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# Selected Subjects Guru Chatter* on HMDA

## A Tale of Two Applicants -- What the dickens?

Question: If a loan application is received jointly from 2 applicants and the institution determines that one of the applicants must be declined due to credit history, may a counter-offer be made declining the "bad" applicant, with the file continuing as a "same application" for the surviving applicant? Or, must you decline and restart with new application for the surviving applicant in order to report the declined application in the HMDA LAR?

Answer by Dan Persfull:
Whether you require a new app is a matter of internal policies. For documentation purposes it would be my preference to require one.

If your counter offer was accepted, you would not report a denial on your HMDA LAR. Counter offers accepted and closed are reported as originations. You would, however, have to send the declined applicant an AAN with the reasons they were declined.

## HELOCS & HMDA - Monitoring Info in the Loan Files

Question: If a bank has elected not to report HELOCs under HMDA, it does not have to collect the borrower's race, sex or ethnicity. If a borrower completes an application and marks this information as it pertains to them does it matter if you have this information in your loan file even though it is not required?

Answer by David Dickinson: You should not request Government Monitoring Information (GMI) unless you plan to report the loan.

[Section 202.5(b) of Regulation B states: *"A creditor shall not **inquire** about the race, color, religion, national origin or sex of an applicant or any other person in connection with a credit transaction, except as provided in paragraphs (b)(1) and (b)(2) of this section."*

## HMDA Reporting on Business Lines of Credit

Question: I know that HELOCs are optional as far as HMDA reporting goes, but I can't find any commentary on business lines of credit(used to primarily purchase rent homes) Should these be reported?



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Answer by Dan Persfull:

> Any dwelling secured line of credit is optional reporting. The following is from the FAQs on the FFIEC's Web site.
>
> Refinancing --- line of credit. If a dwelling-secured line of credit satisfies and replaces another dwelling-secured obligation, is the line required to be reported as a "refinancing"?
>
> Answer: No. A dwelling-secured line of credit that satisfies and replaces another dwelling-secured obligation is not required to be reported as a "refinancing," regardless of whether the line is for consumer or business purposes.

**Is This Refi a Purchase for HMDA?**

Question: A man has a real estate secured loan with us. He dies and his daughter inherits the home. She gets a new loan that will payoff the old loan plus new money and will use the home as rent property. Is this considered a purchase since the refinanced obligation is not "the same borrower"?

Answer by Dan Persfull:
No. This does not meet the definition of a home purchase or a refinance. If any of the new money will be to improve the dwelling, or another dwelling, it would be a home improvement loan. Otherwise it is not a reportable loan.

**Splitting Up a HMDA Loan**

Question: When a loan has multiple property locations and you want to report each property location as a separate loan with a unique loan identifier, is there a certain method by which the loan amount is divided between the individual loans, i.e., can you divide the loan amount equally?

Answer by Dan Persfull:
How you divide is not spelled out in the Reg. It just requires you to allocate the loan among the properties. You can either do it equally, or based upon the percentage of the property's value to the loan.

**CRA/HMDA and Assisted Living Facility**

Question: What is the CRA/HMDA impact for a commercial loan taken to purchase an assisted living facility? Purpose of the loan is to purchase this already existing business. Does an assisted living facility fit the dwelling description? Loan appraisal was residential R/E. For HMDA, is this loan HMDA reportable? I am certain that we don't get CRA credit.

Answer by Dan Persfull:
Here are some threads for you to review. An assisted living facility has some factors to be determined if they are reportable or not. For the most part these facilities will qualify for HMDA reporting.

Convalescent Center
http://www.bankersonline.com/ubbthreads/showflat.php?Cat=0&Board=UBB1&Number=137984&Searchpage=1&Main=137938&Words=%26quot%3Bassisted+living%26quot%3B&topic=&Search=true#Post137984

HMDA
http://www.bankersonline.com/ubbthreads/showflat.php?Cat=0&Board=lending&Number=83017&Searchpage=1&Main=78831&Words=%26quot%3Bassisted+living%26quot%3B&topic=&Search=true#Post83017

HMDA – Residential Care Facility
http://www.bankersonline.com/ubbthreads/showflat.php?Cat=0&Board=UBB1&Number=3017&Searchpage=1&Main=3013&Words=%26quot%3Bassisted+living%26quot%3B&topic=&Search=true#Post3017

This is from a CRA/HMDA Q&A located here .
http://www.ffiec.gov/hmda/pdf/00news.pdf

Q. Are nursing homes, dormitories, fraternity/sorority houses, assisted living and retirement homes to be reported on HMDA?

