
CFPB Issues Final Rule to Improve Information About Access to Credit in the Mortgage Market

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On October 15, 2015, the Consumer Financial Protection Bureau (CFPB) issued a final rule¹ to implement amendments to the Home Mortgage Disclosure Act² (HMDA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act.³ Specifically, the Bureau is adding several new reporting requirements and clarifying several existing requirements. The Bureau has also modified the institutional and transactional coverage of the HMDA's implementing regulation, Regulation C, in addition to modifying existing disclosure and reporting requirements.

By changing what data financial institutions are required to provide, the rule reflects a general interest in improving the quality of HMDA data in today's housing market in order to enhance public understanding of market conditions and help identify emerging risks and potential discriminatory lending practices in the marketplace. The new reporting requirements will also enhance regulators' ability to monitor fair lending compliance and access to credit issues.

These changes also reflect the Bureau's desire to update the reporting requirements and identify opportunities to streamline reporting and make it easier for financial institutions to comply with the law. The CFPB states that it is working with the other members of the Federal Financial Institutions Examination Council (FFIEC) and the Department of Housing and Urban Development (HUD) to modernize the HMDA data submission process to collect information more efficiently. The Bureau has also completed a pilot of a new web-based tool to collect HMDA information more efficiently.

Summary of Amendments

The Bureau has amended Regulation C to modify the types of institutions and transactions subject to the regulation, the types of data that institutions are required to collect, and the processes for reporting and disclosing the required data.

First, Regulation C's institutional and transactional coverage has been amended to better achieve the HMDA's purposes in light of current market conditions and to reduce unnecessary burden on financial institutions. The Bureau is adopting uniform loan-volume thresholds for depository and nondepository institutions. Existing institutional coverage criteria requirements for depository institutions are maintained. However, the institutional coverage criteria for nondepository institutions

will be based on the number of loans completed rather than the amount of the loans or the size of an institution. Separate thresholds for closed-end and open-end loans to reduce current regulatory burdens for certain nondepository institutions that only focus on one type of loan are also added.

Second, several of Regulation C's currently required data points have been amended to clarify the requirements and make the data more useful. The final rule also adopts several new data points (such as an applicant's debt-to-income ratio, the interest rate of the loan, and the discount points charged for the loan), many of which were added by the Dodd-Frank Act, and some of which were added pursuant to the Bureau's discretionary authority to carry out the purposes of the HMDA. The Bureau has said that this information is intended to assist the Bureau and financial institutions in evaluating and screening for potential fair lending issues.

Third, the requirements pertaining to the processes for reporting and disclosing the required HMDA data have been amended. While the current requirement that financial institutions submit their HMDA data to the appropriate federal agency by March 1 following the calendar year for which the data are collected has been retained, the Bureau has imposed a new requirement that financial institutions that report large volumes of HMDA data for a calendar year also submit their data for the first three quarters of the following calendar year to the appropriate Federal agency on a quarterly basis. However, the rule removes the current requirements that a financial institution provide to the public its disclosure statement and its loan/application register and instead requires financial institutions to provide a notice to members of the public seeking these data that the information is available on the Bureau's website.

With respect to scope of the rule, the Bureau has adopted a dwelling-secured standard for all loans or lines of credit that are for personal, family, or household purposes. Thus, most consumer-purpose transactions, including closed-end home-equity loans, home-equity lines of credit, and reverse mortgages, are subject to the regulation.

Background

For almost 40 years, the HMDA has provided the public with information about mortgage lending activity within communities throughout the nation. Public officials use the information available through the HMDA to develop and allocate housing and community development investments, to respond to market failures when necessary, and to monitor whether financial institutions may be engaging in discriminatory lending practices. HMDA data are used by the mortgage industry to inform business practices, and by local communities to ensure that lenders are serving the needs of individual neighborhoods.

The Dodd-Frank Act directed the CFPB to expand the HMDA dataset to include additional information about applications and loans that would be helpful to better understand the mortgage market. According to the CFPB, "While the HMDA dataset is the leading source of information about the mortgage market, it has not kept pace with the market's evolution." For example, the HMDA data do not provide adequate information about certain loan features such as adjustable-rate mortgages and non-amortizing loans.

The Bureau convened a panel of small businesses to provide feedback on potential changes to the

rule in February 2014, and issued a proposed rule⁴ in July 2014.

Overview of the Final Rule

Modifications to Institutional and Transactional Coverage

- **Uniform loan-volume thresholds for depository and nondepository institutions:** The loan-volume thresholds require an institution that originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years to report HMDA data, provided that the institution meets all of the other criteria for institutional coverage. There is also a separate test to ensure that covered institutions that meet only the 25 closed-end mortgage loan threshold are not required to report their open-end lending, and that covered institutions that meet only the 100 open-end line of credit threshold are not required to report their closed-end lending.
- **Modifications to institutional coverage criteria:** The current institutional coverage criteria for depository institutions (which require reporting by depository institutions that satisfy an asset-size threshold, have a branch or home office in an Metropolitan Statistical Area (MSA) on the preceding December 31, satisfy the current federally related test, and originated at least one first-lien home purchase loan or refinancing secured by a one- to four-unit dwelling in the previous calendar year) are being retained. For nondepository institutions, the current loan-volume or amount test is replaced with the loan-volume thresholds discussed above, the current asset-size or loan-volume threshold is removed, but the current criterion that the institution have a branch or home office in an MSA on the preceding December 31 is retained.
- **Modifications to the types of transactions subject to Regulation C:** The Bureau has adopted a dwelling-secured standard for all loans or lines of credit that are for personal, family, or household purposes. Thus, most consumer-purpose transactions, including closed-end home-equity loans, home-equity lines of credit, and reverse mortgages, are subject to the regulation. Most commercial-purpose transactions (i.e., loans or lines of credit not for personal, family, or household purposes) are subject to the regulation only if they are for the purpose of home purchase, home improvement, or refinancing. Home improvement loans that are not secured by a dwelling (i.e., home improvement loans that are unsecured or that are secured by some other type of collateral) and all agricultural-purpose loans and lines of credit are excluded from coverage.

