COGENT BANK

Loan Compliance for Beginners

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FBA 38th Annual Consumer Compliance Conference

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Member FDIC

COGENT BANK

Cogent Bank OVERVIEW

Cogent Bank is a state-chartered, full-service Florida based commercial institution. We offer a full spectrum of lending, depository, property and treasury management services to meet the unique needs of our clients by offering creative solutions that assist in meeting both long- and short- term objectives.

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Disclaimer:

While the speaker makes every effort to assure the information provided at this conference is current and accurate as of the presentation date, it is not intended to be legal advice, and speaker shall not be held responsible for inaccuracies contained herein. The information is subject to change and is not a replacement for reading the applicable statute, regulation, official interpretation, commentary or supplemental information of the CFPB, FDIC, OCC or the Federal Reserve.

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Agenda

- **Equal Credit Opportunity Act (ECOA)**
- **Fair Credit Reporting Act (FCRA)**
- **Flood Disaster Protection Act (FDPA)**
- **Home Mortgage Disclosure Act (HMDA)**

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Equal Credit Opportunity Act (ECOA)

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Equal Credit Opportunity Act (ECOA)

Purpose:

- Promote the availability of credit
- Notify applicants of action taken
- Report credit history in the names of borrowers
- Record Retention
- Collect GMI
- Provide Appraisal Reports

Coverage:

- Unlike Regulation Z, which is limited to personal, family, or household purpose credit, **Regulation B applies to all types of credit and borrowers** subject to some limited exceptions in the Regulation. Generally, Regulation B applies to **personal, family, household, business, and agricultural purpose credit.**
- Reg B applies to all stages of credit, from pre-application and underwriting, through to servicing, collections and payoffs.

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Creditor Responsibilities

Do not discriminate on a prohibited basis in any aspect of a credit transaction

- Rules address taking and evaluating applications; notifying applicants; furnishing credit information (servicing); advertising and marketing; and providing appraisals.

Do not discourage applications

- ECOA requires that a creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.
- *A statement that the applicant "should not bother" to apply, after the applicant states that he is retired.*
- *Use words, symbols, models or other forms of communication in advertising that express, imply, or suggest a discriminatory preference or a policy of exclusion in violation of the Act.*
- *Use of interview scripts that discourage applications on a prohibited basis.*

Definition of "Application" under ECOA

- An application is an oral or written request for an extension of credit that is made in accordance with procedures used by the creditor for the type of credit requested.
- ECOA requires a written application for loan to purchase or refinance primary dwelling which will be secured by that dwelling.
- Procedures used by the creditor – refers to the actual practices followed by a creditor in making credit decisions as well as its stated application procedures.
- **Definition of "Completed"** Application – A "completed application" refers to an application for credit in which the creditor has received all the information typically required to evaluate the request for the specified amount and type of credit. This includes, but is not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports from governmental agencies or other entities necessary to guarantee, insure, or secure the credit or collateral. The creditor shall exercise reasonable diligence in obtaining such information.

Collecting Government Monitoring Information

Creditor **shall not** inquire about the applicant's Race, Color, Sex, Religion, or National Origin in connection with a credit transaction, except:

- Creditor **shall** request Ethnicity, Race, Sex, Marital Status, and Age for an application for credit primarily to purchase or refinance a dwelling occupied or to be occupied by the applicant as a principal residence (within a year or upon completion of construction), where the extension of credit will be secured by the dwelling.
  - This includes closed end loans, and HELOCs where it is apparent at the time of application that the primary purpose of the line is for purchase or refi.
  - This excludes construction-only loans.
  - For race and ethnicity, creditor may:
    - Collect as per HMDA/Reg C requirements ("disaggregated") –OR-
    - Collect ethnicity using the aggregate categories "Hispanic or Latino" and "not Hispanic or Latino"; and, for race, "American Indian or Alaska Native", "Asian", "Black or African American", "Native Hawaiian or Other Pacific Islander", and "White."

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Collecting Government Monitoring Information

- Creditor who is subject to HMDA data collection and reporting **shall** request the data required by HMDA/Reg C.
- Creditor who (1) WAS subject to HMDA in the previous 5 years; (2) has surpassed the coverage threshold in 1 of the prior 2 years; or (3) voluntarily subjects itself to HMDA…**may** request and report the data required by HMDA/Reg C.
- Creditor who is conducting a self-test that meets ECOA requirements so long as certain disclosures are provided.

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Commonly Confused Requirements of ECOA

Spousal Information/Permissible Inquiries Regarding Marital Status

- Spouse permitted to use the account;
- Spouse contractually liable on the account, or spouse owns property jointly;
- Applicant relying on spouse's income as basis for repayment of credit requested;
- Applicant resides on property located in community property state; or;
- Applicant is relying on alimony, child support or separate maintenance payments from spouse as basis for repayment of credit requested.

Documenting Intent to apply for Joint Credit

- A person's intent to be a joint applicant must be evidenced at the time of application, <u>including for two or more individual applicants on a commercial loan application.</u>
- Method used to establish intent must be separate from debt instrument and from means used to affirm accuracy of information.
- Typically documented on an initialed or signed application
  - *We intend to apply for joint credit ___ ___*
  - This language is contained on the top section of URLA/FNMA Form 1003. It's a good idea to <u>include the joint credit acknowledgement on all application forms</u>.

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ECOA Adverse Action Definition

- A refusal to grant credit in substantially the same amount or on the same terms as requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms), and the applicant uses or expressly accepts the credit offered;
- A termination of an account or an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts; or
- A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

<u>Does not include</u>:

- A refusal to extend a type of credit/credit plan that creditor does not offer, or which is prohibited by law.
- A change in the terms of an account expressly agreed to by an applicant.
- Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that account.

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ECOA Adverse Action Notification Requirements

Notice of action taken must be provided to the primary applicant **within 30 days**:

- After taking adverse action on a **completed** application (approval, counteroffer, or adverse action)
- After taking adverse action on an **incomplete** application, and
- After taking adverse action on an existing credit account

Counteroffer - If the applicant does not expressly use or accept a counteroffer, the creditor must provide notice of action taken **within 90 days** of making a counteroffer:

- The adverse action notice may be combined with the counteroffer, which negates need for 2nd notice.