A. Nursing homes, dormitories and sorority/fraternity houses are viewed as temporary housing and are not HMDA reportable since they were not built for permanent residency. In addition, a nursing home is more like a hospital in that it provides medical care, which is usually constant and extensive.

Assisted living and retirement homes are viewed as dwellings that individuals reside in permanently and are HMDA reportable. In fact, in most cases the “home place” has been sold by the individuals who choose these homes as their new “permanent” dwellings.

**We Need Help Classifying & Reporting Loans**

Question:
There is some confusion in how to report our construction to permanent loans. We do not classify our mortgage loans on our system as home improvement loans. We classify them as construction mortgages. Would we report these types of loans as a home improvement loan or other type? Also, one scenario is that we have made a construction to permanent loan to construct a dwelling on unencumbered land. If we do not report it as a home improvement loan, then how would we report this or would we not?

Answer by Dan Persfull:
For HMDA purposes how you classify the loan plays no bearing on a dwelling secured loan.

A true construction/permanent loan can only be made one time; and that is for the **initial** construction of the dwelling. All so called construction/permanent loans after that for the same dwelling would be home improvement loans.

So:

Initial Construction/Permanent loan would be reported as Home Purchase.

Subsequent Construction/Permanent loans on the same property would be Home Improvement Loans.

The loan made to construct a dwelling on unencumbered land would be a Home Purchase transaction if you have a dwelling securing the loan.

## Unclosed Pre-Quals and HMDA

Question: HMDA Pre-Approvals --- I read with interest the "Prequals Under HMDA" by David Dickinson, however I have some questions specific to our case. We accept applications without a specific property -- the property to be determined at a later date. We call these "to be determined" (TBD) pre-approvals. We do issue a commitment letter similar to the one described in 203.2(b)#3. When the property is identified and the loan originated we code this as a PreApproval Code 1. If the loan is denied, cancelled or withdrawn prior to the identification of a property, we classify the loan as not HMDA reportable as there never was a property. Is the classification as "not HMDA reportable" correct since we did not have a property? If not, this means we will show a loan on our LAR without any geocoding as we did not have a property.

Answer: Denied pre-approval requests are required to be reported on the LAR.

Approved but not accepted pre-approval requests are optional reporting.

Withdrawn pre-approval requests are not reported.

For reportable pre-approval requests you report NA for the property information when no property has been identified.

## HMDA - Criteria for Reporting Preapprovals

Question: In a recent training session, Jack Holzknecht stated that even though a bank provides a commitment letter to an applicant upon request that meets the criteria outlined in the definition of preapproval in 203.3(b)(2) but does so without a formal "program", this does NOT meet the standard for reporting preapprovals for HMDA 2004. However, according to HMDA Helpline via e-mail, if the institution meets the HMDA definition of a covered preapproval program, then the institution has a preapproval program. In other words, the procedure the institution goes through and providing the written commitment subject to the limitation permitted in the regulation, determines whether the bank has a "program", and not the fact that the bank identifies such as a "preapproval program". In view of this guidance from HMDA Helpline, does Jack still consider this situation not to meet the preapproval program standards?

Answer by Jack Holzknecht:
You quoted me accurately to an extent. I did say that you must have a program, but I never stated that you had to call it a preapproval program. The agencies agree. See http://www.ffiec.gov/hmda/faqreg.htm#preapprovals The following is from the HMDA Qs and As:

> Program---In general. An element of the definition of "preapproval request" is the existence of a "program." How is it determined whether a program exists?
>
> Answer: A preapproval program exists when the procedures established and used by the lender match those specified in 203.2(b)(2). A program, regardless of its name, is not a "preapproval program" for purposes of HMDA if the program does not meet the specifications in the regulation. By the same token, a program may be a preapproval program for purposes of HMDA even though it is not so named. The question is whether the lender regularly uses the procedures specified in the regulation. If a lender has not established procedures like those specified in the regulation, but considers requests for preapproval on an ad hoc basis, those requests need not be treated as requests for preapproval under HMDA. Failure to establish and consistently follow uniform procedures, however, may raise fair-lending and safety-and-soundness issues.

In order to meet the HMDA definition of a preapproval program you must have a "program." You don't have to call it a preapproval program, but you must have a program. As the Q & A points out, if you are issuing commitment letters without the structure of a program, you may have a safety and soundness problem.

