



CFPB Finalizes Proposed Changes and Clarifications to New HMDA Requirements

September 12, 2017

The Consumer Financial Protection Bureau (“CFPB”) has issued a final rule (the “2017 HMDA Final Rule”) amending Regulation C, which implements the Home Mortgage Disclosure Act (“HMDA”). The 2017 HMDA Final Rule finalizes proposed changes to Regulation C issued by the CFPB in April 2017 (our advisory discussing the April 2017 HMDA proposal can be found [here](#)) and July 2017 (our advisory discussing the July 2017 HMDA proposal can be found [here](#)) which temporarily increases the threshold for collecting and reporting data with respect to open-end lines of credit secured by a dwelling from 100 to 500 for the 2018 and 2019 calendar years, and clarifies and corrects certain other provisions of the CFPB’s 2015 overhaul of the HMDA requirements.

I. Background

HMDA requires covered lenders to collect, report, and disclose certain data about their mortgage lending activities. In October of 2015, the CFPB issued a final rule that significantly amended these requirements (the “2015 HMDA Final Rule”). The 2015 HMDA Final Rule, which we addressed in a [prior advisory](#), modified the types of institutions and transactions subject to Regulation C, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data. Most of the changes made by the 2015 HMDA Final Rule take effect on January 1, 2018, although certain provisions are phased in after that date.

II. Summary of Changes

A. Loan-Volume Threshold

The 2017 HMDA Final Rule finalizes the proposed temporary increase in the threshold for collecting and reporting data for open-end lines of credit. Effective January 1, 2018, the threshold for open-end lines of credit will increase from 100 to 500 loans for a two year period (i.e., calendar years 2018 and 2019). Accordingly, a financial institution will not be subject to HMDA if the institution did not originate at least 25 closed-end mortgage loans or 500 open-end lines of credit in either of the two preceding calendar years. Also, if an institution originated at least 25 closed-end mortgage loans in either of the two preceding years but did not originate at least 500 open-end lines of credit in that time span, the institution will be subject to HMDA as of January 1, 2018, but will not have to collect and report data on open-end lines of credit.

Absent further action by the CFPB, effective January 1, 2020, the open-end threshold for reporting will be restored to the 2015 HMDA Final Rule level of 100 open-end lines of credit, and creditors which are otherwise subject to HMDA reporting originating 100 or more open-end lines of credit must begin collecting and reporting HMDA data for open-end lines of credit at that time.

Additionally, the 2017 HMDA Final Rule corrects a technical error in the language of the 2015 HMDA Final Rule. The 2015 HMDA Final Rule established transactional thresholds under which a closed-end mortgage loan or an open-end line of credit is considered an “excluded transaction” if the financial institution did not meet the loan-volume threshold for that loan type in *each* of the two preceding calendar years. The 2015 HMDA Final Rule excluded these transactions from the collection, reporting, and disclosure requirements. The 2017 HMDA Final Rule establishes that such loans will be excluded transactions if the institution did not meet the applicable threshold in *either* of the two preceding calendar years. The correction clarifies that a financial institution is not required to report a closed-end mortgage loan or an open-end line of credit, respectively, unless the institution meets the threshold for that loan type for two consecutive years.

B. New Exception in Connection with New York CEMA Loans

A consolidation, extension and modification agreement (“CEMA”) is a relatively common way to structure a loan in New York State so as to avoid a borrower paying mortgage recording tax on funds previously disbursed on an existing loan. The 2015 HMDA Final Rule expanded the coverage of Regulation C to include New York CEMAs as a reportable transaction.

The 2017 HMDA Final Rule creates a reporting exception for certain transactions related to CEMAs. Specifically, a covered lender will generally not be required to report any preliminary funding done as part of a CEMA separately from the overall CEMA transaction. In other words, if a lender is extending additional funds as part of a CEMA, the lender should only report the total loan amount under the CEMA (existing debt and new funds) and should not report the extension of the new funds and then the overall total loan. To do so would result in double reporting.

C. Clarification of Certain Terms

The 2017 HMDA Final Rule also clarifies certain key terms such as “automated underwriting system,” “temporary financing,” “multifamily dwelling,” and “mixed-use property.”

