

CFPB Issues Major Changes to HMDA Requirements

January 4, 2016

The Consumer Financial Protection Bureau (“CFPB”) has issued a final rule with major changes to Regulation C, which implements the Home Mortgage Disclosure Act (“HMDA”). Among other things, the new HMDA rule (“HMDA Rule” or “Final Rule”) narrows the coverage of financial institutions subject to HMDA, modifies the types of transactions subject to HMDA reporting, expands the scope of reportable information under HMDA, modifies the rules for reporting an applicant’s ethnicity, race and sex, and revises the requirements for submitting data to regulators and disclosing data to the public.

Though most of these changes will not become effective until January 1, 2018, and will apply to data collected in 2018 and reported in 2019 or later, covered financial institutions should start planning the implementation soon given the complexity of these new requirements and the likely need for system enhancements.

Below is a summary of the HMDA Rule. The effective date for all changes listed below is January 1, 2018, unless otherwise specified.

Coverage of Institutions

Under the HMDA Rule, a bank, savings association or credit union which originated less than 25 home purchase loans, including refinancings of home purchase loans, in both 2015 and 2016 will not be subject to Regulation C in 2017 and will not have to report HMDA data for that year.

Effective January 1, 2018, the HMDA Rule adopts a uniform loan-volume threshold for all financial institutions. Beginning on that date, an institution will be subject to Regulation C and required to collect, record and report data for covered closed-end mortgage loans if the institution originated at least 25 covered closed-end mortgage loans in each of the two preceding calendar years, and satisfies other applicable coverage requirements (i.e., asset size, location, loan activity, and federally related tests). Additionally, an institution will need to collect, record and report data for covered open-end lines of credit if the institution originated at least 100 covered open-end lines of credit in each of the two preceding calendar years, provided that other applicable coverage requirements are met.

Types of Transactions Covered

The HMDA Rule modifies the types of transactions that are covered under Regulation C. In general, the main factor in determining whether a loan primarily for a consumer purpose is reportable under HMDA is whether the loan is secured by a dwelling. Beginning on January 1, 2018, covered transactions will include closed-end mortgage loans and open-end lines of credit. (Under the current rule, the reporting of home equity lines of credit is optional.) The current loan purpose requires that the loan must be for home purchase, home improvement, or refinancing will not be applicable for consumer loans. However, a dwelling-secured closed-end mortgage loan or an open-end line of credit that is primarily for a business purpose will be subject to HMDA reporting under the new HMDA Rule only if such loan is for home purchase, home improvement, or a refinancing.

Please note that the definition of dwelling for purposes of HMDA will no longer include recreational vehicles such as boats or campers. Under the revised definition, the term means a residential structure, whether or not attached to real property. The term includes but is not limited to a detached home, an individual condominium or cooperative unit, manufactured home or other factory-built homes, or a multifamily residential structure or community.

The Final Rule changes the types of reportable preapproval requests under preapproval programs. Effective January 1, 2018, a covered financial institution will be required to collect, record and report data regarding requests for home purchase loans under a preapproval program if the preapproval request is approved by the financial institution but not accepted by the applicant. (Under the current rule, it is optional to report preapproval requests that are approved but not accepted.) Preapproval requests for home purchase loans to be secured by a multifamily dwelling, an open-end line of credit, or a reverse mortgage are not reportable.

Another important change for lenders in New York State is that transactions completed pursuant to consolidation, extension and modification agreements (“CEMAs”) will generally be subject to reporting under the new HMDA Rule as of January 1, 2018. Under the current rule, loans that are refinanced through a CEMA are generally not covered by HMDA. The CFPB has stated in the preamble to the new HMDA Rule that CEMAs in New York is the functional equivalent of refinancings and should be subject to HMDA.

Reportable Information

The new HMDA Rule expands the scope of reportable data. Specifically, for applications and covered transactions on which final action is taken on or after January 1, 2018, additional information will need to be collected, recorded and reported on the loan/application register (“LAR”). This additional information includes the borrower’s age and credit score, loan costs, points and fees, lender credits, interest rate, non-amortizing features, prepayment penalty, monthly debt-to-income ratio, debt-to-value ratio, loan term, property information, automated underwriting system, unique loan identifier, loan originator identifier, and application channel.

Collection of Borrower Information

The new HMDA Rule also requires covered financial institutions to report whether they collected information about the applicant’s ethnicity, race, and sex based on visual observation or surname. Both the current rule and new HMDA Rule require a covered financial institution to collect this information based on either visual

observation or surname when an applicant does not provide the information for in-person applications. Additionally, applicants must be offered the option to select more than one ethnicity and race, and the opportunity to self-identify this information using both aggregate categories and disaggregated subcategories.

Data Submission and Reporting Process

Data collected during 2017 and reported in 2018 as part of the HMDA LAR must be submitted electronically to the appropriate federal agency using a new electronic submission tool in accordance with instructions set forth on Regulation C's amended Appendix A and procedures that will be available from the CFPB. A financial institution subject to the CFPB's supervisory authority must submit its LAR in electronic format to the CFPB. An insured depository institution (and any affiliate) with total assets of more than \$10 billion or an insured credit union (and any affiliate) with total assets of more than \$10 billion is subject to CFPB's supervision.

Beginning on January 1, 2019, a covered financial institution must submit new data with additional reportable information using the new electronic submission tool and revised procedures to be prescribed by the CFPB. The instructions in Appendix A to Regulation C will no longer be applicable as of January 1, 2019, as Appendix A is removed as of that date.

Effective January 1, 2020, in addition to the annual data submission, a covered financial institution that reported at least 60,000 applications and covered loans combined in 2019 (excluding purchased covered loans) must also submit its LAR electronically within 60 calendar days after the end of each calendar quarter (except the fourth quarter).

Disclosure Requirements

Effective January 1, 2018, the HMDA Rule changes the public disclosure requirements with respect to the disclosure statement prepared by the Federal Financial Institutions Examination Council. Instead of making a disclosure statement or a modified LAR available to the public upon request, a covered institution will be required to provide a written notice stating that the disclosure statement and/or the modified LAR can be obtained on the CFPB's website in response to a request. The revised public disclosure requirements will apply to data collected on or after January 1, 2017.

Further Information

Please note that this advisory is a general overview of the final HMDA Rule and is not intended as a comprehensive explanation of all aspects of the HMDA Rule or as formal legal advice. If you have any questions regarding the final HMDA Rule or current HMDA requirements, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenllp.com, or Elizabeth Murphy at 516-296-9154 or via email at emurphy@cullenllp.com.

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