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## **Bureau Approves Use of Revised 1003 for Reg B Purposes and Collection of HMDA Demographic Data in 2017**

The Uniform Residential Loan Application (URLA) has long been used by lenders and brokers in the mortgage industry to collect certain data in connection with a consumer's request for mortgage credit. Designed by the Federal Home Loan Mortgage Corporation (FHLMC) and the Federal National Mortgage Association (FNMA), the URLA (often referred to as the FNMA 1003) can be used to request information about an applicant's ethnicity, race and gender in order to comply with Section 1002.13 of Regulation B. Section 1002.13 governs the collection of this information in connection with an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling. The URLA also can be used to collect information regarding an applicant's marital status and age, among other information. The collection of this information also is governed by Regulation B. And, in fact, the URLA is provided as a sample form in Appendix B to Regulation B. In addition, the commentary to Appendix B indicates that a creditor is permitted to use the URLA without violating Regulation B.

In August 2016, FNMA and FHLMC issued a revised and redesigned Uniform Residential Loan Application (2016 URLA) and requested the Bureau to review the redesigned form. On September 23, 2016 the Bureau issued a notice of "Official Approval" approving use of the 2016 URLA under Regulation B. 81 FR 66930. In particular, the Bureau stated that the language of the 2016 URLA complies with the provisions of Section 1002.5(b) (concerning requests for information about race, color, religion, national origin or sex), Section 1002.5(c) (regarding requests for information about a spouse or former spouse), Section 1002.5(d) (concerning requests for information regarding marital status; income from alimony, child support or separate maintenance as well as information regarding dependents) and Section 1002.13.

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Moreover, the Official Approval states that financial institutions may use the 2016 URLA between January 1, 2017 and December 31, 2017 to collect the expanded ethnicity and race information under the Home Mortgage Disclosure Act (HMDA) and Regulation C. Recall that on October 28, 2015 the Bureau issued a final rule amending Regulation C as required by the Dodd-Frank Reform Act (HMDA Final Rule). 80 FR 66127. Among other revisions, effective January 1, 2018 in soliciting information regarding an applicant and co-applicant's ethnicity and race, lenders are required to permit applicants to self-identify using "disaggregated" ethnic and racial categories (which this article will refer to as "subcategories"). For example, while the HMDA Final Rule retains the current ethnicity categories of "Hispanic or Latino" and "Not Hispanic or Latino," which are referred to under the HMDA Final Rule as "aggregate categories," the HMDA Final Rule adds the following subcategories that applicants may choose to further define their ethnicity: Mexican, Puerto Rican, Cuban and "Other." Under this "Other" subcategory the applicant can (but is not required to) write in a self-identified origin. For purposes of race, the HMDA Final Rule only breaks down the aggregate categories of Asian and Native Hawaiian or Other Pacific Islander into additional subcategories. Before January 1, 2018, requesting an applicant to self-identify is not required under Regulation C. Moreover, such inquiries are prohibited under Section 1002.5(a)(2) of Regulation B.

The Bureau believes there may be benefits to allowing lenders to request that applicants self-identify using the ethnic and racial subcategories under the HMDA Final Rule before January 1, 2018. For example, being authorized to request the expanded data may give lenders additional time to begin implementing the regulatory changes and improve compliance processes before the new requirement becomes mandatory on January 1, 2018. Accordingly, under the Bureau's Official Approval notice, for applications received during the period from January 1, 2017 through December 31, 2017, a lender may, at its option, permit applicants to self-identify using the ethnic and racial subcategories as set forth under the HMDA Final Rule in Appendix B to Regulation C. In addition, the Bureau has indicated that during this period lenders that choose to permit applicants to self-identify will not be deemed to violate Section 1002.5(b) or Section 1002.13 of Regulation B.

While lenders are permitted to request the expanded data during 2017, in submitting HMDA data for applications in which final action is taken in 2017, lenders will not include any of the subcategory information on the HMDA LAR even if they permitted applicants to self-identify using the subcategories. In other words, for HMDA data collected in 2017 lenders will only report the current aggregate categories for ethnicity and race. That is, for ethnicity, lenders will still report the codes for Hispanic or Latino or Not Hispanic or Latino and for reporting race, the codes that apply to the categories of race – specifically, American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Note, however, that the Official Approval provides that if an applicant selects multiple race subcategories that correspond to multiple aggregate race categories, the lender must submit the applicable code for each of those aggregate race categories. For example, let's say a lender receives an application on February 16, 2017 and final action is taken on

March 21, 2017. The applicant completes the following ethnicity and race aggregate and subcategories on the 2016 URLA:

**Demographic Information of Borrower**

The purpose of collecting this information is to help ensure that all applicants are treated fairly and that the housing needs of communities and neighborhoods are being fulfilled. For residential mortgage lending, federal law requires that we ask applicants for their demographic information (ethnicity, sex, and race) in order to monitor our compliance with equal credit opportunity, fair housing, and home mortgage disclosure laws. You are not required to provide this information, but are encouraged to do so. **The law provides that we may not discriminate** on the basis of this information, or on whether you choose to provide it. However, if you choose not to provide the information and you have made this application in person, federal regulations require us to note your ethnicity, sex, and race on the basis of visual observation or surname. The law also provides that we may not discriminate on the basis of age or marital status information you provide in this application.

**Instructions:** You may select one or more "Hispanic or Latino" origins and one or more designations for "Race." If you do not wish to provide some or all of this information, select the applicable check box.

**Ethnicity**

- Hispanic or Latino
    - Mexican     Puerto Rican     Cuban
    - Other Hispanic or Latino – Enter origin:  
Argentinean  
*Examples: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, etc.*
  - Not Hispanic or Latino
  - I do not wish to provide this information
- Sex**
- Female
  - Male
  - I do not wish to provide this information

**Race**

- American Indian or Alaska Native – Enter name of enrolled or principal tribe: \_\_\_\_\_
- Asian
  - Asian Indian     Chinese     Filipino
  - Japanese     Korean     Vietnamese
  - Other Asian – Enter race: \_\_\_\_\_  
*Examples: Hmong, Laotian, Thai, Pakistani, Cambodian, etc.*
- Black or African American
- Native Hawaiian or Other Pacific Islander
  - Native Hawaiian     Guamanian or Chamorro     Samoan
  - Other Pacific Islander – Enter race: \_\_\_\_\_  
*Examples: Fijian, Tongan, etc.*
- White
- I do not wish to provide this information

In completing and filing the HMDA LAR by March 1, 2018, for purposes of reporting ethnicity the lender would simply report Code 1, Hispanic or Latino. For race, even though the applicant did not check the "box" to indicate "Asian," the applicant did choose the "Other" box within the list of subcategories even though the applicant did not write in a further defined self-identified race. Based on the guidance from the Bureau's Official Approval the lender would report Code 2, Asian and Code 5, White.

For further guidance regarding the implementation of the 2016 URLA, contact Aldrich & Bonnefin, PLC at 800-742-3600.