<u>June 16, 2011 HMDA Validation Teleconference – Questions and Answers</u>

Question - "Borrower applied for $30,000.00 loan and is approved. The loan process drags out because of the seller so the borrower requests that the commitment is extended and that the loan amount is reduced to $18,000.00 because the price of the home has been reduced. The loan is re-approved at $18,000.00. The commitment expires and the application is closed – approved not accepted. Do I report the $30,000 that was initially applied for or the $18,000.00 on the LAR?"

Answer – The amount requested on the most recent application or documented borrower request should be used. The institution should be careful to document the change in the requested amount; otherwise it could be viewed as a counter offer.

Question - For sampling purposes, what are the percentage ranges of the FDIC's HMDA validation for "significant" reporters? From an error rate percentage standpoint, what is the minimum error rate that the FDIC will require a refiling?"

Answer – The sample size is not based on a simple percentage of the LAR. For significant reporters, the FDIC selects a sample size necessary to make a statistically valid estimate of error rates. The sample selected will most often range from 39 to 79 application files for each LAR. A smaller judgmental sample will usually be selected for reporters with fewer than 100 applications on a LAR.

Significant reporters should generally expect to re-file a LAR if one or more key data fields used in fair lending or CRA examinations has an error rate that is greater than 5% and/or overall more than 10% of your files have an error. Also, re-filing is generally necessary if there are substantive omissions from the LAR that could affect CRA or fair lending conclusions. Institutions should assure that they are reporting a complete file of originations and non-originated applications. Reporters with a small number of LAR applications may be requested to re-file, for example, if the errors or omissions would affect CRA or fair lending conclusions or if there are issues on more than one examination.

Question – Is it optional both to report HELOCs and business-purpose lines of credit secured by residential real estate?

Answer – Yes, all open-end lines of credit secured by residential real estate, regardless of whether it is a consumer or business purpose loan, are subject to optional reporting.

Question - “We have a commercial loan with 2 properties, one a commercial office building, and a 1-4 family home. They are both being refinanced at the same time into one loan. Would this be reportable or not? The commercial building has the most value, and the 1-4 was taken as an abundance of caution.”

Answer – No, the majority of loan proceeds now finance a commercial office building, therefore the new obligation is not primarily secured by a lien on a dwelling, and the loan is not a refinance, home improvement or home purchase loan for purposes of HMDA reporting.

Question - “Is a loan secured by three properties (the property of an LLC borrower and the properties of the individual guarantors) for cash-out refinancing of a portion of owners’ equity in the LLC borrower’s property to complete construction and pay soft costs on the borrower’s property, HMDA reportable and which property do we use for the statistics?”

Additional Information (from a second e-mail) – “The cash out of equity was used to complete the construction on the property owned by the LLC. The property is a residential dwelling as defined in Reg C.”

Answer – We suggest that the questioner call to discuss this further as it is not entirely evident how this transaction is structured from this description.

Appendix A to Part 203 states the following: “Property Location. Except as otherwise provided, enter in these columns the applicable codes for the MSA, or the MD if the MSA is divided into MDs, state, county, and census tract to indicate the location of the property to **which a loan relates**.” (Emphasis added)

In addition, Supplement I to Part 203 – Staff Commentary states the following with regard to Property location: “…an institution reports the property taken as security. **If an institution takes more than one property as security, the institution reports the location of the property being purchased if there is just one.** If the loan is to purchase multiple properties and is secured by multiple properties, the institution reports the location of one of the properties or reports the loan using multiple entries on its HMDA/LAR (with unique identifiers) and allocating the loan amount among the properties.” (Emphasis added)

Question - “For a mortgage loan secured by a dwelling the proceeds of which are to be "parked away" pending realty investment opportunities (undecided yet as to whether it'll be residential or commercial realty or both), should the loan be reported?”

Answer – Without knowing the purpose of loan, it remains uncertain how to report this loan. If it is a closed end loan (and not a HELOC) and is a refinance of a home purchase loan (existing lien), it would be reportable. It would be reported as a refinance if there is no indication that it will be used for home improvement or the purchase of a dwelling.

Question - "How would we handle a situation in which there are more than 2 borrowers when we are reporting the GMI? For example, if there are 4 borrowers (2 couples) how do we submit the race, sex, ethnicity data when there is only room to report for 2 people."

