

SPECIAL ALERT: CFPB PROPOSES SIGNIFICANT EXPANSION OF HMDA REPORTING REQUIREMENTS

JULY 30, 2014

On July 24, the Consumer Financial Protection Bureau (the CFPB or Bureau) issued a [proposed rule](#) that would expand the scope of the Home Mortgage Disclosure Act (HMDA) data reporting requirements and streamline certain existing reporting requirements. Although some of the new data points the Bureau is proposing to collect were expressly mandated by the Dodd-Frank Act, the Bureau also proposed a significant number of new data points based on discretionary rulemaking authority granted by the Act.

While we describe the proposal below in greater detail, highlights include:

- The proposal would substantially expand the number of data points collected from financial institutions, including requiring reporting of rate spreads on all loans, not just high cost loans. At least initially, however, this additional information would not be provided to the public on the Loan Application Register (LAR). Instead, the proposal states that the Bureau is still examining privacy concerns related to this information.
- The proposal would require financial institutions to report home equity lines of credit (HELOCs), reverse mortgages, and commercial loans secured by a dwelling.
- The proposal does not provide clarification on the definition of an “application” or the “broker rule.”

Those wishing to comment on the proposal must do so by October 22, 2014.

I. Revised Scope of HMDA Reporting Requirements

a. Institutions Required to Report

The CFPB is proposing to revise the threshold that determines which institutions are required to report HMDA data. Generally, depositories and non-depositories would be required to report to the Bureau if they originate at least 25 closed-end or reverse mortgages in the previous calendar year. Depository institutions would still be exempt if, among other things, they are below the minimum asset threshold, but the volume test for non-depository institutions would be removed.

b. Loans That Must Be Reported

The Bureau is proposing to require reporting of all loans secured by a dwelling. This would mean that all home-equity lines of credit, irrespective of the purpose of the loan, and reverse mortgages would need to be reported on the LAR. Commercial loans secured by a residential structure also would need to be included on the LAR. In contrast, home improvement loans not secured by a lien on a dwelling would no longer be reported on the LAR.

c. Quarterly Reporting for High-Volume Originators

Under the proposal, financial institutions that report at least 75,000 entries on the LAR (covered loans, applications, and purchased loans) the preceding calendar year would be required to submit data to the Bureau within 60 calendar days after the end of each calendar quarter. The Bureau indicates that, based on 2012 HMDA data, 28 institutions would have been required to make quarterly reports in 2013.

d. Privacy and Disclosure to the Public

The CFPB discusses at length heightened privacy concerns raised by the newly proposed data points described below. The Bureau states that it is continuing to consider the privacy implications of making this information publicly available and therefore, while the proposal would establish new data collection requirements and requirements for institutions to share that data with the Bureau, the CFPB would leave unchanged, at least initially, the modified LAR data disclosed to the public. The Bureau proposes that financial institutions release on the modified LAR only those data points that are currently released, and seeks comment on any privacy risks created by, and benefits of, publicly disclosing the new data points.

The Bureau also proposes permitting financial institutions that receive requests for HMDA data to direct requestors to a publicly available website rather than keeping data in home offices or branches.

II. New Data Points

The Bureau's proposed rule would require collection and reporting of a number of new data points. Starred data points indicate those items the Bureau proposes to collect based on its own discretionary regulatory authority, while un-starred data points are new collection requirements mandated by the Dodd-Frank Act.

The Bureau notes that, in defining the new data points, it attempted to align the collection requirements with the Mortgage Bankers Association's MISMO data standards and the Uniform Mortgage Data Program, which governs data delivery to Fannie Mae and Freddie Mac.

a. Borrower Information and Underwriting Characteristics

The Bureau proposes requiring financial institutions to collect and report the following additional information about applicants:

- Age.
- Credit Score. The Bureau proposes to interpret "credit score" to have the same meaning as in the Fair Credit Reporting Act, and a financial institution would report the credit score relied on in making the decision, as well as the name and version of the scoring model used to generate each credit score. The Bureau proposes excluding purchased loans from this requirement and also is considering whether a score band, rather than the exact score, should be disclosed.
- *Debt to Income Ratio.
- *Combined Loan-to-Value Ratio.
- Application Channel. Financial institutions would be required to identify whether the borrower submitted the application directly to the institution. It also would be required to indicate whether the loan was, or in the case of an application, would have been, initially payable to the institution. By collecting these data points, the Bureau hopes to identify whether the application

was taken via a retail, wholesale, or correspondent channel. Application channel information would not be reported for purchased loans.

