Home Mortgage Disclosure Act – Big Changes on the Way!

Jonathan Foxx *

"It's just a way to keep the PhD's employed in Washington, DC!" Such was the statement that a CEO of a regional mortgage banker said to me recently about the new changes to the Home Mortgage Disclosure Act, known by its acronym HMDA. "More statistics that go nowhere and tell us nothing," he said, "and more ways to interfere in our loan origination process." I grant that the regulatory burdens these days are demanding, but I was surprised by the sense of futility in those remarks.

Over the years, in fact, HMDA data has played a very useful role in identifying fair lending concerns, helping financial institutions to avoid disparate impact and disparate treatment violations. It certainly is important to mortgage lenders and originators in their obligation to ensure a level market to all consumers, without the impediment of discriminatory practices by bad actors. Perhaps another way to make sense of the Bureau's amendments to HMDA is to recognize that a primary reason for those changes is to create a better tool for rectifying adverse fair lending patterns.

At the core of the revisions undertaken by the Consumer Financial Protection Bureau ("Bureau") is the commitment to consumer protection laws generally, and, by enhancing the metrics of HMDA data collection, the commitment in particular to strengthening fair lending standards. What better way to understand fair lending than through a deep analysis of the HMDA Loan Application Register or "HMDA-LAR." The fact is, the new changes to HMDA will derive over 250 million data points from financial institutions related to mortgage loan applications and originations in 2018.

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The amendments to existing HMDA requirements, effectuated through HMDA's implementing Regulation C, will be spread over four effective dates between January 1, 2017, and January 1, 2020.[1] However, the key date that contains most of the amendments, will the compliance effective date of January 1, 2018. On that effective date, financial institutions will be required to collect HMDA data for applications they receive and loans they originate on or after January 1, 2018.[2] [3]

Certain changes will be new to non-banks, though familiar to depository institutions. For instance, beginning in 2018, non-banks will be required to record HMDA data internally within 30 days of the end of the quarter in which final action was taken. Regulation C has not previously required quarterly recording for non-banks, so this will be a new undertaking for non-depository institutions.[4]

I am going to provide an outline of four HMDA-related areas that the Bureau revised in its update to Regulation C, promulgated through its issuance of the Final Rule ("Rule") on October 15, 2015.

These changes to Regulation C affect the following guidelines:

1. Covered institutions (financial institutions required to collect and report HMDA data);

2. Covered transactions (transaction types and applications);

3. Loan-level data (transaction data to collect and report on); and

4. Reporting and disclosure (method and frequency of data reporting and public access to that data).

COVERED INSTITUTIONS

The Rule provides guidelines to both depository and non-depository institutions. Both of these institution types are covered if, among other things, they originated at least 25 covered closed-end mortgage loans or 100 covered open-end lines of credit in each of the previous two calendar years. This standard is called a "uniform loan volume threshold," and is part of the new evaluation process to determine if an institution is required to collect and report HMDA data. Regulation C eliminates the existing origination volume and asset size criteria and replaces them with the "uniform loan volume threshold."

The standard will have the most impact on non-depository institutions, sweeping up many non-bank creditors into Regulation C compliance. This is due to the fact that the Rule actually removes the current coverage requirement that, in the preceding calendar year, a non- depository institution should have

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originated home purchase loans (including refinancings) equaling: (A) at least 10 percent of the institution's origination volume in dollars, or (B) at least $25 million.

Comparatively, the Rule removes the current coverage requirement for a non-depository institution; to wit, (a) have total assets of more than $10 million as of the preceding December 31, or (b) have originated at least 100 home purchase loans (including refinancings) in the preceding calendar year. Furthermore, currently a non-depository institution must satisfy at least one prong (either (a) or (b) above) or both of these coverage criteria in order to be covered. Consequently, the removal of the foregoing thresholds for non-depository institutions will increase the number of non-depository institutions required to collect and report data.

Yet, the Rule will actually decrease the number of depository institutions covered, because it adds the uniform loan volume threshold to the existing coverage criteria for those institutions. The Bureau estimates that the new coverage criteria will exclude from coverage approximately 1400 depository institutions that are currently covered by the rule and include about 450 non-depository institutions that are not currently covered by the rule. Clearly, the Bureau is casting a wide net in order to apprehend the largest, reliable data set possible!

