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CFPB Issues Interpretive Rule Implementing and Clarifying New HMDA Provisions

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The Consumer Financial Protection Bureau (the "CFPB") has issued an interpretive and procedural rule (the "Rule") implementing and clarifying the changes made to the Home Mortgage Disclosure Act ("HMDA") by Congress earlier this year. Those changes generally provide an exemption from some of the more burdensome reporting requirements for lenders that do not make a significant number of home loans or lines of credit. The CFPB anticipates issuing formal amendments to Regulation C, the regulation implementing HMDA, at a later date, but the Rule is intended to give financial institutions immediate guidance on the new changes until the regulatory changes are adopted.

I. Background

HMDA requires certain depository institutions and for-profit nondepository institutions to collect, report, and disclose data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations. The CFPB issued major changes to Regulation C in 2015. Those changes generally modified the types of transactions subject to HMDA reporting, expanded the scope of reportable information under HMDA, modified the rules for reporting an applicant's ethnicity, race and sex, and revised the data submission and disclosure requirements. We discussed these changes in a prior advisory. In 2017, Regulation C was further amended to temporarily increase 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. The 2017 amendment also clarifies and corrects certain other provisions of the HMDA requirements. A summary of the 2017 amendment is available here.

II. The Regulatory Relief Act and Amendment to HMDA

The Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Act") was signed into law on May 24, 2018. Section 104(a) of the Act amends certain provisions of HMDA to provide a partial exemption from HMDA's requirements for certain financial institutions. The partial exemption eliminates most of the new data point collection and reporting requirements added by the Dodd-Frank Act for banks and credit unions that made under 500 covered mortgage loans or lines of credit in each of the preceding two calendar years. A summary of these changes is available in our prior advisory.

III. Interpretive Rule to the Regulatory Relief Act Amending HMDA

The CFPB has now issued the Rule to provide clarification and guidance on the partial exemption relief granted pursuant to section 104(a) of the Act. Topics covered in the Rule include the effective date of section 104(a) of the Act, optional reporting, institutions covered by the partial exemption, exempt and covered data points, use of a Non-Universal Loan Identifier, and the impact of a poor CRA rating on determining the eligibility of the partial exemption. These topics are discussed below.

1. Effective Date of Partial Exemption

Although the Act does not provide a specific effective date for the partial exemption relief granted pursuant to section 104(a), the CFPB is taking the position that section 104(a) took effect when the Act became law on May 24, 2018.

2. Optional Reporting under the Partial Exemption

Partially exempt institutions are not prohibited from voluntarily reporting exempt data points. Since institutions may not be able to determine applicability of the partial exemption in time for the following year's reporting and it may be less burdensome to report all of the data than to separate the exempt data points from the required data points, the Rule allows partially exempt institutions to voluntarily report data covered by the Act's partial exemption.

Please note that if a data point covered by the partial exemption includes multiple data fields, partially exempt institutions must report all of those data fields if they choose to report at least one of the data fields. For instance, if an institution reports the street address of the property, it must also report the remaining parts of the address.

3. Covered Financial Institutions Eligible for the Partial Exemption

Though Section 104(a) of the Act does not define the terms "closed-end mortgage loan" and "open-end line of credit," the Rule interprets these terms to include only those closed-end mortgage loans and open-end lines of credit that would otherwise be reportable under HMDA.

4. Exempt Data Points

Partially exempt institutions are not required to report 26 data points[1] out of the 48 data points currently set forth in Regulation C. However, such institutions must continue to report the remaining 22 data points[2] in the manner specified in Regulation C.

5. Non-Universal Loan Identifier

If a partially exempt institution chooses not to report a Universal Loan Identifier ("ULI"), it must report a non-universal loan identifier for partially exempt transactions to ensure that such transactions are identifiable.

The non-universal loan identifier may be composed of up to 22 characters to identify the loan or application, which:

a) May be letters, numerals, or a combination of letters and numerals;

b) Must be unique within the insured depository institution or insured credit union; and

c) Must not include any information that could be used to directly identify the applicant or borrower.

6. Clarification on CRA Rating in Determining Eligibility under the Partial Exemption

Section 104(a) of the Act provides that the partial exemption does not apply to a bank that received a "needs to improve" rating in each of its preceding two most recent Community Reinvestment Act ("CRA") examinations or a "substantial noncompliance" rating in its most recent CRA examination. The Rule clarifies that for a given reporting year, the CRA ratings used to determine whether the exception applies are the two most recent CRA ratings as of December 31 of the preceding calendar year.

IV. More Information

The Rule is available here. If you have any questions regarding the Rule, the Regulatory Relief Act, 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, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenanddykman.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

[1] These data points are: Universal Loan Identifier; Property Address; Rate Spread; Credit Score; Reasons for Denial; Total Loan Costs or Total Points and Fees; Origination Charges; Discount Points; Lender Credits; Interest Rate; Prepayment Penalty Term; Debt-to-Income Ratio; Combined Loan-to-Value Ratio; Loan Term; Introductory Rate Period; Non-Amortizing Features; Property Value; Manufactured Home Secured Property Type; Manufactured Home Land Property Interest; Multifamily Affordable Units; Application Channel; Mortgage Loan Originator Identifier; Automated Underwriting System; Reverse Mortgage Flag; Open-End Line of Credit Flag; Business or Commercial Purpose Flag.

[2] These data points are: Application Date; Loan Type; Loan Purpose; Preapproval; Construction Method; Occupancy Type; Loan Amount; Action Taken; Action Taken Date; State; County; Census Tract; Ethnicity; Race; Sex; Age; Income; Type of Purchaser; HOEPA Status; Lien Status; Number of Units; Legal Entity Identifier.

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