Incomplete application - 2 choices:

- You can deny the request and send notice of adverse action **within 30 days** of initial application, **OR**
- You can send notice of incomplete application within the 30 days that:
  - Specifies the information needed to make a credit decision
  - Designates a reasonable deadline for reply
  - Explains that applicant's failure to respond will result in no further consideration of application

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ECOA Appraisal Delivery Requirements

Coverage – Covers **applications** for closed-end or open-end credit (i.e., **originated and non-originated**) to be secured by a **first lien on a dwelling** (as defined in §1002.14(b)(2), **whether the credit is for a business purpose or a consumer purpose.** It does not include any subordinate lien transactions.

  - **Dwelling:** The term "dwelling" means a **residential structure that contains one to four units whether or not that structure is attached to real property.** The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

- Creditor must deliver a copy of all appraisals and other written valuations **"promptly upon completion".**
  - **There are no exceptions for withdrawn or denied applications.** The requirements of the Appraisal rule apply regardless of whether an application is approved, withdrawn, denied, or incomplete.
- Must be delivered at **LEAST three (3) business days prior to consummation** (delivery presumed three (3) business days after you mail or transmit, unless you have evidence of actual receipt).
  - The applicant is permitted to waive the timing requirement at least three (3) business days prior to closing if the creditor provides the copies at or before loan closing.

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ECOA Appraisal Notice Requirements

Coverage – Covers **applications** for closed-end or open-end credit (i.e., **originated and non-originated**) to be secured by a **first lien on a dwelling** (as defined in §1002.14(b)(2), **whether the credit is for a business purpose or a consumer purpose.** It does not include any subordinate lien transactions.

- **Dwelling:** The term "dwelling" means a **residential structure that contains one to four units whether or not that structure is attached to real property.** The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

- Creditor must provide the appraisal notice to the applicant within three (3) business days of receipt of application**, even when the application is denied or withdrawn.**
  - Appraisal Notice: *"We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your use at your own cost."*

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ECOA Common Findings

- **Joint Intent**
  - At time of application! <u>Not</u> after application.
- **Spousal Signature/Guarantee**
- **Timely Credit Decision**
- **Appraisal Notice Disclosure**
  - Applies to business purpose credit applications
- **Appraisal Delivery**
  - Applies to business purpose credit applications

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Fair Credit Reporting Act (FCRA)

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Fair Credit Reporting Act (FCRA)

Permissible purpose: Requires users of consumer credit reports to have a permissible purpose for obtaining the credit report:

- In accordance with consumer's written instruction
- In connection with a credit transaction to the consume,r (or review or collection of an account of the consumer),
- This Includes individual's who will guarantee business credit (but NOT owners, directors, officers, etc., of business borrowers who will not guarantee),
- For employment purposes (must be written), or
- Other legitimate business need in connection with a business transaction (other than credit) initiated by a consumer.

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FCRA Adverse Action Definition

FCRA definition of adverse action is more broadly defined than ECOA definition and includes:

- Adverse action as defined in section 701(d)(6) of ECOA.
  - Under section 701(d)(6) of the ECOA, an adverse action generally means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested.
- A denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
- A denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
- A denial or cancellation of, an increase in any charge for, or any adverse or unfavorable change in the terms of a government license or benefit; or
- An action on an application or transaction initiated by a consumer, or in connection with account review that is adverse to the consumer's interests.

FCRA Adverse Action Notice Requirements

Provide FCRA 615(a) Adverse Action Notice to <u>all</u> individual applicants (not just primary as allowed by ECOA; not required for guarantors as they are not "applicants") if:

- Adverse action is based in whole or in part on information in a <u>consumer report</u>; *or*
- Credit is denied or a credit-related charge is increased based on information obtained from <u>third parties other than CRAs</u> which bears upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; *or*
- Adverse action was taken based on information furnished by a <u>corporate affiliate</u> of the person taking the action

Credit Score Disclosures

FCRA Adverse Action – Required on AAN if a credit score was used in connection with action:

- The consumer's numerical credit score used by the person in taking adverse action;
- The range of possible credit scores;
- All the key factors that adversely affected the credit score (*does not relieve ECOA obligation to disclose reason(s) for Adverse Action)*;
- The date on which the credit score was created; and
- The name of the person or entity providing the credit score or the information upon which score was created.

Risk Based Pricing Notice:

If, based in whole or in part on a consumer report, you grant credit on material terms that are materially less favorable than the most favorable material terms available to a substantial proportion of consumers, you must provide a "risk-based pricing notice" (to each borrower). Model notices in Appendix H to Part 1022.

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Credit Score Disclosures

Credit Score Disclosure Exception Notice (CSDEN) / Notice to Home Loan Applicant:

- ALTERNATIVE to providing a Risk Based Pricing Notice; required if "use" a credit score in connection with consumer application.
- Model notices in Appendix H to Part 1022.
- Notice to the Home Loan Applicant is a REQUIRED disclosure and is included on the model CSDEN notice for 1-4 residential property.
- No Credit Score Notice format for when score is not available.
- Multiple credit scores per consumer – Use most relevant or may disclose all.

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Identity Theft Red Flags

Section 615(e);15 U.S.C. 1681m of the FCRA:

- Requires federal agencies to establish and maintain guidelines for use by each financial institution or creditor regarding identity theft.
- Red Flag means a pattern, practice, or specific activity that indicates the possible existence of identity theft.
- Rules and Regulations, Title 12, (OCC/Part41, FDIC/Part334, FRB/Part22), Subpart J:
  - Risk Assessment
  - Written Program
  - Policies and procedures
  - Duties of card issuers regarding changes of address

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Flood Disaster Protection Act (FDPA)

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Flood Disaster Protection Act (FDPA)

- The Institution **may not make, increase, renew or extend** any loan secured by improved real property or a mobile home that is permanently affixed to a foundation, that is located in a special flood hazard area (SFHA) unless the improved real property is covered by the minimum amount of flood insurance required by statute.
- This includes situations where a security interest is taken only **"out of an abundance of caution."**

Loan Modifications:

- A loan modification may or may not be subject to the FDPA requirements.
- **If a loan modification or restructuring changes terms of the loan such as by increasing the outstanding principal balance beyond what was contemplated as part of the loan under the contract, or by extending the maturity date of the loan, the Regulation would apply because the terms of the loan have been increased or extended beyond what was originally contemplated to be part of the loan.**

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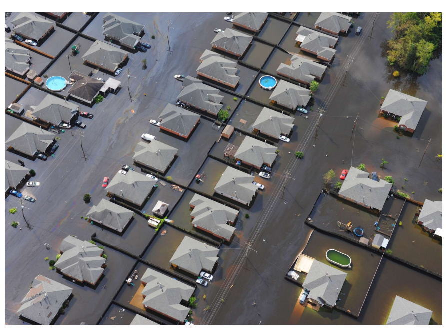
Flood Disaster Protection Act (FDPA)

Flood insurance, either issued through the NFIP or provided by a private insurance company, **is required for the term of the loan** if the property is located in a community that participates in the NFIP.

THE INSTITUTION CANNOT WAIVE THE FLOOD INSURANCE REQUIREMENTS FOR ANY REASON.



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Institution Responsibilities

- Determine if real estate is or will be located in a special flood hazard area, using a standard flood hazard determination form. **This should be obtained as soon as possible!**
- If the structure is, or will be, located in a SFHA, the Lender must provide a Notice of Special Flood Hazards (the Notice) to one borrower. In a transaction involving multiple borrowers, the Lender need only provide the Notice to any one of the borrowers in the transaction but may provide multiple notices if they choose.
  - The Notice of Special Flood Hazards must be provided **any time a loan is made, increased, renewed or extended**. Although increases, renewals and extension do not require a new flood determination, the Lender **must still provide a new Notice of Special Flood Hazards to the borrower.**
  - The Notice **must** be provided to the borrower **within a reasonable time before the completion of the transaction**, to ensure that the borrower has been made aware of the special flood hazard and is informed of their responsibilities under the FDPA; and that the borrower has sufficient time to purchase flood insurance before completion of the loan. **Typically, ten (10) calendar days prior to loan closing is considered reasonable.**

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Institution Responsibilities

  - The Institution is **required to retain evidence that demonstrates record of receipt of the Notice to the borrower**. Examples of a record of receipt include: the borrower's signed acknowledgment of receipt of the Notice; the borrower's initials on a form that acknowledges receipt; the borrower's electronic signature that acknowledges receipt, or a certified return receipt if the Notice was mailed to the borrower. The Institution may retain the record electronically but must be able to retrieve the record within a reasonable time pursuant to a document request from its Federal supervisory agency.
- Maintain adequate flood insurance coverage for the life of the loan:
  - The lesser of the three:
    1. Outstanding Principal Balance of the loan,
    2. Insurable Value, -OR-
    3. Maximum allowed by NFIP:
       - $250,000 for residential structures (1- 4 family), including condominium units.
       - $500,000 for non-residential structures, other residential building and non-condominium residential buildings of five units or greater.
  - When a loan is secured by a building and its contents, and the building is in a SFHA in a participating community, flood insurance coverage is required for both the building **AND** the contents.

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Exemptions to the Purchase Requirements

The mandatory flood insurance purchase requirement does not apply to the following three loan situations:

- Loans on state-owned property covered under an adequate policy of self-insurance satisfactory to the Administrator of FEMA. A list of state property falling within this exemption is periodically published by FEMA.
- Loans with an original principal balance of $5,000 or less and having an original repayment term of one year or less.
- **Any structure that is a part of any residential property but is detached from the primary residential structure of such property and does not serve as a residence.**
  - **A structure that is part of a residential property is a structure used primarily for personal, family, or household purposes, and not used primarily for agricultural, commercial, industrial, or other business purposes. It is detached from the primary residential structure if it is not joined by any structural connection to that structure.**
  - **Whether a structure serves as a residence is based on the Institution's good faith determination that the structure is intended for residential use or actually used as a residence, which generally includes sleeping, bathroom, or kitchen facilities, but not necessarily all three.**

Waiting Periods

In general, new flood insurance policies and endorsements adding or increasing coverage become effective following a 30-day waiting period. However, there are three exceptions listed below:

1. **Loan Exception:** New, additional, or increased flood insurance coverage purchased in connection with making, extending, increasing, or renewing a loan secured by the insured property is not subject to the 30-day waiting period if the NFIP receives the Application Form and full amount due within specified timeframes. If a policy or endorsement is eligible for this exception, then the coverage becomes effective as of the time of the loan closing.
2. **Map Revision Exception:** A 1-day waiting period applies when the NFIP revises an FHBM or a FIRM to show that the building is now in an SFHA when it was not previously. The 1-day waiting period only applies if the insurer receives the Application Form and full amount due within 13 months from the effective date of the map revision. The 1-day waiting period rule applies for all buildings, including those owned by condominium associations.

Waiting Periods

1. **Post-Wildfire Exception:** Coverage becomes effective after a 1-day waiting period if:
   a. The insured property is privately-owned and experiences damage caused by a flood that originated on federal land;
   b. Post-wildfire conditions on federal lands caused or worsened the flooding; **and**
   c. The policyholder purchased the new, additional, or increased coverage either;
      i. On or before the fire containment date; or
      ii. During the 60-calendar day period following the fire containment date.

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Insurable Value

The insurable value of the building may generally be the same as 100% Replacement Cost Value (RCV), which is the cost to replace the building with the same kind of material and construction without deduction for depreciation. In calculating the amount of insurance to require, the Institution may choose from a variety of approaches or methods to establish the insurable value:

- Appraisal based on a cost-value (not market-value) approach;
- Construction-cost calculation;
- Insurable value used on a hazard insurance policy *(recognizing that the insurable value for flood insurance purposes may differ from the coverage provided by the hazard insurance and that adjustments may be necessary)*
- Replacement cost value listed on the flood insurance policy declarations page;
- Any other reasonable approach, so loan as it can be supported.

Note: The RCV may not always be practical in determining insurable value. For nonresidential properties, the insurable value might be based on actual cash value (ACV), which is RCV minus the value of its physical depreciation. In these situations, using RCV rather than ACV could cause the borrower to be insured for more coverage than they would recover in the event of a loss.