Modifications to Reportable Data Requirements

- **New data reporting requirements:** The data points required to be reported can be grouped into four broad categories:
 - Information about applicants, borrowers, and the underwriting process, such as age, credit score, debt-to-income ratio, and automated underwriting system results.
 - Information about the property securing the loan, such as construction method, property value, and additional information about manufactured and multifamily housing.

- Information about the features of the loan, such as additional pricing information, loan term, interest rate, introductory rate period, non-amortizing features, and the type of loan.
- Certain unique identifiers, such as a universal loan identifier, property address, loan originator identifier, and a legal entity identifier for the financial institution.
- Amendments to the collection of ethnicity, race, and sex of applicants and borrowers: The current requirements related to the collection of ethnicity, race, and sex of applicants and borrowers have also been amended. Financial institutions will be required to report whether ethnicity, race, or sex information was collected on the basis of visual observation or surname when an application is taken in person and the applicant does not provide the information. For transactions where ethnicity and race information is provided by the applicant or borrower, financial institutions will be able to permit applicants and borrowers to self-identify using disaggregated ethnic and racial categories. However, when race and ethnicity data are completed by the financial institution, the current requirements requiring financial institutions to provide only aggregated ethnic or racial data are retained.

Additionally, all of the substantive requirements contained in appendix A of Regulation C have been moved, with some modifications, to the regulation text or commentary.

Modifications to Disclosure and Reporting Requirements

The current requirement that financial institutions submit their HMDA data to the appropriate Federal agency by March 1 following the calendar year for which the data are collected is retained.

- Changes to processes for reporting and disclosing the required data: The final rule imposes a new requirement that financial institutions that report large volumes of HMDA data for a calendar year also submit their data for the first three quarters of the following calendar year to the appropriate federal agency on a quarterly basis. However, the current requirements that a financial institution provide to the public its disclosure statement and its loan/application register, modified to protect applicant and borrower privacy, are removed and instead financial institutions will be required to provide a notice to members of the public seeking these data that the information is available on the Bureau's website.

Key Differences from the Proposal

The final rule adopts many of the provisions proposed in 2014. However, in some ways the final rule is narrower than that contemplated in the proposal. For example, several of the data points proposed by the Bureau (such as the proposed requirements to report qualified mortgage status or the initial draw on an open-end line of credit, as well as the "risk-adjusted, pre-discounted interest rate"), are not included. In addition, the Bureau did not adopt the proposal to require reporting of all dwelling-secured transactions made for commercial purposes.

Compliance Considerations

Some aspects of the final rule should ease compliance burdens related to HMDA reporting, in keeping with the Bureau's goal to identify opportunities to streamline reporting and make it easier

for financial institutions to comply with the law. For example, small depository institutions that are located outside a MSA remain excluded from coverage. In addition, under a new standardized reporting threshold in the final rule, small depository institutions that have a low loan volume will no longer have to report HMDA data, a change which could have a significant impact in easing compliance costs for small lenders with few staff members. According to the Bureau, the new threshold will reduce the overall number of banks and credit unions required to report HMDA data by an estimated 22 percent. By aligning the HMDA reporting requirements with well-established industry data standards, the Bureau anticipates that the burden on many lenders will be mitigated.

A number of aspects of the rule will likely impose a number of costs on financial institutions, which conduct a variety of operational tasks to collect the necessary data, prepare the data for submission, conduct compliance and audit checks, and prepare for HMDA-related exams. Industry will be required to revise and update policies and procedures, implement comprehensive systems change, and train staff. More time will be required for tasks such as transcribing and checking data, and more resources will need to be devoted to tasks such as internal and external audits. Covered lenders will also be required to report, with some exceptions, information about all applications and loans secured by dwellings, including reverse mortgages and open-end lines of credit. Because most financial institutions do not currently report open-end lines of credit, many financial institutions will have to develop completely new reporting infrastructures to comply with the switch to mandatory reporting. Collecting and reporting such data for the first time will be time-consuming and complex. The additional nondepository institutions that will have to report closed-end mortgage loans under the final rule will also incur start-up costs to develop policies and procedures, infrastructure, and training. Lastly, as with any rule of this length and complexity, financial institutions will also require increased compliance resources to ensure they do not run afoul of the manifold requirements—especially with the increased regulatory scrutiny and monitoring in the areas of fair lending compliance and access to credit.

Effective Date

This final rule applies to covered loans and applications with respect to which final action is taken beginning on January 1, 2018, as well as purchases that occur on or after January 1, 2018. Most of the provisions of the final rule will take effect on January 1, 2018. Lenders will collect the new information in 2018 and then report this information by March 1, 2019.

¹ Consumer Financial Protection Bureau, “CFPB Finalizes Rule to Improve Information About Access to Credit in the Mortgage Market,” (Oct. 15, 2015).

² 12 U.S.C. § 2801 *et seq.*

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

⁴ 79 Fed. Reg. 51,731.

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