Consider the following chart for depository institutions:

Depository Institution	Coverage Criteria - Now	Coverage Criteria - Later
Asset Size	$44 million	Same[5]
Federal Status	Insured or regulated federally	Same
Preceding December 31	Home/Branch office in MSA[6]	Same
Preceding Calendar Year	Originated at least one purchase or refinance on first lien 1-4 family dwelling	Same
January 1, 2017		Meet existing criteria and originated at least 25 home purchase loans (including refinancings) in each of the two preceding calendar years.
January 1, 2018		Meet existing criteria and originated (a) at least 25 covered closed-end mortgage loans in each of the past two years or (b) at least 100 covered

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	open-end lines of credit in each of the two preceding calendar years.[7]

Thus, on January 1, 2018 a depository institution will be covered by Regulation C if, assuming asset size and the other coverage criteria are met, it originated at least 100 covered open-end lines of credit in each of 2016 and 2017, even if it did not originate 25 closed-end mortgages in each of 2016 and 2017.

Now consider the following chart for non-depository institutions:

Non-Depository Institution	Coverage Criteria - Now	Coverage Criteria - Later
Volume	10% dollar production or $25 million	See below.
Asset Size	$10 million or 100 purchases	See below.
Preceding December 31	Home/Branch office in MSA[8]	See below.
January 1, 2018		If (1) on the preceding December 31, it had a home or branch office in an MSA, and (2) it originated (a) at least 25 covered closed- end mortgage loans in each of the two preceding calendar years, or (b) at least 100 covered open-end lines of credit in each of the two preceding calendar years.

Therefore, on January 1, 2018, a non-depository institution will be covered by Regulation C if it has an office in an MSA and it originated at least 25 closed-end mortgages in each of 2016 and 2017.

COVERED TRANSACTIONS

Currently, HMDA data is collected and reported on closed-end, dwelling-secured loans made for home purchase and refinancing purposes. Also included are closed-end loans made for home improvement purposes, regardless of whether the loan is secured by a dwelling. Reporting home equity lines of credit (HELOCs) to the HMDA-LAR is optional. Regulation C does not specify a distinction between loans made for a consumer or business purpose; that is, both consumer-purpose and business-purpose loans are

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reportable only if they satisfy Regulation C's specific "purpose" test, which determines the subject loan to be for the purchase of a dwelling, refinance a dwelling-secured loan, or to make home improvements.

Certain terminology is being either changed or will remain intact. These terms are intrinsic to the understanding of the amended Regulation C. Three salient terms are "dwelling," "preapproval," and "coverage."

The first term, "dwelling," is used throughout the HMDA regulatory framework. The definition of "dwelling" remains unchanged from the current rule. Dwelling means any residential structure, whether or not attached to real property. It includes vacation or second homes and rental properties; multifamily as well as one-to-four-family structures; individual condominium and cooperative units; and manufactured and mobile homes. It excludes recreational vehicles such as boats and campers, and transitory residences such as hotels, hospitals, and college dormitories.

The second term, "preapproval," requests for preapproval for a purpose other than a home purchase, will not be reportable. In addition, a covered institution may (but is not required to) report requests for preapproval for home purchase loans that the institution approved but that the applicant did not accept. This will change under the amended Regulation C. On the applicable compliance effective date, institutions will be required to report preapproval requests for home purchase loans that were approved but not accepted. It is worth noting that preapproval requests for home purchase open-end lines of credit, home purchase reverse mortgages, and home purchase loans secured by a multifamily dwelling are excluded from the requirement.

The third term, "coverage," refers to the operative factor that institutions generally will be covered by Regulation C if, in addition to other criteria, they originated at least 25 covered closed-end mortgage loans or 100 covered open-end lines of credit in each of the previous two calendar years. (See chart.) If an institution satisfies one of these two criteria but does not satisfy the other, the institution need only collect and report data for the type of transactions that qualified the institution for coverage. In this circumstance, institutions are not required to collect data for the other type of transactions.

Factors affecting business purpose transactions are provided in the Rule, as well. The coverage test for commercial- and business-purpose loans and lines of credit is similar to, but narrower than, the test for consumer-purpose transactions.

In the first place, like the test for consumer-purpose transactions, business-purpose transactions are covered only if secured by a dwelling. Thus, unsecured transactions will be exempt. Open-end lines of credit will be covered. Unlike the test for consumer-purpose transactions, the Rule retains the specific

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purpose test for business-purpose, closed-end mortgages and extends that test to business-purpose, open-end lines of credit.

Therefore, a commercial- or business-purpose loan is covered only if it is secured by a dwelling and it is made to purchase a dwelling, to refinance a dwelling, or to make home improvements. Also, a commercial or business-purpose, open-end line of credit is covered if it is dwelling-secured and it is made to purchase a dwelling, to refinance a dwelling, or to make home improvements.

