CFPB proposes revisions to HMDA final rule

On April 13, 2017, the CFPB proposed substantive changes and technical corrections to the 2015 Home Mortgage Disclosure Act (HMDA) Final Rule (Final Rule) amending Regulation C. The proposal would clarify certain key terms under the Final Rule, including temporary financing, automated underwriting system, multifamily dwelling, extension of credit, income, and mixed-use property:

1. **Temporary Financing.** Because temporary financing is excluded from the definition of "home purchase loan," it is not subject to HMDA reporting. The proposal would clarify that a loan or line of credit is considered temporary financing if it is designed to be replaced by separate permanent financing extended to the same borrower at a later time. Additionally, the proposal would clarify that a construction-only loan or line of credit also is considered temporary financing if it is extended to a person exclusively to construct a dwelling for sale.

2. **Automated Underwriting System (AUS).** Under the proposal, an AUS is an electronic underwriting tool that has been developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit (as those terms are defined in the Final Rule). If this definition is met, the financial institution must report the name of the AUS and the result generated by that system. The proposal would clarify that the AUS developer need not currently be a securitizer, Federal government insurer or Federal government guarantor for an electronic underwriting tool to be considered an AUS.— Under the proposal, the tool is considered an AUS if the developer *at any time* securitized, provided Federal government insurance, or provided a Federal government guarantee for closed-end mortgage loans or open-end lines of credit.

3. **Multifamily Dwelling.** The proposal clarifies that a loan secured by five or more separate dwellings in more than one location is a loan secured by a multifamily dwelling.

4. **Extension of Credit.** Regulation C only applies to an "extension of credit," which occurs only when a new debt obligation is created. The Final Rule had amended Regulation C to extend HMDA coverage to New York State consolidation, extension, and modification agreements (New York CEMAs). The proposal seeks to narrow the Final Rule's applicability and avoid double reporting by creating an exclusion from reporting for a preliminary transaction that provides new funds that are consolidated into a New York CEMA in the same calendar year. Under the proposal, the reporting requirement does not extend to CEMAs from states other than New York, unless they separately qualify as a covered loan or an extension of credit. The proposal also departs from the Final Rule with respect to installment sales contracts, which were not considered extensions of credit under the Final Rule. The proposal would provide that an installment land sales contract can involve an extension of credit (rendering the transaction a closed-end mortgage loan covered by HMDA), depending on the facts and circumstances.

5. **Income.** In response to purported uncertainty among financial institutions about what to include as income when making a credit decision, the agency is proposing that a financial

institution need not consider as income amounts that are derived from underwriting calculations of the potential annuitization or depletion of an applicant's remaining assets. However, actual distributions from retirement accounts or other assets that are relied on by the financial institution as income should be reported as such.

6. **Mixed-Use Property.** The proposal seeks to resolve "uncertainty regarding the reporting requirements for mixed-use property" by clarifying that a loan to improve commercial space in a multifamily dwelling would not be a home improvement loan, but a loan to improve commercial space in a dwelling other than a multifamily dwelling would be a home improvement loan.

The proposed amendments to the Final Rule would also make changes associated with HMDA reporting practices:

1. **Census Tract Reporting.** In the past, errors in the reporting of census tracts were an issue for the industry. The CFPB advises in the proposal that it plans to make a geocoding tool available on its website that reporting institutions may use to identify census tracts. Additionally, the CFPB proposes that a census tract error will be considered a bona fide error and not a violation of HMDA or Regulation C if a financial institution obtains an incorrect census tract number from the CFPB's online geocoding tool, as long as the financial institution entered an accurate property address into the tool, and the tool returned a census tract for the address entered.

2. **Collection of Race, Ethnicity, and Sex Information.** Under the proposal, an applicant may select an ethnicity or race subcategory even if the applicant does not select an aggregate ethnicity or aggregate race category. If an applicant indicates an ethnicity or race subcategory but not an aggregate category, a financial institution should not report an aggregate category. While the Final Rule provides that while a financial institution must report all of the aggregate ethnicity categories and the ethnicity subcategories designated by an applicant, the proposal would limit the maximum that can be reported to a total of five. The change would align the maximum number of ethnicity categories and subcategories that may be reported to the maximum number of race categories and subcategories that may be reported. Note that the CFPB recently proposed aligning Regulation B and Regulation C requirements regarding collection of consumer ethnicity and race information.

3. **Regulation Z Disclosures.** Under the proposal, when a financial institution issues a corrected disclosure to the borrower before the end of the HMDA reporting period in which final action is taken, it should report the interest rate on the revised or corrected disclosure. The proposal would also require that, for open-end lines of credit, the APR that should be reported is the APR at the time of account opening, not at the time of application, as previously set forth in the Final Rule.

4. **Credit Score Reporting.** The CFPB proposes to amend its Regulation C commentary to clarify that when a financial institution uses more than one credit scoring model and combines the scores into a composite credit score, the financial institution must report that score, and report that more than one credit scoring model was used. And in a

transaction involving two or more applicants or borrowers for which the financial institution obtains or creates a single credit score, and relies on that credit score in making the credit decision for the transaction, the institution may report that credit score for the applicant and report that the reporting requirement is not applicable for the first co-applicant or, alternatively, may report that credit score for the first co-applicant, and report that the reporting requirement is not applicable for the applicant.

5. **Reporting Thresholds.** The proposal further clarifies that if a financial institution does not originate 25 or more closed-end loans in either of the two preceding calendar years, or does not originate 100 or more open-end lines of credit in either of the two preceding calendar years, it is not required to report closed-end loans or open-end lines of credit, as applicable. Language in the Final Rule incorrectly suggests that a financial institution must be below the reporting thresholds in each of the two preceding calendar years to be exempt from the reporting requirement. The proposal would expressly permit a financial institution that does not satisfy the reporting thresholds to voluntarily report closed-end loans or open-end lines of credit.

The CFPB also proposes "non-substantive changes," technical corrections, and an effective date for the proposed revisions:

1. **Transition Rules for Data Points.** The CFPB proposes the establishment of transition rules for two data points – loan purpose and the unique identifier for the loan originator (the NMLSR ID). First, the proposed rule provides that a financial institution can indicate that the NMLSR ID reporting requirement is not applicable, even if an NMLSR ID is assigned, if the purchased loan: (1) was originated prior to the effective date of the Regulation Z NMLSR ID requirement, January 10, 2014; or (2) is originated before January 1, 2018 and is covered by the Final Rule but not by Regulation Z, e.g. a commercial purpose home loan. Second, for purchased loans originated before January 1, 2018, a financial institution would satisfy the loan purpose reporting requirement by indicating that the requirement is not applicable.

2. **Effective Date.** The Final Rule takes effect in stages between January 1, 2017 and January 1, 2020, with most of the Final Rule provisions taking effect on January 1, 2018. Accordingly, the proposal contemplates a January 1, 2018 effective date for most of the proposed amendments. Interested parties should assess if programming and operational changes that would be necessary based on the various proposals can be appropriately completed by January 1, 2018.

The proposal will be open for public comment for 30 days after its publication in the Federal Register. The CFPB does not address the privacy concerns related to the public availability of data, but will do so in the future.