

**AMERICAN FINANCIAL SERVICES ASSOCIATION
CONSUMER MORTGAGE COALITION**

May 12, 2014

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, N.W.
Washington, D.C. 20552

Re: Small Business Review Panel for HMDA Rulemaking

Dear Director Cordray:

The undersigned trade associations appreciate this opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB") outline of proposals under consideration (the "[Outline](#)") for amendments to Regulation C, under the Home Mortgage Disclosure Act of 1975 ("HMDA"). The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act" or "Dodd-Frank") amended HMDA to require reporting of additional data points, gave the CFPB authority to amend the required data points, and requires the CFPB to alter the required reporting formats to protect privacy. The Outline and public comments on it will inform a rulemaking to implement the Dodd-Frank Act amendments to HMDA.

We note at the outset that we agree with the CFPB's statement that HMDA is a disclosure statute.¹ As Congress established:

"The purpose of [HMDA] is to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are fulfilling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment."

As stated in Regulation C, the purpose is to provide the public with loan data that can be used:

- (i) To help determine whether financial institutions are serving the housing needs of their communities;
- (ii) To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and

¹ Outline p. 68.

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.”²

We support the purposes of HMDA reporting about lending practices. At the same time, we do not believe HMDA reporting should determine lending practices, or that financial institutions should be required to collect or obtain information that they do not use in their lending operations, except to the extent the information is truly necessary to accomplish HMDA’s purposes. We also believe that HMDA data should be as helpful as reasonably possible, consistent with protecting the financial privacy of borrowers and loan applicants.

Below, we address the need for coordination of many reporting requirements, and then set out comments in response to the more specific suggestions in the Outline.

Need for Coordinated Reporting Requirements

Congress enacted HMDA in 1975, long before the current age of electronic information and “big data.” HMDA reporting is only one of many reporting requirements relating to mortgages, under both federal and state law. Rather than view HMDA reporting in isolation, we suggest that the CFPB work with other regulators, including the Treasury Department’s Office of Financial Research, to rationalize and modernize the overlapping reporting requirements. Mortgage data requirements today, in addition to HMDA, include, but are not limited to:

- Reports to and examinations by federal and state prudential regulators. These include substantial detailed reporting, including reporting for federal Comprehensive Capital Analysis and Review (“CCAR”) purposes.
- Reporting for the Comptroller’s Mortgage Metrics Reports.
- The National Mortgage Database, which the CFPB and FHFA created to streamline datasets.
- Reporting under the Treasury Department’s Making Home Affordable programs.
- Mortgage Call Reports to the NMLS, which the Council of State Bank Supervisors and the American Association of Residential Mortgage Regulators are considering expanding.
- Mortgage data reports to Fannie Mae and Freddie Mac.

In addition, the Outline suggests that the CFPB may create a national centralized registry for all mortgage loans and applications.³ A coordinated approach to data and reporting requirements would appear consistent with the intent behind the National Mortgage Database. The CFPB has [announced](#) its coordination with the Federal Housing Finance Agency (“FHFA”) on a National Mortgage Database to “Streamline Disparate Datasets[.]” According to the [CFPB and FHFA](#), this National Mortgage Database will be

² 12 C.F.R. § 1003.1(b)(1).

³ Outline p. 46.

comprehensive, including information spanning the life of a mortgage loan from origination through servicing, up to date, and extending back to 1998. It will include information about:

- Loan performance from origination to termination;
- Loan terms;
- Property value and characteristics;
- Membership in federal loan programs;
- Sale in the secondary mortgage market; and
- Information on all loan cosigners, including second liens, other past and present mortgages, and credit scores from one year before origination to one year after termination.

The regulators have also [stated](#) that the National Mortgage Database “will provide information on mortgage access and mortgage terms for low-income borrowers and communities faster than data required by the Home Mortgage Disclosure Act, or HMDA.” This is helpful, and reaffirms that coordination can increase efficiency.

Coordination with the National Mortgage Database would be helpful, but it would be incomplete. We suggest that the government collect all of its mortgage data in one database, rather than maintaining multiple, duplicative federal and state databases. It could be hosted at the CFPB-FHFA National Mortgage Database.⁹ A coordinated approach would enable the creation of common datapoints with common data dictionaries and formats. This would greatly reduce regulatory burden in reporting the data, while also reducing the cost of maintaining the database and improving the quality of the data.

Importantly, only a coordinated approach would enable regulators to address the privacy and cybersecurity concerns inherent in modern databases, which did not exist in 1975. This is important because of today’s ease and low cost of searching modern databases. Federal agencies should not inadvertently release information that, in isolation, poses no privacy risks, but that, when used with other available data, including the CFPB’s public complaint database, could risk divulging information that should remain out of the public eye. The risk of inadvertent breaches of privacy is more pronounced with mortgage loans than with other types of transactions because real estate records are public.

In the Dodd-Frank Act, Congress required the CFPB to maintain the privacy of consumer information as required under any provision of law, including the important consumer financial privacy protections in the Gramm Leach Bliley Act (“GLBA”).⁴ Maintaining one rather than multiple databases would help ensure that the data are not inadvertently divulged contrary to these important consumer protections. Consumers do not expect any government breaches of their sensitive mortgage data.

⁴ See Dodd-Frank Act § 1022(c)(8), discussed later in this letter.

After the regulators identify the appropriate mortgage reporting requirements, financial institutions will need time to retool their technology systems to be able to report the required data in the required format and at the required times. We suggest that new data requirements should apply to loans originated after the retooling.

Identifiers

Entity Identifier

The Outline states that the CFPB is considering replacing the current HMDA Respondent / Reporter Identification Number (“HMDA RID”) with an entity identifier to facilitate identification of the lender and its affiliates. The HMDA RIDs effectively identify each creditor.

The Outline states that the CFPB is considering requiring institutions to obtain and report a Legal Entity Identifier (“LEI”) unique to each institution, or to obtain and report RSSD ID numbers. Either of these would create regulatory burden, without providing valuable information for HMDA purposes. While the Outline notes industry support for LEIs,⁵ it cites support in connection with promoting financial stability, managing systemic risk, managing counterparty exposure, and improving operational efficiencies. These are quite different purposes than HMDA reporting, especially HMDA reporting that would require a burdensome entity identifier with little apparent HMDA value.

Universal Loan Identifiers

The Outline states that the CFPB is considering a universal loan ID requirement based on a centralized registry for all mortgage loans and applications. The CFPB helpfully notes that this “would require significant investment of time and money and substantial coordination about all relevant stakeholders.”⁶ The Outline states, “The Bureau also hopes that the universal loan ID would be used in other contexts by the industry, and therefore would be useful for purposes other than HMDA reporting.”