Importantly, if a consumer applies for a loan or line of credit, the proceeds of which will be used for a business purpose, the business-purpose transactional coverage criteria apply. But such a loan or line of credit is not covered unless the specific purpose of the transaction is to purchase a dwelling, refinance a dwelling-secured obligation, or to make home improvements.

Commercial or business-purpose loans and lines of credit for other purposes will not be covered transactions, even if they are secured by a dwelling.

A word about agricultural loans: a loan to purchase property for an agricultural purpose is not covered as a home purchase loan, even if a dwelling is situated on the property. The amended Regulation C specifically states that all dwelling-secured loans and lines of credit for an agricultural purpose are excluded from coverage, not just transactions to purchase a home.

LOAN LEVEL DATA

There are 13 new data points in the revised Regulation C. This number of data points was required by the Dodd-Frank Wall Street Reform and Consumer Protection Act. But the Bureau used its authority in order to further require the collection and reporting of many more data points – that is, all in all, in addition to the 25 or so data points required under the current rule. To put a fine point on it, in sum, the Rule seems to require the collection of up to 54 data points. Of these 54 data points, 10 are unchanged from the current rule, 11 have been modified from the current rule, and 33 are entirely new.[9]

Unchanged data points are the (1) Application Date, (2) Loan Type, (3) Action Taken, (4) Action Taken Date, (5) Property State, (6) Property County, (7) Property Census Tract, (8) Borrower/Applicant Sex, (9) Borrower/Applicant Income, and (10) HOEPA Status.

The Rule adds these data points:

- Information about applicants and borrowers, including age, credit score, and debt-to-income and combined debt-to-income ratios;

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- Information about the loan process, including whether the application was submitted directly to the institution, whether the loan was, or would have been, initially payable to the institution, and the name of, and results from, the automated underwriting system that was used;
- Information about the property securing the loan, including value and type (i.e., manufactured home);
- Information about the features of the loan, such as total loan costs or total points and fees, origination charges, discount points, lender credits, interest rate, prepayment penalty term, loan term, introductory rate period, and non-amortizing features; and
- Certain unique identifiers, such as property address, legal entity identifier for financial institutions, and mortgage originator NMLSR identifier.

There are some exclusions. For business- or commercial-purpose loans, the following data points are not required: (1) Rate Spread, (2) Total Loan Costs or Points and Fees, (3) Origination Charges, (4) Discount Points, (5) Lender Credits, and (6) Prepayment Penalty Term. For purchased loans, these data points are not required: (1) Rate Spread, (2) Credit Score, (3) Credit Score Model, (4) Total Loan Costs or Points and Fees, (5) Prepayment Penalty Term, (6) Debt-to- Income Ratio, (7) Loan-to-Value Ratio, (8) Application Channel, (9) Obligation Initially Payable, (10) Automated Underwriting System, (11) Result Generated by Automated Underwriting System.

Ethnicity and race data are significantly modified, in that, as amended, Regulation C will allow applicants to add details about their ethnicity or race. Thus, additional data may be available about "subcategories" of race and ethnicity. Institutions will not be required or permitted to complete these "subcategories."

On October 3, 2015, the TILA/RESPA Integration Disclosure ("TRID") rules became effective. Four new data points involve TRID data for closed-end mortgage loans. There may be a cumbersome heuristic to deriving TRID data on the four data points. Here's how I see the debacle: these four data points will need to "link" (or be mapped) or otherwise match the information disclosed on the TRID form with what is reported under the Rule. Furthermore, if an institution cures an erroneous disclosure as permitted under Regulation Z,[10] that revised disclosure must be reported under Regulation C to the extent the revision affects information required under Regulation C.

Let's consider a scenario. A financial institution discloses discount points on the TRID disclosures in the amount of $2500. The amount of $2500 discount points is sent to the HMDA-LAR. In due course, the $2500 discount points is found to be an error, with $2000 being the actual discount points. So, the institution rediscloses for the $2000, makes all required adjustments to the TRID disclosures, and then seeks to correct the data thus far recorded in the HMDA-LAR. However, if an institution must report data

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quarterly and already reported the amount as $2500, it must correct the amount and report $2000 in its annual reporting under Regulation C. Inevitably, this infers that institutions will have to link, map, or otherwise match any TRID redisclosures to the data reported to the HMDA-LAR. This would be a significant, logistical challenge.

