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2018 HMDA LAR – Covered Transaction / Data Point Changes

Covered Transaction Changes

The criteria for being a HMDA covered institution in 2018 is not changing. However, the criteria for determining the types of applications that covered institutions must report starting in 2018 has changed, and are based on whether they have exceeded the following thresholds:

- If a covered institution originated 25 or more closed-end dwelling secured loans in each of the prior two years (i.e., 2016 and 2017), it must report closed-end dwelling secured loans in 2018.
- If a covered institution originated 500 or more dwelling secured open-end lines in each of the prior two years (i.e., 2016 and 2017), it must report dwelling secured open-end lines in 2018. These lines are no longer subject to optional reporting.

Thus, if in either of the two preceding years, a covered institution did not originate the minimum number of closed-end dwelling secured loans and/or dwelling secured open-end lines, it does not have to report those loans/lines.

Note that the types of loans involved are dwelling secured closed-end loans or dwelling secured open-end lines of credit. Beginning in 2018, unsecured loans or line of credit used for home improvement are no longer HMDA reportable! There are no longer any purpose tests for consumer related mortgage loans or lines of credit. And just to confuse things, reverse-mortgages, and assumptions, where the borrower takes on the obligation as a successor in interest of the current borrower, are specifically included. However, the purpose tests still apply to commercial loans and open-end lines of credit. They are HMDA reportable only if they are used for home purchase, home improvement, or refinance purposes.

Data Point Changes

In addition to the potential increase in HMDA reportable applications should the home equity line of credit threshold be met, the HMDA Loan Application Register (LAR) also expands in 2018 from 24 to 48 Data Points per application record. Not only are the number of Data Points doubling, but only nine of the current 24 Data Points reported are not subject to any change. Information to be reported in fourteen other current Data Points is being modified to various degrees, and will be outlined in this article. Only one current Data Point will no longer have to be directly reported by institutions in 2018.

The potential magnitude in both the volume of transactions to be reported due to the impact of HELOCs, and the number of changes to the information reported to existing Data Points alone would seem more than enough to tackle at one time, the task is made even more daunting by the addition of twenty-five new Data Points and additional information to be reported on the LAR starting in 2018.

Unchanged Data Points

As ten (nine unchanged and one discontinued) Data Points are well established and straight forward in nature, we will simply identify them.

- **Application Date** (*Data Point 3*)
- **Loan Type** (*Data Point 4*)
- **Action Taken** (*Data Point 10*)
- **Action Taken Date** (*Data Point 11*)
- **Property Location - County** (*Data Point 13*), **State** (*Data Point 14*), and **Census Tract** (*Data Point 15*)
 - In 2018, the **MSA/MD** Data Point will no longer be reported directly by the institution. This information will get filled in automatically by the CFPB based on the other property location information provided.
- **Income** (*Data Point 20*)
- **HOEPA Status** (*Data Point 23*)

Modified Data Points

The information to be reported beginning in 2018 for fourteen of the current Data Points has been modified to various degrees. These are outlined below.

- **LEI (legal entity identifier)** (*Data Point 1*) **plus the ULI (universal loan identifier)** (*Data Point 2*). This is the identifier for the lender plus, up to 23 additional characters to identify the covered loan or application.
 - What's changed?
 - The LEI must be that which was issued by either the GLEIF or a utility authorized by them.
 - The ULI may be letters and numerals
 - Must unique within the institution
 - Must not include any information that could be used to directly identify the applicant or borrower, and
 - Must end with a two-character check digit.
 - It is acceptable, but not required, to use the same ULI that meets the TILA/RESPA requirements.
 - Information on generating the ULI and the check digit in Appendix C of Regulation C.
- **Loan Purpose** (*Data Point 5*). Report whether the application is for a 1) home purchase loan, 2) home improvement loan, 3) refinancing, 4) cash-out refinancing, or 5) for a purpose other than the four listed. You can generally rely on the statement of the applicant as to the loan's purpose.
 - What's changed?
 - The addition of the Cash-out Refinance loan purpose. This is used if the institution treats the application as a cash out for its own underwriting, or for underwriting an investor loan. However, if all refinances are treated the same, with no consideration of cash out, this loan purpose does not come into play.
 - The handling of certain multi-purpose loans. Home purchase still trumps all other purposes; however, home improvement no longer trumps a refinance. New comment 4(a)(3)-3 states that if a loan is both a cash-out refinance or a refinance, and a home improvement loan, it should be reported as a cash-out refinancing or refinancing.

- **Preapproval (Data Point 6).** Report whether the application or covered loan involved a request for a preapproval of 1-4 family closed-end a home purchase loan under a preapproval program.
 - What's changed?
 - **There is no N/A response.** There is either a request for a covered preapproval, or not. If an institution has no such "program" there is no request.
- **Construction Method (Data Point 7).** Currently, this is the Data Point for the **Property Type**, which indicated whether the dwelling involved with the loan was 1-4 family, manufactured housing, or multifamily.
 - What's changed?
 - As inferred by the change in the name of the Data Point, the new response options for this Data Point are 1) site-built or 2) manufactured housing.
 - Covered loans or applications related to modular homes should be reported with a construction method of site-built, regardless of whether they are on-frame or off-frame modular homes. Modular homes comply with local or other recognized buildings codes rather than standards established by the National Manufactured Housing Construction and safety Standards. Modular homes are not required to have HUD Certification labels or data plates.
 - Multifamily dwellings should generally be reported as site-built, unless the multifamily dwelling is a manufactured home community.
- **Occupancy Type (Data Point 8).**
 - What's changed?
 - The response options. You will now report if the property involves the applicant's 1) principal residence, 2) second residence, or 3) investment property.
 - Investment property is one the applicant or borrower will not occupy. The property is considered an investment property for reporting, even if the applicant does not identify it in that manner, and even if the property is not intended to generate income.
- **Loan Amount (Data Point 9).** Report the amount of the covered loan or the amount applied for.
 - What's changed?
 - The amount is no longer rounded to thousands.
- **Government Monitoring Information - Ethnicity (Data Point 16), Race (Data Point 17) and Sex (Data Point 18).** Report the information collected in the government monitoring form, indicating whether the information was gathered in person or by visual observation.
 - What's changed?
 - There are now additional sub-categories for ethnicity and race:
 - Hispanic ethnicity sub-categories are: Mexican; Puerto Rican; Cuban; and Other Hispanic or Latino.
 - Asian race subcategories are: Asian Indian; Chinese, Filipino; Japanese; Korean; Vietnamese; and Other Asian.
 - The Native Hawaiian or Other Pacific Islander race subcategories are: Native Hawaiian; Guamanian or Chamorro; Samoan; and Other Pacific Islander.
 - There are also free form Data Points applicants can use to write in a non-listed race or tribe.