The Outline also suggests a hybrid identifier, without a central registry. The Outline notes that this would be “relatively simple to implement,” but that it may not be fully useful because institutions may not use it for other purposes. If a hybrid loan identifier is sufficient for HMDA purposes, it does not follow that it is insufficient for other purposes. A hybrid identifier system would incorporate numbers that actually have business uses. Business uses of numbers from a centralized registry, on the other hand, are a CFPB “hop[e]”, but not otherwise evident. A centralized registry would bring no apparent tangible benefit, but would come at great cost and disruption.

⁵ Outline p. 45 and note 57.

⁶ Outline p. 47.

The Outline states that the Regulation C commentary strongly encourages institutions not to use the applicant's or borrower's name or social security numbers,⁷ but does not prohibit use of that information in creating identifiers. We suggest that the commentary be revised to prohibit the use of that information in creating identifiers. Few institutions use such information in their identifiers, so the compliance burden of not using such information in their identifiers is not substantial, and eliminating such information from identifiers would help protect the privacy of consumers. We do not recommend using the MERS mortgage identification numbers because not all loans are MERS loans, and because a MERS number may never be assigned for applications that do not result in closed loans.

A hybrid identifier appears able to serve all the purposes of HMDA reporting, at minimal cost. A central registry would impose large costs, an unnecessary layer of regulation and delay, would be inconsistent with the need for coordinated reporting requirements, and would appear to offer no benefit.

Format

The permissible format of the entity-created loan ID number required for HMDA reporting should be consistent with the loan ID number format that will be required to appear on the Loan Estimate and Closing Disclosure⁸ to avoid having to create another identifier format.

Loan ID in Wholesale and Correspondent Channels Require Clarity

The Outline states that the proposed requirement to create a unique loan identifier would necessitate establishing a unique identifier at the time of application for each loan.⁹ This apparently means there would need to be a specific ID number even if the application never results in a closed loan. For applications received in the wholesale or correspondent channels, there would need to be a clear rule specifying who must obtain the loan identifier and, in a hybrid identifier system, which entity's number should be included in the loan identifier.

We suggest that whatever entity would fund the loan if the application were approved should establish the universal loan identifier, and that that entity's number should be included in the universal loan identifier.

⁷ Outline p. 46; comment 4(a)(1)-4.

⁸ 12 C.F.R. § 1026.37(a)(12) and § 1026.38(a)(5). Comment 37(a)(12)-1 provides:

The loan identification number is determined by the creditor, which number may contain any alpha-numeric characters. Because the number must allow for the identification of the particular credit transaction under § 1026.37(a)(12), a creditor must use a unique loan identification number, *i.e.*, the creditor may not use the same loan identification number for different, but related, loan transactions (such as different loans to the same borrower).

⁹ Outline p. 16.

If an application is submitted through a mortgage broker, the mortgage broker does not ordinarily make a credit decision, and would not be a HMDA reporter and have a HMDA RID that could be used by a hybrid identifier system. Further, a mortgage broker may submit an application to more than one creditor, each of which would establish a different universal loan identifier and report the application. However, this would be appropriate, because the applications submitted to the different institutions often will not be the same and may contain significant differences.

For applications submitted in the wholesale channel, we suggest that the Loan Originator Identifier for the mortgage brokerage be provided, rather than for the individual loan originator.

If an application is submitted to a correspondent, we suggest that the correspondent should establish the universal loan identifier using its entity number.

The “Broker Rule” Should Be Clearer and Should Distinguish Delegated and Non-Delegated Underwriting Authority

We suggest that the CFPB clarify existing uncertainty about the Regulation C “broker rule” in Comment 1(c)-1 through 4. This commentary distinguishes brokers who do and do not make credit decisions, and requires the former to report but not the latter. However, the comment does not discuss correspondents, who commonly make or participate in making credit decisions. It is not always clear whether a mortgage broker or correspondent that has only non-delegated underwriting authority makes credit decisions. A correspondent may communicate a binding credit decision to a consumer before an investor reviews the application. A correspondent may have delegated underwriting authority from some investors and non-delegated authority from others.

Clarity would be helpful, and the addition of the channel and universal loan ID fields presents an opportunity to create a straightforward rule, while allowing regulators to see the involvement of mortgage brokers, correspondents, and investors. A mortgage broker’s role in making credit decisions is subordinate to the investor’s role, and brokers do not fund loans. A correspondent with delegated underwriting authority plays a substantial role in making credit decisions.

We suggest that a mortgage broker would not report the loan, but the wholesale lender funding the loan would report both the credit decision and the mortgage brokerage’s loan originator ID number. If a correspondent has delegated authority, the correspondent should report its decision, and the investor purchasing the loan should report the loan as a purchase, rather than a decision. If the correspondent has non-delegated underwriting authority, it should report its credit decision, and the investor should also report its credit decision on the same loan.

No ID Created or Available on Purchased Loans

There will be situations where no universal loan identifier is created at origination, such as where the loan was originated before this requirement becomes effective, or the originator was not a HMDA reporter. Also, an entity subject to HMDA reporting may purchase a loan from an entity that is not subject to HMDA reporting and which did not obtain the universal loan identifier. In such cases, the purchaser reporting the loan should establish the universal loan identifier using its entity number.

A hybrid numbering system, by identifying each unique entity, would ensure that there would be no duplicate numbers, even if a loan were transferred between institutions that use the same loan identification number.

Loan Originator Identifier

Require Reporting of Mortgage Broker Identifiers

The Outline focuses on the identification of individual loan originators, but does not clearly contemplate requiring identification of an entity that acts as a mortgage broker.¹⁰ A mortgage broker identifier, combined with the new channel data element that the Dodd-Frank Act requires, would allow state regulators of mortgage brokers to use HMDA reports to identify the types of loans brokers originate and the pricing of such loans, including whether the mortgage broker was steering applicants to institutions who pay higher levels of broker compensation.

Individual Loan Originator Identifier Should Be Consistent with RESPA/TILA

The individual's number that must be reported should be the same number that the RESPA / TILA integrated disclosures ("Integrated Disclosures") rule will require on the last Loan Estimate or Closing Disclosure.¹¹ The Integrated Disclosures rule provides for situations where a loan originator has a state license rather than an NMLS ID. To the extent that HMDA will require an identifier when the individual loan originator does not have an NMLS ID, the reported number should be the same number as required under the Integrated Disclosures rule. This approach would minimize unnecessary regulatory burden.