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Replacement Cost Value(RCV)/Actual Cash Value(ACV)

How Flood Damages Are Valued

The value of flood damage in the Dwelling Form is based on either Replacement Cost Value (RCV) or Actual Cash Value (ACV).

Replacement Cost Value (RCV)

Replacement Cost Value (RCV) is the cost to replace that part of a building that is damaged (without depreciation). To be eligible, three conditions must be met:

1. The building must be a single-family dwelling, and
2. Be your principal residence, meaning you live there at least 80 percent of the year, and
3. Your building coverage is at least 80 percent of the full replacement cost of the building, or is the maximum available for the property under the NFIP.

Actual Cash Value (ACV)

Actual Cash Value (ACV) is Replacement Cost Value at the time of loss, less the value of its physical depreciation.

Some building items such as carpeting are always adjusted on an ACV basis. For example, wall-to-wall carpeting could lose between 10–14 percent of its value each year, depending on the quality of the carpeting. This depreciation would be factored in the adjustment.

Personal property is always valued at ACV.

Contents Coverage

When a loan is secured by a building and its contents, and the building is in a SFHA in a participating community, flood insurance coverage is required for both the building AND the contents. The maximum amount of coverage available through the NFIP is $100,000 for residential contents and $500,000 for nonresidential contents.

It is important to note that lenders can review loan agreements and security instruments to verify whether a security interest is taken in the building and contents. Examiners frequently see situations in which a lender obtains flood insurance for the building but not its contents, often because the lender did not intend to take the contents as collateral.

The Interagency Flood Q&As clarify the lender cannot exempt the contents from required coverage because the lender took a security interest inadvertently or out of an abundance of caution. Where the loan agreements and security instruments create a security interest in the contents, regardless of whether the security interest is perfected under applicable law, flood insurance must be purchased to cover the contents.

Construction Loans

A loan secured by a building in the course of construction is subject to flood insurance requirements, even if the building is not yet walled and roofed, as long as the construction has not been halted for 90 days or longer or the lowest floor used for rating purposes is not below the base flood elevation (BFE).

The Flood Q&As finalized in October 2022 offer two compliance options for the Institution when making loans secured by a building to be constructed:

- Require borrower to purchase a flood insurance policy at the time of origination;
- Allow borrower to defer the purchase of flood insurance until either:
    1. A foundation slab has been poured or an elevation certificate has been issued; or
    2. The building is walled and roofed, provided the building to be constructed will have its lowest floor below the BFE.

If the Institution allows the borrower to defer the purchase of flood insurance until after origination, it must have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than 30 days prior to disbursement of funds to the borrower in light of the NFIP 30-day waiting period requirement.

When insurance is obtained for a building in the course of construction, materials or supplies used in construction or repair are not insurable unless they are in and enclosed building located on or adjacent to the premises.

Force Placed Flood Insurance

If the Institution determines at any time during the term of a designated loan that a building or mobile home and any personal property securing the loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under the regulation, the Institution must notify the borrower that the borrower must obtain flood insurance at the borrower's expense, in an amount at least equal to the minimum amount required under the regulation.

If the borrower fails to obtain flood insurance within 45 days of the Institution's notification to the borrower, the Institution must purchase flood insurance on the borrower's behalf at that time.

Under the Biggert-Waters Act, <u>the Institution may force place and charge for flood insurance beginning on the date on which flood insurance coverage lapsed or did not provide a sufficient coverage amount.</u>

Termination of Force Placed Flood Insurance

Within <u>30 days of receipt of confirmation of a borrower's existing flood insurance coverage</u>, the <u>Institution must contact the insurer to terminate the force-paced flood insurance policy and refund all premiums and fees</u> for any period of <u>overlap between the borrower's policy and the force-placed policy</u>.

Escrow Requirements

A regulated lending institution, must escrow all flood insurance premiums and fees for designated loans secured by residential improved real estate or a mobile home in a SFHA that are made, increased, extended, or renewed on or after January 1, 2016, subject to certain exceptions.

For loans made, increased, renewed, or extended before that date that are still outstanding and not subject to one of the exceptions, lenders must notify borrowers by June 30, 2016, of the option to escrow flood insurance premiums and costs.

Exceptions:

Small Lender Exception: The financial institution had total assets of less than $1 billion as of December 31 of either of the two prior calendar years and, as of July 6, 2012:

- The institution was not required by Federal or State law to escrow taxes, insurance premiums, fees, or any other charges for the term of the loan; and
- The institution did not have a policy of uniformly and consistently escrowing the same.

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Escrow Requirements

If the financial institution initially qualified for the exception but later exceeded the $1 billion asset-size threshold, <u>the financial institution must begin escrowing for any loans made, increased, extended, or renewed on or after July 1 of the first calendar year of changed status.</u>

Loan-Related Exceptions: The escrow requirement does not apply to the following types of loans:

- loans with a subordinate position to a senior lien secured by the same property for which flood insurance is being provided;
- loans secured by residential improved real estate or mobile homes that are part of a condominium, cooperative, or other project development when covered by a flood insurance policy that (a) meets the mandatory flood insurance purchase requirement; (b) is provided by the condominium association, cooperative, homeowners association, or other applicable group; and (c) the premium for which is paid by the condominium association, cooperative, homeowners association, or other applicable group as a common expense;
- loans secured by residential improved real estate or a mobile home that is used as collateral for a business, commercial, or agricultural purpose;
- home equity lines of credit;

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Escrow Requirements

Loan-Related Exceptions (Continued): The escrow requirement does not apply to the following types of loans:

- Nonperforming loans, which the regulation defines as loans that are 90 or more days past due and remain nonperforming until they are permanently modified or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, are collected or otherwise discharged in full; and
- Loans with terms of 12 months or less.

