Cullen | Dykman

Changes to HMDA under the Regulatory Relief Bill: Limited Help for Small-Volume Mortgage Lenders

May 29, 2018

The Economic Growth, Regulatory Relief and Consumer Protection Act (the "Act") signed into law on May 24, 2018 eases several of the provisions of the Dodd-Frank Act, the landmark legislation that was enacted in response to the 2008 financial crisis. One law addressed by the Act is the Home Mortgage Disclosure Act ("HMDA"), but the HMDA relief provided by the Act is relatively limited and is unlikely to have a significant impact on most financial institutions that regularly engage in home mortgage lending.

HMDA, enacted in 1975, 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 under HMDA, and those changes were implemented by regulatory amendments of the Consumer Financial Protection Bureau ("CFPB") that took effect on January 1, 2018. The changes were so significant that the CFPB gave lenders a 26-month lead time to prepare for the new requirements.

Given that the HMDA amendments in the Dodd-Frank Act were viewed as particularly burdensome, there has been hope by lenders that Congress would enact significant HMDA relief. However, the relief in the Act is relatively narrow and many lenders may not see any HMDA relief at all.

The major change to HMDA made by the Act is to eliminate 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 in each of the preceding two calendar years (but not other covered lenders). More specifically, the Act provides that (a) if a bank or credit union made fewer than 500 covered closed-end mortgage loans in each of the preceding two calendar years, the lender does not have to collect and report certain data points for covered closed-end mortgage loans in the following calendar year, and (b) if a bank or credit union made fewer than 500 covered open-end lines of credit in each of the preceding two calendar years, the lender does not have to collect and report certain data points for covered open-end lines of credit in the following calendar year. This relief will 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.

Please note that this change just reduces the number of data points that a covered lender eligible for relief must collect and report, it does not exempt the lender from HMDA coverage.

For banks and credit unions eligible for this relief, the data points that will not have to be collected include the points and fees payable on the loan; the difference between the annual percentage rate on the loan and the benchmark rate for such loan; the prepayment fee on the loan; the value of the real property securing the loan; the length of any introductory interest rate period; if the loan is not fully amortizing; the term of the loan; whether the loan involved a broker; certain loan and lender identifiers; and the applicant's/borrower's credit score.

The Act also calls for a "lookback study" to be completed in two years to evaluate the impact of these changes at the national and local level.

While the HMDA relief provided by the Act will ease the regulatory burden for certain financial institutions, it is not the broader relief that most lenders had hoped for and anticipated. That being said, it is still possible that Congress will enact additional HMDA relief, and it is also possible that the CFPB may provide other relief by amending Regulation C, the regulation that implements HMDA. We will continue to monitor developments on this topic.

If you have any questions regarding the 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, Diana Acosta at (516) 357-3739 or via email at dacosta@cullenanddykman.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

Practices

- Banking and Financial Services

Industries

- Financial Institutions

Attorneys

- Elizabeth A. Murphy
- Joseph D. Simon