Property Identifier

The Outline discusses the current difficulties and inefficiencies in providing census tract information.¹² Real estate is governed by state and local law, and therefore varies geographically. Local jurisdictions, as the CFPB points out, use a variety of methods of

¹⁰ Outline p. 48 states that the CFPB is considering requiring financial institutions to report the unique identifier of employees.

¹¹ 12 C.F.R. § 1026.37(k), § 1026.38(r)(3) and (5), and their commentary.

¹² Outline pp. 48-49.

identifying properties. The CFPB proposes using geographic coordinates, although it recognizes that this approach would not work well for multi-unit properties. It also mentions using postal addresses. As for usefulness, there is little difference between geographic coordinates and postal addresses in most circumstances because of the ability to translate the two.

The Integrated Disclosures rule will require disclosure of the address including the zip code of the property, or if the address is unavailable, the property location including zip code.¹³

Postal addresses are readily available in almost every instance, and are easy to use as long as the formatting requirements are flexible. They also identify individual units in a multi-unit property, unlike geographic coordinates. Geographic coordinates are more burdensome to report. Parcel and lot numbers are not readily defined and can be informal and arbitrary, and therefore are not very useful.

In the rare instance when a postal address is unavailable, we suggest that institutions not be required to report a property identifier. This would have little impact on the usefulness of the data and would limit compliance burdens. If the CFPB will require identification where there is no postal address, the same identifier that is sufficient for the Integrated Disclosures should be sufficient for Regulation C.

If the CFPB were to require reporting geographic coordinates, it will need to make clear what level of accuracy is required. A property occupies an area, and is not a single point. The point inside the area to report would need to be specified.

The Outline mentions a possible centralized, federal geocoding service. Some institutions already use private geocoding vendors. While a central system may be helpful to some institutions, there should not be a requirement to abandon current geocoding operations. Changing geocoding services can be disruptive, would require formatting adjustments, systems changes and time for testing, as well as training time and cost.

If centralized geocoding were required, it would be important to permit institutions to track their lending in low- and moderate-income (“LMI”) areas in their Community Reinvestment Act (“CRA”) assessment areas throughout the year. Even though this would not be a Regulation C need, it is and will continue to be a lending need.

¹³ 12 C.F.R. § 1026.37(a)(6) and § 1038.38(a)(3)(vi).

Application Data

Reasons for Denial

Currently, reporting reasons for a denial is optional for some but not all financial institutions. The Outline states that the CFPB is requiring all financial institutions to report, and whether to amend the existing denial codes.¹⁴

For those institutions not currently required to report denial reasons, adding that requirement would be a significant regulatory burden. Retaining this exemption for some institutions may not compromise the usefulness of HMDA data.

Possible amendments to Regulation C denial codes will never capture all reasons for denial of an application. Regulation B adverse action notices “must be specific and indicate the principal reason(s) for the adverse action.”¹⁵ That is, adverse action notices are creditor-specific. Two financial institutions may provide differing reasons for adverse actions on two similar applications. Regulations B and C have differing purposes. For this reason, there will always be some differences between Regulation B adverse action reasons and Regulation C denial reasons.

At the same time, amending the Regulation C denial codes would involve considerable regulatory burden. An institution may have scores of Regulation B adverse action reasons. Each of the institution’s Regulation B adverse action reasons would need to be re-mapped to the appropriate amended Regulation C denial codes. Despite the considerable regulatory burden, it is not clear that there would be any commensurate benefit. We cannot support a significant regulatory burden absent a clear benefit.

AUS Results

The Outline suggests that the CFPB may require reporting of results of automated underwriting systems (“AUS”), such as the return code the AUS generated, and perhaps the system used.

The vast majority of loans are underwritten by an agency AUS, and these AUS systems largely determine the underwriting results. Reporting this information would therefore be quite helpful.

On the other and, some financial institutions use proprietary AUS, but reporting the results of proprietary AUS would not be helpful for three reasons. First, unlike the Fannie Mae and Freddie Mac (“GSE”) and the Federal Housing Administration (“FHA”) AUS, proprietary systems are not comparable. They look at differing variables, apply differing weights, and change at unknown times, so that comparing results of proprietary

¹⁴ Outline p. 49.

¹⁵ 12 C.F.R. § 1002.9(b)(2).

systems from different institutions would not be valid. Reporting proprietary AUS results would introduce unwelcome noise into HMDA data. Second, proprietary AUS results may be only one part of a final underwriting decision, while for agency loans they are a key driver of the decisions. The proprietary AUS results are therefore less important than the federal AUS results. Third, requiring reporting of proprietary AUS results would discourage the use of such systems, even though they are beneficial to consumers and provide significant safety and soundness protections.

Application Channel

We have no objection to reporting an application channel as retail, wholesale, or correspondent. However, we suggest a clarification about the correspondent channel.

The Outline describes a correspondent with non-delegated underwriting as:

“operat[ing] more like a mortgage broker in the wholesale channel. These correspondents receive the application from the applicant, but prior to closing involve a third party lender that funds the transaction and in whose name the transaction closes. The correspondent with nondelegated authority does not make the credit decision without lender involvement.”¹⁶

It is not clear whether the Outline contemplates the application channel would be correspondent, or whether there would be separate channels indicating whether the correspondent had delegated or non-delegated underwriting authority. We have suggested above that a correspondent always report its decision, and that the investor, using the same universal loan identifier, should report its decision if the correspondent has non-delegated authority, and report the loan as a purchase if the correspondent has delegated authority. If this suggestion were adopted, it would not be necessary to have sub-channels to identify whether the correspondent has delegated or non-delegated authority.

Borrower Data

Age Rather Than Birth Date

We agree with the Outline that age rather than birth date is a preferable reporting requirement due to privacy concerns.¹⁷

¹⁶ Outline p. 51.

¹⁷ Outline p. 52.

Credit Score

Requiring reporting of credit scores presents certain challenges. Not all loans are underwritten based on credit scores. When credit scores are used, there are many different types.

We do not believe financial institutions should be required to obtain a credit score, or a particular type of credit score, solely for HMDA reporting, when the institution will not use the credit score for other purposes. This would be an unnecessary cost. It would also be misleading because it would imply that the reported credit score related to the underwriting decision when it did not. This would create noise in HMDA data.

If the use of a particular credit score were required, it would give the supplier of that credit score a government-sanctioned monopoly. There would be include an enormous competitive disadvantage to other credit score suppliers, even if they produce scores with superior predictive capability, for lower prices, and more rapid or more secure delivery.

The Outline contemplates requiring reporting of the credit score used, defining credit score as in § 609(f)(2) of the Fair Credit Reporting Act (“FCRA”). We support using this definition.

