

The Gurus Speak about HMDA and HOEPA

Guru Bios: <http://www.bankersonline.com/bio.html>

Reporting Vacation Homes and Rental Homes under HMDA

Question: Do we report Vacation Homes and Rental/Investment Homes for HMDA purposes if the purpose falls into any one of the three categories (home purchase loan, home improvement loan, or refinancing)?

Answer by David Dickinson: Absolutely. Here's the definition of "dwelling" in §203.2(d):

Dwelling means a 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.

And from the Commentary to §203.2(d) #1 & #2:

*The definition of "dwelling" is not limited to the principal or other residence of the applicant or borrower and thus includes vacation or second homes and **rental properties**. A dwelling also includes a multifamily structure such as an **apartment building**. Recreational vehicles such as boats and campers are not dwellings for purposes of HMDA.*

Using the Rate Spread Calculator for HOEPA?

Question: I have attended training recently regarding the new HOEPA requirements. At my training it was discussed that we should use the rate spread calculator at the FFIEC website to calculate the bank spread on applicable loans. I have recently received a new brochure offering 2004 HMDA training. In the brochure it states that although the new Rate Spread and HOEPA calculations both utilize U.S. Treasury Security Yields, the yields used must be obtained from two different sources and two distinct points in time. Doesn't the rate spread calculator take care of this automatically for the user or is additional calculations needed?

Answer by David Dickinson: Simply use the FFIEC's Rate Spread Calculator. (www.ffiec.gov) I'm assuming the training brochure you mentioned is speaking about HOEPA vs. the APR Rate Spread Calculation. They do use different sources and look at different dates, but you probably don't care since we have the automated calculator. Now, if we can just get a HOEPA calculator from the Federal Reserve!

Is Unsecured Carpet Loan HMDA-Reportable?

Question: If I am making an unsecured loan for \$5,000.00 and part of the proceeds will be used to buy carpet, is this HMDA reportable?

Answer by David Dickinson: It's your choice. HMDA defines a Home Improvement loan in §203.2(g) as:

(1) A loan secured by a lien on a dwelling that is for the purpose, ... 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, ... of repairing, rehabilitating, remodeling or improving a dwelling or the real property on which it is located, and that is classified by the bank as a home improvement loan.

#1 requires the loan to be secured by a dwelling. #2 does not, but it must be "classified" as home improvement.

One catch, if you do call this a home improvement loan, and it is refinanced later, you cannot report it as a "refinance" because §203.2(k) requires refinancing loans to be dwelling secured and replacing a dwelling secured loan.

Rate Spread and Balloon Notes

Question: For HMDA reporting of rate spread, if a loan is ballooned but amortized over a longer period (e.g., a 5 year term with a balloon based on a 15 year amortization), when entering the term on the FFIEC calculator, do you enter the term as 5 years or 15 years? Along those same lines and understanding the HOEPA limitation regarding balloon loans, when referring to the H.15 Statistical Release Tables to determine HOEPA status do you refer to the actual term; e.g., 5 years, or the term the amortization is based on --15 years?

Answer by David Dickinson: For both the HOEPA calculation and the APR Spread Test, you always use the term to maturity. How long is it between loan closing and the maturity date. Never use the amortization or time between rate changes, for variable rate loans.

Temporary Financing under HMDA

Question: We are looking for clarification on what is considered "temporary financing" per HMDA. What I have read states that temporary financing is based on how the loan will be repaid. We have a loan on which the purpose is home improvement on a residential 2nd home. Per the lender, the exact repayment is unknown at this time. The loan will either be paid off from sale of the rental property OR the customer will refinance at the end of the term. The current term

is 6 months with interest due monthly. Would this be HMDA reportable or would it fall under "temporary financing"?

Answer by David Dickinson: This is commonly discussed here at BOL. If you do a search for "temporary financing" you'll have many discussions to read. [Here](#) is one that I have added to my favorites that should address your situation.

I think you what you have described is definitely temporary financing.

Mailing the HOEPA Disclosures

Question: Can the HOEPA disclosure be mailed, and if so, do we need a signed copy in the loan file?

