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CFPB Amends the Home Mortgage Disclosure Act Coverage Thresholds

April 24, 2020

The Consumer Financial Protection Bureau ("CFPB") has raised the data reporting thresholds under the Home Mortgage Disclosure Act ("HMDA"). This change will ease the compliance obligations on lenders that do not originate a certain number of closed-end mortgages or open-end lines of credit secured by dwellings.

The CFPB issued a final rule on April 16, 2020 amending Regulation C, the regulation implementing HMDA, to increase the permanent closed-end coverage threshold from 25 to 100 closed-end mortgage loans in each of the two preceding calendar years effective July 1, 2020. Additionally, the permanent open-end coverage threshold will be increased from 100 to 200 open-end lines of credit in each of the two preceding calendar years when the current temporary threshold of 500 open-end lines of credit expires on January 1, 2022. These thresholds apply to both depository and non-depository institutions. Under the final rule, exempt institutions that do not meet the coverage threshold can choose to report data provided that certain conditions are met.

Background

HMDA and Regulation C require financial institutions and certain other mortgage lenders to collect and report data on dwelling-secured 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 HMDA coverage threshold is based on the number of covered transactions originated by an institution in each of the two preceding calendar years. The CFPB's 2015 HMDA Rule set the reporting threshold for closed-end mortgage loans at 25 in each of the two preceding calendar years, and for open-end lines of credit at 100 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. In October 2019, the CFPB extended the temporary open-end threshold until January 1, 2022.

Closed-End Mortgage Threshold Change and Optional Reporting

The closed-end mortgage threshold change offers significant relief to small-volume lenders. Effective July 1, 2020, institutions originating fewer than 100 closed-end mortgage loans subject to HMDA coverage in either of the two preceding calendar years will not have to report HMDA data on such loans.

Under the final rule, starting July 1, 2020, institutions which originate fewer than 100 closed-end mortgage loans in either of the two preceding calendar years (including those newly excluded institutions[1] that report closed-end data for the full calendar year) will have the option of collecting, recording, reporting and disclosing HMDA information for applications for, originations of, and purchases of excluded closed-end mortgage loans. If an institution chooses to collect, record, and report data for exempt transactions, it must do so as though they were covered transactions in compliance with applicable requirements for all applications for closed-end mortgage loans that it receives, closed-end mortgage loans that it originates, and closed-end mortgage loans that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded closed-end mortgage loan.

With respect to 2020 HMDA data, the final rule provides guidance on closed-end data collection, recording and reporting obligations for newly excluded institutions:

- Collection: Newly excluded institutions can comply with existing data collection requirements until June 30, 2020, and can stop collecting data on their closed-end mortgage loans beginning on July 1, 2020.
- Please note that other laws or regulations such as Regulation B may still require collection of certain data on home loan activity. For example, Regulation B requires collection of information regarding the applicant's ethnicity, race, sex, marital status, and age in transactions where the credit sought is primarily for the purchase or refinancing of a dwelling that is or will be the applicant's principal residence and will secure the credit.
- Newly excluded institutions do not violate Regulations B or C by collecting demographic information about applicants prior to July 1, 2020 in accordance with their legal obligations under Regulation C as that regulation is in effect before the July 1, 2020 effective date. Although Regulation B prohibits creditors from inquiring about the race, color, religion, national origin, or sex of a credit applicant except under certain circumstances, the CFPB notes in the final rule that even after the effective date, applicable exceptions in Regulation B will permit newly excluded institutions to collect information in 2020 about the ethnicity, race, and sex of applicants for loans that would have been covered loans absent the final rule.
- Recording: Newly excluded institutions must record closed-end loan data for the first quarter of 2020 on a loan/application register by 30 calendar days after the end of the first quarter, but are not required to record closed-end loan data for the second quarter of 2020.
- Reporting: Newly excluded institutions are not required to report closed-end loan data for 2020, including data collected and recorded for the first quarter of 2020. Newly excluded institutions may voluntarily report data on closed-end mortgage loans in 2021 as long as they report data for the full calendar year 2020.

Open-End Lines of Credit Threshold Change and Optional Reporting

Effective January 1, 2022, upon the expiration of the current temporary threshold of 500 open-end lines of credit, the threshold for reporting HMDA data on open-end lines of credit subject to HMDA coverage is permanently set at 200 open-end lines of credit.

As of that date, an institution which originates fewer than 200 open-end lines of credit in either of the two preceding calendar years may (but is not required to) collect, record, report, and disclose HMDA information for an excluded open-end line of credit as though it were a covered loan, provided that the institution complies with such requirements for all applications for open-end lines of credit that it receives, open-end lines of credit that it originates, and open-end lines of credit that it purchases that otherwise would have been covered loans during the calendar year during which final action is taken on the excluded open-end line of credit.

Additional Information

An executive summary of the final rule can be accessed here. A copy of the final rule is available here. Other helpful materials can be found here. Please note that this advisory is a general overview of the amendment to Regulation C 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@cullenllp.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154, or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Footnote

[1] Newly excluded institutions are institutions that were subject to HMDA's closed-end requirements as of January 1, 2020 because they originated at least 25 closed-end mortgage loans in 2018 and 2019 and meet other requirements but are no longer subject to HMDA's closed-end requirements as of July 1, 2020 due to the final rule's change to the closed-end threshold.

Practices

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