When a financial institution obtains multiple scores for one application, we support incorporating the Regulation V requirements about which score to disclose¹⁸ to determine which score should be used for HMDA reporting. However, where there are multiple applicants, in some instances the FCRA rules require that each applicant receive a disclosure of his or her own score. FCRA is a consumer disclosure statute, designed in part to educate consumers about their credit profiles, while HMDA has quite different purposes. For HMDA purposes, only one score should be reported, and it should be the score that was used in underwriting (for example, the institution might average the scores of the applicants or use the lowest score of any applicant, and then that score would be the basis for reporting.) Reporting credit scores that financial institutions do not use would distort HMDA data.

Report Percentile Rather than Raw Score and Contextual Information

Because there are many different credit scores, reporting a raw credit score may not be very useful. To address that concern, the Outline suggests reporting a number of new data elements to put the score into context, such as the date on which the score was created, the name of the scoring model, and the range of possible scores under the model.¹⁹ That could be very burdensome. However, most mortgage lenders provide FCRA credit score disclosures that include how the credit score ranks compared to the credit score distribution for all applicants. In the FCRA disclosures, if the borrower’s

¹⁸ 12 C.F.R. § 1022.74(d)(4).

¹⁹ Outline p. 53.

score is higher than 50 percent of consumers, then 50 percent is disclosed to the consumer. The same percentage could be reported for HMDA purposes instead of the raw score and multiple fields of contextual information. Even if contextual information were reported, the percentile would be easier to use to compare loans across different institutions and geographies. This would reduce regulatory burden while providing more useful information.

The date the credit score was created would be close to the date of the application or loan, so reporting the date would not add significant meaning. There should be no requirement to report, for each application, the range of possible scores under each model used because these are not loan-specific, they only vary by model used.

Debt-to-Income Ratio

The Outline mentions the possibility of requiring reporting of debt-to-income ratios (“DTIs”).²⁰

Given the new ability-to-repay regulation, loans with high DTIs are very rare, so reporting DTIs would not serve the purpose it would have some years ago. The Outline is correct in stating that DTIs may be a reason for denial of an application,²¹ but DTI seldom affects loan price. If HMDA denial codes are reported, they will identify loans denied due to DTI. Reporting which loans are denied due to DTI should be sufficient because the DTI level itself would not provide significant additional information.

Financial institutions do not often rely on front-end DTIs, so reporting them would give the inaccurate impression that they are meaningful.

As the Outline recognizes, there are many different methods for calculating DTI.²² One financial institution will commonly use different DTI calculations for different purposes. Reporting DTIs would therefore not result in usable data. Imposing a uniform DTI calculation for HMDA reporting purposes would be unduly burdensome. As with unused credit scores, we do not believe financial institutions should be required to calculate a DTI, that they do not use for credit decisions, solely for HMDA reporting purposes. Doing so would be misleading because it would imply that the reported DTI related to the underwriting decision when it did not.

Borrower-Provided Monitoring Information Should Not Be “Corrected”

Currently, Regulation C requires reporting of monitoring information as provided by the applicant.²³ Nonetheless, it has been advocated that if, based upon visual observation, the applicant appears to be of a different sex than the applicant indicated, the institution must

²⁰ Outline p. 53.

²¹ Outline p. 53.

²² Outline p. 53.

²³ Regulation C Appendix B at II.

“correct” that information. This assumes that the information is incorrect. The applicant but not the institution is best able to determine the applicant’s sex. We would appreciate a clarification that the institution should not “correct” or amend this information as provided by the applicant.

Loan Types

Loan Purpose

The Integrated Disclosures rule defines loan purpose as purchase, refinance, construction, or home equity.²⁴ Regulation C defines loan purposes as home purchase, home improvement, or refinancing.²⁵ The CFPB declined to conform the loan purposes under the Integrated Disclosures rule to Regulation C, stating that the rules have different purposes.²⁶ However, the loan purposes defined in the Integrated Disclosures rule appear to serve HMDA reporting purposes better than the current Regulation C definitions.

A difference between the two sets of definitions is that the Regulation C definitions do not sufficiently distinguish loans secured by one property but that are used to purchase, refinance, or pay off the debt on a different property. These loans are rare. However, financial institutions must rely on borrower statements for the loan purpose. This introduces subjectivity into the data, especially where one loan serves multiple purposes. Under the Integrated Disclosures rule, purchase, refinance, and construction loans are secured by the same property, and if the funds are used for a different property, the loan is a home equity loan. This approach removes the subjectivity from the definition. It is also consistent with how most financial institutions, investors, and consumers view the loan purpose.

Another difference between the two sets of definitions is that, when a loan has more than one purpose, the hierarchy for identifying the purpose differs. Under the Integrated Disclosures rule, the creditor must identify the purpose as a purchase, refinance, construction loan, or, for all other purposes, a home equity loan.²⁷ The Regulation C hierarchy is purchase, home improvement, and refinance.²⁸

To remove subjectivity, to make the loan purpose clearer, and to improve data integrity through consistent definitions, the Regulation C loan purpose definition should conform to the Integrated Disclosures loan purpose definition. Construction loans should continue to be excluded from reporting.

²⁴ 12 C.F.R. § 1026.37(a)(9).

²⁵ Regulation C Appendix A at I.A.5.

²⁶ 78 Fed. Reg. 79730, 79913-14 (December 31, 2013).

²⁷ 12 C.F.R. § 1026.37(a)(9).

²⁸ Regulation C Comment 4(a)(3).

Loan Categories

The CFPB states that HMDA data utility may be improved if reporting were required of whether a loan or application is for a reverse mortgage, home equity line of credit (“HELOC”), or cash-out refinancing.²⁹ A definition of cash-out refinance would need clarification.

A consumer who owns a home free of mortgage debt may obtain a mortgage loan on the property. If none of the loan proceeds are used for a reportable purpose, the loan is not subject to reporting. This is a type of cash-out refinance that should be subject to HMDA reporting. For consistency with the Integrated Disclosures rule, we suggest that a cash-out loan, that does not satisfy and replace a lien on the same property, be reported as a home equity loan.

Loans that do satisfy and replace a loan on the same property may be either rate-and-term refinances, or may be cash-out refinances. However, it may be difficult to determine which is the correct category. If the CFPB were to draw such a distinction, it would need to be very specific about how much cash out defines a cash-out loan, and how to calculate the amount of cash out.

We agree that home improvement should be eliminated as a separate category. It depends upon the applicant’s subjective statement of purpose. It is also difficult to track and report, particularly when it is included in an unsecured installment loan program where other loans are not reported. If a loan is a cash-out loan, it does not appear relevant whether the borrower uses the proceeds for home improvement or for another expense or multiple expenses.