**HMDA -- Refinancing Loan From Another Lender**
Question: If we refinance a client's 2nd and 3rd mortgage/primary residence (not a HELOC or a home improvement) from another lender, are these HMDA reportable?

Answer: Yes. They would meet the definition of refinance.

From page 8 of the GIR:

A refinancing is any dwelling-secured loan that replaces and satisfies another dwelling-secured loan to the same borrower.

**HMDA GMI Requirements**

Question: Am I understanding this correctly? --Under HMDA, we are required to collect and report monitoring information on ANY HMDA-covered application from a natural person regardless if it is business or consumer purpose and regardless if it is an application for a multifamily or 1-4 family dwelling.

Answer by Dan Persfull: Yes, you are understanding it correctly.

**HMDA Rate Spread**

Question: For calculating rate spread for HMDA, do you round up the number of months to the next year if the number of months is over a half year, i.e., would 78.60 months be 6 or 7 years?

Answer by John Burnett: Calculate the number of years, expressed as a decimal. So 78.6 months becomes 6.55 years. Then round fractional years of less than 0.5 down, and fractional years of 0.5 or greater up, to the next whole year. Use 1.0 years for any term of less than one year (don't round them down to zero). The answer to your question, then, is 7 years.

**Construction, Then HELOC Equals HMDA?**

Question: If we do a construction loan on a home, but then do a HELOC afterwards, and proceeds from the HELOC are used to make improvements and finish the home, is this a HMDA reportable loan??

Answer by Dan Persfull: Open-end lines of credit are optional reporting for HMDA. Their purpose does not supersede your option to report.

**Question on HMDA on 2d Mortgage**

Question: If a portion of a 2nd mortgage proceeds are going toward closing costs of a first refinanced mortgage, is this HMDA reportable?

Answer by Dan Persfull: Yes. A portion of the proceeds, along with the proceeds from the first mortgage, are satisfying and replacing an existing dwelling secured loan. Therefore it would meet the definition of a refinancing and be reported as such (provided the loans are to the same borrower).

**Vacant Land as Collateral, HMDA Reportable?**

Question: If we are refinancing a home equity line of credit and using a 40 acre parcel of that property as collateral, this 40 acre parcel does not have the dwelling on it. Is this going to be HMDA reported?

Answer by Dan Persfull:
No, the loan is not dwelling secured.

## Indirect Home Improvement Loans and HMDA

Question: I have a question about indirect home improvement loans and HMDA. Is an indirect application that we receive (and presumably approve and fund) from a dealer considered a "purchased loan" as far as HMDA is concerned? Since we're purchasing paper that is not technically a loan yet, I don't see how it can be deemed a purchased loan. And, per our Merchant Agreements with our dealers, they are acting as an agent of the bank.

Answer by Dan Persfull:
From page D-2 of the A Guide to HMDA Reporting Getting it Right guidelines:

*6. Credit decision of agent is decision of principal. If an institution **approves loans through the actions of an agent**, the institution must report the action taken on the application (loan originated, approved but not accepted, or denied, for example). State law determines whether one party is the agent of another.*

You will report these as originations, denials or whatever the final action was.

## Training Session Generated HMDA Questions

Question: We recently went to a training session and had a number of questions that came from that. The Fed was quoted on a number of these issues and were are curious about your opinion on these issues.

1) The rules say that a Home-equity line of credit is an open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending) and the reporting of such loans under HMDA is optional. Does that mean that any OTHER revolving line of credit such as commercial lines of credit secured by a dwelling that have a HMDA purpose MUST get reported? Or is this intended to make all revolving lines of credit with a HMDA purpose an optional reporting item?

2) For the temporary financing exclusions under HMDA -- how is a construction loan defined? Is a construction loan only one that builds a NEW dwelling from the "ground up" or is it broader than that? For example, we make other types "construction" loans such as for a "fix and flip" for the purchase of a dwelling that is being purchased and improved. We do this as a multiple advance construction loan -- the first advance is for the purchase of the dwelling and all subsequent advances are for the fix up of the dwelling. This loan is multiple-advance loan internally classified as a construction loan and monitored as such -- is this a construction loan for HMDA purposes?

Answer by Dan Persfull:

All open-end lines of credit are optional reporting.

All temporary loans are exempt, not just construction loans.

