MORTGAGE BANKERS ASSOCIATION

May 25, 2017

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

RE: RIN 3170-AA64 – Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule

Dear Ms. Jackson,

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the proposed amendments (or proposal) to the Consumer Financial Protection Bureau's (CFPB or Bureau) Home Mortgage Disclosure (Regulation C) Final Rule.

Outreach by the Bureau to stakeholders identified several areas in the Final Rule published in the Federal Register on October 15, 2015 that warranted clarifications, technical corrections or minor changes. We appreciate the Bureau's efforts to address those issues in the proposed amendments. These changes include transition rules for two data points—loan purpose and the unique identifier for loan originator, clarifications of key terms, such as "temporary financing" and "automated underwriting system" (AUS) and creation of a new reporting exception for certain New York Consolidation, Extension and Modification Agreement (CEMA) transactions.

The proposal also affirms that the Bureau will make available on its website a geocoding tool that institutions may use to identify the census tract where a property is located. The proposal also would establish that an institution would not violate Regulation C by reporting an incorrect census tract for a property if the institution entered the address properly.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

I. Executive Summary

Despite laudable efforts by the Bureau, effective implementation by lenders is not feasible under the current schedule, as many outstanding issues remain unresolved.

Outstanding Issues that Warrant a Delayed Effective Date:

- HMDA data collection portals
- Publication and implementation of data quality edits
- Geocoder production release and integration specs
- Data privacy concerns
- Resubmission expectations
- Updated Filing Instructions Guides
- Guidance on reporting and collection issues
- Impacts of the proposed amendments
- Uniform Residential Loan Application
- Government Monitoring Information

Further Comments:

MBA has identified numerous recommendations on specific elements of the proposed Rule as follows:

- Bona fide errors and census tract
- Purchased loan transition rules
- Rate spread – date rate lock is set
- Purchase exemption from CLTV – application to assumptions
- Application of proposed purchase exemption from NMLSR reporting to assumptions; application of both exemptions to loans originated on or after January 1, 2018
- Corrected disclosures
- Counteroffers
- Depletion of assets

Multifamily Comments:

MBA has also identified recommendations that address issues mainly concerning the multifamily business:

- Applicability of HMDA reporting to multifamily loans
- Exemption of purchases and assumptions of multifamily loans from Introductory Rate Period reporting
- Simplified reporting from smaller-volume HMDA reporters, particularly smaller-volume multifamily reporters
- Further consideration and clarification of the multifamily definition

II. Introduction

MBA greatly appreciates the CFPB's efforts to clarify the Rule, as well as its participation in MBA seminars and conferences to that end since the Rule was finalized in October 2015. Nevertheless, even with the Bureau's laudable efforts, it is evident that several important steps have not yet been completed, making effective, timely implementation on the current schedule extremely difficult, if not impossible, for most institutions.

Most of the amendments in the Final Rule, such as the expanded data collection requirements, are to become effective January 1, 2018. However, as you are aware, collection of data must begin in 2017 for loan applications that may become reportable in 2018. Considering the fact that much remains to be done by the CFPB, including rules and deliverables (see below), MBA respectfully urges the Bureau to delay these amendments and the Final Rule for at least one year in order to provide the Bureau and Home Mortgage Disclosure Act (HMDA) reporters with sufficient time to complete, implement and test their data collection and reporting processes.

Additional time will allow several necessary actions and relevant materials to be delivered by the Bureau in time for them to be reviewed, tested and integrated into both vendors' and lenders' processes to ensure effective implementation primarily at loan origination, the point at which most reportable information is being collected. Significant training of lenders' employees is also required to ensure proper and accurate collection and reporting under the Final Rule, and training cannot begin until the systems and processes are complete.

We also suggest that, considering the possibility that privacy concerns might dictate that certain data not be disclosed publicly, a one year delay also should be used to reconsider whether the many data points required under Dodd-Frank within the Bureau's authority should be required.

Simply delaying enforcement of the requirements under the circumstances would be insufficient. Moreover, we believe that continuing to apply Regulation C in its current form would adequately serve the public policy purposes underlying HMDA during the additional year of implementation. In sum, the balance of burdens against public policy benefits favors a delay.

The following discussion further explains why the effective date should be delayed pending key steps and the release of information by the Bureau. The subsequent sections provide comments on several of the specific issues raised in the Rule.