HELOC reporting should remain optional. HELOCs are easy to identify and exclude from reporting. Reporting would be a significant burden. HELOCs are seldom used for purchase, and while HELOCs will occasionally be used in part to pay off an existing lien, the primary purpose of HELOCs is to take cash out of equity. HELOC cash can be used for any purpose, but because the financial institution does not know the purpose at application, and because the borrower is free to change the purpose at any time, reporting would not provide much useful information.

If reporting of HELOCs were made mandatory, identifying a purpose on a HELOC should not be required. HELOCs are considerably different products than closed-end home equity loans and, if reported, should be separately identified as HELOCs. If reporting HELOCs were made mandatory, the reported loan amount should be the full credit line because the amount drawn depends on the borrower’s discretion.

²⁹ Outline pp. 53-54.

QM Status Should Not Be Reportable

We do not support reporting QM status. Requiring such reporting would stigmatize non-QM loans, and discourage their origination, even more than the ability-to-repay rule and its TILA litigation risk already do. Points and fees and the risky loan terms that are prohibited on QM loans will be identifiable, so separately reporting QM status would not add much information. At the same time, QM reporting would primarily discourage lending at DTIs over 43 percent. HMDA is a reporting statute, and should not be used to constrain credit.

Additionally, financial institutions often may not know whether a loan is actually a QM loan. They may instead underwrite a loan to be a QM loan and, as a precaution, also underwrite the same loan as a non-QM loan. Reporting the unknown should not be required.

Loan Features

Balloons, Interest-Only, and Negative Amortization Loans

The Outline suggests requiring reporting balloon payments, interest only payments, and negative amortization, using the same definitions that are used in the Integrated Disclosures rule.³⁰ We agree with this approach. It would reduce compliance burdens, and there is no significant difference between how the public would use this information and how individual consumers would use this information when reviewing their disclosures.

Introductory Period of Adjustable Rate Mortgages

The Outline suggests reporting the number of months of the initial fixed period of an adjustable-rate loan. If the “introductory period” were defined consistently with the “initial-fixed rate period for variable-rate transactions” used under Comment 4(a)(12)(ii)-1 to determine the APOR, this information would not be difficult to report. As noted below, if this information were reported together with the annual percentage rate (“APR”) and the Rate Set Date, all of the information needed to calculate the rate spread would be reported.

Step Rates, Step Payments, and Seasonal Payments

The Integrated Disclosures rule defines “step payments,” “seasonal payments,” and “step rates.” Financial institutions offering such features need to disclose them to consumers,³¹ meaning they are identified. Loans having these features are distinct products and would

³⁰ Outline p. 56.

³¹ 12 C.F.R. § 1026.37(a)(10)(i)(B); (a)(10)(ii)(C); and (a)(10)(ii)(E).

most likely have different pricing, so reporting them would be beneficial without undue regulatory burden.

Other Information Concerning Loan Features

The Outline suggests reporting the term of prepayment penalties. We do not object to this. However, we suggest that it would be important to exclude from the definition or prepayment penalty the recapture of institution-paid closing costs when a loan is paid in full during the first 36 months.³² This would be consistent with the Integrated Disclosures rule. It would also prevent including relatively insignificant information in HMDA data.

Loan Features

The Integrated Disclosures rule defines loan types as conventional (not guaranteed or insured by a federal or state agency), FHA, VA, and other.³³ Regulation C defines loan types as conventional (not FHA, VA, FSA, or RHS), FHA, VA, or FSA / RHS.³⁴ That is, Regulation C includes state-insured or guaranteed loans with conventional loans, while the Integrated Disclosures rule includes such loans with “other” federally-backed loans. The approach in the Integrated Disclosures rule is more logical, and would more closely reflect how loans are priced. Using definitions that are aligned would improve data integrity and reduce compliance burdens. To the extent that there is a desire to continue to report FSA/RHS loans separately, that could be done.

Property Value

The Outline suggests reporting the property value that the financial institution relied on in underwriting the loan.³⁵ We agree that this would be preferable to reporting the LTV because it would be less burdensome. The LTV would be known because the loan amount, or amount applied for, would be reported. We believe the CLTV should not be required. If CLTV information were required, it should similarly be the amount of other liens on the property that is used in underwriting.

Pricing Data

Points and Fees

The Outline suggests reporting the total dollar amount of points and fees.³⁶ Financial institutions only calculate points and fees until they determine compliance with the applicable cap. Once compliance is known, there is no need for further calculation.

³² 12 C.F.R. § 1026.32(b)(vi).

³³ 12 C.F.R. § 1026.37(a)(11).

³⁴ Regulation C Appendix A at I.A.3.

³⁵ Outline p. 58.

³⁶ Outline p. 60.

Institutions should not be required to obtain or calculate information they do not use in underwriting, solely for HMDA reporting purposes. If points and fees must be reported, their amount should therefore be considered accurate if the amount is not less than the actual amount, and is the amount the institution relied on for underwriting purposes.

Other Pricing-Related Data

The Outline suggests reporting total origination charges, discount points, risk-adjusted, pre-discounted interest rate, and the interest rate.³⁷

APR, Rate Set Date, and Rate Spread

Reporting the APR, Rate Set Date, and Rate Spread would provide more useful information than the other pricing-related data under consideration. The Rate Set Date is a critical component of loan pricing. Although consumers do not understand the APR well, HMDA is not a consumer education statute. The APR is the clearest indicator of the cost of the loan, and would be easier to report and to use than a number of different components.

If the APR and Rate Set Date are reported, when combined with other required reporting fields, the comparable average prime offer rate (“APOR”) and rate spread over the APOR can be identified. This would allow data edits that verify that the rate spread is correctly calculated, enhancing data integrity.

Rate Spread Should Not be Reportable on HELOCs

Currently, financial institutions do not calculate rate spreads on HELOCs, aside from calculating the Home Ownership and Equity Protection Act³⁸ (“HOEPA”) threshold. Financial institutions should not be required to calculate HELOC rate spreads solely for HMDA reporting purposes. The rate spread calculated for HOEPA is not directly comparable, and therefore should not be reported.

Other Pricing-Related Data Should Not be Reported

The Outline suggests reporting other pricing-related data to permit visibility into component items of points and fees, to help users better understand loan pricing including discounts received for discount points paid, and to flag potential discriminatory practices for further investigation.³⁹

³⁷ Outline pp. 61 – 63.

³⁸ Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, §§ 151–158, 108 Stat. 2160, 2190-2198 (1994) (codified as amended in scattered sections of the Truth in Lending Act, 15 U.S.C. §§ 1601–1667f).

³⁹ Outline p. 61.

