NCUA Fair Lending and HMDA Compliance Webinar
February 20, 2015
Questions and Answers

The following are questions that were submitted during NCUA's February 20, 2015, webinar about Fair Lending and compliance with the Home Mortgage Disclosure Act (HMDA), but due to time constraints, were unable to be answered during the live event. Similar questions were consolidated and some questions were edited for clarity. If you have questions about the substance of the responses or have any additional questions, please contact NCUA's Office of Consumer Protection at ComplianceMail@ncua.gov or 703-518-1140.

Fair Lending

1. **We have several branches and all of our mortgage loans are done centrally at one branch. Does the Equal Housing Signage need to be visible in all our branches or just the one where mortgage apps are taken?**

Equal housing signage must be prominently displayed so as to be readily apparent to all persons seeking to engage in real estate-related transactions. The signage must be posted and maintained at all credit union business locations which participate in real estate-related transactions. 24 CFR §110.10(c) and 110.15

2. **What type of demographic analysis is expected for a credit union compliance audit?**

NCUA does not apply a one-size fits all approach when evaluating credit union fair lending compliance management systems. A credit union's demographic analysis may be impacted by such factors as field of membership, size and complexity, location, and credit products offered. The analysis performed should demonstrate the credit union understands the demographic makeup of their field of membership to ensure credit services are applied equitably, and do not discriminate on a prohibited basis. 12 CFR §701.31(e)

3. **Do we need to have a non-discrimination notice posted on our solicitation mailings for mortgage refinance?**

Yes. Any federal credit union that advertises real estate-related loans must prominently indicate in such advertisement, in a manner appropriate to the advertising medium and format used, that the credit union makes such loans without regard to race, color, religion, national origin, sex, handicap, or familial status. With respect to written and visual advertisements, a credit union may satisfy the notice requirement by including in the advertisement a copy of the logotype, with the legend "Equal Housing Lender" or "Equal Housing Opportunity." 12 CFR §701.31(d)(1), 701.31(d)(1)(i)

4. **Do you normally perform a supervision contact prior to a fair lending exam?**

No. We perform supervision contacts and fair lending exams each year at different credit unions. If there are significant weaknesses noted during a supervision contact, a fair lending exam may be conducted the following year.

HMDA

Home Equity Lines of Credit (HELOCs)

5. **If HELOC funds are used by the borrower solely to purchase another investment property, and to flip that property to generate income; is that loan HMDA reportable?**

Home equity lines of credit (HELOCs) for home purchase or home improvement may be reported at the institution's option. "Home purchase loan" means a loan secured by and made for the purpose of purchasing a dwelling. 12 CFR §1003.4(c)(3), 003.2, 1003.4(a)

6. **Are you required to gather GMI data on HELOCS if you do not report them on the HMDA report?**

A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, must request as part of the application the applicant's ethnicity, race, sex, marital status, and age. An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling. 12 CFR §1002.13(a) and Comment 1002.12(a)-5

7. **I understand that if you report HELOCs for HMDA you must do so for everyone. But if we are currently reporting - and we would like to stop - can we change at reporting year end?**

HELOCs for home purchase or home improvement may be reported at the institution's option. You may elect to stop reporting HELOCs at reporting year end. 12 CFR §1003.4(c)(3)

8. Are Home Equity loans that are for refinancing their home loans for a lower rate or cash out on their equity reportable on the HMDA report?

HELOCs for home purchase or home improvement may be reported at the institution's option. If the home equity loan is not a HELOC, it is reportable if the refinancing replaces and satisfies another dwelling-secured loan to the same borrower. If the cash-out equity loan is dwelling secured (not a HELOC) and the proceeds are used, at least in part, for repairing, rehabilitating, remodeling, or improving a dwelling (or the real property on which the dwelling is located), it is reportable. 12 CFR §1003.2 Definitions, 1003.4(c)(3)

Home Improvement

9. Is there a formal definition of "home improvement"? For instance is buying a new furnace considered home improvement?

Home improvement loan means: (1) A loan secured by a lien on a dwelling that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located; and (2) A non-dwelling secured loan that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that is classified by the financial institution as a home improvement loan. A loan to purchase a new furnace would meet the definition of a home improvement loan outlined above. 12 CFR §1003.2(Home Improvement Loans)(1) & (2)