III. The Effective Date of the Final Rule and these Amendments Should Be Delayed Pending Completion of Key Actions by the Bureau and to Permit Industry Time to Effectively Implement the Rule

The Final Rule brings extraordinarily ambitious additions to what is already an extensive database on mortgage lending. Specifically, it more than doubles the data points to be collected and reported, modifies most of the current definitions, expands reporting to Home Equity Lines of Credit (HELOCs) and pre-approval transactions and also extends reporting requirements to virtually all significant mortgage or HELOC lenders.

Regarding the data points, the Final Rule requires reporting on 48 data fields, adding 25 new data fields to the current 23, and also modifies 20 of the existing fields. The current data fields include the rate spread (for higher-priced loans), Home Ownership and Equity Protection Act (HOEPA) status, race, ethnicity and income of the borrower, action taken on the loan or application, location of the property and loan amount.

The new data fields include fields mandated by Dodd-Frank, as well as fields required by the CFPB under its discretionary authority. These include the age and credit score of the borrower, debt-to-income (DTI) ratio, loan-to-value (LTV) ratio, total points and fees, rate spread (for all loans), term in months of any prepayment penalty, property value, term in months of any introductory rate, existence of non-amortizing feature(s), loan term, channel through which the application was made including retail, broker, etc., loan originator identifier and property address.

The reporting thresholds for HMDA require institutions that originate at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years to report HMDA data, provided the institution meets all of the other criteria for institutional coverage. The Bureau is also modifying the types of transactions subject to Regulation C.

As to transaction coverage, the Final Rule also adopted a dwelling-secured standard for all loans or lines of credit that are for personal, family or household purposes, making most consumer-purpose transactions, including closed-end home-equity loans, HELOCs and reverse mortgages, subject to the regulation. Commercial-purpose transactions (*i.e.*, loans or lines of credit not for personal, family or household purposes) are covered only if they are for the purpose of home purchase, home improvement or refinancing.

Approximately seven months from today, the new data fields are to be reported for loans where action is taken on or after January 1, 2018. This necessitates collecting the new data for loans entering lenders' pipelines within the next few months, as well as reporting on loans that are already in the pipeline, such as applications taken for homes under construction and applications taken for loans requiring a subordination of an existing lien.

Lenders, and the vendors that support the industry, are still waiting on the CFPB to release the reporting portal, the geocoding tool, data validation and other edits, to name a few. Without the availability of these and other necessary rules and tools, lenders cannot finalize revised business processes or provide final technology requirements for their information technology teams and/or vendors, or provide training to their originations and operations staff. For these reasons, as discussed in further detail below, there simply is not time for the Bureau and lenders to complete the key actions and provide the materials needed for implementation, now or going forward:

A. **HMDA Data Collection Portals –** The Rule provides that all data is to be reported through separate data portals for 2017 and 2018 and beyond, with each having data check capabilities. Neither the portal for the 2017 data—which is needed for reporting for the first quarter of 2018—nor the portal for the 2018 data has been released. Releases have been delayed several times and only the 2017 portal is expected in 2017. Lenders currently use the responses returned by the Federal Financial Institutions Examination Council (FFIEC) HMDA portal to identify reporting issues as their loans are originated. The lack of an available portal to test against is preventing lenders from being able to test their 2017 loan data. Delay in the 2018 portal will likewise prevent testing of 2018 data. Lenders also use the rate checker capabilities for reporting. Unless the Rule is delayed, the checker feature will likewise not be available to lenders currently collecting data expected to be reported in 2018 and 2019.

B. **Publication and Implementation of Data Quality Edits –** The Rule constrains lenders from reporting more than once unless resubmission is required. It is not yet clear, however, how the Bureau plans to convey back data quality edits to the industry so that systems can be improved. Additional time would allow the Bureau to publish its 2019 data quality edits so that technology providers would have sufficient time to program systems to assist lenders in submitting higher-quality, more accurate submissions. This information, along with the 2017 and 2018 data portals, is critical for lenders, considering the enforcement actions that the Bureau has taken against lenders for HMDA reporting inaccuracies based on the data collected currently. This issue is of greater concern considering the amount of new data elements required to be reported on or after January 1, 2018 for reporting in 2019.

C. **Geocoder Production Release and Integration Specs –** While MBA appreciates that the Bureau is committed to issuing a geocoder to identify the census tract where a property is located and establishing a safe harbor for its use, no such tool has been released. In fact, the timing of the release of the tool, the source of the data, and the consistency of the data are not yet known. When the tool is released, there is the additional concern that capacity or reliability problems could undermine its usefulness. Additionally, while errors may be acceptable under HMDA, an accurate tool is needed to facilitate Community Reinvestment Act (CRA) compliance. Considering that it will take an estimated three to six months to test the tool and implement it, the tool needs to be issued very shortly. Otherwise, a delayed effective date is needed here, as well.