The CFPB is considering requiring reporting the Total Origination Charges, as disclosed on the Closing Disclosure. The total of Points and Fees is a reasonably good indicator of the actual origination fees, other than in the relatively rare situations where an institution's affiliate provides substantial services, or the consumer has chosen to pay discount points that are included in points and fees. Reporting Total Origination Charges in addition to Points and Fees would therefore add little value, yet would be significantly burdensome. Given that the APR, Rate Set Date, and the Points and Fees (either not less than the actual amount or the amount relied on for underwriting) would serve essentially the same purpose as Total Origination Charges for virtually all loans, requiring reporting Total Origination Charges would be disproportionately burdensome relative to any potential benefit.

Information on *Bona Fide* Discount Points

The Outline suggests requiring separately reporting total discount points paid by the consumer to reduce the interest rate.⁴⁰ This would be a considerable reporting burden. We suggest that the CFPB provide clearer guidance on when discount points are *bona fide*.

The Outline suggests requiring reporting the risk-adjusted, pre-discounted interest rate.⁴¹ This would be a regulatory burden because this amount is not reported to consumers. Additionally, there is still considerable uncertainty about how to calculate this rate precisely.

The Outline also suggests requiring reporting the initial interest rate.⁴² This would encourage offering deeply discounted teaser rates, which would not be a consumer protection.

Property Data

The Outline contemplates requiring reporting whether a multi-unit property is deed-restricted for affordable housing.⁴³ This is a rare situation. It would be difficult to define and would be burdensome to report. Requiring such reporting may discourage such programs.

Construction Method Other Than Manufactured Home Should Not Be Reported

The Outline suggests requiring reporting construction methods rather than property type.⁴⁴ Institutions currently must determine whether a property is a manufactured home, but may identify the property as a 1-4 family property rather than a manufactured home if,

⁴⁰ Outline p. 62.

⁴¹ Outline p. 62.

⁴² Outline p. 62 – 63.

⁴³ Outline p. 64.

⁴⁴ Outline pp. 64-65.

despite reasonable efforts, the institution cannot determine whether the property is a manufactured home.⁴⁵ That provision should be retained.

Construction methods other than “manufactured home” should not be required because other construction methods have little impact on either credit decisions or pricing.

Personal or Real Property Should Be Limited to Manufactured Homes

The Outline suggests requiring reporting whether a loan would be secured by real or personal property.⁴⁶ We do not object, but such reporting should be limited to manufactured homes because that is where the distinction is relevant.

Property Estate Type Should be Limited to Manufactured Homes

The Outline suggests requiring reporting whether manufactured homes sit on land the borrower owns or leases.⁴⁷ Again, this should be limited to manufactured homes.

Property Location

The Outline suggests centralized geocoding for reporting property location.⁴⁸ As noted above, centralized geocoding could be an option, but should not be a requirement. The Outline does not state whether the geocoding information would be passed back to the reporting entity. Institutions subject to the CRA need to track lending in LMI census tracts, so that information should be returned to the reporting entity.

Owner Occupancy Status Should Be Revised

The Outline indicates that owner-occupancy status will continue to be reported, but may be changed from the current standards (owner-occupied as a principal dwelling; not owner-occupied as a principal dwelling, which includes second homes and rental properties; and not applicable, which may be multifamily)⁴⁹ to investment, principal residence, or second home.⁵⁰ We believe that this change would provide better information and would not be burdensome to implement.

⁴⁵ Regulation C Appendix A at I.A.4.

⁴⁶ Outline p. 65.

⁴⁷ Outline p. 65.

⁴⁸ Outline p. 66.

⁴⁹ Regulation C Appendix A at I.A.6.

⁵⁰ Outline p. 66.

Clarifying Reportable Applications

Declined Prequalifications Should Not Be Reportable/Aligning Application Definitions

The CFPB is disinclined to amend the Regulation C definition of application, but has considered aligning the definition more closely with Regulation B.⁵¹ Both Regulations B and C define application to include an oral or written request for a mortgage loan,⁵² although under Regulation B, a declined prequalification request converts that request into a declined application, requiring a decline letter.⁵³ That prequalification is not a reportable application under HMDA.

We do not believe that it would be helpful to require reporting declined prequalifications because they are preliminary, informal, less complete than applications, and because they are subject to change when the prospective applicant provides more complete or different information.

Aligning Application Definitions Not Practical in Light Decision in RESPA/TILA Rule Not to Align Definitions

The Outline also notes that the HMDA definition of application is different from the definition in Integrated Disclosures rule.⁵⁴ While there may be benefits to aligning the definition of application under RESPA, TILA, ECOA, FCRA, and HMDA, because that was rejected in the Integrated Disclosures rule, it would be difficult to use solely a HMDA rulemaking to address this issue.

Protecting Consumer Privacy

The Outline discusses at length the need to protect the privacy of loan applicants and borrowers, and we agree that this is important. Technology has advanced since HMDA was enacted, so that new privacy risks now exist. Increasing the scope of HMDA reporting would increase the potential privacy risks.

The Outline, in its Appendix B, discusses federal rules that may potentially overlap or conflict with Regulation C. We suggest including in this list the GLBA financial privacy restrictions and prohibitions, which are incorporated into the Dodd-Frank Act. These GLBA privacy protections include the consumer financial privacy restrictions as implemented in Regulation P, as well as the information security requirements in GLBA § 501(b).⁵⁵ Protecting privacy and protecting against hacking and other cybersecurity threats are important for information as sensitive as HMDA data.

⁵¹ Outline p. 67.

⁵² 12 C.F.R. § 1002.2(f) and § 1003.2(1).

⁵³ Regulation B Comment 2(f).

⁵⁴ Outline p. 67.

⁵⁵ 12 U.S.C. § 6801(b).

It is important to consider the GLBA in connection with HMDA because the Dodd-Frank Act incorporates by reference the GLBA privacy protections into a restriction on the CFPB's disclosure of information. GLBA prohibits direct disclosure of protected information,⁵⁶ as well as indirect redisclosure through a nonaffiliated third party,⁵⁷ including the CFPB.⁵⁸ The Dodd-Frank Act provides:

“(8) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, *the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) [FOIA exemptions] or 552a [Privacy Act of 1974] of title 5, United States Code, or any other provision of law, is not made public under this title.*”⁵⁹

The GLBA is “any other provision of law,” so that the CFPB must ensure that it does not release, or require release of, information that is protected from public disclosure under GLBA.

