The following are questions posed by attendees at the August 19, 2014 QuestSoft webinar that addressed the new HMDA proposal from the CFPB, and the answers from Leonard Ryan of QuestSoft.

DISCLAIMER: Please remember that the contents of this Q & A document are for informational purposes only and do not constitute legal advice. This document should not be regarded as a substitute for detailed advice regarding individual laws and regulations. You should contact a legal advisor should you have additional questions on the interpretation of these proposed regulations.

Q: Any discussion regarding tolerance violations with all the new additional fields?

A: We have not seen anything related to fines, penalties, accuracy benchmarks, etc. within the proposal or subsequent conversations. We also doubt the CFPB will issue guidance in this area at this early stage. Tolerance violations are not really a part of the rulemaking process. However, I would also not expect for the CFPB to ever weaken current examiner guidelines.

Q: Assuming the NMLS number will be used for the unique identifier, what will happen on those loans that are required to be HMDA reported, but are not consumer loans and where the loan originator is not required to have an NMLS? For example, non-consumer loans on apartment buildings.

A: Commercial loans where a home acts as collateral are excluded in the new HMDA proposals.

Q: At our credit union, our HELOCS are on our consumer side. We have our HMDA plugin on our mortgage origination side. How can we report our HELOCS and will it make a difference if we have closed or open end HELOCS? All of ours are open end.

A: The CFPB does not seem to be separating Closed or Open End HELOCS in terms of reporting though there is a data field that will indicate the type so that the loan amount is properly assigned. The intent of the CFPB and many regulators is that they wish reporting on ANY loan where someone can lose their right to live in a property if they don't pay the loan. This would certainly apply in a foreclosure on the property for non-payment of the loan.
Q: Credit Score -- will this be the mid score?
A: It will be the score you use to make the credit decision. Whether it is the low, mid, high or some other calculation doesn't matter.

Q: COMMENT: Application is six data elements, but shouldn't it be seven as you can't provide disclosures without a product?
A: Six Data Elements is what RESPA/TILA rules are using. There is no bright line guidance for what constitutes an application in the proposed HMDA. Therefore, we're focusing on what we are going to recommend to the CFPB. Because QuestSoft programmers must constantly address the pitfalls among regulators that use different definitions, QuestSoft is far more concerned about consistency among regulations than we are with any technicality.

Q: Will you be writing additional audits/reviews to pick up issues?
A: We will be programming additional Group Edits to address any new issues that we can. This will include both CFPB edits as well as our own; as our mission is to always promote data integrity and accurate filings.

Q: Do you have a sample letter we can go by or use to send in for comments to the CFPB regarding HMDA reporting concerns on this additional information, such as the property address and other areas of privacy?
A: Probably not. We will be happy to post our response to the CFPB when we complete them. Due to conferences and other educational events, we will likely complete our response the second week of October. However, please realize that the CFPB now accepts electronically delivered responses and the format is more like an email than a formal letter. In any case, the CFPB publishes all comment letters, good or bad, so the entire industry along with regulators other than the CFPB will be viewing your comments.

Q: Do you have to report commercial loans through HMDA for loans to entities for properties that are secured by a dwelling, but are more “commercial” in nature? These are usually loans to LLC’s that have multiple properties managed by property managers. Although the loans are secured by a dwelling, which usually triggers HMDA reporting, the entities involved do not have ethnicities or any HMDA required information.
A: We don’t have a specific answer on this. The proposals suggest the CFPB wants to remove commercial properties with homes added as an abundance of caution from HMDA reporting. Your question seems to offer a lot of nuances as to how complicated this has become.

Q: Does the new HMDA apply to commercial loans secured by residential property?
A: See above answer
Q: If an application is initially declined due to credit score and the institution’s lending policy, are we still required to spend further time and money to complete the other required sections?

A: We have absolutely no idea. Usually after you say no, the borrower and lender both move on. It remains to be seen how the proposed changes will affect this process.