D. Data Privacy – In the preamble to the Final Rule, the Bureau noted it would apply a balancing test to determine which and how the data points would be released to the public. The Bureau also committed to providing at a later date a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed. Since the Final Rule was published in 2015, however, there has been no action by the Bureau to engage these issues. It is important for lenders, and for the public, to understand what information will be disclosed and how the privacy of some data points will be preserved.

MBA has commissioned research to address the privacy risks of "re-identification" of consumers. Preliminary results suggest a very high risk of re-identification under the current data, and an even higher risk of exposure under the expanded data. Specifically, using other publicly available data sets, the identities of individuals can be linked to the individuals' HMDA data in more than 75 percent of cases with near 100 percent re-identification for minority borrowers. The new data also can increase the risk to 100 percent of all borrowers if certain of the new data points are released without protective measures. Considering that the expanded data includes significant personal information such as credit score, age, DTI, LTV and income, the potential severity of harm from release of the data to be collected under the Final Rule is much greater.

MBA respectfully asks that the Bureau not delay embarking on the process of determining which data points will be made public and in what form. These decisions should not be delayed until after the data collection begins. If little of the new data can be made public and can only be made available for government use, it is not clear to what extent it needs to be gathered at all. Data is already made available to examiners upon request of lenders, obviating the need for every lender to provide it. Notably, resolution of these disclosure issues also is relevant to determining data security and retention needs.

E. Resubmission Expectations – In January 2016, the CFPB issued a request for information (RFI) seeking public input on what resubmission requirements should pertain under the new Rule. MBA commented that the industry would be well served if a dialogue were open as the Final Rule was implemented to determine what resubmission expectations were appropriate, considering the data required under the Final Rule. However, since the RFI was issued, the Bureau has not provided information on its views or invited any further comment.

Currently, an institution in excess of 100,000 loans per year has a 4 percent error tolerance, and must correct and resubmit its HMDA reporting if it exceeds that threshold (or correct and resubmit just one field if the error rate for that field exceeds 2 percent). With the required data points more than doubling, we urge that additional time be used to reevaluate and increase the error tolerances to appropriately reflect the increase in complexity and quantity of data reporting. In any event, MBA urges the industry be provided fair notice of resubmission expectations before data collection and reporting is required.

F. **Updated FIG(s) are Needed –** While MBA appreciates the CFPB's issuance of its Filing Instructions Guide (FIG), the FIG must be updated before the Rule is effective. Technology vendors as well as lenders rely on the FIG to update their systems for customers. Lenders also are relying on the FIG to assess changes needed in their policies and procedures. Considering the timing of this proposal and the time anticipated for the FIG update, there is likely to be insufficient time for vendors to make systems changes and for lenders to test and implement by the current effective date. In addition to the FIG, additional time could be spent creating a Bureau "Guide to HMDA Reporting: Getting it Right" and "Frequently Asked Questions." These documents proved useful over the years as established by the Federal Reserve and the FFIEC.

G. **Guidance on Outstanding Issues –** There are several outstanding issues pertaining to collection and reporting that need to be addressed. These include questions about:

   a. AUS Reporting Expectations for Federal Housing Administration (FHA) and U.S. Department of Agriculture (USDA) Loans
   b. Census Tract Values on Purchased Loans
   c. Reporting Demographic Information in Excess of Five Selections

   An extended implementation schedule would provide additional time to respond to these and other issues necessary to an effective implementation.

H. **Impact of Issues in Proposed Rule –** The proposed Rule raises several issues that can be expected to provoke comments. One such area is reporting of Ethnicity and Race, including:

   a. Reporting Subcategory selections, specifically when an aggregate value is not selected
   b. Use of "Other"
   c. Impact of change on determining maximum number of selections to report, and determining which sections to report if more than five selections are made by the applicant

   An extended implementation period also will allow the Bureau time to fully consider the comments to judiciously develop a final rule and provide sufficient time for vendors and lenders to implement the rule.

I. **The New Uniform Residential Loan Application –** When the Final Rule was first finalized, it was anticipated that a new Uniform Residential Loan Application

(URLA) issued by the Government-Sponsored Enterprises (GSEs) would provide a useful means of collecting the HMDA data. The URLA has been delayed and consequently some of the new data may be gathered in a new abbreviated form and the remainder by other means. One industry concern is that the new URLA as proposed fails to collect enough information for a lender to be able to report Loan Purpose, which in fact is a data point that has conflicting definitions in the URLA, HMDA Final Rule and Know Before You Owe Final Rule. An extended implementation period could allow the URLA to be completed and issued, and could function to facilitate HMDA collection.