Answer – The bank would report information on the applicant and the first co-applicant.

Appendix A to Part 203 states, in part, the following: "If there is more than one co-applicant, provide the required information only for the first co-applicant listed on the application form."

Question - We closed on a loan to purchase a home which the borrower intended to demolish and construct a new home upon the land. As the loan funds were utilized to purchase the property we reported the loan as a HMDA loan.

The borrower has now requested an additional loan to finance the cost to demolish the home as well as grade the lot, bring in fill etc. Is this new loan HMDA reportable as part of the loan proceeds are being utilized to demolish the home?

- "The loan proceeds will not be utilized to construct a new home as a separate loan is granted to fund the construction. The loan will be secured by land and the house that will be constructed upon it once the existing home is demolished."

Answer – A temporary loan for demolition and land preparation it is not reportable. If this loan replaced the original home purchase loan and financed both construction and a permanent mortgage loan, it would be reportable as a refinance.

Question - "Are FHLB grant loans HMDA reportable? The loan is secured by a note and dwelling, there is no repayment of the loan except if you sell or refinance within 5 years."

Additional Information (from a second E-mail) – "The program was developed by the Federal Home Loan Bank of Boston, made available to member financial institutions to offer these funds to increase affordable housing opportunities for low and moderate-income homebuyers. The lender was approved to offer these funds in conjunction with their Buy Cities Programs as Down Payment Closing Cost Assistance. The program is a subsidy grant secured by a note and recorded mortgage. There are NO monthly payments required to be made on this subsidy and the subsidy is completely forgiven after completion of the retention period which is five years from the date of closing. In the event the property that secures the note is sold PRIOR to the end of the retention period, the borrower agrees to repay the lender an amount equal to a pro rata share of the subsidy amount from any net gain realized upon the sale of the property(the repayment obligation). Pro rata share is calculated by reducing the subsidy amount by 20% for each full 12 month period that the retention period has passed. The borrower hereby acknowledges and understands that the subsidy amount represents a reduction in the borrowers closing costs for the acquisition of the property which shall be used as the borrower's primary residence. Provided that no event of default has occurred, as defined in the note, the subsidy amount will be forgiven at the end of the retention period and no payment will be due on the subsidy amount."

Answer – If the bank is the lender that originated the loan (makes the credit decision) and the purpose of the loan is either home purchase, home improvement, or refinance, then you'd report the loan on the HMDA LAR.

Question - "We would like your assistance in determining if the following transaction is HMDA reportable and if so how should the transaction be reported.

A loan applicant wants to draw equity from his primary residence that he owns free and clear to pay off existing debts on two investment properties. Both investment properties are 1-4 family dwellings. The new loan will be secured by the primary residence."

Answer – If the new loan is secured by the borrower's primary residence, but no existing lien on the residence was replaced, then this loan does not meet the definition of refinance under Regulation C. Therefore, this loan is not HMDA reportable.

Question – "If an application is received and at application the GMI information is captured for two individual borrowers as: Borrower white, male, not Hispanic; Co-borrower white, female, not Hispanic.

Sometime before the loan closes the borrowers tell us they want to hold title in the name of a trust. Would we be required to change the GMI to NA for a non-entity?"

Answer – If the borrowers signed the note (not just a guaranty) as individuals and not just in a trustee capacity, then you'd report the GMI on those individuals. If they did not sign the note as individuals, then you'd report NA for GMI.

Question – "If at application we know the property will be held in the name of a trust however the trust has no income so we are using each borrowers income to qualify.

Example: Mr and Mrs Jones are borrowers and the property will be held in The Jones Family Realty Trust. Should we report The GMI informaiton [*sic*] as:

> The borrower (Trust) as NA for GMI
> The co-borrower info would be Mr. Jone's race ethnicity and gender and the income as the combined total amount of income for each borrower used to qualify?"

Answer – The question implies that both individuals are trustees and their incomes were relied on when the bank qualified the loan. If both individuals signed the note as both individuals and trustees, then GMI on those individuals should be collected and reported on the HMDA LAR. You'd also report the individuals' income, which the bank relied on in making the credit decision, on the LAR as well. If the trust is the borrower and individuals are guarantors, then you'd report NA for GMI and for income.