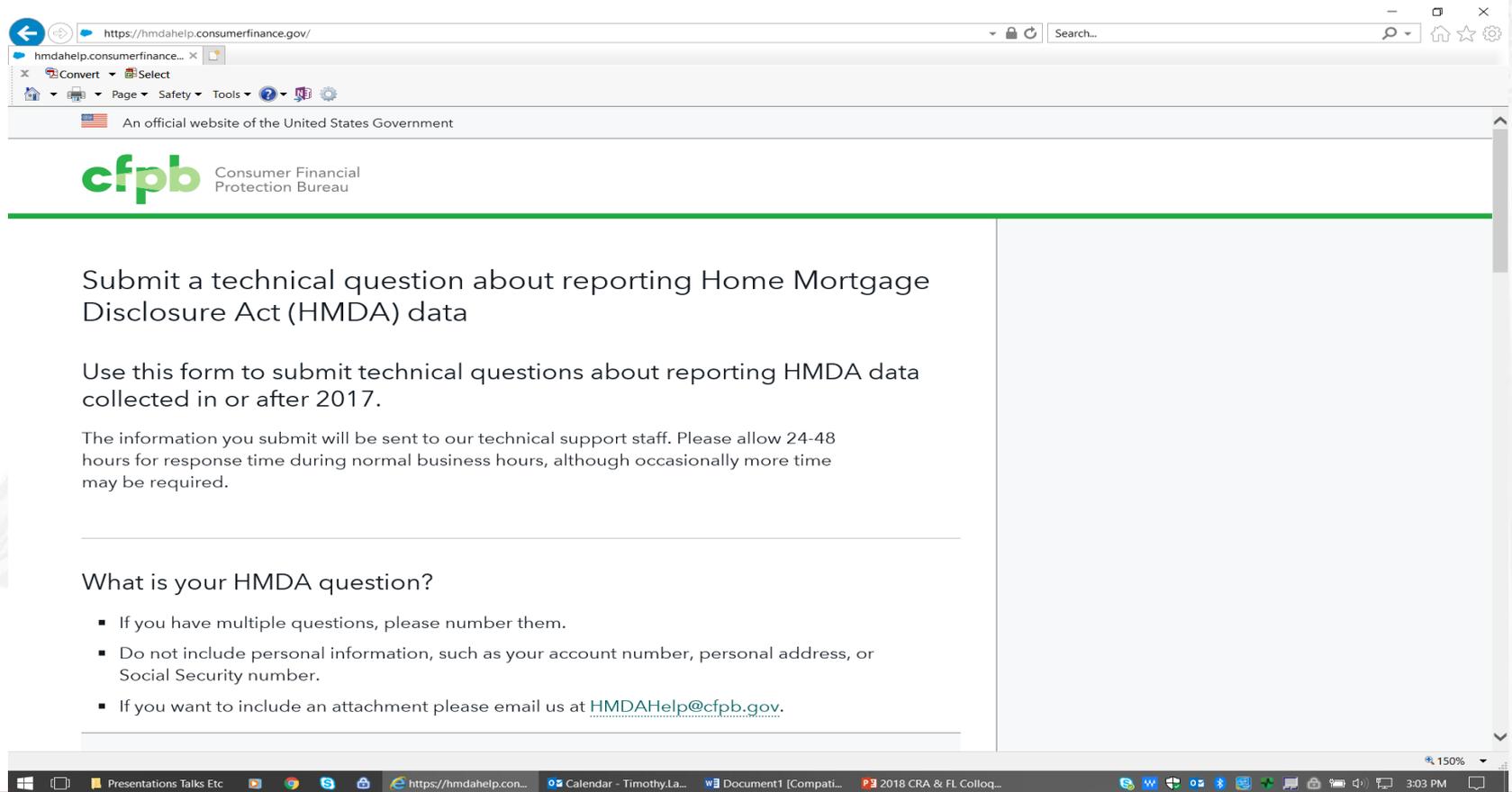
# Resources: Self-Service Knowledge Portal

- [Self-Service Knowledge Portal](https://hmdahelp.consumerfinance.gov/knowledgebase/sj)