J. **Government Monitoring Information –** MBA appreciates the efforts of the Bureau to help facilitate the transition from aggregated to disaggregated Government Monitoring Information (GMI) by permitting the collection of disaggregated data in 2017. Nevertheless, the options presented concerning what and how to collect data in 2017 have proven troublesome. For example, the rule change suggests that a subcategory for race is allowed to be collected pre-implementation but the lender cannot report the aggregate category. How would this be handled in the transition period should a lender choose to collect disaggregated but report aggregated?

Also, the Final Rule permits consumers to report any information regarding ethnicity, race or sex as they deem fit regardless of whether the information may be inconsistent or unreliable. In contrast, it limits the amount of information that a lender can report, which forces the lender to prioritize which consumer-provided information to report when the consumer makes more than five selections. Lenders and consumers would benefit from guidance from the Bureau regarding a hierarchy as to the order in which those five selections are to be reported. For example, do all aggregated selections get reported prior to disaggregated selections, or if three aggregated selections are provided along with three disaggregated selections, which is to be dropped? This type of guidance will assist reporters in preparing high-quality data to submit to the Bureau. Or in the alternative, the Bureau could allow lenders to report an unlimited number of selections in an effort to capture the information truly provided by the consumer.

Lenders should also be able to create drop-down lists of choices, particularly for disaggregated reporting, designed to mimic those “examples” of other disaggregated categories or “enrolled or principal tribes” identified in Fannie Mae’s Demographic Information Addendum. Otherwise, erroneous data will be introduced into systems at undue costs.

Moreover, for lenders opting to collect disaggregated data during 2017 but report aggregated data for transactions with an application date prior to January 1, 2018, is not clear what the lender should report if the consumer selects a disaggregated category but does not select an aggregated one. Under the proposed Rule, the lender may not report an aggregated category if the consumer did not select it, even if the consumer selected one of the disaggregated subcategories under that aggregated category. For example, if a consumer selects “Japanese” but not select “Asian”, and the lender is reporting aggregated data, should the lender report nothing for race since there is no aggregated category selected or “Asian”?

Additional implementation time would give the Bureau an opportunity to reassess the data collection and reporting priorities in this area to provide lenders with better guidance to report demographic information in a way that is consistent with the way that the information is provided by the consumer.

During an extended implementation period, consideration also could be given to revising the requirements for disaggregated GMI altogether. It is unclear, for example, to what extent so many self-designations of racial ethnic subcategories serve a purpose beyond markedly increasing systems’ costs. Extension of the implementation period also would provide opportunities for a more orderly transition, including training to adjust to new requirements

In sum, at the time the CFPB announced the revised HMDA Rule in October 2015, the effective date of January 1, 2018 for most of the rule changes appeared to provide sufficient time for implementation. But now, as we draw close to that date, and the foregoing steps have not been completed, there simply is not enough time to effectively comply. While MBA appreciates the Bureau’s efforts thus far, we strongly believe getting this implementation right is far more important than simply meeting what has become an unrealistic timeframe.

In order for industry members and technology providers to finalize programming of systems to implement the revised HMDA Rule, the Rule and FIG need to be finalized, and the portal with accompanying instructions must be released, to name a few. Once these and other items are finalized and released, and programming is completed, lenders will need to test their systems, finalize policies and procedures and complete final staff training.

As indicated, some lenders have already taken applications that will require the collection and reporting of the expanded HMDA data, and they do not yet have efficient systems designed to capture the data in the way necessary for reporting. While technically the implementation date is January 1, 2018, in reality we are now at or close to the implementation date.

Because lenders do not have systems that are designed to collect the expanded data, once the systems are updated to provide for collection of the expanded data, lenders will need to manually review applications already taken and then manually enter the expanded HMDA data into their systems. Based on industry experience, this will be a time-consuming and expensive process, and will produce flawed data based on errors resulting from having to review and manually enter a backlog of information on a significant number of loan files. It is likely that with many loan files, various new data elements will be simply missing or inaccurate.