- *Automated Underwriting System. Financial institutions would indicate the name of the automated underwriting system (AUS) utilized to evaluate the application and the recommendation generated by the AUS.

b. Property Data

The Bureau proposes requiring financial institutions to collect and report the following additional information regarding the subject property:

- Postal Address and Location of Subject Property. The Bureau states that having this information will help facilitate a better understanding of lending trends in geographic divisions smaller than census tract. It further notes that this data may enable more precise analysis of lending patterns to identify potential fair lending redlining concerns.
- Property Value.
- *Number of Dwelling Units in the Property.
- *Construction Method. Financial institutions would report whether the property is “site-built” or “manufactured housing.” Additional guidance would help financial institutions distinguish between modular homes and manufactured homes, as well as on-frame modular homes and off-frame modular homes.
- *Manufactured Housing Information. Financial institutions would report (i) whether the home is legally classified as real or personal property; and (ii) whether the applicant or borrower owns the land on which the manufactured home is or will be located through a direct or indirect ownership interest, or paid or unpaid leasehold.
- *Multifamily Housing Information. Financial institutions would report the number of individual dwelling units in multifamily dwellings that are income-restricted pursuant to federal, state, or local affordable housing programs.

c. Product Features

The Bureau proposes requiring financial institutions to collect and report the following additional information regarding the loan product:

- Points and Fees. Financial institutions would report the total points and fees payable at origination in connection with the mortgage. This requirement would mirror the definition of “points and fees” contained in Regulation Z.
- *Borrower-Paid Origination Charges. For certain loans, financial institutions would report the total of all itemized amounts that are designated borrower-paid at or before closing. This requirement would align with the definition of total origination charges designated as “borrower-paid” in the new [TILA/RESPA Closing Disclosure](#).
- *Discount Points. For certain loans, financial institutions would report the points designated as paid to the creditor to reduce the interest rate.
- *Non-Discounted Interest Rate. For certain loans, financial institutions would report the interest rate the borrower would receive if they did not pay bona fide discount points.
- *Interest Rate.

- *Loan Term.
- Introductory Period. Financial institutions would report the term in months of any introductory period after which the rate of interest may change.
- Non-Amortizing Features. Financial institutions would report whether the terms of the loan product would result in balloon payments, interest only payments, potential negative amortization, or any other payments that are not fully amortizing.
- Prepayment Penalty. Financial institutions would report the term in months of any prepayment penalty or other fee or charge payable upon repayment of some portion of principal or the entire principal in advance of scheduled payments.
- *Qualified Mortgage. Financial institutions would report whether the loan is a qualified mortgage and, if so, how it qualifies for treatment as a qualified mortgage.
- *First Draw. For HELOCs and reverse mortgages, the financial institution would report the amount of the first draw, if any, made at account opening.

d. Identifiers

The Bureau proposes requiring financial institutions to collect and report the following identifiers related to the application or loan:

- Universal Loan Identifier. The proposal would require financial institutions to report an identifying number for each loan or application reported. If a loan origination was previously reported for HMDA purposes with a universal loan identifier, a financial institution would report the later purchase of the loan using the same universal loan identifier.
- *Mortgage Loan Originator Identifier. Financial institutions would report the loan originator's NMLS number.

III. Clarifications and Revisions to Existing Data Points and Definitions

In addition to requiring the collection and reporting of new data, the Bureau has proposed a number of clarifications and revisions to the collection and reporting of existing data points. This includes the following clarifications and revisions:

- Reasons For Denial. The Bureau proposes to require all reporters to report reasons for denial. In addition, the Bureau would require an institution choosing "other" as the reason for denial to complete a narrative field to describe the reason for denial.
- Occupancy Type. The Bureau proposes removing the requirement to report a property as owner-occupied and instead require it to be reported as a principal residence, second residence, investment property with rental income, or investment property without rental income.
- Lien Priority. This would now be reported on purchased loans.
- *Rate Spread. For all loans subject to TILA, financial institutions would be required to report the difference between the APR and the APOR as of the date the interest rate is set.
- HOEPA Status. Financial institutions would be required not only to identify a loan as a high cost mortgage, but also would need to indicate the reason the loan triggers the HOEPA requirements—whether because of APR, points and fees, or both.

- Loan Type. The Bureau notes that it is considering removing the home-improvement loan designation and requiring financial institutions to distinguish between cash-out refinances and rate/term refinances.
- Loan Amount. The Bureau proposes that financial institutions would no longer round the loan amount to the nearest thousand, but rather report the amount in dollars. For open-end lines of credit, the loan amount would generally be the amount of credit available to the borrower under the terms of the plan. For reverse mortgages, the amount would be the initial principal limit.

The Bureau also commented on the following definitions and requirements:

- Application. Despite a number of requests for harmonizing the definition of “application” with other regulations, the Bureau declined to propose additional guidance or clarification regarding the definition of an application. This means that the Regulation C definition of an application would remain distinct from the definition contained in Regulation X.
- Reporting Repurchases. The Bureau proposes additional guidance to assist financial institutions with reporting loan repurchases. Where the loan is originated and sold, and then repurchased, within the same calendar year, the Bureau proposes that the originating financial institution *not* report the loan as sold, and the purchasing financial institution *not* report the loan as purchased. If the repurchase happens in a calendar year subsequent to the origination, both the purchase and repurchase would be reported in their respective calendar years.
- Action Taken. The Bureau proposes additional examples regarding conditional approvals and clarifications regarding which conditions are customary commitments or closing conditions and which are underwriting or creditworthiness conditions.