

LEGISLATIVE UPDATE

HOME MORTGAGE DISCLOSURE ACT (REGULATION C) AMENDMENTS EFFECTIVE JANUARY 1, 2018, JANUARY 1, 2019 AND JANUARY 1, 2020

The Consumer Financial Protection Bureau ("the Bureau") has issued a final rule amending Regulation C. The final rule changes the:

- Types of institutions that are subject to Regulation C;
- Types of transactions that are subject to Regulation C;
- Specific information that covered institutions are required to collect, record, and report; and
- Processes for reporting and disclosing data.

BACKGROUND

The Home Mortgage Disclosure Act ("HMDA") requires certain financial institutions, including credit unions, to collect, report and disclose information about their mortgage lending activity. This information is important because it:

- Helps show whether the financial institutions are serving the housing needs of their communities;
- Assist public officials in distributing public-sector investment to attract private investment to areas where it is needed; and
- Assist with the identification of potentially discriminatory lending patterns and enforcement of anti-discrimination laws.

Regulation C implements HMDA and sets out specific requirements for collecting, recording, reporting, and disclosure of mortgage information.

NEW AMENDMENTS

Institutional Coverage: A credit union which originates at least 25 home purchase loans, including refinancing of home purchase loans, now meets the institutional coverage of Regulation C.

Effective January 1, 2018, the Rule adopts a uniform loan-volume threshold for all institutions. Beginning in 2018, a credit union will be subject to Regulation C if it originated at least 25 covered closed-end loans in each of the two preceding calendar years or at least 100 covered open-end lines of credit in each of the two preceding calendar years and it meets other applicable coverage requirements.

Transactional Coverage: The Rule modifies the types of transactions that are covered under Regulation C. In general, the Rule adopts a dwelling-secured standard for transactional coverage. Beginning on January 1, 2018, covered loans under the Rule generally will include closed-end mortgage loans and open-end lines of credit secured by a dwelling. However, the

Rule only requires credit unions that are originated at least 100 covered open-end lines of credit in each of the two preceding calendar years to collect, record and report information on HELOCs.

Reportable Data: Perhaps the most important change is the significant increase in the “data points” which have been added to the reporting form. The Rule adds new data points for applicant or borrower age, credit score, automated underwriting system information, unique loan identifier, property value, application channel, points and fees, borrower-paid origination charges, discount points, lender credits, loan term, prepayment penalty, non-amortizing loan features, interest rate, and loan originator identifier as well as other data points.

Collection and Recording of Borrower or Applicant Information: For data collected in or after 2018, the Rule amends the requirements for collecting and reporting of information regarding an applicant’s or borrower’s ethnicity, race, and sex.

First, the Rule adds a requirement to report how the credit union collected the information about the applicant’s or borrower’s ethnicity, race and sex. The credit union will report whether or not it collected the information on the basis of visual observation or surname.

Second, for applicant or borrower information collected on or after January 1, 2018, the credit union must permit applicants to self-identify their ethnicity and race using disaggregated ethnic and racial subcategories.

Data Submission Process: The Bureau is developing a new web-based submission tool for recording HMDA data. The credit union will report data using the new web-based submission tool beginning in 2018.

EXECUTIVE SUMMARY OF HOME MORTGAGE DISCLOSURE ACT FINAL RULE AND SMALL ENTITY COMPLIANCE GUIDE

The Bureau has prepared a helpful Executive Summary of the changes to Regulation C, a copy of which is attached to this Legislative Update.

The Bureau has also prepared a detailed and helpful Small Entity Compliance Guide which can be found on the Bureau’s website at the following link:

https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/cfbp_hmda_small-entity-compliance-guide.pdf

Should you have any questions, please feel free to contact our office.

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1700 G Street NW, Washington, DC 20552

August 24, 2017

Executive Summary of the Home Mortgage Disclosure Act (Regulation C), Final Rule

The Consumer Financial Protection Bureau (Bureau) has issued a final rule (2017 HMDA Final Rule) amending the 2015 Home Mortgage Disclosure Act Final Rule (Regulation C) (2015 HMDA Final Rule).¹ The amendments included in the 2015 HMDA Final Rule take effect on January 1, 2018, January 1, 2019 and January 1, 2020.

This document summarizes some of the 2017 HMDA Final Rule's changes to Regulation C. Although this executive summary provides a high-level overview of the 2017 HMDA Final Rule, it is not a substitute for reviewing the rule.

Background

The Bureau is amending Regulation C to make technical corrections, to clarify and make changes to certain requirements adopted by the 2015 HMDA Final Rule, which was published in the *Federal Register* on October 28, 2015.