IV. Further Comments

A. Bona Fide Errors and Census Tract

As indicated, the Bureau plans to make available on its website a geocoding tool to provide the census tract for a property based on the property address entered by users. Section 1003.6(b)(2) provides that an incorrect entry for census tract number is deemed a bona fide error, and is not a violation of the Act or this part, provided the financial institution maintains procedures reasonably adapted to avoid an error. Obtaining the census tract numbers for covered loans and applications from the Bureau's geocoding tool is an example of a procedure reasonably adapted to avoid errors under § 1003.6(b)(2). Accordingly, a census tract error is not a violation of the Act or this part if the financial institution obtained the census tract number from the Bureau's geocoding tool.

We appreciate the clarification that obtaining census tract numbers for covered loans and applications from the Bureau's geocoding tool is an example of a procedure reasonably adapted to avoid errors under § 1003.6(b)(2). We also request that the CFPB consider explicitly including as an example of a procedure reasonably adapted to avoid errors the obtaining of the geocode from the Bureau, along with evidence of the version of the tool, and the date submitted to the tool. Moreover, we believe the Rule should explicitly state, if the geocoding tool is updated subsequent to the action taken on the loan or in the reporting year, whether the institution should not be expected to revise to indicate the new result.

Such clarifications, in addition to adding efficiency, would allow banks with CRA requirements focusing loan purchase and origination activities within low- to moderate-income (LMI) tracts to rely on the fact that a tract can be reported as LMI if it met that designation at the time of origination/purchase and use of the geocoding tool.

B. Purchased Loan Transition Rules

The CFPB requested information on the importance of the transition rules. MBA regards them as particularly important, especially in the case of repurchased loans where data is not available in the form the CFPB is requesting.

We respectfully request consideration of two additional data points for transition rules:

1. The collateral value determined at the time of origination is not relevant to the repurchased transaction and may not be readily available. A more current value may be available systemically but its utility is not clear.

2. There is also a need for guidance in reporting loan type in the case of government-insured loans which may no longer be insured at the time of purchase.

Ideally, lenders would have the ability to report N/A for both fields if the loan was originated prior to January 1, 2018.

C. Rate Spread – Date Rate Lock is Set

If an interest rate is set pursuant to a “lock-in” agreement between the financial institution and the borrower, then the date on which the agreement fixes the interest rate is the date the rate was set. Except as provided in comment 4(a)(12)-5.ii, if a rate is reset after a lock-in agreement is executed (for example, because the borrower exercises a float-down option or the agreement expires), then the relevant date is the date the financial institution exercises discretion in setting the rate for the final time before closing or account opening. The same rule applies when a lock-in agreement is extended and the rate is reset at the same rate, regardless of whether market rates have increased, decreased, or remained the same since the initial rate was set. If no lock-in agreement is executed, then the relevant date is the date on which the institution sets the rate for the final time before closing or account opening.

We request clarity on how discretion may be exercised in setting the rate prior to closing.

- In the case where a lock-in agreement is extended prior to expiration, we believe the accurate lock-in date is the date of the original agreement, as the institution extended the lock pursuant to the agreement, not discretion. The CFPB should indicate whether it agrees with this interpretation, and whether such a determination would be impacted by a decision not to impose a lock-in extension fee.
- Similarly, in the case where the borrower exercises a float-down option, the lender is not exercising discretion. Is the institution to report the original lock-in date in this case rather than the date of rate reset?

D. Purchase Exemption from CLTV Should Also Apply to Assumptions

The Bureau proposes a technical correction to the comment on 12 CFR § 1003.4(a)(23) and a new comment to provide additional guidance on the requirement to report the combined loan-to-value ratio (CLTV) relied upon in making the credit decision. We believe that the Bureau should add a comment to exempt assumptions in the same way that purchases are already exempt from this requirement because the factors underlying the purchase exemption apply equally to assumptions.

Section 1003.4(a)(23) exempts purchased covered loans from the requirement to report CLTV. As the Bureau described its reasoning when it issued its October 2015 amendments to Regulation C, it based that exemption on:

- Its conclusion that CLTV on purchased loans is less valuable than CLTV on originations;

- Its observation that CLTV at the time of purchase may no longer be accurate; and
- The "practical challenges in ascertaining the combined-loan-to-value ratio that the originating financial institution relied on in making the credit decision." [2]

Those factors apply equally to assumptions. Both purchases and assumptions occur after the loan is originated, which reduces the information value and accuracy of CLTV information. Also, purchases and assumptions share the same practical challenges to acquiring the information. Accordingly, we recommend that the Bureau exempt assumptions of covered loans from the CLTV reporting requirement in the same way it exempts purchases.