1. Automated Underwriting System

The 2015 HMDA Final Rule requires lenders to report, except for purchased covered loans, the name of the automated underwriting system is used to evaluate the application and the result generated by that system. An automated underwriting system is an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. A person is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, if it has ever securitized, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or an open-end line of credit. The 2017 HMDA Final Rule clarifies that a person may be a securitizer, Federal government insurer, or Federal government guarantor

even if it is not actively securitizing, insuring or guaranteeing closed-end mortgage loans or open-end lines of credit at the time a financial institution uses the automated underwriting system to evaluate an application.

2. Temporary Financing

The 2015 HMDA Final Rule does not apply to “temporary financing.” To clarify the meaning of this term, the 2017 HMDA Final Rule provides that a loan or line of credit is considered “temporary financing” and thus excluded under Regulation C if it is designed to be replaced by separate permanent financing extended by any financial institution to the same borrower at a later time. This clears up confusion caused by the April 2017 and July 2017 proposals to further clarify that the applicability of the temporary financing exclusion does not depend on whether the financial institution that originates the permanent financing is the same institution that originated the loan or line of credit the permanent financing is designed to replace. The 2017 HMDA Final Rule also clarifies that a construction-only loan or line of credit is considered “temporary financing” and thus excluded under Regulation C if the loan or line of credit is extended to a person exclusively to construct a dwelling for sale.

3. Multifamily Dwelling

The 2017 HMDA Final Rule also clarifies the definition of “multifamily dwelling” by establishing that a covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling. Additionally, the 2017 HMDA Final Rule establishes that a covered loan secured by five or more separate dwellings that are located within a multifamily dwelling, but which is not secured by the entire multifamily dwelling (e.g., an entire apartment building or housing complex), is not considered to be secured by a multifamily dwelling. The 2017 HMDA Final Rule further provides examples to clarify when loans are secured by multifamily dwellings.

4. Mixed-Use Property

The 2017 HMDA Final Rule clarifies the reporting requirements for home improvement loans secured by mixed-use property by establishing that a loan or line of credit to improve commercial space in a multifamily dwelling is not a reportable home improvement loan, but a loan or line of credit to improve commercial space in a dwelling other than a multifamily dwelling is a reportable home improvement loan. For example, a loan to improve retail space in an apartment building is not a home improvement loan and would not be reported, but a loan to improve a doctor’s office or daycare center in a single-family dwelling is a home improvement loan and would be reported.

D. Transition Rule for Loan Purpose and Loan Originator Unique Identifier

The 2017 HMDA Final Rule establishes transition rules for the loan purpose and loan originator’s “unique identifier” data points. For certain purchased loans that were originated prior to the effective date of their respective reporting requirement, this would permit covered financial institutions to report “not applicable” for the loan originator data point and require covered financial institutions to report “not applicable” for the loan purpose data point.

E. Safe Harbor for Bona Fide Errors Due To Incorrect Information From the CFPB's Geocoding Tool

The 2015 HMDA Final Rule provides that an incorrect entry for a census tract number on an HMDA report is deemed a bona fide error and is not a violation of Regulation C or HMDA if the covered financial institution maintains procedures reasonably adapted to avoid such errors. The CFPB plans to make available on its website a geocoding tool for covered financial institutions to identify the census tract in which a property is located. The 2017 HMDA Final Rule establishes a safe harbor for a covered financial institution that uses the geocoding tool provided by the CFPB, enters an accurate property address, and reports an incorrect census tract due to incorrect information generated by the geocoding tool.

F. Effective Date

The CFPB stated in both the April 2017 HMDA Proposal and July 2017 HMDA Proposal that for the proposed amendments to have the intended effect, their effective dates should be synchronized with the related effective dates in the 2015 HMDA Final Rule. The 2017 HMDA Final Rule adopts the effective dates as proposed. Accordingly, since most of the amendments included in the 2015 HMDA Final Rule will take effect on January 1, 2018, most of the amendments in the 2017 HMDA Final Rule will take effect on January 1, 2018. Furthermore, some of the amendments included in this Final Rule will take effect on January 1, 2019, or January 1, 2020, respectively, to correspond to related effective dates of amendments in the 2015 HMDA Final Rule.

II. More Information

The 2017 HMDA Final Rule can be found [here](#).

Please note that this advisory is a general overview of the 2017 HMDA Final Rule and is not intended as a comprehensive explanation of all aspects of the amendments or as formal legal advice. If you have any questions regarding the 2017 HMDA Final Rule, Regulation C, HMDA or mortgage compliance issues in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com, or Elizabeth A. Murphy at 516-296-9154 or via email at emurphy@cullenanddykman.com.

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