Appendix B of the regulation further describes both how the information is to be gathered and how reported.

- Transition: for applications received prior to 2018, but reported in 2018, the information currently required is sufficient for reporting purposes.
- **Type of Purchaser (Data Point 21).** If the loan was originated and then sold within the same calendar year, report the type of purchaser.
 - What's changed?
 - Basically, some response options have been reorganized:
 - Affiliate - Changed from Code 8 to Code 6;
 - Commercial bank, savings bank, or savings association - Changed from Code 6 to Code 7;
 - Life insurance company, credit union, mortgage bank, or finance company - Currently, all are grouped under Code 6. The types of entities have been modified and split. Credit union, mortgage company, or finance company will be grouped under Code 8. Life insurance company is listed as a separate entity under Code 9.
 - Other - Changed from Code 9 to Code 10
 - In addition, non-originated applications, loans originated in one calendar year / sold in a different calendar year, and loans where only a minority interest has been sold - Changed from Code 0 to not applicable.
- **Rate Spread (Data Point 22).** For covered loans subject to Reg. Z, report the difference between the annual percentage rate and the average prime offer rate for a comparable transaction, available on the FFIEC web site, as of the date the interest rate is set.
 - What's changed?
 - Rate spread is reported using up to three decimal places, not rounding to two decimal places.
 - The actual difference gets reported for all such loans; not only if the rate spread exceeds to applicable tolerance.
 - For open end lines, identify the most closely comparable closed end transaction. If an open-end line has no maturity, use the 30-year fixed rate.
 - For the rate set date for a loan that comes through a broker, use the last time the rate was set with the broker, not when the broker set with the borrower.
 - Rate spread is not reported for assumptions, purchased loans or reverse mortgages.
- **Lien Status (Data Point 24).** Report the lien status as 1) first or 2) subordinate.
 - Report using the best information in file for those which do not originate, such as the applicants statement, or a title report if one was already completed. For products where the institution would routinely require that any subordinate lien be paid off, the institution may report the first lien position.
 - What's changed?
 - *Loan not secured by a lien*, Code 3, has been eliminated.
 - *Not applicable (purchased loan)*, Code 4, has been eliminated. You must now determine and report whether the lien status of a purchased loan as 1) first or 2) subordinate.
- **Reason for Denial (Data Point 26).** Report the principal reason or reasons for a denied application or request for preapproval.
 - What's changed?
 - Reporting denial reason(s) is now required for all.
 - Report the principal reasons, and only report up to four in all.
 - If the standard model adverse action form was used, report the reasons shown on the form.
 - If the action taken was not a denial, report as not applicable.

New Data Points

Last, but not least, the following is an overview of the twenty-five new Data Points that are to be reported on the HMDA LAR beginning in 2018.

- **Property Address (Data Point 12).** Report the physical address of the property securing the loan, or proposed on the application to secure the loan.
 - Include the street address, city, state and zip code (either 5 or 9 digit).
 - If the address is not known, for example, when the property has not been listed on the application denied early in the process, report the address as not applicable.
- **Age (Data Point 19).** Report the age of the applicants in whole years.
 - Use the number of whole years derived from the birthdate on the application form. For example, if an applicant provides a date of birth of 01/15/1970 on the application form that the financial institution receives on 01/14/2015, the institution reports 44 as the applicant's age.
 - If there is more than one co-applicant, the financial institution reports the age only for the first co-applicant listed on the application form.
- **Credit Score (Data Point 25).** Report the credit score or scores relied on in making the credit decision. Also report the names and version of the scoring model. Codes are provided for Beacon, Fair Isaac, FICO etc.
 - The credit score should be considered as relied upon even if it was not a dispositive factor. Thus, if an application is denied for reasons other than the credit score, but the score is part of the standard underwriting for the loan, the score should be reported.
 - If more than one score is used for an applicant, report the score based on the score used, whether the highest, lowest or combined. Only one score for the applicant is to be reported.
 - If there are two applicants, report the credit score used for each.
 - If the file is closed prior to the score being obtained, and for applicants that are not non-natural persons, report not applicable.
- **Total Loan Costs or Total Points and Fees (Data Point 27).** Report the exact amount.
 - For TRID loans [subject to Regulation Z §1026.19 (f)], report the Total Loan Costs disclosed to the borrower on the final Closing Disclosure (CD). If a corrected CD is provided prior to filing of the annual HMDA report, the amount on the LAR should be corrected, as appropriate, to correspond with corrected CD.
 - For non-TRID closed-end loans, where no Closing Disclosure is required, report the total points and fees, expressed in dollars, using the calculation described in the HOEPA section of Reg. Z §1026.32 (b)(1).
 - This Data Point does not apply to open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. For these, report not applicable.
- **Origination Charges (Data Point 28).** The total itemized amounts designated as borrower paid at or before closing on the Closing Disclosure.
- **Discount Points (Data Point 29).** Report the dollar amount of points paid to reduce the interest rate, as disclosed on the Closing Disclosure.
- **Lender Credits (Data Point 30).** The amount of the Lender Credits disclosed on the Closing Disclosure.
 - Be sure to use the final closing disclosure, and if a corrected disclosure is required prior to filing of the annual HMDA report, the amount should be corrected to correspond.
 - Does not apply to open-end lines of credit, reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. For such loans, report not applicable.