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FDPA Common Findings

- Buildings in the course of construction
- Private Flood Insurance Policies (Compliance Aid Statement)
- Contents Coverage when building and contents within building secures the loan
- Timely delivery of flood notices, including for loan extensions
- Flood insurance coverage for multiple properties and/or multiple structures
- Force placed flood insurance

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Penalties and Liabilities

The Flood Disaster Protection Act provides penalties for violations of:

- Mandatory flood purchase requirement;
- Escrow requirements;
- Notice requirements; and
- Force placement requirements

If an institution is found to have a pattern or practice of committing any of these violations, the Agencies are required to assess civil money penalties in an amount not to exceed $2,000 (adjusted annually for inflation) per violation. Currently, the civil money penalty effective January 10, 2025, is an amount not to exceed $2,730. Any penalty assessed will be paid into the FEMA National Flood Mitigation Fund.

Liability for violations cannot be transferred to a subsequent purchaser of a loan. No penalty may be imposed after the expiration of four years beginning on the date of the occurrence of the violation.

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Home Mortgage Disclosure Act (HMDA)

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Home Mortgage Disclosure Act (HMDA)

Purpose:

The Home Mortgage Disclosure Act (HMDA) is intended to provide the public with loan data that can be used:

- To help determine whether financial institutions are serving the housing needs of their communities;
- To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and
- To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

HMDA is not intended to encourage unsound lending practices or the allocation of credit.

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Institutional Coverage Test

Asset-Size Threshold: On the preceding December 31, the Institution had assets in excess of $58 million*. The asset size threshold is adjusted annually by the CFPB. *Updated for data collection in 2025

Location Test: On the preceding December 31, the Institution had a home or branch office located in a Metropolitan Statistical Area (MSA)

Loan Activity Test: During the preceding calendar year, the Institution originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a 1-4 family unit dwelling.

Federally Related Test: The Institution is a federally insured and regulated institution.

Loan Volume Thresholds: The Institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years; or 200 open-end lines of credit in each of the two preceding calendar years.

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Reportable Transactions

A reportable transaction is an application for a loan secured by a dwelling (unless otherwise excluded) where the purpose is to:

- Purchase a Dwelling
- Refinance a Dwelling
- Improve a Dwelling
- Other - Home Equity (consumer purpose)

NOTE: A financial institution may rely on the oral or written statement of the applicant regarding the proposed use (purpose) of the covered loan proceeds.

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Other Reportable Transactions

- **Short-Term Financing:**

  Investor Rehab/Resale loans – Lender A originates a loan with a nine-month term to enable an investor to purchase a home, renovate it, and re-sell it before the term expires, the loan is not designed to be replaced by permanent financing, which means the temporary financing exclusion does not apply. This transaction is not considered temporary financing (not reportable) simply because its term is short. It would be reportable as a home purchase loan.

- **Assumptions:**

  The assumption of an existing dwelling secured loan by a new borrower via a written agreement must be reported as a home purchase loan.

- **Contract for Deed Pay Off:**

  A dwelling secured loan or line to pay off a land contract cannot be a refinance and must be reported as a home purchase loan.

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What is an Application under HMDA?

Application means an oral or written request for a covered loan that is made in accordance with procedures used by a financial institution for the type of credit requested.

Consistency with ECOA (Regulation B)

Bureau interpretations that appear in the official commentary to ECOA (Regulation B) are generally applicable to the definition of application under HMDA (Regulation C). However, under HMDA the definition of an application does not include prequalification requests.

Definitions

- **Application** – An oral or written request for a covered loan that is made in accordance with procedures used by a financial institution for the type of credit requested.
- **Closed-end Mortgage Loan** – An extension of credit that is secured by a lien on a dwelling and that is not an open-end line of credit.
- **Covered Loan –** A closed-end mortgage loan or an open-end line of credit that is not an excluded transaction.
- **Dwelling** – A residential structure, whether or not attached to real property. Includes but is not limited to a detached home, an individual condominium or cooperative unit, a manufactured home or other factory-built home, or a multifamily residential structure or community.
  - A dwelling is not limited to the principal or other residence of the applicant or borrower, and thus includes vacation or second homes and investment properties.
  - Multifamily residential structures: A dwelling also includes a multifamily residential structure or community such as an apartment, condominium, cooperative building or housing complex, or a manufactured home community.
    - A loan related to a manufactured home community is secured by a dwelling if it is not secured by any individual dwelling units and is, for example, instead secured only by property that only includes common areas, or is secured only by an assignment of rents or dues.

Definitions

Dwelling Continued:

- Mixed-use properties: A property used for both residential and commercial purposes, if the property's primary use is residential. An institution may use any reasonable standard to determine the primary use of the property, such as by square footage or by the income generated. An institution may select the standard to apply on a case-by-case basis.
- Properties with service and medical components: A property used for both long-term housing and to provide related services, such as assisted living or supportive housing is a dwelling.

- **Home Improvement Loan –** A closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part, of repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which the dwelling is located.
- **Home Purchase Loan** – A closed-end mortgage loan or an open-end line of credit that is for the purpose, in whole or in part of purchasing a dwelling.
  - Includes a loan secured by one dwelling and used to purchase another dwelling.
  - Includes both combined construction/permanent loan or line of credit, and the separate permanent financing that replaces a construction-only loan or line of credit for the same borrower at a later time.
  - Does not include a construction-only loan or line of credit that will be replaced by separate permanent financing extended by any financial institution to the same borrower at a later time or that is extended to a person exclusively to construct a dwelling for sale.

Definitions

- **Multifamily dwelling –** A dwelling, regardless of construction method, that contains five or more individual dwelling units.
  - NOTE: A covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling.
- **Open-end Line of Credit** – An extension of credit secured by a lien on a dwelling and that is an open-end credit plan where the lender reasonably contemplates repeated transactions and may impose a finance charge from time to time on an outstanding unpaid balance.
  - Includes business purpose open-end lines of credit secured by a dwelling.
- **Prequalification –** A request (other than a preapproval request) by a prospective loan applicant for a preliminary determination of whether the prospective loan applicant would likely qualify for credit under the Institution's standards, or for a determination of the amount of credit for which the prospective applicant would likely qualify.

