



CFPB FINALIZES HMDA RULE; IMPLICATIONS FOR FUTURE SMALL BUSINESS LOAN DATA REPORTING RULE

On October 15, 2015, the Consumer Financial Protection Bureau (CFPB) finalized a rule to update Regulation C, the implementing regulations to the Home Mortgage Disclosure Act (HMDA). HMDA requires certain depository and nondepository institutions to collect and report data about originations and purchases of mortgage loans as well as applications that do not result in originations. The purpose of HMDA is to provide the public with information about mortgage lending activity to help public officials allocate funds for housing and regulators monitor discriminatory lending practices.

The CFPB's final rule changed (i) the types of institutions and transactions subject to Regulation C, (ii) the data a financial institution must collect and (iii) the process for reporting and disclosing the collected data.

The final rule establishes uniform loan-volume thresholds for depository and nondepository financial institutions. The loan-volume thresholds require a financial institution that originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years to report HMDA data.

The CFPB also modified the types of transactions that are subject to Regulation C. Prior to the amendment, Regulation C covered home purchase loans, home improvement loans and refinancings. Now, Regulation C applies to all dwelling-secured loans or open-end lines of credit that are for personal, family or household purposes, which includes closed-end home-equity loans, home-equity lines of credit and reverse mortgages. The CFPB clarified that Regulation C does not cover home improvement loans that are not secured by a dwelling.

The final rule adds and amends several data points that financial institutions must report on covered loans. Implemented in the wake of the mortgage market crisis, the Dodd-Frank Act specified new data reporting requirements under the HMDA and gave the CFPB discretion to establish additional requirements. Not all of the data points proposed were adopted. The CFPB grouped data points into four general categories: (i) information about the applicant or borrower and the underwriting process (e.g., age, debt-to-income

ratio), (ii) information about the property securing the loan (e.g., property value), (iii) information about features of the loan (e.g., introductory rate period) and (iv) certain unique identifiers (e.g., property address). In addition to these data requirements, financial institutions must indicate whether information on an applicant's ethnicity, race or sex is collected on the basis of visual observation or surname when an application is taken in person and the applicant does not provide the information. Whether ethnicity groups may be reported on an aggregated or disaggregated basis depends on whether the financial institution or applicant provides the data.

Finally, the CFPB revised regulations regarding the reporting and disclosure of information. Financial institutions that reported at least 60,000 transactions in the preceding year must report their data on a quarterly basis in the following year, rather than annually. The CFPB is developing a web-based tool to streamline the submission process. The final rule eliminated the requirement that financial institutions provide a disclosure statement and their loan/application register to the public. Only a notice directing the public to look for HMDA information on the CFPB's website must be provided. Acknowledging borrower privacy concerns, the CFPB adopted a balance test approach to determine which HMDA data will be disclosed to the public through its website.

The final HMDA rule will take effect on January 1, 2018.

The publication of the final rule affects only players in the mortgage market, but potentially also lenders offering small business loans. See e.g., our ALERTS of September 17, 2010 and April 14, 2011. Section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require financial institutions to collect and report certain data in connection with credit application by women- or minority-owned businesses and small businesses. The CFPB has indicated that the collection and disclosure of small business loan data will be similar in theory and practice to mortgage credit data under HMDA. Pressure has been mounting on the CFPB to promulgate a small business loan data reporting rule. The final HMDA rule and the rule's commentary provide a potential insight into such future small business loan reporting requirements both as to types of data that may be required and methods of origination, delivery and publication. □

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