- **Interest Rate (Data Point 31).** Report the interest rate applicable to the approved application, or to the loan at closing or account opening, using up to three decimal places.
 - For covered loans subject to Regulation Z's Loan Estimate and Closing Disclosure requirements, use the interest rates disclosed on the Loan Estimate and Closing Disclosure, as applicable.
 - For applications not approved or closed, report not applicable.
 - For an application approved but not accepted, report the rate on the Loan Estimate or the rate at the time of approval, as applicable/.
 - For a variable rate covered loan not subject to Regulation Z's Loan Estimate and Closing Disclosure requirements, if it is not known at approval or closing, use the fully indexed rate based on the index.
- **Prepayment Penalty Term (Data Point 32).** Report the number of months for which any prepayment penalty will apply, as defined in Regulation Z.
 - For loans with no prepayment penalty, report as not applicable.
 - Data Point does not apply to reverse mortgages, or loans or lines of credit made primarily for business or commercial purposes. For such loans, report not applicable.
 - HELOCs are included.
- **Debt to Income Ratio (Data Point 33).** The ratio of the applicant's total monthly debt to the total monthly income relied on in making the credit decision.
 - The debt to income ratio should be considered as relied upon if it was a factor in the underwriting, even if not the deciding factor. For example, if the loan was denied for bad credit or collateral value, but the debt to income was a part of the standard underwriting, it should be reported.
 - If no credit decision was made due to incompleteness or withdrawal, report as not applicable, even if information was in the file to complete the debt to income ratio.
 - When reporting a ratio, report the actual ratio used, using decimal places or the rounded ratio, as applicable.
- **Combined Loan-To-Value Ratio (Data Point 34).** Report the ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision.
 - Use the ratio calculated according to any secondary market requirement, if you use more than one for the loan.
 - Even if the CLTV is only a factor in the decision, it should be reported.
 - If no decision was made because withdrawn or incomplete, report as not applicable.
 - If no LTV was calculated or used, report as not applicable.
- **Loan Term (Data Point 35).** Report the total number of months to maturity or termination.
 - If the payments are not monthly, still report the term calculated as the equivalent number of whole months.
 - For an open-end line include both the draw and the repayment period.
 - If there is no definite term, such as a reverse mortgage, report as not applicable.
- **Introductory Rate Period (Data Point 36).** Report the number of months before the first date the interest rate may change after closing or account opening.
 - This represents the standard variable rate or discounted rate period, such as the first 60 months of a 5/1 ARM, or an introductory "teaser" rate for a variable rate equity line. This does not apply to a conditional rate, such as on an employee loan where the rate will revert in the event the employee leaves.
 - Report a fixed rate loan as not applicable.
- **Non-Amortizing Features (Data Point 37).** Report contractual features that would allow payments other than fully amortizing payments

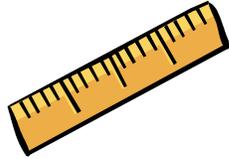
- This Data Point applies to all HMDA reportable loans, not only those subject to Regulation Z. Thus, for a business loan to purchase a dwelling, that has a balloon payment, this feature should be reported accordingly.
- For reporting, codes are shown for balloon payments, interest only payments, negative amortization, and Other non-fully amortizing features. Each one must be entered as present or not present.
- **Property Value (Data Point 38).** Report the property value relied on in making the credit decision. It may be an appraised value, or the purchase price, whatever was used for the loan to value determination.
 - If the file is closed for incompleteness or withdrawn before the credit decision, report as not applicable, even if an appraisal was received.
- **Manufactured Home Secured Property Type (Data Point 39).** Report whether 1) the manufactured home to secure the loan includes the land, or 2) does not include the land.
 - Report a covered loan that is or would have been secured only by a manufactured home but not the land as secured by a manufactured home and not land, even if the manufactured home is considered real property under applicable State law.
 - Note that a manufactured home community that is a multifamily dwelling is not considered a Manufactured Home for purposes of reporting Data Points 39 and 40.
- **Manufactured Home Land Property Interest (Data Point 40).** Report whether the applicant or borrower 1) owns the land directly or 2) indirectly, or leases the land, either 3) paid or 4) unpaid).
 - If the property is owned by a cooperative of which the applicant is or will be a member, then there is indirect ownership. If the applicant will not have a membership interest but will pay rent to the cooperative, then report as a leasehold interest.
 - If the applicant will be putting the home on property owned by a family member or friend, with no expectation of paying rent, then report as an unpaid leasehold.
- **Total Units (Data Point 41).** Report the number of individual units in the property securing the loan.
 - For a manufactured home community that will secure the loan, report the number of individual home sites located in the community, including RV sites if those were included in the value.
 - When an individual manufactured home in a community secures the loan, report just one dwelling unit.
 - For condominiums or cooperative properties taken in the entirety to secure the loan, report the total units. However, for example if the loan is secured by 20 out of 100 actual units, report just the 20 units.
- **Multifamily Affordable Units (Data Point 42).** When a multi-family property is used to secure the loan, report the number, if any, of affordable housing units in the overall property.
 - Affordable housing income-restricted units are individual dwelling units that have restrictions based on the income level of occupants. They may be mandated under various programs such as Section 8 or Federal Home Loan Bank or Rural Housing Service.
- **Application Channel (Data Point 43).** Report whether the application was initially 1) submitted directly to your financial institution or 2) not submitted directly. Also report whether loan is or would be initially payable to your institution.
 - For example, if another institution takes the application and closes the loan as an agent for your institution in its own name, then immediately transfers the loan, your institution would report the loan, not as a purchase, but as an origination that was not originally submitted to your institution or initially payable to your institution.
 - If the applicant first submitted the application to your credit union, but you refer the member to a CUSO for origination on your behalf, then the application was submitted directly to your institution.

