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CFPB Publishes Final Rule Expanding HMDA Requirements

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On October 15, 2015, the Consumer Financial Protection Bureau ("CFPB") released a final rule amending Regulation C, which implements the Home Mortgage Disclosure Act ("HMDA"). The final rule expands the existing HMDA reporting requirements promulgated under the Dodd-Frank Act and includes new data points that institutions were not previously required to collect and report.

Covered Institutions

Starting in 2017, banks, credit unions, and savings associations engaged in residential mortgage lending that meet the current asset size, location, loan activity, and federally related criteria set forth under the current Regulation C will be subject to regulation under the current Regulation C, provided that such institution originated or refinanced at least 25 home purchase loans in each of 2015 and 2016. Institutions that would otherwise be subject to the current Regulation C, but did not originate or refinance at least 25 home purchase loans in each of 2015 and 2016, will no longer have to report starting on January 1, 2017.

Beginning on January 1, 2018 the final rule will subject an institution to Regulation C if such institution meets the following criteria:

- The institution is a bank, credit union, or savings association that meets the asset size, location, loan activity, and federally related criteria under the current Regulation C, and originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of 2016 and 2017.
- The institution is a for-profit mortgage-lending institution other than a bank, credit union, or savings association that meets the location criteria under the current Regulation C and originated at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of 2016 and 2017.
- Non-depository institutions will no longer have to meet the other existing standards, such as asset size.

The anticipated effect of these changes is that more non-depository institutions will be subject to the disclosure requirements under Regulation C, while low-volume institutions will be excluded from reporting under Regulation C altogether. In addition, the expansion of the loan-volume threshold to two years will allow smaller and startup institutions additional time to enhance their internal systems to comply with the new Regulation C.

Covered Transactions

Transactions that are subject to the final rule include most consumer-purpose transactions, such as closed-end home-equity loans, home-equity lines of credit, and reverse mortgages. Commercial-purpose transactions are only subject to the new Regulation C to the extent they are used for a home purchase, home improvement, or refinancing. The final rule excludes from coverage home improvement loans that are not secured by a dwelling and all agricultural-purpose loans and lines of credit.

Further, covered institutions that meet only the 25 closed-end mortgage loan volume threshold will not be required to report their open-end lending, and covered institutions that meet only the 100 open-end line of credit volume threshold will not be required to report their closed-end lending.

Reportable Information

Beginning January 1, 2018, covered institutions will be required to collect and report on a total of 48 data points, including 25 new data points and 12 modified data points, which can be summarized by the following categories:

- Property value, property address, construction information, and number of individual dwelling units
- Term, interest rate, type, and purpose of the loan
- Term of any prepayment penalty
- Duration of any introductory interest rates
- Non-amortizing features
- Applicant's debt-to-income ratio and credit score
- Automated underwriting system results
- Discount points charged for the loan
- Origination charges
- Lender credits
- Loan-to-value ratio
- Total loan costs or total points and fees charged

Additionally, lenders will be required to report whether the applicant's ethnicity, race, or sex information was collected on the basis of visual observation or last name when an application is taken in person and the applicant does not provide that information.

Reporting Requirements

All institutions currently subject to Regulation C will continue to be subject to the current Regulation C through the end of 2017. Low-volume depository institutions that will be excluded from coverage based on their activity volume in 2015 and 2016 will no longer have to report in 2017. In all other respects, the 2016 data will be due on March 1, 2017 and the 2017 data will be due on March 1, 2018 as required under the current Regulation C.

Beginning January 1, 2018, covered institutions will collect data as required by the new Regulation C. The first reporting obligations under the new Regulation C will be due on March 1, 2019.

After that date, covered institutions will be subject to yearly reports , except for large-volume institutions that received at least 60,000 total applications or covered loans, excluding purchased loans, in the preceding calendar year. In addition to yearly reports, such large-volume institutions will also submit quarterly reports starting with data collected in the first quarter of 2020 that will be due by May 30, 2020.

Reporting under the new Regulation C will be done via a web-based tool developed by CFPB, which is expected to reduce compliance costs. The new tool can be accessed here: http://www.consumerfinance.gov/hmda/.

Implications

The new Regulation C overhauls the reporting and disclosure requirements under HMDA, and the CFPB expects that the number of institutions required to report HMDA data will decrease by 22%. It appears that the new reporting requirements will generally increase compliance costs for most institutions with the exception of a limited number of excluded low-volume institutions. Institutions should take steps now to assess their current data collection systems and staffing to determine what enhancements are necessary for the institution to comply with the new Regulation C.

CFPB has previously stated that one of its priorities is to investigate and enforce fair lending laws, including through the use of HMDA data. The significantly enhanced data collection and reporting requirements under the new Regulation C are intended to create a more transparent mortgage market and allow regulators to monitor how housing needs are met and to identify discriminatory lending practices. The new data points include a level of pricing data and individual loan originator data that will allow a deeper analysis of an institution's lending practices. As a result of the new Regulation C, private parties and regulators will have access to a greater variety of data points in connection with investigations of potential discriminatory lending practices.

In light of the new Regulation C, covered institutions should review their lending-related policies and procedures in an effort to mitigate the potential for fair lending-related violations. See our previous alert on mitigating fair lending risks here.

More Information

The following is a link to the final rule: http://files.consumerfinance.gov/f/201510_cfpb_final-rule_home-mortgage-disclosure_regulation-c.pdf.

For more information about these issues, please contact the author(s) of this Legal Alert or your existing firm contact.

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