Redacted Fields on Modified LAR

Currently, the modified Loan / Application Register (“LAR”) made available to the public deletes the application or loan number, the date the application was received, the date action was taken,⁶⁰ and it rounds the loan and income amounts to the nearest \$1,000.⁶¹ The Outline states that credit score and age would be deleted or modified (age could be reported as “62 or over” or “under 62”).⁶²

Concern About Identifying Individual Consumer and Consumer's Loan

Some of the fields currently redacted from the modified LAR are not particularly sensitive by themselves, but are redacted to prevent the modified LAR from being used to identify the individual consumer and the consumer's loan. With technological advances, it is now possible in some cases to combine the current modified LAR with land records and other public information to identify individual consumers and their loans. Most consumers would not want, or expect, information about themselves or their loans to

⁵⁶ GLBA § 502(a), 15 U.S.C. § 6802(a).

⁵⁷ “(c) LIMITS ON REUSE OF INFORMATION.—Except as otherwise provided in this subtitle, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.” GLBA § 502(c), 15 U.S.C. § 6802(c).

⁵⁸ GLBA § 509(5), 15 U.S.C. § 6809(5).

⁵⁹ Dodd-Frank Act § 1022(c)(8) (emphasis added).

⁶⁰ 12 C.F.R. § 1003.5(c).

⁶¹ Regulation C Appendix A at I.A.7.

⁶² Outline p. 68.

become available from public HMDA data. At a minimum, in addition to the fields currently redacted, the property ID, property value, age of applicant, number of units, and affordable housing deed restrictions should be redacted to protect individual consumers from being identified.

Concerns About Sensitive Fields

We recommend redacting the following fields to protect reasonable expectations of privacy:

- Loan Amount. Rounding the loan amount to the nearest \$1,000 does not sufficiently protect the consumer's privacy.
- Income. Rounding income to the nearest \$1,000 does not sufficiently protect the consumer's privacy.
- Age or Reverse Mortgage. Identifying the consumer as under 62 or as 62 or over does not sufficiently protect the consumer. It could identify elderly consumers who may be vulnerable to abusive schemes targeted to the elderly. Identifying a loan as a reverse mortgage would have the same effect as indicating that the consumer is over 62.
- Credit Score, AUS results, DTI, and Denial Reasons. These are all sensitive personal information that most consumers would expect to remain private.
- HOEPA and Pricing Information. Each of these could be used to identify that the consumer is subprime, and vulnerable to abusive schemes targeted to subprime borrowers.

Aggregate Reports in Lieu of Modified LAR

Reporting additional information to regulators does not raise privacy concerns, but reporting that information to the public or other entities does raise privacy concerns because that information can be connected with individual consumers. The modified LAR compromises applicants' and borrowers' privacy, even when the LAR is highly redacted. Regulators should solicit comments concerning how HMDA information should be analyzed, and release additional reports to the public reflecting those analyses in lieu of requiring that a modified LAR be made available.

The Dodd-Frank Act amended HMDA to provide:

“The Bureau shall prescribe standards for any modification under paragraph (1)(E) [requiring modification of itemized information to protect applicants' privacy] to effectuate the purposes of this title, in light of the privacy interests of mortgage applicants or mortgagors. Where necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the

disclosure of information described in subparagraph (A) in aggregate or other reasonably modified form, in order to effectuate the purposes of this title.”⁶³

The Outline indicates that the CFPB is considering “use restrictions, and a restricted access program.”⁶⁴ It is important to ensure that any access, restricted or otherwise, is compliant with the GLBA privacy protections incorporated into Dodd-Frank Act § 102(c)(8). At a minimum, any such program should contain the following safeguards:

Users’ Protection of Privacy

Any entity having access to HMDA data should have to meet rigorous standards to safeguard the information and protect it from cybersecurity risks. There also must be standards preventing the release of information that could be tied back to individual consumers or loans.

Statistically Valid Research and Results Should be Submitted for Input and Review Before Release

Any entity seeking access to HMDA data should submit a research proposal. Access to HMDA data should only be provided for statistically valid research, and the entity should agree that it will use the data only for the purpose of the research as proposed and approved. Researchers having access to the data should include researchers from industry. Before the results of the research are released to the public, they should be submitted to an advisory board that includes members from industry for input and review. The advisory board’s input and review should be made public at the same time as the results of the research.

Data Standards and Integrity

Alignment with MISMO/ULDD

The Outline discusses aligning HMDA data standards with the industry’s MISMO standards and the GSEs’ Uniform Loan Delivery Dataset (“ULDD”).⁶⁵ Where the data elements required for HMDA reporting are not substantially similar to information that institutions must have to comply with the Integrated Disclosures rule, Regulation B, FCRA, or other consumer laws and regulations, we agree that it would be useful to align Regulation C with MISMO and ULDD standards.

⁶³ HMDA § 304(h)(3)(B).

⁶⁴ Outline p. 69.

⁶⁵ Outline pp. 19-20.

Data Integrity

Current data integrity standards are more stringent than needed to assure a reasonably accurate and unbiased analysis that limits false positives and negatives. The addition of more fields of reported data will compound the problem.

Tolerances

In most instances, a field is considered incorrect if it is not exact, or has not been rounded precisely as the regulation requires. There should be reasonable tolerances for fields that contain dates, dollar amounts, and percentages such that minor differences that would not meaningfully affect analysis are not considered errors. This would significantly reduce unnecessary regulatory burden with no meaningful impact on the quality of HMDA data.

“Errors in Any Field of an Entry” Standard Should be Eliminated

Current HMDA resubmission standards, as tightened in October 2013, require institutions that have 100,000 or more entries to resubmit HMDA data if 4 percent or more of the sample entries have errors in any field.⁶⁶ We believe that this standard should be eliminated for the following reasons:

- The standard is not meaningful. The standard does not appear to be rationally related to whether the data are compromised. Excessive error rates in particular fields for the institution’s entire HMDA submission can compromise the usefulness of the data. But if error rates for individual fields are not excessive, the fact that X% of entries have an error in any field would not compromise the usefulness of the data for analysis.
- The standard is too strict. It will be exacerbated and extremely difficult to meet if a large number of new fields are added. If 40 fields are required to be reported and the error rate for each field is a trivial 0.1 percent, then the entries having errors in any field would be approximately 4 percent (3.92 percent). If a sample of 250 entries were reviewed, the chance of an institution failing to meet the 4 percent standard would be 39.2 percent. If the error rate for each field were only 0.2 percent, then the entries having errors in any field would be approximately 7.7 percent. The chance of an institution failing to meet the 4 percent standard after a review of 250 entries would be 98.7 percent.

Institutions that report fewer than 100,000 entries are required to resubmit if 10 percent or more of entries have an error in any field. While it might be somewhat easier for these smaller institutions to remain under that higher threshold, the standard should still be eliminated because it is not meaningful.