- If the application came to you through a broker or a correspondent, even though your institution approved the loan, the application as not received directly.
- **Mortgage Loan Originator NMLSR Identifier (Data Point 44).** Report the originating officers NMLS.
 - If the individual has not NMLS, such as a commercial lender, report not applicable.
 - If more than one MLO was involved, report the number for the one with primary responsibility.
- **Authorized Underwriting System (AUS) (Data Point 45).** Report the name of the AUS used to underwrite the loan. Also report the AUS result.
 - For an AUS to be covered, it must be developed by a securitizer, Federal government insurer, or a Federal government guarantor. It must provide a result regarding both the credit risk of the applicant and the eligibility of the covered loan to be originated, purchased, insured, or guaranteed that entity.
 - If more than one report is used from the same AUS, report the most recent.
 - If you get reports from more than one AUS, report the one to which you sold the loan.
 - Report not applicable if no AUS was used, or the loan was purchased, or the loan is a commercial loan.
 - For reporting, codes include 1) Desktop Underwriter, 2) Loan Prospector, 3) Technology Open to Approved Lenders, 4) Guaranteed Underwriting System, 5) Other, 6) Not Applicable
 - For reporting the AUS result, the codes offered are the standard ones seen for the various systems noted. Be sure to code the results to correspond to the right AUS.
- **Reverse Mortgage (Data Point 46).** Report whether the application or loan is a reverse mortgage.
- **Open-End Line of Credit (Data Point 47).** Report whether the application or loan is an open-end line.
- **Business or Commercial Purpose (Data Point 48).** Report whether the application or loan is primarily for business or commercial purpose.

The “Good Old Days”

It may seem hard to imagine, but in a few years, we may look back and say, “Remember back in 2017... when HMDA was simple!”

Short Clips



FDIC HMDA IMPLEMENTATION TELECONFERENCE

On 10/06/17, the FDIC issued [FIL-47-2017](#), announcing that it will hold a teleconference on Thursday, October 26, 2017, from 1:30 p.m. to 3:00 p.m. to discuss implementation of the 2015 Home Mortgage Disclosure Act Final Rule requirements that become effective beginning in 2018. [Advance registration](#) is required.

FINCEN ISSUES TECHNICAL FIXES ON CUSTOMER DUE DILIGENCE RULE

On 09/28/17, technical corrections to FinCEN's *Customer Due Diligence Final Rule* were published in the [Federal Register](#). The corrections affect only Appendix A to 31 CFR 1010.230, and 31 CFR 1024.210; and are effective immediately.

NEW OFAC SANCTIONS ON NORTH KOREAN BANKS, AND INDIVIDUALS

On 09/26/17, the Treasury Department's Office of Foreign Assets Control (OFAC) announced [new sanctions](#) targeting eight North Korean banks, two banks identified as linked to the government, and 26 individuals linked to North Korean financial networks involved in the country's use of the international financial system to facilitate its WMD and ballistic missile programs.

CFPB PROPOSED CHANGES FOR PUBLICLY REPORTED HMDA DATA

On 09/25/17, the CFPB's [Proposed Policy Guidance](#) on the loan-level Home Mortgage Disclosure Act data to be made available to the public under the revised HMDA data collection rules, which take effect in 2018, was published in the Federal Register.

The CFPB is proposing to not publicly disclose certain data points, including the universal loan identifier, the application date, the date of action taken by the bank on a covered loan or application, the address of the property securing the loan, and the credit score or scores relied on in making the credit decision.

The Bureau is also proposing to reduce the

precision of values reported for several data fields; including the amount of the covered loan applied for, the age of an applicant or borrower, or a borrower's debt-to-income ratio.

Comments are due by November 24, 2017.

CFPB ALIGNS REGULATION B AND C DEMOGRAPHIC INFORMATION REQUIREMENTS

On 09/20/17, the CFPB issued [Final Rule amendments](#) to the Equal Credit Opportunity Act (ECOA / Reg. B) which provide flexibility the collection of applicants' demographic data under the Home Mortgage Disclosure Act (HMDA / Reg. C). Reg. B prohibits the collection of information on consumers' race or ethnicity, except to the extent required to monitor compliance with ECOA or to comply with HMDA.

Prior to the Final Rule amendments, Reg. B permissible inquiries included only aggregate racial and ethnic categories. This conflicted with the new HMDA rules, which require lenders to permit applicants and borrowers to self-identify using disaggregated ethnic and racial categories.

The Final Rule amendments permit lenders to allow applicants to self-identify using disaggregated categories during calendar year 2017, in accordance with the [September 2016 Bureau Approval Notice](#), enabling lenders to use Fannie Mae and Freddie Mac's new Uniform Residential Loan Application prior to January 2018.

The Final Rule amendments include other optional model forms to assure compliance with Regulation B requirements. In addition, the Final Rule amendments allow non-HMDA reporting institutions to choose on an "application-by-application basis" between the two approaches to collecting personal demographic data (i.e., either the more limited, aggregate race and ethnicity category required by Reg. B, or the disaggregated and more expansive categories required for HMDA reporting institutions under Reg. C effective in 2018). These amendments become effective January 1, 2018.

The Final Rule amendments did not add the 2016 URLA to the Reg. B Appendix. The CFPB indicated a separate notice for this form will be issued and published in the Federal Register in 2018.

JOINT NPR AMENDING CRA REGULATIONS TO CONFORM TO HMDA REGULATION CHANGES

On 09/20/17, a [Joint Notice of Proposed Rulemaking](#) (NPR) from the Board of Governors of the Federal Reserve System (Fed), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) was published in the Federal Register. The Joint NPR proposes to amend the agencies' respective Community Reinvestment Act (CRA) regulations primarily to conform to changes made by the CFPB to Regulation C, which implements the Home Mortgage Disclosure Act (HMDA).

The agencies are proposing to amend their CRA regulations to revise the definitions of "home mortgage loan" and "consumer loan," as well as the public file content requirements. These revisions would maintain consistency between the CRA regulations and the recent changes to Regulation C, which generally become effective on January 1, 2018.

In addition, the draft proposal contains technical revisions and would remove obsolete references to the Neighborhood Stabilization Program.

Comments on the proposal will be accepted until October 20, 2018. The agencies anticipate that the proposed amendments to their CRA regulations will take effect on January 1, 2018.

ARBITRATION RULE COMPLIANCE GUIDE

On 09/15/17, the CFPB released a [Small Entity Compliance Guide](#) on its Final Rule that drastically limits the use of mandatory arbitration agreements in consumer financial contracts. The rule went into effect on 09/18/17, and compliance is required on or after 03/19/18. The Guide explains who is covered by the rule, required language in revised pre-dispute arbitration agreements, the submission of records, and other related topics.