Definitions

- **Preapproval –** A request is for a home purchase loan, not secured by a multifamily dwelling, not for an open-end line of credit or reverse mortgage and is reviewed under a preapproval program.
  - A request for a preapproval is an application 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 an applicant valid for a designated period of time to extend a home purchase loan up to a specified amount.
  - To be a preapproval program, the written commitment must result from a comprehensive review of the creditworthiness of the applicant, including such verification of income, resources and other matters as is typically done by the FI as part of its normal credit evaluation program. The written commitment cannot be subject to conditions other than:
    - ✓ Suitable Property – Conditions that require the identification of a suitable property.
    - ✓ No Material Change – Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and
    - ✓ Other Limited Conditions – limited conditions that are not related to the financial condition or creditworthiness of the applicant that the financial institution ordinarily attaches to traditional home mortgage applications. (i.e. clear title, clear termite inspection, settlement statement showing adequate proceeds from the sale of the present home to purchase a new home).
  - Do not report a request for a preapproval that will be an open-end line of credit, a reverse mortgage or secured by a multifamily dwelling.

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Definitions

- **Refinancing** – A closed-end mortgage loan or an open-end line of credit in which a new, dwelling-secured debt obligation satisfies and replaces an existing, dwelling-secured debt obligation by the same borrower.
  - **Contract Law** – whether a refinancing occurs is based on contract law.
  - **Multiple Loans:**
    - One loan or line replaces two or more – one new dwelling secured loan or line can replace multiple existing dwelling secured loans or lines.
    - Multiple loans or lines replace a single loan or line – multiple new dwelling secured loans or lines can replace a single existing dwelling secured loan or line. In either scenario the new loan or line is a refinancing.

    Example – a borrower has an existing $50,000 closed-end mortgage loan and obtains a new $75,000 closed-end mortgage loan that satisfies and replaces the existing $50,000 loan. The new $75,000 loan is a refinancing.
  - **Loans secured by a personal guarantee** – borrower has an existing $30,000 closed-end mortgage loan (or line) secured only by a personal guarantee, the new $50,000 loan (or Line) is **not** a refinancing.
  - **Same Borrower** – only one borrower must be in common between the existing and new obligation. (i.e. two spouses are divorcing. If both spouses are obligated on obligation X, but only one spouse is obligated on obligation Y, then obligation Y is a refinance. On the other hand, if only spouse A is obligated on obligation X and only spouse B is obligated on obligation Y, then obligation Y is not a refinancing.

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Definitions

- **Refinancing (Continued):**
    - **Commercial Property** - A refinancing of a loan or line secured by a multifamily dwelling or a single-family investment property is a refinance.
    - **Short-Term Financing** – Report refinances of short-term financing.

The following are not Dwellings:

- Recreational vehicles, including boats, campers, travel trailers, or park model recreational vehicles.
- Houseboats, floating homes, and mobile homes constructed before June 15, 1976, regardless of whether they are used as residences.
- Transitory residences such as hotels, hospitals, college dormitories, or recreational vehicle parks.
- Structures originally designed as a dwelling but used exclusively for commercial purposes, such as a home converted to daycare facility or professional office.

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Dwelling Chart

Single Family Dwellings	Multifamily Dwellings	Mixed Use Property Dwellings
✓ Principal Residence ✓ Secondary Residence ✓ Vacation Homes ✓ Manufactured Home or other factory built homes ✓ Detached Homes ✓ Investment Properties ✓ Individual Condominium Units ✓ Individual Cooperative Units	✓ Apartment Buildings or Complexes ✓ Manufactured home communities (mobile home park) ✓ Condominium building or complexes ✓ Cooperative building or complexes	✓ Mixed-use property if primary use is residential ✓ Properties for long-term housing and related services or medical care, if primary use is residential. (assisted living facilities) o Medical Services + Longer Term Housing = dwelling

Structures that are not considered dwellings:
- Boats, Campers, Travel Trailers
- Park Model RVs
- Recreational Vehicle Parks
- Houseboats, Floating Homes
- Mobile Homes constructed prior to June 15th, 1976
- Transitory Residences (homes converted to daycare facilities/homes converted to professional offices)
- Hotels
- College Dormitories
- Mixed-Use property if primary use is not residential
- Structures used originally as dwellings but used exclusively for commercial purposes
- Properties for long-term housing and medical care if primary use is not residential.
- Hospitals and Properties used to provide medical care (skilled-nursing, rehab, etc.)

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HMDA Purpose Waterfall – Multi-purpose Loans

For multiple purpose HMDA reportable loans/lines, you will proceed down the following hierarchy known as the "Waterfall"

Home Purchase – if **ANY** of the loan proceeds will be used to purchase a dwelling, it must be reported as a home purchase loan. (i.e. home purchase loan that is also a home improvement loan and a cash-out refinance loan), report as a Home Purchase.

Refinance – If **ANY** of the loan proceeds will be used for refinance or cash-out refinance but NONE of the loan proceeds will be used toward the purchase of a home, then report loan as a refinance. (i.e. if the refinance is a cash-out refinance and the funds will be used for both home improvement and to pay tuition), report the loan as a Refinance or Cash-out Refinance.

Home Improvement – If **ANY** of the loan proceeds will be used for home improvement but NONE of the proceeds will be used toward the purchase of a home or for refinance or cash-out refinance, (i.e. a loan is a home improvement loan as well as for another purpose, but the covered loan is not a home purchase loan, a refinancing, or cash-out refinance), then report the loan as Home Improvement.

Other – If **NONE** of the loan proceeds for a Consumer Purpose transaction will be used toward the purchase of a home, refinancing, cash-out refinancing or home improvement, report loan as Other Purpose

HMDA Loan Purpose Waterfall

Loan Purpose	Code
If **ANY** of the loan proceeds will be used toward the purchase of a home:	Use: (1) – Home purchase loan
If **ANY** of the loan proceeds will be used for refinance or cash-out refinance but **NONE** of the loan proceeds will be used toward the purchase of a home:	Use either: (31) – Refinancing; (32) – Cash-out refinancing
If **ANY** of the loan proceeds will be used for home improvement but **NONE** of the loan proceeds will be used toward the purchase of a home or for refinance or cash-out refinance:	Use purpose code: (2) – Home improvement loan
If **NONE** of the loan proceeds for a **consumer purpose transaction** will be used toward the purchase of a home, refinancing, cash-out refinancing or home improvement:	Use purpose code: (4) – Other purpose

Excluded Transactions

- **Non-Dwelling Secured Transaction,** regardless of purpose.
- **Modifications** – Cannot be satisfied and replaced – if the transaction meets the definition of refinance under Regulation Z, it would be HMDA-reportable.
- **Agricultural Purpose** (100% exclusion) – An institution may use any reasonable standard to determine the primary use of the property. (refer to 12CFR1026.3(a), comment #8, Reg Z Commentary).
- **Bare Land** – Do not report loans or lines secured by bare land only – unless you know that the applicant or borrower will use the proceeds **within 2 years** after closing or account opening to construct a dwelling on, or to purchase a dwelling to be placed on the land. Depending on how structured could still be considered under the temporary financing exclusion.
- **Less than $500** – do not report loans or lines less than $500.