E. Proposed Purchase Exemption from NMLSR Reporting Should Also Apply to Assumptions; Both Exemptions Should Apply for Loans Originated on or after January 1, 2018

The proposed temporary exemption from NMLSR reporting for purchases of non-Regulation Z loans should also apply to assumptions and it should not be limited to loans originated prior to January 1, 2018.

Existing commentary to 12 CFR § 1003.4(a)(34) requires NMLSR reporting for non-Regulation Z loans, to the extent loan originators are assigned NMLSR IDs. However, the Bureau recognized that there are practical differences between how readily available the NMLSR information will be at the time a non-Regulation Z loan is purchased versus when it is originated. Specifically, the Bureau recognized that, at the time of purchase, loan documents for non-Regulation Z loans "may not include the NMLSR ID …, even when the loan originator has been assigned an NMLSR ID."[3] Based on that reasoning, the Bureau proposed to exempt from NMLSR reporting purchases of covered loans that (1) do not satisfy coverage criteria of Regulation Z; and (2) were originated prior to January 1, 2018.

First, we recommend that the Bureau extend the scope of the proposed purchase exemption to assumptions. The potential for a lack of NMLSR ID information in the loan

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[2] 80 FR 66128, 66221 (Oct. 28, 2015) ("The Bureau has determined to exclude purchased covered loans from the requirements of § 1003.4(a)(24). The Bureau does not believe that the combined-loan-to-value ratio information is as valuable for purchased covered loans as for applications and originations. The combined-loan-to value ratio that the originating financial institution relied on in making the credit decision may no longer be accurate, because the total amount of debt secured by the property to the value of the property likely has changed since origination. In addition, the Bureau believes that purchasing financial institutions may face practical challenges in ascertaining the combined-loan-to-value ratio that the originating financial institution relied on in making the credit decision because it may not be evident on the face of the loan documents. In light of the limited value of the data and these practical challenges, the Bureau is excluding purchased covered loans from the requirements in § 1003.4(a)(24).").

[3] 82 FR at 19159.

documentation will be the same for both types of transactions. As a result, purchases and assumptions should receive equivalent treatment here.

Second, at least in the case of multifamily loans, the practical challenge that the Bureau has recognized will continue to exist for loans originated on or after January 1, 2018. There still will be instances in which loan documents for 2018 and loans originated after that date "may not include the NMLSR ID …, even when the loan originator has been assigned an NMLSR ID." Because the practical considerations underlying the proposed purchase exemption will endure into and beyond 2018, the purchase and assumption exemptions should similarly remain in place as standing rather than transitional exemptions.

F. Corrected Disclosures

The Rule proposes changes to comment 4(a)(12)-8 to clarify that with respect to an application or a preapproval request that is approved but not accepted, if a financial institution provides early disclosures under Regulation Z § 1026.18 or § 1026.37 (for closed-end mortgage loans) or § 1026.40 (for open-end lines of credit) but does not provide subsequent disclosures, the lender may report the annual percentage rate (APR) for the covered loan as calculated and disclosed pursuant to those early disclosures. MBA fully supports this clarification, but requests further guidance with respect to preapproval requests that are approved but not accepted. Generally speaking, a preapproval request does not identify a property address and therefore does not trigger the disclosure requirements under Regulation Z § 1026.18 or § 1026.37. In such cases, relying on the APR disclosed pursuant to those provisions is not applicable, and MBA requests revisions to the proposed commentary to clarify the appropriate APR in such instances.

The Rule also proposes a new comment 4(a)(12)-9 to provide guidance in situations where a financial institution provides a corrected disclosure under Regulation Z that reflects a corrected APR. However, this comment is limited to applications approved but not accepted and preapproval requests that are approved but not accepted. As mentioned above, in those cases a lender may never provide anything other than the early disclosures. As a result, it seems that this comment should apply to originations, not applications or preapprovals. Further, the proposed comment provides that the date the corrected disclosure was provided to the borrower is the date disclosed pursuant to Regulation Z, 12 CFR § 1026.38(a)(3)(i) (i.e., on the Closing Disclosure). While this guidance is helpful with respect to loans subject to that provision, MBA seeks guidance on what date should be used for loans subject to the other two provisions identified at the beginning of the new proposed comment (i.e., 12 CFR § 1026.19(a) and 12 CFR § 1026.6(a)).