However, the Senate is expected to pass a disapproval resolution to the rule (the House passed a disapproval resolution in July), and the President signs it, the CFPB Final Rule will be voided, and compliance will not be required.

FINCEN ISSUES ADVISORY ON FATF-IDENTIFIED JURISDICTIONS WITH AML/CFT DEFICIENCIES

On 09/15/17, FinCEN issued an [FIN-2017-A005](#), an advisory regarding the Financial Action Task

Force's (FATF) updated list of jurisdictions with strategic anti-money laundering/counter-terrorist financing (AML/CFT) deficiencies. Of note, Afghanistan and Laos were removed from the list due to significant technical progress in improving their AML/CFT regimes and establishing the legal and regulatory framework to meet their action plan commitments. The changes may affect U.S. financial institutions' obligations and risk-based approaches regarding relevant jurisdictions.

OCC UPDATES FLOOD BOOKLET

On 09/07/17, The OCC updated its [Comptroller's Handbook Booklet on the Flood Disaster Protection Act](#) to reflect recently enacted flood insurance legislation and implementing regulations.

FINCEN ISSUES ADVISORY ON SOUTH SUDAN

On 09/06/17, FinCEN issued [FIN-2017-A004](#), an advisory regarding the potential movement of assets belonging to South Sudanese senior political figures. Additionally, the Office of Foreign Assets Control (OFAC) designated two South Sudanese government officials and one former official for their roles in destabilizing South Sudan and three companies that are owned or controlled by one of the officials.

FFIEC LAUNCHES INDUSTRY OUTREACH WEBSITE

On 09/06/17, The FFIEC launched a new [Industry Outreach Website](#) designed to share information about current issues related to financial institution supervision, and to provide updates to supervisory guidance and regulations.

The website also provides access to upcoming FFIEC-sponsored webinars and includes an archive of past webinars, including the Military Lending Act and Mobile Financial Services - Appendix E of the Retail Payment Systems Booklet. It is anticipated that additional seminars will soon be added to the archive.

DOL PROPOSES DELAY IN EFFECTIVE DATE FOR CERTAIN FIDUCIARY RULE EXEMPTIONS

On 08/31/17, a Department of Labor (DOL) [proposal to extend to the applicability date](#) for certain exemptions to the fiduciary rule to July 1, 2019, was published in the Federal Register. The proposed extension would apply to the best

interest contract exemption, principal transactions exemption, and prohibited transaction exemption 84-24. Comments on the proposed delay were due by September 15, 2017.

CFPB ISSUES DETAILED SUMMARY ON TRID CHANGES AND CLARIFICATIONS

On 08/30/17, the CFPB released a [Detailed Summary](#) of the changes and clarifications to the TILA-RESPA integrated disclosures that it finalized early in July.

The summary provides a quick reference to the Final Rule, which covers tolerance provisions for the disclosed total of payments, exemptions from TRID for certain loans, applicability of the disclosures to co-operative units and the sharing of disclosures, among other topics. The Final Rule also made extensive technical corrections, many of which are addressed in the summary.

REG. Z DOLLAR THRESHOLD CHANGES FOR 2018

On 08/29/17, the CFPB announced [2018 changes in the dollar thresholds](#) for several Regulation Z provisions governed by the CARD Act, the Home Ownership and Equity Protection Act and the Dodd-Frank Act. The thresholds are based on changes in the Consumer Price Index.

Several dollar thresholds remain unchanged. However, the HOEPA loan threshold will increase slightly to \$21,032, and the HOEPA fee trigger will be \$1,052, effective January 1, 2018.

For Qualified Mortgages, points and fees cannot exceed 3 percent of loans of \$105,158 or more; \$3,155 for loans between \$63,095 and \$105,158; 5 percent for loans between \$21,032 and \$63,095; and 8 percent for loans of less than \$13,145.

CFPB UPDATES HMDA RESOURCES ON WEBSITE

On 08/30/17, the CFPB updated its [website](#) to include resources for financial institutions required to file Home Mortgage Disclosure Act data. The updated resources include filing instruction guides for HMDA data collected in 2017 and 2018, and HMDA loan scenarios.

HMDA TECHNICAL CORRECTIONS, HELOC REPORTING THRESHOLD

On 08/24/17, the CFPB Protection Bureau issued a [Final Rule](#) making several technical corrections and clarifications to the expanded data collection

under Regulation C, as well as temporarily raising the threshold at which reporting institutions are required to report data on home equity lines of credit.

As originally written, HMDA reporting institutions originating more than 100 HELOCs would have been generally required to report under HMDA. However, the Final Rule temporarily raises that threshold to 500 HELOCs for calendar years 2018 and 2019, allowing the Bureau time to assess whether to make the adjusted threshold permanent. This provision takes effect on January 1, 2018, the same date as for most HMDA expansion provisions.

HMDA TRANSACTION TESTING GUIDELINES

On 08/23/17, the FFIEC issued [guidelines](#) for examiners to use in assessing the accuracy of the HMDA data that institutions record and report. The HMDA Examiner Transaction Testing Guidelines (Guidelines) describe FFIEC procedures for sampling and validating HMDA data. The Guidelines should assist financial institutions seeking to better understand the approach that regulators will use to assess HMDA data as part of the examination process.

CFPB OPENS PORTAL FOR REGULATORY INQUIRIES

On 08/17/17, the CFPB established a new [online portal](#) for processing regulatory inquiries, replacing the email address process previously utilized. Through the portal, the Agency's Office of Regulations staff provide informal guidance to financial institutions and financial service providers within 10-15 business days.

KBYO OVERDRAFT DISCLOSURE PROTOTYPES

On 08/21/17, the CFPB released new "Know Before You Owe" [Overdraft Disclosure Prototypes](#) designed to improve the model form that banks and credit unions already provide to consumers weighing overdraft coverage. The Bureau is currently testing the four prototypes, each of which have a simple, one-page design aimed at making the costs and risks of opting in to overdraft coverage easier to understand and evaluate.