10. Please define what is meant by "Classified" for home improvement loans not secured by a dwelling.

A financial institution has “classified” a loan that is not secured by a lien on a dwelling as a home improvement loan if it has entered the loan on its books as a home improvement loan, or has otherwise coded or identified the loan as a home improvement loan. For example, a financial institution that has booked a loan or reported it on a “call report” as a home improvement loan has classified it as a home improvement loan. A financial institution may also classify loans as home improvement loans in other ways (e.g., by color-coding loan files). 12 CFR §1003.2, Supplement I to Part 1003 (Home Improvement Loan)(1) - Staff Commentary

11. Are unsecured personal loans used for the purposes of home improvements HMDA reportable?

If the financial institution is subject to HMDA reporting requirements and it classifies these loans as home improvement loans, they would be HMDA reportable. 12 CFR §1003.2, 1003.4(a)

12. If we know a car loan is used for improving a home but we do not classify it as a home improvement loan, do we still have to report HMDA data?

If the financial institution does not classify these non-dwelling secured loans as home improvement loans, they would not be HMDA reportable. 12CFR §1003.2 Home Improvement Loans (2), 1003.4(a)

13. Our home improvement loan program is specified for home improvements and secured with a UCC-1 only. Is this HMDA reportable? Does this have anything to do with the QM rules and underwriting standards?

If the financial institution is subject to HMDA reporting requirements, these non-dwelling secured loans would be HMDA reportable because the financial institution is classifying them as home improvement loans (12 CFR § 1003.4(a)). Regulation C (HMDA) requirements are generally separate from Regulation Z (Truth-in-Lending) requirements (e.g., QM rules).

Preapproval

14. If the member fails to provide required documents (i.e. income) after preapproval of a home equity loan, should it be reported as cancelled or denied?

To clarify, preapprovals are only for home purchases. 12 CFR §1003.2(2) defines a preapproval program as, "A request for preapproval for a home purchase loan is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than:

> (i) Conditions that require the identification of a suitable property;
> (ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and
> (iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as certification of a clear termite inspection)."

15. In regards to prequalification and preapproval, what is the definition of "credit analysis"?

The term "credit analysis" is not used in Regulation C when defining preapproval and prequalification programs. A request for preapproval requires a comprehensive analysis of the creditworthiness of the applicant, and issuance of a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than (1) conditions that require the identification of a suitable property; (2) conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and (3) limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as certification of a clear termite inspection). A prequalification request is a request by a prospective loan applicant for a preliminary determination on whether the prospective applicant would likely qualify for credit under an institution's standards, or for a determination on the amount of credit for which the prospective applicant would likely qualify. 12 CFR §1003.2 (Application)(2) and Staff Commentary 1003.2 (Application)(2) and (3)

16. If a member does not go through with the pre-approval because time expires and they did not get a contract then what code do we report?

Reporting of the transaction is optional when a preapproval request is approved but no property is identified. If the transaction is reported, the lender uses code '8' ("preapproval request approved but not accepted") under "type of action" and code '1' ("preapproval was requested") under "request for preapproval." FFIEC HMDA FAQ (http://www.ffiec.gov/hmda/faq.htm)

17. Does a written commitment to the applicant apply to a Good Faith Estimate when considering a preapproval reportable under Reg C, thereby requiring us to report HMDA?

A Good Faith Estimate is not considered a written commitment for HMDA preapproval purposes. To be a covered preapproval program, the written commitment issued under the program must result from a full review of the creditworthiness of the applicant, including such verification of income, resources and other matters as is typically done by the institution as part of its normal credit evaluation program. 12 CFR Supplement 1 – Staff Commentary 1003.2 (Application)(3)

Other

18. If a file receives a conditional approval is that considered too far along to be withdrawn?

If the conditional approval contains creditworthiness conditions (e.g., providing proof of income), the application could still be withdrawn because a credit decision has not yet been made. If the conditional approval contains no creditworthiness conditions, the application should be coded as approved not accepted. 12 CFR §1003 Appendix A (I)(B)(1), FFIEC HMDA FAQ (http://www.ffiec.gov/hmda/faqreg.htm#action)

19. **Define temporary financing under Regulation C for the purpose of exclusion.**
The regulation lists as examples of temporary financing construction loans and bridge loans. Construction and bridge loans are illustrative, not exclusive, examples of temporary financing. The examples indicate that financing is temporary if it is designed to be replaced by permanent financing of a much longer term. A loan is not temporary financing merely because its term is short. For example, a lender may make a loan with a 1-year term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires. Such a loan must be reported as a home purchase loan. 12 CFR §1003 Supplement I 1003.2(Home Purchase Loan)(5)