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Excluded Transactions

- **Business Purpose Home Equity** – Generally, do not report business purpose home equity loans or lines. However, business purpose home purchase, refinance and home improvement loans or lines must be reported. (refer to 12CFR1026.3(a), comment #8, Reg Z Commentary). The following business purpose loans and lines are not reportable because they do not meet the home purchase, home improvement or refinance definitions under HMDA:
  - Home Equity – Business Improvement or Expansion purpose – renovate a family restaurant that is not located in a dwelling, purchase a warehouse or purchase business equipment.
  - Home Equity – Purchase Business Inventory – a loan or line to a corporation whose funds will be used primarily for business purposes, such as to purchase inventory.

  Still must report refinance of a business purpose home equity loan or line when satisfying and replacing credit obligation.

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Excluded Transactions

- **Temporary Financing** – a loan or a line is considered temporary financing and excluded if the loan or line is designed to be replaced by permanent financing at a later date (i.e. two phase financing). Both phases do not have to be made by the same lender.
  - **Bridge or swing loan (two-phase financing)** – Institution extends credit in the form of a bridge loan to finance the borrower's down payment on a home purchase. The borrower pays off the bridge loan with funds from the sale of his existing home and obtains permanent financing for the new home from Institution. Bridge loan is excluded as temporary financing because the bridge loan will be replaced by the permanent financing. Bridge-Only Loan is not to be reported – considered as temporary financing since it will not be replaced by permanent financing.
  - **Temporary vs. Short Term -** If Lender originates a loan with nine-month term to enable an investor to purchase a home, renovate it and resell it before the term expires, the loan is <u>not</u> designed to be replaced by permanent financing and therefore, temporary financing does <u>not apply</u>! Just because a transaction is short term, it does not make it temporary financing.

Excluded Transactions

- **Prequalification Requests** – No house, no HMDA.

  NOTE: An application for the purpose of refinancing IS NOT a prequalification request
- **Loans secured by a Personal Guarantee**
- **Loans originated or purchased by the FI acting in a fiduciary capacity**
- **Servicing Only Purchases**
- **Merger/Acquisition Lines or Loans**
- **Partial Interest in a Line or Loan Purchased**
- **Purchase of an interest in a pool (i.e. loan participations) of loans or lines**

Demographic Information (DI) Rules Requirements

- **Report as provided by applicant(s).** Only the applicant(s) can select sub-categories (Not to be selected by financial institution)
- Initial application is taken in person: Request DI. Collect based on visual observation/surname, even if applicant indicates they do not wish to provide.
- Initial application not in person: **If they've previously indicated they do not wish to provide, do not collect, even if you meet with applicant(s) prior to closing.**
- **Initial application not taken in person and DI not provided: If they did not indicate they do not wish to provide, but you meet with them prior to closing, request DI. If they indicate they do not wish to provide, collect based on visual observation/surname.**
- One applicant can provide on behalf of another not present.
- Applicants must have the option of selecting more than one ethnicity and race.
- If Other is selected and additional information is provided, report only as provided (Other selection with additional information provided counts as one selection).
- Report on all individuals, even if one applicant/co-applicant is not a natural person.

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HMDA Demographic Information Collection

A Financial Institution shall collect data about the ethnicity, race and sex of the applicant/co-applicant.

- You must ask for this information, **but you cannot require the applicant(s) to provide it,** whether the application is taken in person, by mail, by telephone or via the internet.
- You must inform the applicant that Federal law requires this information to be collected in order to protect consumers and to monitor compliance with Federal statutes that prohibit discrimination against applicants on these bases.
- You must inform the applicant that if the information is not provided where the application is taken *in person*, you are required to note the information on the basis of visual observation or surname.

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Demographic Information Collection Methods

In Person Applications:

Telephone Applications – For applications taken by telephone, you must state the information in the collection form **orally,** except for the information which pertains to applications taken in writing.

Electronic Media Applications – If you accept an application through electronic media with a video component (i.e. Skype, FaceTime, etc.), you ***must treat*** the application **as taken in person**. If you accept an application through electronic media without a video component (i.e. facsimile), you ***must treat*** the application **as accepted by mail**.

Non-Natural Persons - Report the applicant's or co-applicant's ethnicity, race or sex information as NA when the applicant or co-applicant is not a natural person (i.e., corporation, partnership or trust).

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Information Not Provided

In Person Application:
If the applicant chooses not to provide the DI information, you **must** note this fact on the collection form and **then collect** the applicant(s) ethnicity, race and sex on the **basis of visual observation or surname**.

When collecting DI information on basis of visual observation or surname, use the aggregate (main) categories below. ***Do not select from the subcategories*** *when collecting on the basis of visual observation or surname.*

Ethnicity	Race or National Origin	Sex
Hispanic or Latino	American Indian or Alaska Native	Male
Not Hispanic or Latino	Asian	Female
	Black or African American	
	Native Hawaiian or other Pacific Islander	
	White	

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Information Not Provided

Mail, Telephone or Internet Application:

- If the applicant chooses not to provide DI information, and it is confirmed by the applicant – you will report "information not provided by applicant in mail, internet or telephone application"

Partial DI Information Provided:

- When an applicant provides the requested information for some, but not all fields, you **will report the information that was provided by the applicant**, whether partial or complete.
- If the applicant provides partial information, but also checks the box "I don not wish to provide this information" box on the application taken by mail or the internet, you **must report the information that was provided by the applicant.**