On April 13, 2017, the Bureau issued a proposal to amend the 2015 HMDA Final Rule, which was published in the *Federal Register* on April 25, 2017 (the April 2017 HMDA Proposal),² to address technical errors, ease the burden of certain reporting requirements, and clarify some key terms. On July 14, 2017, the Bureau issued a second proposal, which was published in the

¹ Home Mortgage Disclosure (Regulation C); 80 FR 66128 (Oct. 28, 2015) (2015 HMDA Final Rule).

² April 2017 HMDA Proposal, 82 FR 19142 (Apr. 25, 2017).

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Federal Register on July 20, 2017 (the July 2017 HMDA Proposal).³ The July 2017 HMDA Proposal addressed temporary increases to the institutional and transactional coverage thresholds for open-end lines of credit.

Summary of Changes

The 2017 HMDA Final Rule:

1. Temporarily increases the threshold for collecting and reporting data with respect to open-end lines of credit from 100 to 500 for the 2018 and 2019 calendar years. Financial institutions originating fewer than 500 open-end lines of credit in either of the two preceding years will not be required to begin collecting such data until January 1, 2020;
2. Establishes a new reporting exclusion and optional reporting for certain transactions and data points; and
3. Clarifies certain key terms defined in the 2015 HMDA Rule, including multifamily dwelling and automated underwriting system, among others.

Loan-Volume Thresholds

The 2015 HMDA Final Rule established loan-volume thresholds for closed-end mortgage loans and open-end lines of credit that determine both which institutions are required to report HMDA data and the types of transactions those covered institutions must report. Only institutions that meet either the closed-end or open-end threshold are covered financial institutions, assuming that they satisfy the other institutional coverage criteria. A covered financial institution is only required to report data on its closed-end mortgage loans if it meets the closed-end threshold. Likewise, a covered financial institution is only required to report data on its open-end lines of credit if it meets the open-end threshold.

The 2017 HMDA Final Rule finalizes the proposed temporary increase to the open-end threshold. Effective January 1, 2018, the open-end threshold will increase from 100 to 500 loans for a period of two years (i.e., calendar years 2018 and 2019). Financial institutions

³ July 2017 HMDA Proposal, 82 FR 33455 (July 20, 2017) See also Home Mortgage Disclosure (Regulation C), Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit, <https://www.consumerfinance.gov/policy-compliance/rulemaking/rules-under-development/home-mortgage-disclosure-regulation-c-temporary-increase-institutional-and-transactional-coverage-thresholds-open-end-lines-credit/>.

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originating fewer than 500 open-end lines of credit in either of the two preceding years will not be required to begin collecting and reporting HMDA data on open-end lines of credit, during this period. The Bureau is not making the threshold increase for open-end lines of credit permanent at this time. Absent further action by the Bureau, effective January 1, 2020, the open-end threshold will be restored to the 2015 HMDA Final Rule level of 100 open-end lines of credit, and creditors originating between 100 and 499 open-end lines of credit will need to begin collecting and reporting HMDA data for open-end lines of credit at this time.

The 2017 HMDA Final Rule also corrects a technical error to ensure that the loan-volume thresholds for transactional coverage mirror the loan-volume thresholds for institutional coverage. The 2015 HMDA Final rule established transactional thresholds under which a closed-end mortgage loan or an open ended line of credit is considered an “excluded transaction” if the financial institution did not meet the loan-volume threshold for that loan type in *each* of the two preceding calendar years. The 2015 HMDA Final Rule excluded these transactions from the collection, reporting and disclosure requirements. The 2017 HMDA Final Rule establishes that such loans will be excluded transactions if the institution did not meet the applicable threshold in *either* of the two preceding calendar years. The correction clarifies that a financial institution is not required to report a closed-end mortgage loan or an open-end line of credit, respectively, unless the institution meets the threshold for that loan type for two consecutive years.

In addition, the 2017 HMDA Final Rule clarifies that financial institutions will have the option of reporting loans that are otherwise excluded from reporting requirements because the financial institution did not satisfy the loan-volume thresholds. However, if a financial institution chooses to report the excluded transactions, it is obligated to report all such applications, originations, and purchases for that calendar year.

Excluded Transactions

The 2015 HMDA Final Rule expanded Regulation C’s transactional coverage to include New York Consolidation, Extension and Modification Agreements (New York CEMA) transactions. The 2017 HMDA Final Rule creates a reporting exception for certain transactions related to New York CEMAs. As a result of these changes, covered financial institutions generally will not be required to report any preliminary transaction where a consumer receives additional funds prior to consolidation into a New York CEMA transaction. However, financial institutions will continue to be required to report the New York CEMA transaction.