Q: If we are under the 75,000 LAR entries, do we still file annually? That only those that have in excess of the 75,000 file quarterly -- is that what you meant?

A: Yes. The 75,000 is a PRELIMINARY number. The final rule could be lower. However, if you are not at the threshold for quarterly reporting, you will continue to compile the information quarterly but only submit ANNUALLY (the same as today).

Q: The CFPB does not allow the LTV to determine the repayment ability of the borrower. Why is this considered in HMDA reporting?

A: The LTV is vital as a barometer for fair lending. This field has nothing to do with Ability to Repay. The CFPB is looking at automating the fair lending reporting of data. Different regulations, different requirements.

Q: The loan types excluded shows agriculture loans. Right now, agricultural purchase loans are not reported, but refinances are. Will this be changing so refinances are not reported either?

A: We don’t have an answer to this question at this time.

Q: This question is not necessarily in regards to the upcoming changes, but are pre-qualifications including denials HMDA-reportable?

A: Prequalification denials are never reported. However, if the borrower requests a written preapproval which after running credit, etc., you deny; that would be reportable under both today’s HMDA rules and under the new CFPB proposed rules.

Q: We do not sell in the secondary market and do not determine whether or not our loans are QM, but just comply with the Ability to Repay guidelines. Will we nonetheless have to determine whether or not loans meet the QM guidelines for HMDA purposes?

A: Yes, it seems so under the new HMDA guidelines.

Q: When data is asked for release, we usually hide certain areas to protect the borrower. How will we know if we can hide credit scores? What fields with this new enhancement can we hide?

A: In terms of REPORTING, there will be no "hiding" of the information. The CFPB will want the credit scores submitted using an encrypted method yet to be determined. The proposal does not change the current PUBLIC disclosure of HMDA data in Year 1 of the new reporting. You will use the same fields and have the same three fields hidden just as you do now. However, under the proposal, the CFPB will decide at some future time if they want to make your protected information available to the public. We don’t see the likelihood where the CFPB will require credit scores in the lender’s public disclosure, as that will probably have a chilling effect on mortgage lending with borrowers.
Q: When is the vote to approve the new proposed HMDA reporting fields? If approved, when do you anticipate the new reporting rules to take effect?

A: Commentary is being accepted until October 22nd. It is unknown when the new rules will take effect, but we expect it will be either January 1, 2016 or January 1, 2017.

Q: When reviewing the rule, I didn't see how they are going to handle what is currently considered "Temporary Financing." Any input on this?

A: The CFPB has continued many of the current HMDA practices, including "Temporary Financing." We do not anticipate that the reporting of this will change under the final rules.

Q: Where is the web address to submit our comments by Oct 14?


You may submit comments, identified by Docket No. CFPB-2014-0019 or RIN 3170-AA10, by any of the following methods:

Email: FederalRegisterComments@cfpb.gov.

Electronic: http://www.regulations.gov. Follow the instructions for submitting comments.

Q: Will all the new HMDA questions be on the URLA, or will there be a new HMDA addendum to the URLA?

A: While not part of the webinar, FannieMae and FreddieMac have indicated that they are looking to release an updated URLA in the next year to address issues of the changes in both RESPA/TILA, and also HMDA changes. No date of implementation has been suggested.

Q: Will they use the undiscounted rate as described by the CFPB for the QM points and fee calculation?

A: We do not have an answer to this and the proposal does not seem to address this question.

Q: Will you be having another webinar about this topic in the future?

A: We offer webinars as information is updated, so there will likely be more webinars on this topic as things change. However, unless there are changes prior to the October 22 deadline for comments, we do not feel there will be another “live” webinar. This webinar, however, is available for download to watch unlimited with your staff.

Q: Would commercial loans that take a dwelling as security (abundance of caution) be reportable under the proposed HMDA rules?

A: No. That is one of the major changes under the new CFPB rules.
You can view a recording of this webinar at:

http://questsoft.com/hmdawebinar