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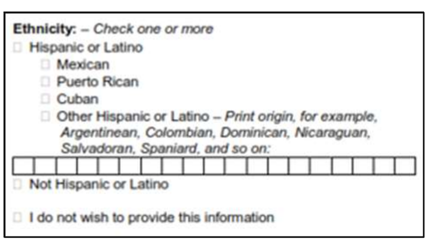
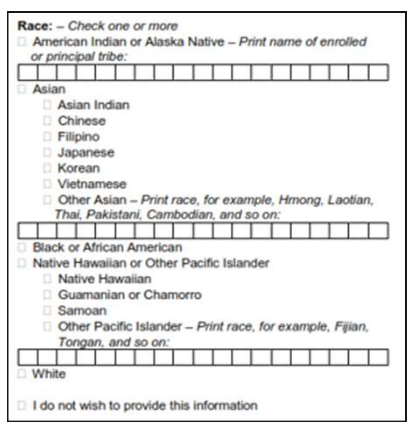
Ethnicity and Race

You must offer the applicant(s) the option of selecting more than one ethnicity or race. If the applicant(s) select more than one ethnicity or race, you must report each selected designation, not to exceed 5. All main ethnicity categories must be reported prior to reporting an ethnicity subcategory.


Ethnicity: – *Check one or more*
☐ Hispanic or Latino
☐ Mexican
☐ Puerto Rican
☐ Cuban
☐ Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on:*
☐ Not Hispanic or Latino
☐ I do not wish to provide this information


Race: – *Check one or more*
☐ American Indian or Alaska Native – *Print name of enrolled or principal tribe:*
☐ Asian
☐ Asian Indian
☐ Chinese
☐ Filipino
☐ Japanese
☐ Korean
☐ Vietnamese
☐ Other Asian – *Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on:*
☐ Black or African American
☐ Native Hawaiian or Other Pacific Islander
☐ Native Hawaiian
☐ Guamanian or Chamorro
☐ Samoan
☐ Other Pacific Islander – *Print race, for example, Fijian, Tongan, and so on:*
☐ White
☐ I do not wish to provide this information

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Reportable Data

Who Reports HMDA Data – The FI that makes the credit decision is required to report the application.

Timing of Reporting – A FI reports the date for an application on the LAR for the calendar year during the application was acted upon (action taken date year) even if the institution received the application in a previous calendar year.

Multiple Properties – When there are multiple properties taken or proposed to be taken as security, the FI reports a single entry on its LAR and provides the information for one of the properties taken as security that contains a dwelling. The information reported for each of the following data fields must relate to the same property:

- Construction Method
- Occupancy Type
- Property Address
- Property Location
- Lien Status
- Manufactured Home Secured Property Type
- Manufactured Home
- Land Property Interest.

HMDA Small Filer Exemptions under EGRRCPA

- On August 31, 2018, the CFPB issued an interpretive and procedural rule to implement and clarify HMDA amendments made by the Economic Growth Act signed into law on May 24, 2018.
- The Economic Growth Act's HMDA amendments provide eligible insured depository institutions with a partial exemption from reporting certain data points with respect to closed-end mortgage loans, open-end lines of credit, or both. The partial exemptions are available to insured depository institutions that meet the following conditions:
  - Originated fewer than 500 closed-end mortgage loans in the two preceding calendar years.
  - Originated fewer than 500 open-end lines of credit in the two preceding calendar years.
  - Does not have a negative CRA examination history during each if its two most recent examinations.
- The rule identifies 26 data points covered by the partial exemptions and 22 other data points that all HMDA reporters must collect, record, and report.

HMDA Required Data Points

Even if your institution is a small filer, the following data points (and all related data fields), regardless of exemption must be reported:

- Application Date
- Loan Type
- Loan Purpose
- Preapproval
- Construction Method
- Occupancy Type
- Loan Amount
- Action Taken
- Action Taken Date
- State
- County
- Census Tract
- Ethnicity
- Race
- Sex
- Age
- Income
- Type of Purchaser
- HOEPA Status
- Lien Status
- Number of Units
- Legal Entity Identifier

HMDA Small Filer Data Points Exempted

The following data fields are exempt from reporting for all applications reported in 2018 and beyond for Small Filers.

- Universal Loan Identifier (ULI)
- Property Address
- Rate Spread
- Credit Score
- Reasons for Denial*
- Total Loan Costs or Total Points and Fees
- Origination Charges
- Discount Points
- Lender Credits
- Interest Rate
- Prepayment Penalty Term
- Debt-to-Income Ratio
- Combined Loan-to-Value Ratio
- Loan Term
- Introductory Rate Period
- Non-Amortizing Features
- Property Value
- Manufactured Home Secured Property Type
- Manufactured Home Loan Property Interest
- Multifamily Affordable Units
- Application Channel
- Mortgage Loan Originator Identifier
- Automated Underwriting System & Results
- Reverse Mortgage
- Open-End Line of Credit
- Business or Commercial Purpose

If you voluntarily report any of the fields highlighted in red above, you must provide **ALL** the related data included within that section. For example, if you report the credit score of one applicant, you must also report the scoring model used.

*Certain FI supervised by the OCC, or by the FDIC(but previously OTS-regulated) are required to report reasons for denial, even if a partial exemption applies.

HMDA Examination Tolerances

- Three (3) calendar days or less in the date the application was received or the date shown on the application form.
- One thousand (1,000) dollars or less in the amount of the covered loan or the amount applied for, as applicable.
- Three (3) calendar days or less in the date of the action taken by the financial institution, provided that such differences do not result in reporting data for the wrong calendar year.
- Rounding errors in reporting the dollar amount, rounded to the nearest thousand of the gross annual income relied on in making the credit decision or, if a credit decision was not made, the gross annual income relied on in processing the application.

Common HMDA Reporting Errors

Source: ADI Consulting

- Failing to capture all HMDA-reportable transactions
- Reporting incorrect loan amount
- Using the wrong Purchaser Type code
- Inaccurately reporting Total Income
- Recording inaccurate Action Date
- Failing to capture GMI
- Reporting Cash-out Refinancing rather than Refinancing for Loan Purpose
- Reporting Action Taken Type Withdrawn rather than Approved not Accepted

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