20. If you purchase a loan, is it reportable on the HMDA LAR?

Yes. If the credit union is subject to HMDA reporting requirements, it must report purchases of home purchase loans, home improvement loans, and refinances. 12 CFR §1003.4(a)

21. The lender we sell a loan to reports the loan for HMDA. Do we still have to input the loans on the HMDA LAR?

In this case you are considered the "broker" and need to follow the broker rule outlined in 12 CFR Supplement I Staff Commentary 1003.19(c)(2), "For the purposes of the guidance given in this commentary, an institution that takes and processes a loan application and arranges for another institution to acquire the loan at or after closing is acting as a "broker," and an institution that acquires a loan from a broker at or after closing is acting as an "investor." (The terms used in this commentary may have different meanings in certain parts of the mortgage lending industry, and other terms may be used in place of these terms, for example in the Federal Housing Administration mortgage insurance programs.) Depending on the facts, a broker may or may not make a credit decision on an application (and thus it may or may not have reporting responsibilities). If the broker makes a credit decision, it reports that decision; if it does not make a credit decision, it does not report. If an investor reviews an application and makes a credit decision prior to closing, the investor reports that decision. If the investor does not review the application prior to closing, it reports only the loans that it purchases; it does not report the loans it does not purchase. An institution that makes a credit decision on an application prior to closing reports that decision regardless of whose name the loan closes in."

22. If an entity requests our modified LAR in electronic format, can we charge a fee?

A financial institution may impose a reasonable fee for any cost incurred in providing or reproducing the data (i.e., modified LAR). 12 CFR §1003.5(d)

23. What is the appropriate race selection for Hispanic borrowers if the loan officer has to fill out the information to the best of their ability?

The loan officer must select whatever ethnicity and race or races he or she believes apply, based on surname and visual observation. 12 CFR §1003 Appendix B(I)(D)

24. To confirm accuracy of HMDA data, do I hit Submit or Export, then reply back via e-mail, or do I have to "import" the data?

For instructions on submitting HMDA data, please refer to the How to File section on the HMDA page of FFIEC's website (http://www.ffiec.gov/hmda/default.htm).

25. For online applications, does the borrower have to choose to "not share" or fill in some or all of the information requested or is allowed not to do either?

The applicant(s) must be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact must be noted on the form. 12 CFR §103 Appendix B(II)(A) and (E)

26. If a closed end second mortgage is done as part of a TDR (troubled debt restructure) then is it be included on HMDA report?

The mortgage would only be reported if it "satisfies and replaces" an existing obligation secured by a first lien on a dwelling. 12 CFR §1003.2(Refinance)

27. My understanding is that MECAs are not reportable as refinance as they do not satisfy and replace an existing lien. In the case where a loan is refinanced via a MECA with new money to purchase or improve a dwelling, would this be HMDA reportable?

MECAs that do not satisfy and replace an existing lien are not HMDA reportable. FFIEC HMDA Q&A (http://www.ffiec.gov/hmda/faqreg.htm#meca)

28. We did not originate any mortgage loan applications in 2014, however, we have in the past years. Do we need to report 0 because do have a branch in an MSA?

If you do not meet the reporting criteria then you do not submit a HMDA LAR. : FFIEC website 2015 Reporting Criteria for Depository Institutions (http://www.ffiec.gov/hmda/guide.htm)

29. If there is a rate spread reported on some of the HMDA reportable loans, is that a problem or does it raise concerns? Should the credit union reduce their loan rates?

The credit union should report rate spreads as required. Making a loan rate decision by itself does not cause concern if supported by a reasonable decision for risk. 12 CFR §1003 Appendix A (I)(G)(1)

30. When is a mobile home HMDA reportable?

A mobile home is reportable when it is considered a dwelling. The definition of a dwelling is residential structure (whether or not attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home. 12 CFR 1003.2 (Dwelling)

31. How do you report negative income on the LAR?

You cannot report a negative number or $0. Therefore, you would enter "NA". 12 CFR §1003 Appendix A (I)(D)(6)(c)

32. Is an assisted living or nursing home HMDA Reportable?

The property would have to meet the definition of a dwelling to be reportable. Transitory residences, such as hospitals, are not considered dwellings. 12 CFR §1003 Supplement I 1003.2(Dwelling)(2)