G. Counteroffers - 4(a)(8); 4(a)(8)(i)

In the preamble to proposed comment 4(a)(8)(i)-9, the Bureau states that the amendment is based on informal guidance provided that when a financial institution makes a counteroffer to lend on terms different from the applicant's initial request and the applicant agrees to proceed with consideration of the counteroffer, the financial institution reports the action taken on the application in accordance with comment 4(a)(8)(i)-13 regarding conditional approvals.

We understand, however, some questioners received informal guidance consistent with current comment 4(a)(8)-1 and were reassured when the revisions to Regulation C were consistent with the informal advice. Under current requirements, if the applicant accepts the terms of a counteroffer and the loan closes under its terms, the resulting loan is reported with an Action Taken code of “origination”, and all loan-specific terms (*e.g.* loan type, property type, loan purchaser) are reported by reference to the final loan. If the loan does not close, the application is reported with an Action Taken code of “denial”, because legally, a counteroffer is considered a denial of the original request. All other terms are reported by reference to the original application.

The proposed change to this process—treating counteroffers as conditional approvals—is a major change and it is likely that many institutions will not be able to make system changes by the proposed effective date. The Bureau states that the proposed amendment to comment 4(a)(8)(i)-9 would provide a full range of options to actions and terms to be reported. Some of our members believe, however, that the proposed changes place undue burdens on financial institutions to determine if the applicant agrees to proceed with consideration of the financial institution's counteroffer, particularly when the application does not result in an origination. How would an institution determine “agreement” by an applicant? This formulation is too vague and would lead institutions to make errors or spend resources and time to conduct a word search for words that can be interpreted to mean “agreement” without any real certainty. There is also concern with the clause "if the applicant agrees to proceed with consideration of the financial institution’s counteroffer." It is unclear how lenders are to determine if they "agree to proceed with consideration." More guidance is needed as to what qualifies as "agreeing to proceed."

Under the proposal, if the applicant “agrees to consider” the counteroffer, the guidance should provide that the counteroffer be deemed to replace the original application, and from that point forward, reporting should occur as if the original application never existed. If the loan ends up closing, the proposal changes nothing. Where things get complicated is when the loan does <u>not</u> close. We believe the Rule and commentary should provide:

- If the consumer “agrees to consider” the counteroffer, but later decides not to move forward, it should be reported as a withdrawal.
- If he/she later fails to provide necessary information, the loan should be reported as “closed for incompleteness”.
- If a conditional acceptance letter is issued, but the applicant opted not to proceed, it should be reported as “approved not accepted”.
- And in all these scenarios, the terms themselves would always be reported by reference to the counteroffer, not the original application (which may be complicated even further by all the additional data points that will be added in 2018).

H. Depletion of Assets

Proposed Comment 4 to Paragraph 4(a)(10)(iii) provides that a financial institution does not include as income amounts considered in making a credit decision based on factors that an institution relies on in addition to income, such as amounts derived from underwriting calculations of the potential annuitization or depletion of an applicant’s remaining assets. In certain circumstances (for example, in making custom mortgage loans to high-net worth applicants), financial institutions may make credit decisions that are only partially reliant on income, or are based on a combination of income and asset depletion (which assets include art work, securities, or other investment properties), or which do not consider income and rely entirely on depletion of assets such as those described above. The Bureau should clarify that, in these circumstances, a financial institution may include its consideration of depletion of assets on its LAR for 4(a)(10)(iii) or, in the alternative, report N/A for this data point.

V. Multifamily

The following comments focus mainly on multifamily lending.

A. General Comment – Multifamily Loans Should Not Be Subject to HMDA Reporting

As we consider the applicability of this proposal and the Final Rule to multifamily mortgages, we would like to reiterate our deeply held view that multifamily loans should not be subject to HMDA reporting. Multifamily mortgages are commercial in nature and are not consumer facing. Credit determinations are based on assessments of the business of managing an income-producing property, the value of the underlying property and the certainty of operating cash flow from the property as an income-producing asset. We believe that, as a result, the public policy benefit of collecting HMDA data on commercial multifamily mortgages does not outweigh the considerable regulatory burden of collecting and reporting it. We, therefore, continue to urge the CFPB to exclude multifamily commercial lending entirely from HMDA reporting.

B. Purchases and Assumptions of Multifamily Loans Should be Exempt from Introductory Rate Period Reporting

The Bureau proposes to add a new comment to address Introductory Rate Period (IRP) time periods expressed in loan documents in units other than months. We believe that the Bureau should also add a comment to exempt purchases and assumptions of multifamily loans from IRP reporting, because the negligible public policy benefits of the reported information would not outweigh the burden of reporting it. This would be consistent with the proposed purchase exemptions from reporting of CLTV and NMLSR.