Good to Know

Send your questions to the
answerperson@mandm.consulting

Sending requests to the above address gets you a written response to your questions. Emails sent to the answer person are received and responded to five days a week.

Q: We are looking at doing a home equity line of credit promotion. Questions:

1. Can we require a deposit account as part of the promotion (existing or new customers)?
2. If yes to #1, can we require a direct deposit to get the promotional rate?

A: Under anti-tying rules, you are permitted to require a deposit account under the “traditional bank product exception.” The anti-tying provisions provide exceptions to the prohibitions. These exceptions permit a bank to extend credit, lease or sell property, furnish services, or vary prices on the condition that the customer:

- Obtain a loan, discount, deposit, or trust service from the same bank (this is commonly known as the “traditional bank product exception”);
- Provide an additional product or service related to and usually provided in connection with a loan, discount, deposit, or trust service to the same bank; or
- Not obtain additional products or services from competitors if the condition is reasonably imposed in a credit transaction to assure the soundness of the credit.

I am also not aware of anything that would prohibit the Bank from providing a promotional rate for those that set up direct deposit; however, keep in mind this must be disclosed appropriately in advertising, account disclosures, etc., and this may be considered a bonus under Regulation DD.

Q: Will we consider a beneficial owner, who has no account relationship with the Bank, as a “customer”? I believe no. However, if a beneficial owner has an account relationship with the Bank, would they be considered a customer and a beneficial owner? I want to make sure we address this since a lot of our CIP practices refer

to a customer, and we cannot open accounts for a customer if they are not present.

A: Technically, the beneficial ownership rule does not address the difference between a “beneficial owner” and a “customer”. Instead, this rule applies to instances where the customer would be the legal entity itself. As such, my recommendation would be to define beneficial owners separately within your CIP, and outline the requirements for beneficial owners under a section for legal entity customers.

Q: If a minor is joint in an account, and it's not a custodial account, is there any reason the minor cannot withdraw funds or transact on the account on their own?

Secondly, if we feel the minor is being pressured by someone to take funds out who is not a signer, are there any Vermont laws to protect the minor as we have with elder financial abuse?

A: Based on [8 V.S.A. § 14206](#), *Deposits of minors; exemption from trustee process*, you may allow the minor to withdraw from and/or transact in the type of accounts you have described.

The law states that “*The governing body of a financial institution, in its discretion, may accept deposits from a minor and may pay to a minor such sum as is deposited to the credit of such person, and is due, as if such minor were of age. The check and receipt or acquittance of such minor shall be a full discharge for the amount for which it is given*”.

Regarding the question on potential “pressure exerted on a minor to withdraw funds”, I did not find any specific law focused on minor financial abuse. However, as you need to carefully consider such matters as:

- When to bring such concerns to the attention of a minor’s parent or guardian, the local police, or the department of child welfare, as appropriate;
- Determining whether the facts support the filing a SAR; and
- Determining what documentation is required / sufficient to support any decision made;

I suggest that you seek additional guidance from your legal counsel.

Q: Can you provide guidance as to how the Bank would apply or obtain the Universal Loan Identifier, which will be required as of 01/01/18?

A: Based on the new HMDA regulations, the Bank picks the universal loan identifier (ULI) subject to some restrictions. The ULI may be letters and numerals, but must be unique within the bank. It must not include any information that could be used to directly identify the applicant or borrower, and must end with a two-character check digit. However, it is acceptable, but not required, to use the same ULI that meets the TILA/RESPA requirements.

Appendix C to HMDA provides the following guidance:

1. ULI—uniqueness. Section 1003.4(a)(1)(i)(B)(2) requires a financial institution that assigns a universal loan identifier (ULI) to each covered loan or application (except as provided in §1003.4(a)(1)(i)(D) and (E)) to ensure that the character sequence it assigns is unique within the institution and used only for the covered loan or application. A financial institution should assign only one ULI to any particular covered loan or application, and each ULI should correspond to a single application and ensuing loan in the case that the application is approved and a loan is originated. A financial institution may use a ULI that was reported previously to refer only to the same loan or application for which the ULI was used previously or a loan that ensues from an application for which the ULI was used previously.

A financial institution may not report an application for a covered loan in 2030 using the same ULI that was reported for a covered loan that was originated in 2020. Similarly, refinancings or applications for refinancing should be assigned a different ULI than the loan that is being refinanced. A financial institution with multiple branches must ensure that its branches do not use the same ULI to refer to multiple covered loans or applications.

2. ULI—privacy. Section 1003.4(a)(1)(i)(B)(3) prohibits a financial institution from including information that could be used to directly identify the applicant or borrower in the identifier that it assigns for the application or

covered loan of the applicant or borrower. Information that could be used to directly identify the applicant or borrower includes, but is not limited to, the applicant's or borrower's name, date of birth, Social Security number, official government-issued driver's license or identification number, alien registration number, government passport number, or employer or taxpayer identification number.

Q: I have a HMDA question regarding the following loan transaction. The loan proceeds will be used to reimburse borrower for the initial purchase of the property, and to provide funding for the construction (ground up) of a single-family dwelling to be sold to a third party. The loan term is 12 months. We are struggling with this one. A dwelling existed which will be demolished. No liens being paid off so it's not a refinance. It's not a purchase either. Is this HMDA reportable?

A: Since the loan is construction-only, and as you outlined, does not otherwise qualify as a home purchase or refinance transaction, the loan is not HMDA reportable. [Comment 1003.2-5](#) states that a construction-only loan is considered "temporary financing" under Regulation C, and is not reported.

Q: We are looking get employees more involved / familiar with our Online Banking services. One suggestion was made to hold a raffle for employees only (excluding officers and managers) where they can earn raffle tickets for performing certain online functions (e.g., for successful online banking logins, for submitting a certain number of bill payment transactions, for making a certain number of mobile check deposits, etc.) within a certain time frame. Meeting each function will award the employee raffle tickets to be drawn for prizes. Would such a raffle be permissible? Seems to me that we may be walking a thin line on this. What are your thoughts?

