CFPB Issues Proposals to Ease Certain HMDA Requirements

May 13, 2019

The Consumer Financial Protection Bureau ("CFPB") has issued two separate proposals which, if implemented, will reduce the regulatory burden on financial institutions under the Home Mortgage Disclosure Act ("HMDA"). Pursuant to a proposed rule, the thresholds for collecting and reporting HMDA data will be increased (thus exempting more small-volume lenders), and under an advance notice of proposed rulemaking, the CFPB is seeking comments on whether to change certain new data points and to exclude business- and commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling entirely from HMDA's requirements.

I. Background

HMDA requires financial institutions and certain other mortgage lenders to collect and report data on housing-related loans and applications for such loans. This data is used by regulators and the public to evaluate the home lending practices of lenders, including to determine if a lender may be engaging in a discriminatory lending pattern or practice.

The Dodd-Frank Act greatly expanded the amount and types of data that lenders are required to collect and report under HMDA. In October 2015, the CFPB issued the 2015 HMDA Rule to implement those changes by regulatory amendments to Regulation C, the regulation that implements HMDA. Most provisions of the 2015 HMDA Rule took effect on January 1, 2018.

The HMDA coverage threshold is based on the number of covered mortgages originated by an institution in the prior two years. The 2015 HMDA Rule set the closed-end threshold at 25 mortgage loans in each of the two preceding calendar years, and the open-end threshold at 100 open-end lines of credit in each of the two preceding calendar years. In 2017, the CFPB temporarily increased the open-end threshold to 500 open-end lines of credit for 2018 and 2019.

The Economic Growth, Regulatory Relief and Consumer Protection Act (the "EGRRCPA") was then signed into law on May 24, 2018, and, among other things, eased certain HMDA reporting obligations. The partial exemptions from HMDA requirements in EGRRCPA eliminate the collection and reporting requirements on most of the new data points which were added by the Dodd-Frank Act. Certain insured depository institutions and insured credit unions that made under 500 covered mortgage loans in each of the preceding two calendar years can take advantage of the partial exemptions.[1]

II. The 2019 HMDA Proposed Rule

The CFPB has now issued a notice of proposed rulemaking ("NPRM") inviting the public to comment on proposed amendments to Regulation C that would raise the HMDA coverage thresholds, and clarify the partial exemptions and other issues.

Closed-end threshold

The CFPB is proposing to increase the closed-end institutional and transactional coverage threshold to either: (1) 50 closed-end mortgage loans; or (2) 100 closed-end mortgage loans in each of the two preceding calendar years. Under the proposal, institutions originating fewer than 50 closed-end mortgage loans, or alternatively 100 closed-end mortgage loans in either of the two preceding calendar years would not be required to report data on closed-end mortgage loans as of January 1, 2020.

Specifically, the CFPB seeks comment on: (1) how the proposed increase to the closed-end coverage threshold to 50, 100, or another number would affect the number of depository institutions required to report data on closed-end mortgage loans; (2) the significance of the data that would not be available for achieving HMDA's purposes as a result of the proposed increase to the closed-end coverage threshold to 50, 100, or another number; and (3) the reduction in burden that would result from the proposed increase to the closed-end coverage threshold for institutions that would not be required to report.

Open-end threshold

The CFPB is also proposing to extend the temporary threshold of 500 open-end lines of credit for institutional and transactional coverage (pursuant to the 2017 amendments to Regulation C) to January 1, 2022. Once the extension expires, the proposal would set the threshold for open-end lines of credit permanently at 200. Under the proposed amendments, institutions originating at least 200 open-end lines of credit but fewer than 500 open-end lines of credit would not be required to begin collecting HMDA data for open-end lines of credit until 2022. The two-year extension would allow these institutions to have sufficient time for adapting their systems and preparing for compliance.

The EGRRCPA partial exemptions

The proposal incorporates the EGRRCPA's partial exemptions from HMDA's requirements into Regulation C, with minor adjustments and additional interpretations. It addresses issues regarding applicability of the partial exemptions in various scenarios related to a merger or acquisition, and provides general tests for when the partial exemptions apply for closed-end mortgage loans and open-end lines of credit, respectively.

Specifically, subject to certain exceptions, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 covered closed-end mortgage loans (that are not excluded) would not be required to collect, record, or report optional data (new data points added by the Dodd-Frank Act) for closed-end mortgage transactions. Subject to certain exceptions, an insured depository institution or insured credit union that, in each of the two preceding calendar years, originated fewer than 500 covered open-end lines of credit (that are not excluded) would not be required to collect, record, or report optional data (new data points added by the Dodd-Frank Act) for open-end lines of credit transactions.

The CFPB is soliciting comments relating to (1) whether these amendments appropriately implement section 104(a) of the EGRRCPA and (2) whether there are any additional issues under the EGRRCPA that the CFPB should address in Regulation C.

III. Advance Notice of Proposed Rulemaking

In addition to the NPRM, the CFPB has also issued an Advance Notice of Proposed Rulemaking ("ANPR") relating to HMDA reporting. The ANPR is solicitating comments on whether the CFPB should make changes to the new data points added by the 2015 HMDA Rule (as well as the existing data points that were revised by that rule), and (2) whether business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling should continue to be reported under HMDA. The CFPB has stated that one of its goals under the ANPR "is to ensure that the data requirements established in the 2015 HMDA Rule appropriately balance the benefits and burdens associated with data reporting." It appears that the CFPB is considering reducing the HMDA reporting burdens imposed by the 2015 HMDA Rule.

IV. Additional Information

The comment period for the NPRM is 30 days following publication in the Federal Register and the comment period for the ANPR is 60 days following publication in the Federal Register.

The NPRM can be found here and the ANPR is available here.

Please note that this advisory is a general overview of the NPRM and ANPR and is not intended as formal legal advice. If you have any questions regarding HMDA, Regulation C 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, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

[1] Please note that this relief does not apply to a bank or credit union that received a "needs to improve" or "substantial noncompliance" rating under the Community Reinvestment Act in each of its preceding two most recent examinations.

Practices

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Attorneys

- Joseph D. Simon
- Kevin Patterson