The screenshot shows a web browser window displaying the HMDA Self-Service Knowledge Portal. The browser's address bar shows the URL <https://hmdahelp.consumerfinance.gov/knowledgebase/sj>. The page features the FFIEC logo, which consists of a stylized blue starburst icon followed by the letters 'FFIEC' in a bold, white, sans-serif font. Below the logo, there is a paragraph of text: "The questions and answers below pertain to compliance with Regulation C, effective January 1, 2018, the HMDA Platform, and the Filing Instruction Guides for HMDA Data. These questions and answers are summaries of and not a substitute for Regulation C or the Filing Instruction Guides for HMDA Data. Regulation C and their official interpretations (also known as the commentary) are the definitive sources of information regarding their requirements. Begin typing your question below to search the questions and answers available in the HMDA Knowledgebase Articles." Below this text is a search bar with the placeholder text "Search for HMDA Articles..." and a green "Search" button. At the bottom of the page, there is a green button labeled "Submit a Question to HMDA". The browser's taskbar at the bottom shows several open applications, including Skype for Business, HMDA Home Page, Calendar, and Intel Graphics Settings.

# Resources: HMDA Help

- [HMDA Help](https://hmdahelp.consumerfinance.gov/) or email [HMDAHelp@cfpb.gov](mailto:HMDAHelp@cfpb.gov)

A screenshot of a web browser displaying the HMDA Help website. The browser's address bar shows the URL https://hmdahelp.consumerfinance.gov/. The website header includes the CFpb logo and the text "Consumer Financial Protection Bureau". The main content area features a heading "Submit a technical question about reporting Home Mortgage Disclosure Act (HMDA) data" followed by a paragraph: "Use this form to submit technical questions about reporting HMDA data collected in or after 2017. The information you submit will be sent to our technical support staff. Please allow 24-48 hours for response time during normal business hours, although occasionally more time may be required." Below this is a section titled "What is your HMDA question?" with a bulleted list of instructions: "If you have multiple questions, please number them.", "Do not include personal information, such as your account number, personal address, or Social Security number.", and "If you want to include an attachment please email us at [HMDAHelp@cfpb.gov](mailto:HMDAHelp@cfpb.gov)." The browser's taskbar at the bottom shows several open applications, including "Presentations Talks Etc", "Calendar - Timothy.La...", and "Document1 [Compati...". The system tray shows the time as 3:03 PM and the battery level at 150%.

# FFIEC HMDA Examiner Transaction Testing Guidelines

- Apply to examinations of HMDA data collected beginning in 2018 and reported beginning in 2019
- Eliminate the file error resubmission threshold
- Provide a more lenient 10 percent field error resubmission threshold for financial institutions with LAR counts of 100 or less
- Not changed by 2018 interpretive rule

[FFIEC HMDA Examination Transaction Testing Guidelines](#)

# HMDA Transaction Testing Sample Sizes and Thresholds

LAR Count	Total Sample Size (A)	Initial Sample Size (B)	Initial Sample Threshold (C)	Resubmission Threshold (D)	
				#	%
25 – 50	30*	15	2	3	10.0*
51 – 100	30	20	2	3	10.0
101 – 130	47	29	2	3	6.4
131 – 190	56	29	2	3	5.4
191 – 500	59	30	2	3	5.1
501 – 100,000	79	35	2	4	5.1
100,001+	159	61	2	4	2.5

# HMDA Key Fields: FDIC, OCC, FRB

- Previously, nearly all HMDA data fields were “key”
- 2015 HMDA rule includes 48 data points reported in a total of 110 fields (for non-exempt institutions)
- 37 of 110 fields were determined to be “key” by FDIC, OCC, and FRB
  - [FIL-51-2017](#), FDIC Releases Interagency Designated Key HMDA Data Fields List
  - [OCC Bulletin 2017-41](#), Interagency Key Fields
  - [CA 17-3](#), Designated Home Mortgage Disclosure Act Key Data Fields
- “examination staff may determine that it is necessary to review additional HMDA data fields, as appropriate”