A: In my opinion, this raffle would be permissible if you open it to all employees, not simply to employees who are also bank customers. The key obstacle you face is that of this raffle being defined as a lottery. Banks are generally prohibited from participating in lotteries. Opening the drawing to any entry and providing

that participants are not required to be a bank customer or to buy any bank products or services are ways to avoid this problem. For this raffle, I recommend that you include a disclosure that the raffle is open to all employees; participants do not need to be a bank customer or to purchase any bank products or services to participate.

A lottery is when you have three or more people who advance money, but know that one or more, but not all, will win. Advance money can be interpreted as them paying any fee to bank with you. This is not necessarily a direct payment as in for a ticket.

Q: I am wondering if there is a listing of products that are included in the arbitration rule as covered products

A: I believe that what you are looking for is included in the [CFPB's Small Entity Compliance Guide for Arbitration Agreements](#). The list begins at the bottom of page 9 of the guide.

Q: We have a customer who was in a flood zone A. They filed LOMA papers and it is determined that the structure is no longer in flood zone A. What is the protocol for the Bank? Should we send a letter letting them know they are no longer required to have flood insurance?

A: The flood insurance requirement is not waived unless or until the LOMA, which states that the building is outside of the SFHA is issued. Until the flood map is amended by the LOMA, you are bound by the information shown on the current flood map. If a LOMA is issued, the Standard Flood Hazard Determination Form can be updated. Once it's updated, the flood insurance requirement can be waived at that point. The Bank may still require flood insurance if you wish to protect your security interest as well.

If and when you determine that flood insurance is no longer required, I am not aware of any formal requirement to notify the borrower in writing that they no longer need flood insurance; however, it may be a good idea to do it in writing and retain a copy to support your records. You will also need to retain a copy of the LOMA and the amended Flood Determination.

Q: We have a borrower who has a life estate and occupies the property. His son is the owner. The son does not live in the home and has his own home which he occupies as his primary residence. Can you confirm that the son does not need to sign a rescission. My understanding is he has no right to cancel as it is not his primary residence. The borrower who has the life estate has executed the right to cancel.

A: Based on the information that you provided below, I believe you are correct. Since the home is not the son's principal dwelling, the Bank would not be required to give him rescission. Per [Section 1026.23\(a\)\(1\)](#) of Reg. Z:

(a) Consumer's right to rescind. (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

Q: Can you clarify what the correct late charge parameters are for land loans in the state of Maine? We have utilized the standard 5% / 15-day late charge parameters. Some of our peer credit unions indicate that they have been instructed that the late charge for land should be an amount not exceeding \$10 that is 5% of the unpaid amount of the installment after 15 days. Which is correct?

A: In Maine, the appropriate late charge parameters vary, depending on the credit union charter. The Maine Consumer Credit Code applies to closed-end and open-end types of consumer credit; [§2-502, Title 9-A](#) states that (emphasis added):

§2-502. Delinquency charges

- 1. A creditor may contract for and receive a delinquency charge on any outstanding, unpaid installment payment or portion of*

*such payment due under a consumer credit transaction or open-end credit plan not paid in full **within 15 days** after its scheduled or deferred due date in an amount not exceeding the greater of:*

- A. *An amount, not exceeding \$10, that is 5% of the unpaid amount of the installment; or [2003, c. 100, §2 (AMD).]*
- B. *The deferral charge, section 2-503, that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.*

However, federally chartered credit unions are exempt from that rule because of preemption. §701.21(b)(i)(B) of the NCUA Rules and Regulations preempts the State's late charge provisions. In addition to this exemption, NCUA regulations do not impose any late charge restrictions / limitations.

Q: We have an application for a personal loan that we need to determine the proper action. The Loan Officer had a conversation about the required credit score for the applicable loan product after receipt of the application. The borrower stated their score is 634 and do not bother pulling credit to verify if it must be 700. Is this a denial based on information we were provided by the borrower or a withdrawn loan request? The borrower was told that the minimum score is 700 and then verbally told the LO his was 634 after he applied. He then stated do not bother pulling his credit, he will look elsewhere.

A: Based on what you've described, in my opinion, the appropriate action taken for this application is "withdrawn"; as the Loan Officer basically informed the applicant of the Bank's general underwriting criteria.

Q: We have an application for a personal loan that we need to determine the proper action. The Loan Officer had a conversation about the required credit score for the applicable loan product after receipt of the application. The borrower stated their score is 634 and do not bother pulling credit to verify if it must be 700. Is this a denial based on information we were provided by the borrower or a withdrawn loan request? The borrower was told that the minimum

score is 700 and then verbally told the LO his was 634 after he applied. He then stated do not bother pulling his credit, he will look elsewhere.

A: Based on what you've described, in my opinion, the appropriate action taken for this application is "withdrawn"; as the Loan Officer basically informed the applicant of the Bank's general underwriting criteria.

Q: In the customer information area of the SAR, when the SAR relates to an authorized signer of an entity who has no other relationship with the bank, do we check "Customer" or "Other" in the dropdown box.

A: Per the instructions: *"Item 21 Relationship of the subject to an institution: If the subject has a relationship with a financial institution or individual listed in Part III or Part IV, enter the financial institution's TIN from Items 55 or 80 in field 21a "Institution EIN." Select all options 21b through 21l that describe the relationship. If the relationship is not covered by any of options 21b through 21l, select option 21z "Other" and enter a brief description of the relationship in the "Other" text field."*

We typically see institutions indicate "customer" for a signer, but that is probably because many institutions obtain CIP on the authorized signers. This will also change once the new CDD rule goes into effect next year, requiring institutions to identify the owners. In our opinion, you could use either option since the instructions don't specify.

Q: Are Courtesy Overdraft Programs considered a loan, and are there any reasons to not offer this type of program to nonprofits?

A: In some cases, based on the repayment structure, Courtesy Overdraft Programs are considered a loan for Reg. Z purposes.

Specifically, it could be considered a loan even if there are no interest payments. Nevertheless, the plan may be subject to Truth in Lending requirements. Regulation Z covers such arrangements if "the credit is subject to a finance charge or is payable by a written agreement in more than four installments."