⁶⁶ CFPB’s [HMDA Resubmission Guidelines](#) at II.

Distinguishing Systemic and Random Errors

As further explained below, we suggest that data integrity standards be established at the field level, that they should distinguish between systemic errors and random errors, and that they should distinguish among the different types of fields. Systemic errors in a field should be subject to either a low percentage standard (for most fields) or a medium percentage standard (for non-key explanatory fields) and corrected if they exceed the applicable percentage standard. Random errors should be subject to a low, medium, or higher percentage standard and corrected if they exceed the applicable percentage standard.

Errors in fields may be either systemic or random. Systemic errors are errors caused by programming or formulas or by incorrect policies. We believe that systemic errors should be subject to stricter standards and that random errors should be subject to more lenient standards for the following reasons:

- Systemic errors are directional; random errors are not. Systemic errors are more likely to result in false positives or false negatives because they are directional and will have a clear bias. For example, if a programming mistake causes the applicant's race to be misstated in a consistent way in certain situations, there would be a clear directional impact. On the other hand, random errors (usually input errors) would tend to be equally distributed or equally likely to overstate or understate the value of a field and would be independent of the pricing or underwriting outcome being studied.
- Systemic errors are easier to find and correct than random errors. A data audit of a reasonable number of entries by an institution or a regulator is likely to uncover any systemic errors. We estimate that if a systemic error occurs in a field in 2 percent of the cases, a random review of 100 records should find the error 86.7 percent of the time. When an error in a field is caused by a systemic error, it is much easier to identify other entries that would be affected by the same problem and institute a global solution. However, where the errors are random, other entries having an error in the same field cannot be systematically identified and corrected. A far more burdensome and manual process is needed to discover and correct random errors.

Distinguishing Among Types of Fields

We also suggest that the data integrity standards distinguish among the following types of fields and provide appropriate standards for each type of field:

- Protected class and LMI fields. These fields include Race, Ethnicity, Sex, and Age and fields that identify LMI income borrowers and geographies. A low error rate for these fields is necessary in order to have a reliable unbiased analysis of the protected class or LMI impact.

- Outcome fields. Outcome fields include fields that relate to pricing and the Action Taken field that reflects the underwriting decision. An analysis of HMDA data will generally look at how outcomes differ for different protected classes or LMI borrowers or households. Random errors in outcome fields will not be biased because the direction of the errors would be random. Random errors in the Action Taken field would tend to have an averaging effect, moving the acceptance or rejection rates of the studied group somewhat towards 50 percent. Random errors in pricing variables may somewhat understate disparities, but if a sufficiently large number of entries are sampled, it is unlikely that a statistically significant pricing disparity would go undiscovered. We suggest that a medium error rate for outcome fields would be more than sufficient.
- Explanatory fields. These are fields that provide valid explanations as to why differentials in outcomes exist. Some explanatory fields have considerably more explanatory power than other factors and should be considered “key” fields. Fields that do not have substantial explanatory power should be considered “non-key”. If an analysis shows a disparity and the explanatory field would tend to favor the control group over the protected class or LMI group, then random errors in that field would understate the field’s explanatory value and overstate the disparity and could result in false positives. If the explanatory field would tend to favor the protected class or LMI group, then random errors would overstate the explanatory value, understate the disparity and could result in false negatives. Because key explanatory fields are more likely to favor control groups over the protected class or LMI group, institutions have a strong incentive to limit errors in key explanatory fields. We suggest that a medium error rate for key explanatory fields and a higher error rate for non-key explanatory fields would be more than sufficient.
- Phase-in for new fields. Because many new fields of information will be required, we suggest that institutions should be given sufficient time to test their data under the new requirements before implementation and that more lenient data integrity standards should apply to these fields initially.

New Data Elements by Loan Type

Under the current reporting requirements, reporting certain data elements is not required for certain types of loans because they are irrelevant. For example, a number of data elements do not need to be reported when a loan is purchased rather than originated. The Outline does not appear to discuss which new data elements would be required for purchased loans. The Outline does mention in some places concerns about reporting certain data elements for HELOCs and business loans. For each type of loan listed below, certain current and proposed data elements would be irrelevant and difficult to report, and should not be required.

HELOCs

- Loan Purpose. The purpose of a HELOC is to take cash out of equity. To the extent there is any other purpose, a consumer may not have decided a purpose at account opening, and the purpose may change after the account is opened.
- Loan Amount, if it is the amount of the line used for a particular loan purpose. If the loan amount must be reported, it should be the total line amount because the amount drawn depends on borrower discretion rather than on lending practices.
- Total points and fees on second homes for which the calculation of total points and fees is not otherwise necessary because they are not subject to either the ability-to-repay rule or HOEPA. Financial institutions should not be required to calculate information they do not use.
- Rate Spread.
- Total Origination Charges and Total Discount Points, because HELOCs do not have a Closing Disclosure on which these amounts are disclosed.
- Risk Adjusted, Pre-Discounted Interest Rate.
- Introductory Interest Rate Term.
- Nonamortizing Features. These are definitions reflect the Integrated Disclosures rule that only applies to closed-end loans.
- DTI. HELOCs are not subject to the ability-to-repay in § 1026.43, rule and are generally portfolio products, so the HELOC DTI calculation is less uniform than on closed-end loans, and would therefore not be particularly useful.

Business Loans

- Total points and fees.
- Rate Spread.
- Total Origination Charges and Total Discount Points, because business loans do not have a Closing Disclosure on which these amounts are disclosed.
- Risk Adjusted, Pre-Discounted Interest Rate.
- Application Channel.
- Loan Originator ID.
- AUS results.
- QM Status.

Purchased Loans

With the purchaser reporting a universal loan identifier, the information reported by the originating institution would be retrievable, and it would be burdensome and unnecessary to require an investor, who may be purchasing the loan some time later, to re-report the same information.

- All pricing data.
- Loan Originator ID.
- Property ID, other than property address.
- Borrower Age.

Applications that Do Not Result in Closed Loans

- Any field of information that must be reported under different standards than for loans that close. For example, when income information is provided on an application but that income information has not been verified when the application is withdrawn, closed for incompleteness, or declined for reasons unrelated to income, the requirement to report the income “relied upon” is actually a different standard than for a loan that closes.
- All pricing data.
- DTI, because the application may be declined or withdrawn before DTI is calculated. There should be no requirement to calculate information that a financial institution never uses, solely for HMDA reporting.

Conclusion

We appreciate the CFPB’s attention to the many issues involved in implementing the Dodd-Frank Act amendments to HMDA and on coordinating federal data on consumer mortgage loans.

Sincerely,

American Financial Services Association
Consumer Mortgage Coalition