A key purpose of the requirement to report IRP is to discourage "teaser" rates and any other types of "rate manipulation,"[4] but the reporting of IRP information on multifamily loans does not further that objective. While multifamily loans often use a floating rate that readjusts periodically throughout the life of the loan, these loans are not typically characterized as introductory and certainly are not characterized as having teaser rates. As a result, the behaviors that reporting of IRP data intends to make evident and discourage do not exist. The terminology and commentary examples are suggestive of a different type of loan product.[5]

In addition, IRP provides no information that would be useful to monitor decisions that occur within the context of a purchase or assumption. Purchases and assumptions are transactions that occur sometime after the loan origination. As a result, the IRP reflects only decisions made by borrowers and lenders as part of a different transaction that occurred in the past and that may have involved a different set of circumstances. Moreover, at the time of a purchase or assumption, the initial rate period may already have passed and would likely have no relevance to the transaction whatsoever. Since IRP is relevant only at origination, it should only be reportable in connection with origination.

In sum, we believe that the potential public policy benefits of requiring IRP reporting for multifamily purchases and assumptions is minimal and so does not outweigh the regulatory burden involved in maintaining, compiling and reporting it. We therefore recommend that purchases and assumptions be exempt from a requirement to report the IRP.

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[4] 80 FR at 66216.

[5] The Bureau might consider renaming this field a more neutral and descriptive name (e.g., "Initial Rate Period") to reduce the confusion that flows from the use of the label "introductory" and the example in the commentary that groups together "introductory" and "teaser" rates. See comment, Paragraph 4(a)(26)-1 (as amended in 2015) ("For example, assume an open-end line of credit contains an introductory or "teaser" interest rate for two months after the date of account opening, after which the interest rate may adjust.).

C. The CFPB Should Accept Simplified Reporting from Smaller-volume HMDA Reporters, Particularly Smaller-volume Multifamily Reporters

We recommend that the CFPB reduce the regulatory burden, particularly on smaller-volume HMDA reporters, by providing a technologically simpler means of reporting their HMDA data.

The proposal addresses the use of a geocoding tool the Bureau plans to make available on its website, but does not address another reporting technology issue that could have significant impacts on HMDA reporters. As indicated, the CFPB has announced that it is creating a web-based data submission and edit-check to process HMDA data collected in or after 2017.[6]

Our concern with the proposed portal is that, while adapting to a new reporting technology can be daunting for any HMDA reporter, smaller-volume HMDA reporters could be especially hard hit by such a change in reporting technology. This is particularly the case for smaller-volume multifamily HMDA reporters, whose systems and processes are less likely to align with technology supporting a law and regulation created with single-family reporting in mind. As a result, the small marginal public policy benefit to be gained from data on a smaller volume of loans will not justify the level of burden smaller-volume reporters would bear to adapt to the CFPB's planned portal.

To reduce the risk of such a cost-benefit imbalance, we strongly urge the Bureau to continue to permit smaller-volume HMDA reporters to submit HMDA data by way of Excel spreadsheets or similar files. Alternatively, the CFPB could design its portal to accept data from Excel spreadsheets or similar files from smaller-volume reporters, thereby eliminating the burden for each smaller reporter to implement technology initiatives to reconfigure their data to accommodate the portal.

D. Further Consideration and Clarification of the Multifamily Definition is Needed

Section 1003.2(f)-2 notes that a loan that is secured by five or more separate dwellings in more than one location is a loan secured by those properties and should therefore be reported as "multifamily." This seems to mean, for example, that five or more single-family residences in different locations could be reported as one multifamily loan. Further consideration and clarification is needed to assure appropriate application of this definition.

[6] https://www.consumerfinance.gov/data-research/hmda/tech-preview

Conclusion

In conclusion, MBA respectfully requests the Bureau delay these amendments and the Final Rule for at least one year to allow the Bureau time to provide much-needed information and materials, and to allow HMDA reporters more time to finalize and implement the changes effectively.

Again, MBA appreciates the Bureau's work on the HMDA Rule and its consideration of these comments. Should you have questions or wish to discuss these comments, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or kmarkison@mba.org or Kathy Marquardt, Vice President of Commercial Servicing and Council Coordination, at (202) 557-2742 or kmarquardt@mba.org.

Again, we greatly appreciate the CFPB's attention to these concerns.

Sincerely,

Pete Mills
Senior Vice President
Residential Policy and Member Engagement