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The 2017 HMDA Final Rule clarifies two categories of transactions that are excluded as temporary financing and not reported in HMDA data: (1) a construction-only loan or line of credit that is extended to a person exclusively to construct a dwelling for sale; and (2) a loan or line of credit designed to be replaced by separate permanent financing extended by any financial institution to the same borrower at a later time.

Clarification of Key Terms

The 2017 HMDA Final Rule clarifies the definition “multifamily dwelling.” The 2017 HMDA Final Rule establishes that a covered loan secured by five or more separate dwellings, which are not multifamily dwellings, in more than one location is not a loan secured by a multifamily dwelling. In addition, the 2017 HMDA Final Rule establishes that a covered loan secured by five or more separate dwellings that are located within a multifamily dwelling, but which is not secured by the entire multifamily dwelling (*e.g.*, an entire apartment building or housing complex), is not secured by a multifamily dwelling as defined by § 1003.2(n). The 2017 HMDA Final Rule provides examples to clarify when loans are secured by multifamily dwellings.

The 2017 HMDA Final Rule also clarifies the reporting requirements for home improvement loans secured by mixed-use property. The 2017 HMDA Final Rule establishes that a loan or line of credit to improve commercial space in a multifamily dwelling is not a reportable home improvement loan, but a loan or line of credit to improve commercial space in a dwelling other than a multifamily dwelling is a reportable home improvement loan. For example, a loan to improve retail space in an apartment building is not a home improvement loan and would not be reported, but a loan to improve a doctor’s office or daycare center in a single-family dwelling is a home improvement loan and would be reported.

The 2017 HMDA Final Rule clarifies the meaning of “Automated Underwriting System” (AUS). An AUS is an electronic tool developed by a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit. A person is a securitizer, Federal government insurer, or Federal government guarantor of closed-end mortgage loans or open-end lines of credit, respectively, if it has ever securitized, provided Federal government insurance, or provided a Federal government guarantee for a closed-end mortgage loan or open-end line of credit. Additional guidance in the 2017 HMDA Final Rule explains that a person may be a securitizer, Federal government insurer, or Federal government guarantor even if it is not actively securitizing, insuring or guaranteeing closed-end mortgage loans or open end lines of credit at the time a financial institution uses the AUS to evaluate an application.



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The 2017 HMDA Final Rule also clarifies the meaning of income for the purpose of reporting the gross annual income relied on in making the credit decision or processing the application if a credit decision was not made. The 2017 HMDA Final Rule clarifies that a financial institution does not include as income amounts considered in making a credit decision based on factors that an institution relies on in addition to income, such as amounts derived from underwriting calculations of the potential annuitization or depletion of an applicant's remaining assets. Actual distributions from retirement accounts or other assets that are relied on by the financial institution as income should be reported as income.

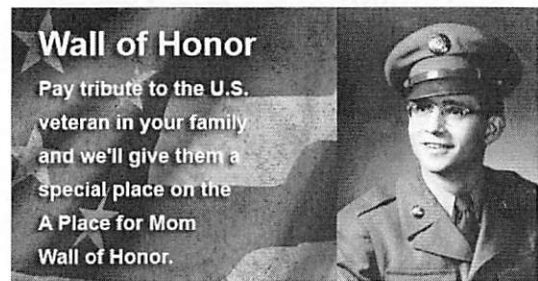
Clarification of How to Collect Race and Ethnicity Information

The 2017 HMDA Final Rule clarifies three aspects of collecting and reporting race and ethnicity information.

First, the 2017 HMDA Final Rule states that an applicant is not required to select an aggregate race or ethnicity category as a precondition to selecting one of the race or ethnicity subcategories.

Second, the 2017 HMDA Final Rule clarifies that an applicant may provide a particular other ethnicity or race in the free-form field, whether or not the applicant selects the "Other" ethnicity or race subcategory. The 2017 HMDA Final Rule also will permit, but not require, a financial institution to select automatically and to report the Other race or ethnicity subcategory if the applicant provides a specific other race or ethnicity in the free-form field. It further permits but does not require a financial institution to report American Indian or Alaska Native if the applicant provides only a particular American Indian or Alaska Native enrolled or principal tribe in the free-form field.

Third, the 2017 HMDA Final Rule clarifies how a financial institution should report ethnicity if an applicant selects more than five ethnicity categories and subcategories combined. The instructions for reporting ethnicity will mirror the instructions for how to report more than five race categories and subcategories already set forth in the 2015 HMDA Final Rule.



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