Answer by David Dickinson: The HOEPA disclosure does not **require** signatures. Yes, it can be mailed, but §226.31(c)(1) indicates that they must be furnished 3 business days prior to consummation and the commentary makes it clear that "*Disclosures are considered furnished when **received** by the consumer.*" Therefore, you need to allow time for mail delivery.

2004 Asset Reporting Threshold for HMDA

Question: Has the Federal Reserve announced the asset reporting threshold for HMDA 2004? I have been watching for it, and I haven't seen it yet. If they have set the threshold, could you please tell me what the amount is for 2004?

Answer by David Dickinson: The Federal Reserve announced [in this December 19, 2003 Press Release](#) that the threshold was raised to \$33 million. <http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20031219/>

HELOCs HMDA-Reportable?

Question: I have been told by numerous people "in the know" that Home Equity Lines of Credit are not reportable under HMDA, regardless of their purpose - home purchase refi or home improvement. Is this correct?

Answer by David Dickinson: HELOC's are optional, even if they are for home purchase or home improvement [§203.4(c)(3)]. If you choose to report Home Equity Lines of Credit, report only the amount for home improvement or home purchase [Appendix A, §I.A.7.d.].

Reporting Home Equity Loans Under HMDA

Question: Under the new HMDA regulations, do we report straight home equity loans if they are for home improvement or refinance? I am not referring to Home Equity Lines of Credit.

Answer by David Dickinson: Absolutely. If the loan is dwelling secured (home equity loan) and is for the purpose of home purchase or home improvement, then you must report this HMDA loans.

Occupancy Code for Non-dwelling Secured Home Improvement Loan

Question: Under HMDA - If we report a non-dwelling secured home improvement loan in 2004, which occupancy code do we use on the HMDA LAR?

Answer by David Dickinson: Use the same occupancy codes as you would if the home was dwelling secured.

Changes in GMI Due to HMDA

Question: With the HMDA changes in 2004 I see that the government monitoring information on the real estate applications has changed somewhat. If your financial institution is not required to report, do we need to be ordering the new real estate applications to replace the old forms?

Answer by David Dickinson: Yes. Regulation B also changed the government monitoring information just like HMDA.

Balloon Notes and the HMDA Rate Spread

Question: We handle balloon notes at our institution. On the new rate spread calculator for HMDA, do we enter the amortization of the payment(15yr/20yr amort) OR the balloon maturity term (exp: 1 yr; 3 yr; 5 yr)?

Answer by David Dickinson: Just like HOEPA, you enter the term to maturity, not the amortization length.

HMDA Reporting on Disposition of Application

Question: If a loan is approved but not accepted, withdrawn, or closed for incompleteness, is it HMDA reportable?

Answer by Andy Zavoina: The application's disposition is reportable, hence the LAR codes:

- 1—Loan originated
- 2—Application approved but not accepted
- 3—Application denied
- 4—Application withdrawn
- 5—File closed for incompleteness
- 6—Loan purchased by your institution

But the disposition isn't what makes it reportable or not. Refer to the 2003 or 2004 rules for reportability.

Using the Word “Gender”, Rather than “Sex”

Question: For HMDA signs, the Federal Reserve Board offers copy, stating "ethnicity, race, sex and income of applicants and borrowers." Is the word "gender" acceptable instead of "sex"? Does it matter, or must the Fed verbiage be followed exactly?

Answer by John Burnett: Follow the Fed language. "Sex" is the appropriate word, and it should not offend given the context.

From *Dictionary.com*: 

Traditionally, gender has been used primarily to refer to the grammatical categories of “masculine,” “feminine,” and “neuter,” but in recent years the word has become well established in its use to refer to sex-based categories, as in phrases such as gender gap and the politics of gender. This usage is supported by the practice of many anthropologists, who reserve sex for reference to biological categories, while using gender to refer to social or cultural categories. According to this rule, one would say The effectiveness of the medication appears to depend on the sex (not gender) of the patient, but In peasant societies, gender (not sex) roles are likely to be more clearly defined. This distinction is useful in principle, but it is by no means widely observed, and considerable variation in usage occurs at all levels.