REPORTING AND DISCLOSURE

A new electronic submission portal will be introduced soon by the Bureau. There is a website landing page for it on the Bureau's website, although it is not yet functional.[11] This portal will be the new way in which the HMDA-LAR will be sent to the Bureau. Guidance on how to complete the current HMDA-LAR will be deleted, effective January 1, 2019. New instructions will be integrated into the electronic submission portal beginning in 2019.

In addition, public access disclosure for 2017 and beyond will be available at the Bureau's website. Where institutions are required to maintain their modified HMDA-LAR on their premises, the Bureau will require the filers to send consumers and interested others to the Bureau's own online database.

As to the public database itself, the Bureau has not yet announced what information and data sets will be made public from the amended Regulation C filings. Apparently, the Bureau is contemplating a tiered approach to providing public access, such as access to the general public, the press, researchers, academics, consultants, and so forth. Exactly which data sets will be made available to the public and on what basis will soon be the subject of an elicited response from the public.

As I mentioned at the outset, the amended Regulation C may be viewed as a new tool in the maintaining of fair lending initiatives. The Bureau's enforcement actions make it abundantly clear that HMDA data is and will continue to be intrinsic to fair lending compliance.

The use of enforcement orders in reviewing HMDA compliance, along with many new reporting obligations, will amplify regulatory risks for HMDA filers. The obtained data can be expected to form the basis for increased legal and regulatory scrutiny with respect to fair lending requirements. Institutions will also need to be prepared to devote additional and supplementary resources to evaluating potential fair lending matters, particularly where they will be reporting data on a quarterly basis.

On December 1, 2015, the Bureau issued a guide, entitled Home Mortgage Disclosure (Regulation C) Small Entity Compliance Guide ("Guide").[12] According to the Guide, its purpose is to provide "an easy-to-use summary of Regulation C, as amended by the 2015 HMDA Rule, and to highlight information that financial institutions and those that work with them might find helpful when implementing the 2015 HMDA Rule."[13]

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In addition to the Guide, the Bureau has a website devoted to HMDA compliance support.[14] Although you may want to read the 797 page Rule itself, at this time the Bureau's website contains useful information and documentation on the Home Mortgage Disclosure Act rule (Federal Register); a HMDA Executive Summary (an overview of changes to the HMDA rule issued October 15, 2015); HMDA Key Dates Timeline (an overview of the effective dates for different elements of the rule); a HMDA Compliance Guide (a guide to the new rule which makes the content "more accessible for industry constituents, especially smaller businesses with limited legal and compliance staff"); a template for Reporting "Not Applicable" (a reference tool on when to report data as not applicable); a Summary of Reportable Data (a reference tool for HMDA data required to be collected, recorded, and reported); and, a HMDA Institutional Coverage Chart (entities covered for 2017 and 2018).

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[1] On October 15, 2015, the CFPB released a final rule amending Regulation C, 12 C.F.R part 1003, the implementing regulation of the Home Mortgage Disclosure Act. Published in the Federal Register on October 28, 2015.

[2] On January 1, 2019, additional amendments related to electronic data submission and public disclosures become effective January 1, 2019. Also, institutions will report the data collected under the new requirements by March 1, 2019. On January 1, 2020, quarterly reporting begins for large-volume lenders as of the first quarter of 2020. The first data under the new reporting schedule must be reported by May 30, 2020.

[3] Beginning in 2020, institutions with a combined total of 60,000 or more loan originations and applications will be required to report HMDA data on a quarterly basis. For the first three quarters of each year, these large-volume institutions must report the required data within 60 calendar days of the relevant quarter's end. The first submission (for the first quarter of 2020) will be due on May 30, 2020. Fourth quarter data will be submitted with the annual submission, which will continue to be due by March 1 of the following year.

[4] FFIEC examination guidance for depository institutions already mandates this practice.

[5] May be revised

[6] Metropolitan Statistical Area

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[7] The terms "closed-end mortgage loan" and "open-end line of credit" are defined as part of the new transactional coverage criteria, which also become effective on January 1, 2018. Covered open-end lines of credit by definition are secured by a dwelling.
[8] Op. cit. 3
[9] Not every data point is collected for every application or origination.
[10] 12 C.F.R. §§ 1026.19(e)(3)(iv), (e)(4)
[11] See http://www.consumerfinance.gov/hmda
[12] Home Mortgage Disclosure (Regulation C), Small Entity Compliance Guide, Consumer Financial Protection Bureau, December 2, 2015
[13] Idem, p 6
[14] See http://www.consumerfinance.gov/regulatory-implementation/hmda/

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