WIPFLI

Home Mortgage Disclosure Act Refresher
December 13, 2023

Questions received during the webinar:

1. For application date on the preapproval application, is there an issue if we use the date the property was identified for preapprovals becoming originated loans BUT report the date of the original application received for preapprovals that are denied or withdrawn?

Wipfli Response:
If you have **DO HAVE** a preapproval program in accordance with Regulation C, then you will report the date the application was received or the date on the application for the preapproval request.

If you do **NOT** have a preapproval program in accordance with Regulation C, you will report the application date that the application is considered received or the date on the application. You may use the same method in determining an application in accordance with Regulation B. For instance, if you do not consider it to be an application until the property address has been provided, you will report the date you received the property address because that is the date you received an application. Remember to be consistent in the application date method used.

Official interpretation 1003.4(a)(1)(ii)-1. **Application date - consistency.** Section 1003.4(a)(1)(ii) requires that, in reporting the date of application, a financial institution report the date it received the application, as defined under § 1003.2(b), or the date shown on the application form. Although a financial institution need not choose the same approach for its entire HMDA submission, it should be generally consistent (such as by routinely using one approach within a particular division of the institution or for a category of loans). If the financial institution chooses to report the date shown on the application form and the institution retains multiple versions of the application form, the institution reports the date shown on the first application form satisfying the application definition provided under § 1003.2(b).

1003.2(b) Application —

(1) In general. 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.

(2) Preapproval programs. A request for preapproval for a home purchase loan, other than a home purchase loan that will be an open-end line of credit, a reverse mortgage, or secured by a multifamily dwelling, 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 financial institution ordinarily attaches to a traditional home mortgage application.

Official interpretation 1003.2(b)-1. **Consistency with Regulation B.** Bureau interpretations that appear in the official commentary to Regulation B (Equal Credit Opportunity Act, 12 CFR part 1002, Supplement I) are generally applicable to the definition of application under Regulation C. However, under Regulation C the definition of an application does not include prequalification requests.

2. What if we had a repurchase of a FHLMC loan?

Wipfli Response:
If the question is, do we report loans that we have to repurchase from FHLMC, the answer is, “yes”. The rule states the following:

Official interpretation 1003.4(a)-5. Purchased loans. i. A financial institution is required to collect data regarding covered loans it purchases. For purposes of § 1003.4(a), a purchase includes a repurchase of a covered loan, regardless of whether the institution chose to repurchase the covered loan or was required to repurchase the covered loan because of a contractual obligation and regardless of whether the repurchase occurs within the same calendar year that the covered loan was originated or in a different calendar year.

3. How do we code an application where we issue a conditional clear to close, i.e. 10 days after receipt of the application; the conditional CTC requests updated pay stubs and they don’t provide them?

Wipfli Response:
It will depend on your response regarding the applicant not providing the information.

- If you did not provide a notice of incompleteness to the applicant and you provided an adverse action notice to the applicant for the incomplete application, you will report the Action taken as 3-denied.
- If you sent a letter of incompleteness meeting the requirements of Regulation B and the applicant did not respond or provide all of the information requested within the period of time specified in the notice, then one of the following would apply:
    - If you did not provide an adverse action notice, you will report the Action taken as 5-file closed for incompleteness.
    - If you provided an adverse action notice to the applicant, you have the option to report the Action taken as either 3-denied or 5-file closed for incompleteness

It would not be approved but not accepted because the pay stubs are an underwriting condition.

Official interpretation 1003.4(a)(8)(i)-6. **Action taken - file closed for incompleteness.** A financial institution reports that the file was closed for incompleteness if the financial institution sent a written notice of incompleteness under Regulation B, 12 CFR 1002.9(c)(2), and the applicant did not respond to the request for additional information within the period of time specified in the notice before the applicant satisfies all underwriting or creditworthiness conditions. *See* comment 4(a)(8)(i)-13. If a financial institution, then provides a notification of adverse action on the basis of incompleteness under Regulation B, 12 CFR 1002.9(c)(1)(i), the financial institution may report the action taken as either file closed for incompleteness or application denied. A preapproval request that is closed for incompleteness is not reportable under HMDA. *See* § 1003.4(a) and comment 4(a)-1.ii.

Official interpretation 1003.4(a)(8)(i)-3. **Action taken - application approved but not accepted.** A financial institution reports application approved but not accepted if the financial institution made a credit decision approving the application before closing or account opening, subject solely to outstanding conditions that are customary commitment or closing conditions, but the applicant or the party that initially received the application fails to respond to the financial institution's approval within the specified time, or the closed-end mortgage loan was not otherwise consummated or the account was not otherwise opened. *See* comment 4(a)(8)(i)-13.