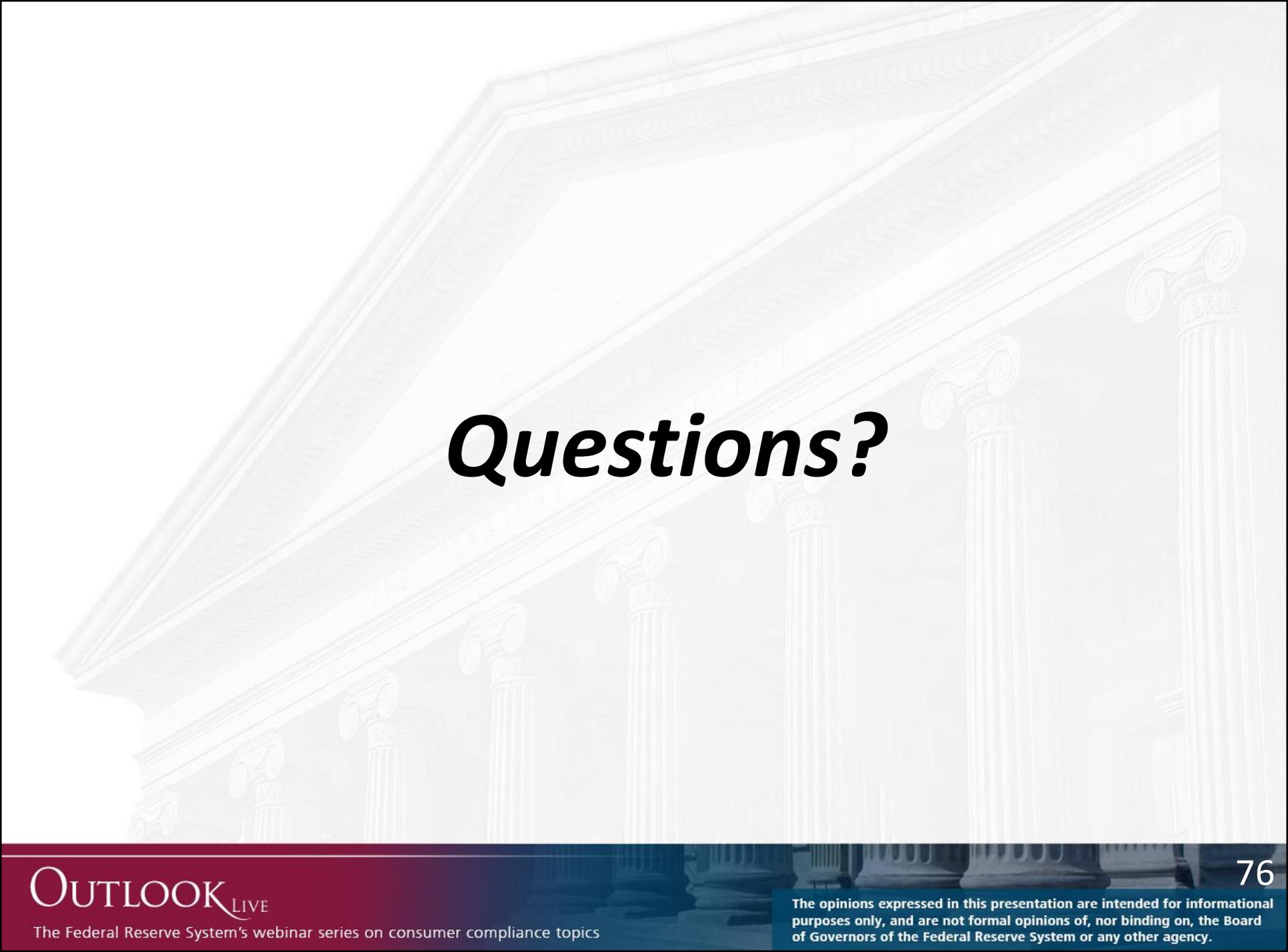
# HMDA Loan-Level Public Data Disclosure

- Proposed [Policy Guidance](#) with Request for Public Comment
- Proposes to exclude:
  - Universal loan identifier, application date, action taken date, property address, credit score, NMLS ID, AUS result, and free-form text reporting fields for race, ethnicity, name and version of credit score model, reason for denial, and AUS system name
- Proposes to reduce the precision of other disclosed values:
  - Loan amount, age, DTI, property value

# Contact Information

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# *Questions?*