Purpose Driven Nature of Some HMDA Aspects

Question: With HMDA being purpose driven, is an "unsecured" note with the purpose being the purchase of residence HMDA-reportable?

Answer by David Dickinson: No, this cannot be HMDA reported. HMDA is both purpose and collateral driven. There is one optional exception: HMDA does allow you to report home improvement loans, regardless of collateral, if you classify them as home improvement loans [203.2(g)(2)].

Again, this is purely optional. You can simply report only dwelling secured home improvement loans - see 203.2(g)(1). [**Editor’s note:** One more point of clarification. On refinances, purpose does not matter. If it is a refinance (the old obligation is satisfied and being replaced with a new one) and the original loan and the new loan are both secured by a dwelling, the loan is reportable as a refinance under HMDA, regardless of the purpose of the original loan or the new loan.]

Ethnicity vs. Race

Question: Concerning the new 2004 HMDA reporting regulations: If an applicant indicates an ethnicity of Hispanic or Latino, are they still required to check a race code? If yes, what would that race code be? It seems that none of the race codes apply for these individuals.

Answer by David Dickinson: Yes, you must have a race and ethnicity in all cases. This has been discussed a lot on BOL.

Read [this post](#) for starters. Be sure to specifically read Don Narup's post on 8/15/03.

2004 HMDA and Ethnicity --

<http://www.bankersonline.com/ubbthreads/showflat.php?Cat=&Board=lending&Number=105261&page=&view=&sb=5&o=&part=1&vc=1>

Arm Loans, Max Rate and HOEPA

Question: How does the 8% maximum rate threshold for HOEPA loans apply to ARM loans?

Answer by David Dickinson: ARM's are not treated differently. Only look at the initial interest rate for the APR Test.

Treatment of Title Search and Title Exam Fees Under HOEPA

Question: Regarding Section 32 fees: are title search and title exam fees APR-sensitive fees? I am a title closer in Florida and am arguing about this with a lender in New York. Please help.

Answer by David Dickinson: They won't be in the APR unless they are not "reasonable". See §226.4(c)(7). These same fees may be HOEPA fees if they are not reasonable, paid to an affiliate or are retained by the bank.

Three Questions to Ask for Determining HMDA-Covered Refinance

Question: Several employees from our bank attended a HMDA seminar by Compliance Guru Jack Holzknacht. They understood Mr. Holzknacht to say that there are only three questions to ask regarding whether a refinancing is reportable. 1)Is the loan secured by a dwelling? 2)Is any portion of the loan paying off any existing debt? 3)Is any of the debt being paid off secured by a dwelling? They understood that if the answer to each of these questions was "yes", then the loan was reportable. I just wanted to clarify that is the way the revisions read. HMDA is/was a purpose driven reg and this appears to abandon

that focus. It would appear that virtually any loan secured by real estate that is refinanced, no matter what the purpose, would be reportable. It seems out of character for the reg to have to report a refinanced car loan if the customer decides to add their real estate to get a better rate.

Answer by David Dickinson: Unfortunately, this is correct. The FRB really overstepped this regulation in their attempt to make it simple. I think you'll find [this BOL string](#) helpful.

<http://www.bankersonline.com/ubbthreads/showflat.php?Cat=&Board=lending&Number=121765&page=0&view=collapsed&sb=5&o=&fpart=1>

Time for Determining Need for HOEPA Disclosure

Question: When do we determine that a HOEPA disclosure is needed regarding the APR and the fees?