Official interpretation 1003.4(a)(8)(i)-13ii. **Customary commitment or closing conditions.** Customary commitment or closing conditions include, for example: a clear-title requirement, an acceptable property survey, acceptable title insurance binder, clear termite inspection, a subordination agreement from another lienholder, and, where the applicant plans to use the proceeds from the sale of one home to purchase another, a settlement statement showing adequate proceeds from the sale.

Official interpretation 1003.4(a)(8)(i)-13iii. **Underwriting or creditworthiness conditions.** Underwriting or creditworthiness conditions include, for example: conditions that constitute a counter-offer, such as a demand for a higher down-payment; satisfactory debt-to-income or loan-to-value ratios, a determination of need for private mortgage insurance, or a satisfactory appraisal requirement; or verification or confirmation, in whatever form the institution requires, that the applicant meets underwriting conditions concerning applicant creditworthiness, including documentation or verification of income or assets.

4. For number of units, single family with guest house/cottage…1 or 2 units?

Wipfli Response:
If you took a security interest in both the single-family dwelling and the guest house/cottage, and both are considered dwellings, under the definitions in HMDA, report 2 units.

1003.2(f) **Dwelling** means a residential structure, whether or not attached to real property. The term 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.

Official interpretation 1003.2(f)-3 **Exclusions.** Recreational vehicles, including boats, campers, travel trailers, and park model recreational vehicles, are not considered dwellings for purposes of § 1003.2(f), regardless of whether they are used as residences. Houseboats, floating homes, and mobile homes constructed before June 15, 1976, are also excluded, regardless of whether they are used as residences. Also excluded are transitory residences such as hotels, hospitals, college dormitories, and recreational vehicle parks, and structures originally designed as dwellings but used exclusively for commercial purposes, such as homes converted to daycare facilities or professional offices.

5. Regarding the gross annual income. What if the loan is to an individual, but the individual has five entities that tie out to the individuals consolidated?

Wipfli Response:
HMDA requires that you report the gross annual income relied on in making a credit decision. You would need to determine what income was relied on in making the credit decision in order to report the field. If the gross annual income from the five entities is considered in the credit decision in addition to any other gross annual income of the borrower, it would be included. If it is not considered, it would not. Obtaining a consolidated financial statement, would not be the determining factor, unless it was used to make the credit decision.

For example, if the credit decision is based on the debt service coverage ratio of the property being purchased and the credit presentation includes the global debt service coverage to supplement the strength of the entire business relationship, then you would report the gross income related to the debt service calculation of the property being purchased, since that was the debt service coverage ratio relied on in making the credit decision.

6. How should we report an address with an FKA or AKA?

Wipfli Response:
FKA and AKA (assuming you mean formally known as and also known as) is not part of an address typically used by the U.S. Postal Service. You would first need to determine the address using the U.S. Postal Service address. Once that is determined, you would use that address for reporting purposes.

7. Could I get some more clarification on the times you would mark one of the credit scores as 8888 even when we have gotten the score from a credit report.

Wipfli Response:
You report the score you used in making a credit decision. Some institutions use one score even though multiple scores are on the credit report for each applicant. If within your underwriting, you only base your credit decision on one score, you would report that score for the applicant or co-applicant and report 8888 (not applicable) for the other applicant. The code 8888 is also used for purchased loans, applications that are withdrawn or closed for incompleteness (for both the applicant and co-applicant data fields even if there is no co-applicant), the applicant is not a natural person, or when you made a credit decision without relying on a credit score.

a. Use Code 8888 if the requirement to report the credit score does not apply to the covered loan or application that your institution is reporting. i. If Regulation C requires your institution to report a single score for a covered loan or application involving multiple applicants or borrowers, either report the credit score in the applicant field and use Code 8888 in the co-applicant field or report the credit score in the co-applicant field and use Code 8888 in the applicant field.

8. When it comes to our Title one loan program, are we required to report the rate spread? They are not HPML loans, and we do not use rate spreads in underwriting.

Wipfli Response:
The rate spread field is completed on originations and approved but not accepted applications unless the transactions meet one of the requirements for the field being coded as not applicable or you are a partial filer.

For example, if the loans are primarily for a business or commercial purpose, Regulation Z would not be applicable, and therefore, the rate spread field would be not applicable. However, if the loan is Regulation Z applicable, and does not meet any of the other factors in the statute excerpt below for reporting the field as not applicable, the rate spread should be reported. The field is not dependent on it being a HPML or the use of the rate spread in underwriting.

Official interpretation 1003.4(a)(12)-7 **Rate spread - scope of requirement.** If the covered loan is an assumption, reverse mortgage, a purchased loan, or is not subject to Regulation Z, 12 CFR part 1026, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable. If the application did not result in an origination for a reason other than the application was approved but not accepted by the applicant, a financial institution complies with § 1003.4(a)(12) by reporting that the requirement is not applicable. For partially exempt transactions under § 1003.3(d), an insured depository institution or insured credit union is not required to report the rate spread. See § 1003.3(d) and related commentary.