Any "construction" on an existing dwelling is an home improvement loan. However, the loans in the "fix and flip" scenario you presented would be reported as home purchases once they are "flipped" since the loan was to purchase and repair the dwelling.

**Equity Loan to Buy Time-Share -- HMDA or No?**
Question: We're doing a fixed home equity loan secured by the borrower's primary residence. The purpose is to purchase a vacation time-share. Is this loan HMDA reportable? (No existing lien is being paid off.) I'm thinking on one hand the time-share may be considered a dwelling, but on the other hand it can be "transitory" like a hotel.

Answer by Dan Persfull: Timeshare properties are not reportable.

**HMDA - Single Dwelling Home for Investment Purpose**
Question: If I have a borrower who purchased a single dwelling home/property for investment purposes only, do I need to fill out a HMDA form?

Answer by Jim Bedsole: If the loan is to purchase the property and is secured by the property, then purpose doesn't impact HMDA. It would be HMDA reportable in the event of an investment purchase of a single family dwelling secured by the dwelling.

Answer by Dan Persfull: Jim's answer is correct but a clarification needs to be made in that it does not have to be secured by the dwelling being purchased.

The definition of a home purchase loan for HMDA is any loan for the purpose of purchasing a dwelling and will be secured by a dwelling. (Read the "a dwelling" as "any dwelling.")

**HMDA Reporting Applicable to Purchased Mortgage?**
Question: Does HMDA reporting apply to a mortgage that is purchased from another lender when the mortgage and note was assigned and not cancelled?

Answer by Dan Persfull:
Yes. From page D-11 of the A Guide to HMDA Reporting, Getting it Right manual;

3. Action taken—purchased loans. An institution reports the loans that it purchased during the calendar year, and does not report the loans that it declined to purchase.

## Pre-Quals in 2003/04 HMDA LARs

Question: If a financial institution happens to report their pre-qualifications on their 2003 and 2004 HMDA LAR with the MSA, State Code, County Code, and Census Tract/BNA sections as NA (since a property has not been identified in the process of pre-qualifying the applicants), is this in violation of Regulation C? Should the FDIC examiners cite a violation of Regulation C?

Section 203.2 (2) of the Supplement I to Regulation C states, in part: Regulation C does not require an institution to report pre-qualification requests on the HMDA/LAR, even though these requests may constitute applications under Regulation B for purposes of adverse action notices."

This is quoted by an FDIC Compliance examiner who is also seeking clarity on this. If you can provide additional clarity around this, I would greatly appreciate it.

Long story short, we reported our pre-qualifications on our 2003 and 2004 HMDA LARs (utilizing PCi Services as a 3rd party HMDA and CRA preparer) and feel that while the information was provided in error we don't believe we should be in violation of Reg C based on the definition provided by the regulation as stated above. I appreciate your time and any responses you can provide on this issue.

Answer by Dan Persfull:
This is probably not the answer you're looking for, but here's my opinion:

From page D-3 of the 2003 GIR:

*However, under Regulation C the definition of an application does not include pre-qualification requests. (Appendix A of this part, Paragraph IV.A.)*

A pre-qualification request does not meet the definition of an application under Reg. C. Therefore they should not be reported on the 2003 LAR.

The first part of the section you quote states that a FI may run their pre-qualifications under the same procedures that would constitute an application under Reg. B, or they may run them under a separate qualification program - REGARDLESS of how the FI processes the request - Reg C does not require them to be reported as applications under Reg. C.

From page D-2 of the 2004 GIR:

*However, under Regulation C the definition of an application does not include pre-qualification requests.*

For 2004 only pre-approval requests that fell under a qualified pre-approval program was to be reported on the LAR.

Pre-qualification requests are not to be reported on the 2004 LAR.

**How Should We Report Income on the HMDA LAR?**
Question: How should we report income on the HMDA LAR? The reg says the income entry should be what we relied on in making the credit decision. Is it permissible to use the income that the borrower reported on the loan application for the HMDA LAR? Or must we wait for the verification of income to come in and use that figure? What do you think about this practice - we use the income on the borrower's application for the HMDA LAR. If the verified income is lower than the reported income, we revise the LAR. However, if the verified income is higher, we don't revise the LAR since our credit decision would not have changed.

Answer by Dan Persfull:
You are to report the income used to make your decision, it's that simple. If you use stated income, that's what you report, if you use verified income, that's what you report.

My experience with examiners (FDIC) is that if you verify income, that's the income you report unless you have documentation in file why additional income was discounted (not used).



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