However, if a finance charge is imposed, the Reg. Z tolerance provisions do not appear to apply to

determining whether a finance charge has occurred, only as to whether the finance charge has been properly disclosed. Thus, it appears that any amount, even a nominal amount, in excess of the amount actually owed for overdrafts would be considered a finance charge and the arrangement would be subject to Reg. Z disclosure requirements.

I know of no reasons to not offer this type of program to nonprofits.

Q: I'm checking our system to be sure that we are complying with the High Cost Mortgage Loan thresholds. Can you point me to the limits for 2017?

A: You can find the [2017 HOEPA high-cost mortgage limits](#) published in the Federal Register.

Q: I'd like your thoughts on listing the occupation for a "disabled" person on a CTR. I'm assuming that, as with the term "retired," listing "disabled" alone is not sufficiently descriptive, and that we would be expected to gather additional information about their last employment. For example, if the customer was previously employed as a banker we would enter "Disabled - Banker." Or, if the customer was disabled and had never worked we would enter something like, "Disabled - Never Employed." Are we required to get more descriptive when a customer simply states that they are disabled? Can you direct me to any written guidance or Q&As on this subject?

A: In my opinion, I agree that the use of the term "disabled" is not sufficiently descriptive. I recommend that if you have information regarding prior employment, that you include it, such as you described in your email. Keep in mind that the more information we provide, the better. The only written guidance we have on this is in [FinCEN's CTR Electronic Filing Instructions](#).

While the instructions do not specifically discuss the listing of occupation for "disabled" individuals, the approach outlined in the instructions for retired individuals apply, based on the following statement:

Do not use non-descriptive items such as businessman, merchant, retailer, retired, or

self-employed. If words like self-employed, unemployed, or retired are used, add the current or former profession if known (e.g. self-employed building contractor, retired teacher, or unemployed carpenter).

Q: Does a single-family house that is a rental property have a max coverage available of \$250,000 or \$500,000? Our retail credit administrator is working on a calculation and we aren't sure what the insurance coverage is for this scenario.

A: Since this is a single-family residence, the NFIP Maximum would be \$250,000. Biggert Waters increased the maximum to \$500,000 for multi-unit properties (i.e., 5 or more residential units).

Q: We have a customer who made two mortgage payments, June & July, that were short and was reported as delinquent. The customer as of Aug 1st is current. Do we have the authority to remove the two delinquent payments from their credit report?

A: If the information is inaccurate, then the customer or the Bank can challenge the inaccurate information reported to the Credit Bureau; however, it sounds like based on your email below that the information reported was accurate. Under the FCRA, the Bank is required to report complete and accurate information, so "goodwill" adjustments are not something that I would typically recommend.

There may be limited situations where such adjustments may be appropriate, but do not know whether this is one of them. Further, there may also be legal issues for the Bank by taking this type of action. As such, I recommend that you run this matter by legal counsel to clarify all applicable issues before taking any action with the credit bureau.

Important Dates– Don't Forget!

Generally, we retain the prior month, and go forward for at least a year as known. Dates are either effective dates of Final Rules, or end of the comment period for proposed rules.)

- 09/15/2017 [DOL, Fiduciary Rule Exemptions](#). End of Comment Period for proposed delay in effective date for certain exemptions.
 - 09/15/2017 [Next Day ACH Program](#). Effective Date of Phase 2 Implementation.
 - 09/18/2017 [CFPB, Arbitration Agreements](#). Effective date of Final Rule.
 - 09/29/2017 [NACHA Rule on Registration of Third-party Senders](#). Effective date for compliance by ODFIs.
 - 10/01/2017 [Military Lending Act Regulation](#). Sections on credit card accounts become mandatory.
 - 10/19/2017 [CFPB, 2016 Mortgage Servicing Rules](#). Mandatory compliance date for sections of the Final Rule relating to Delinquency, Requests for Information, Force-Placed Insurance disclosures, Early Intervention, Loss Mitigation, Prompt Payment Crediting, and Small Servicers.
 - 10/20/2017 [Joint NPR, CRA, Regulation BB](#). End of Comment Period for proposed amendments to CRA Regulations to conform to HMDA Regulation Changes.
 - 11/24/2017 [CFPB, Proposed HMDA Policy Guidance](#). End of Comment Period regarding proposed changes to the disclosure of loan-level HMDA data
 - 01/01/2018 [CFPB, Regulation B](#). Effective date for Amendments to Ethnicity and Race Information Collection requirements.
 - 01/01/2018 [HMDA, Regulation C](#). Revised transaction coverage and expanded fields effective.
 - 01/01/2018 [CFPB, Regulation Z](#). Effective date of 2018 dollar thresholds for several Reg. Z provisions.
 - 03/19/2018 [CFPB, Arbitration Agreements](#). Mandatory compliance for pre-dispute arbitration agreements entered into on or after this date.
 - 04/01/2018 [CFPB, Prepaid Accounts Rule](#). New Mandatory compliance date for most Reg. E & Reg. Z changes originally scheduled to become effective on 10/01/17.
 - 04/19/2018 [CFPB, 2016 Mortgage Servicing Rules](#). Mandatory compliance date for sections of the Final Rule relating to Successors in Interest, and Periodic Statements.
 - 05/11/2018 [FinCEN, CDD / Beneficial Ownership Rules](#). Mandatory compliance date.
 - 07/01/2018 [Federal Reserve, Regulation CC](#). Effective date of Final Rule reflecting a virtually all-electronic check collection and return environment.
 - 10/01/2018 [CFPB, Amendments to the TRID Rules](#). Mandatory compliance date.
 - 10/01/2018 [CFPB, Prepaid Accounts Rule](#). Mandatory compliance date regarding electronic transaction histories, and for submitting prepaid account agreements to the CFPB.
 - 12/31/2018 [FHFA, HARP Extension](#). Program extended beyond original September 2017 end-date.
 - 01/01/2019 [HMDA, Regulation C](#). Effective date for changes to enforcement and reporting provisions.
 - 10/01/2019 [CFPB, Prepaid Accounts Rule](#). Mandatory compliance date for providing the full 24 months of written account transaction history upon request.
 - 01/01/2020 [HMDA, Regulation C](#). Quarterly reporting for high volume reporters starts.
-