

## EXPERT ANALYSIS

### Former CFPB Attorneys Examine Revisions To the Home Mortgage Disclosure Act

By Allyson Baker, Esq., Andy Arculin, Esq., and Peter Frechette, Esq.  
*Venable LLP*

The Consumer Financial Protection Bureau unleashed another major rulemaking on the mortgage industry Oct. 15. The agency issued its long-awaited final rule amending and expanding the reporting requirements under the Home Mortgage Disclosure Act, 12 U.S.C. § 2801, and its implementing regulation, Regulation C, 12 C.F.R. § 1003.1(b)(1)(i)-(ii).

The 797-page final rule revises, and in many ways expands, the breadth and scope of HMDA data collection requirements. It includes the addition of roughly 25 new data fields to the CFPB's new Web-based submission tool for reporting HMDA information and modifies an additional 12 data fields.

The HMDA and Regulation C require many lenders to report information about the home loans they originate or purchase or for which they receive applications from potential borrowers. The Federal Financial Institutions Examination Council currently compiles the reported data.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 instructed the CFPB to expand the HMDA data fields to include additional information about applicants as well as the loans themselves.

#### IMPORTANT CHANGES

The final rule adopted many of the changes suggested in the agency's July 2014 proposed rule. Still, members of the financial industry will need to comb through the new rule to identify changes relevant to their businesses.

#### Covered institutions

Starting with data collection obligations in 2018, an institution will be subject to the HMDA/Regulation C requirements if it originated at least 25 covered closed-end mortgage loans in each of the two preceding calendar years. An institution also will be subject to the rule if it originated at least 100 covered open-end lines of credit in the two years preceding the year of data collection. However, a lender will only need to report information pursuant to the threshold it meets (*i.e.*, a lender that originates 25 closed-end mortgage loans but does not originate 100 or more covered open-end lines of credit, would not need to report its lines of credit).

To fall within the final rule's ambit, banks, savings associations and credit unions also must meet Regulation C's current tests for asset-size (currently \$44 million), location (the institution has a home or branch office in a Metropolitan Statistical Area), being federally related (the institution is federally insured or regulated; the mortgage loan is insured, guaranteed or supplemented by a federal agency; or the loan is intended for sale to Fannie Mae or Freddie Mac), and loan activity (originating at least one home purchase loan or refinancing transaction).

For-profit lenders also must meet the existing location test by either having a home or branch office in an MSA on the preceding Dec. 31 or receiving applications for, originating or buying five or more

home purchase loans, home improvement loans or refinancing transactions on property located in an MSA in the preceding calendar year.

### **Covered transactions**

Loans for which HMDA data must be reported (“covered transactions”) include most closed-end mortgage loans and open-end lines of credit that are secured by a dwelling. The final rule changes the previous purpose-based test, which looked to how the loan would be used, to a more mechanical metric, which looks to how the loan is secured.

However, dwelling-secured business-purpose loans and lines of credit will be covered only if they are home purchase loans, home improvement loans or refinancing transactions. The final rule also exempts agriculture-purpose transactions generally, as well as other types of transactions.

The final rule also revises HMDA/Regulation C coverage of preapproval requests (*i.e.*, requests to see if an individual may qualify for financing, before submitting an application). Under the final rule, preapproval requests that are approved but not accepted will not be included in an institution’s collection and reporting obligations.

### **New and modified data fields**

The final rule greatly expands the information required to be collected and reported by institutions pursuant to HMDA/Regulation C. The CFPB states that the expanded data fields will enable the public, the bureau and other financial institution regulators to identify emerging risks and potential discriminatory lending practices, as well as to screen for possible fair lending problems.

The new data points include:

- Applicant or borrower age
- Credit score
- Automated underwriting system information
- Unique loan identifier (*i.e.*, a code or designator to identify a specific loan)
- Property value
- Application channel (*i.e.*, broker)
- Points and fees
- Borrower-paid origination charges
- Discount points
- Lender credits
- Loan term
- Prepayment penalty
- Non-amortizing loan features
- Interest rate
- Loan originator identifier (a code assigned by the Nationwide Mortgage Licensing System and required based on the Secure and Fair Enforcement for Mortgage Licensing Act, or SAFE Act).

The final rule also modifies existing data fields. For example, it requires lenders to report how they collect information on an applicant’s race, ethnicity or sex (*i.e.*, through visual observation or surname).

*The 797-page final rule revises and in many ways expands the breadth and scope of Home Mortgage Disclosure Act data collection requirements.*

### ***New reporting procedures, disclosure and privacy***

The CFPB is developing a Web-based submission tool for reporting HMDA data. The agency indicates that it will use a “balancing test” to weigh public disclosure against the need to protect applicant and borrower privacy. The exact nature of this balancing test remains to be determined. The CFPB states that it will provide “a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed.”

### ***Large-volume reporters***

The final rule introduces a quarterly filing requirement for covered institutions reporting at least 60,000 applications and covered loans (combined) in the preceding calendar year. The metric excludes covered loans purchased in the preceding year. The new quarterly reporting requirements will become effective Jan. 1, 2020, with the first quarterly report due by May 30, 2020.

### **TIMING**

Most provisions of the final rule become effective Jan. 1, 2018. Accordingly, covered institutions will be required to begin collecting information under the new requirements throughout 2018 for submission on or before March 1, 2019:

- Submissions due by March 1, 2016, and 2017 will use the current collection requirements and submission process.
- Submissions due by March 1, 2018, will use the current collection requirements but must be submitted using the new CFPB tool.
- Submissions due by March 1, 2019, will use the new collection requirements and must be submitted using the new CFPB tool.

### **CONCLUSION**

The final HMDA rule is extensive and complex, so industry members and observers will need to carefully review and analyze the additional collection and reporting requirements it imposes.

*Members of the financial industry will need to comb through the new rule to identify changes relevant to their businesses.*



**Allyson Baker** (L) is a partner in the Washington office of **Venable LLP**. She previously served as an enforcement attorney with the Consumer Financial Protection Bureau, where she was lead counsel on one of the first enforcement actions that resulted in one of the largest agency settlements to date. She can be reached at [abaker@venable.com](mailto:abaker@venable.com). **Andy Arculin** (C) is counsel in the firm's Washington office. He previously worked at the Consumer Financial Protection Bureau, where he helped draft regulations for the Real Estate Settlement Procedures Act, the Truth in Lending Act and the Equal Credit Opportunity Act under the Dodd-Frank Act's mortgage rules. He can be reached at [raarculin@venable.com](mailto:raarculin@venable.com). **Peter Frechette** (R) is an attorney in the firm's regulatory practice group in Washington, where he assists clients with ongoing regulatory compliance matters. He can be reached at [psfrehette@venable.com](mailto:psfrehette@venable.com).

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