Answer by David Dickinson: Refer to §226.32(a)(1). Here's a quick summary from our [Advanced Lending Manual](#):

HOEPA applies to: [§226.32(a)(1) – page 6670.01]

The requirements of this section apply to a consumer credit transaction that is secured by the consumer's principal dwelling and in which either:

1. *The annual percentage rate at consummation will exceed by more than 8 percentage points for first-lien loans, or by more than 10 percentage points for subordinate-lien loans, the yield on Treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or*

2. *The total points and fees payable by the consumer at or before loan closing will exceed the greater of:*

a) *8 percent of the total loan amount (loans > \$6,100); and*

b) *\$488 (loans < \$6,100); this figure is for 1-1-03 and shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index.*

HOEPA does not apply to: [§226.32(a)(2) – page 6670.01]

1. *A residential mortgage transaction (construction loans, purchase loans, etc.)*

2. *A reverse mortgage transaction*

3. *An open-end credit plan (HELOCs)*

Thus, if you have a consumer purpose refinance, home equity or home improvement loan, secured by the borrower's principal dwelling and either 1 or 2 above are met, this loan is subject to the HOEPA requirements.

(the italicized words are a quote from the regulation. The Non-italicized words is my input).

There is also a HOEPA worksheet available at [our website \(http://www.bankerscompliance.com/downloads.htm\)](http://www.bankerscompliance.com/downloads.htm) that I think you will find helpful.

More on the Definition of Temporary Financing

Question: I am the HMDA reporter at our institution and we've been discussing the term temporary financing. Do you have a good definition or some parameters for deciding if a loan is reportable or not and what would make it temporary financing.

Answer by David Dickinson: I wrote the Federal Reserve with this same question. I have a response (in writing) from the Denver FRB that states: "temporary financing usually means the loan will not be repaid from ordinary income, is a single payment loan and is less than two years in term."

The letter goes on to say that this is just a rule of thumb. I like to say that temporary is more than short term. It is temporary in nature. IOW, it is usually followed by something else. For instance, a construction loan is followed by a permanent loan. A bridge loan is paid off by the sale of the house or by a new loan.

HMDA Notice Has Changed for 2004

Question: With the changes to Reg. C - HMDA, will the language on the "Home Mortgage Disclosure Act Notice" change? If so, where can I find the required language to use for this notice?

Answer by David Dickinson: The HMDA notice will change for 2004. See §203.5(e):

Notice of availability. A financial institution shall post a general notice about the availability of its HMDA data in the lobby of its home office and of each branch office located in a metropolitan area. An institution shall provide promptly upon request the location of the institution's offices where the statement is available for inspection and copying, or it may include the location in the lobby notice.

The Commentary to this same section states:

1. Poster--suggested text. An institution may use any text that meets the requirements of the regulation. Some of the federal financial regulatory agencies and HUD provide HMDA posters that an institution can use to inform the public of the availability of its HMDA data, or the institution may create its own posters. If an institution prints its own, the

following language is suggested but is not required:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; ethnicity, race, sex, and income of applicants and borrowers; and information about loan approvals and denials. Inquire at this office regarding the locations where HMDA data may be inspected.

2. Additional language for institutions making the disclosure statement available on request. An institution that posts a notice informing the public of the address to which a request should be sent could include the following sentence, for example, in its general notice: "To receive a copy of these data send a written request to [address]."

Disclosing ARMs for HOEPA

Question: For a HOEPA disclosure, how should a real estate ARM loan be disclosed? These loans have a 2% rate adjustment cap with a 6% maximum lifetime increase. (1) Should only the "worst case" payment level be disclosed with the beginning rate and payment or (2) Should the current (beginning) payment amount with the maximum possible adjusted interest rate and payment amount at each adjustment until the lifetime cap is reached be disclosed?

Answer by David Dickinson: Use the APR at the time of closing. Do not assume anything will change.

Early Disclosures and Permissible Purposes (Mixed Question)

Question: On a pre-approval over the phone, with no property address, is there any violation if you don't have the early disclosures signed? For HMDA purposes, you can now ask the race/gender of the applicants. As for obtaining a credit report for a phone application, FCRA states that a written consent is not needed as long as the lender has "permissible purposes" to obtain it. Am I correct?

Answer by David Dickinson: First, there are no early disclosures triggered until a house is identified (usually by presenting a purchase agreement).

You are correct that you do not need written consent to pull a consumer report. You need a "legitimate business need initiated by the customer." If they apply for a preapproval, you have the right to pull a consumer report.