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HMDA Highlights

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Last month I published an article on the changes coming in Regulation C,[1] the implementing regulation of the Home Mortgage Disclosure Act.[2] The article can be viewed here and downloaded here or here.

I would like to highlight a few of the salient features for you.

Essentially, HMDA serves three purposes: (1) it provides public and public officials with information to help determine whether financial institutions are serving the housing needs of the localities in which they are located and to assist public officials in their determination of where to distribute public sector investments to improve the private investment environment; (2) it requires the reporting of racial characteristics, gender, and income information on applicants; and (3) it identifies possible discriminatory lending patterns and enforcing anti-discrimination statutes.

In 2010, the Dodd-Frank Act amended HMDA to expand the scope of information compiled, maintained and reported. In August 2014, the CFPB proposed amending Regulation C to implement the Dodd-Frank changes.

The CFPB chose not to adopt several data points specified in the Dodd-Frank Act and included a few on its own. Take the following summary listing of the changes made by the CFPB's October 2015 Regulation C amendments (hereinafter, "Rule") as a tool to be used along with my article and the CFPB's own promulgated guides and issuances regarding the HMDA changes.

<u>Institutional Coverage</u>

Although it is not required by the Dodd-Frank Act, the CFPB nevertheless adopted uniform loan-volume thresholds for depository and non-depository institutions, which require an institution to report data if it originated in each of the two preceding calendar years at least 25 closed-end mortgage loans or at least 100 open-end lines of credit, assuming the institution meets the other criteria for coverage.

Institutions that meet only the closed-end threshold are not required to report open-end lending, and institutions that meet only the open-end threshold need not report closed-end lending.

The regulation retains the other coverage criteria for depository institutions, which require reporting by depository institutions that satisfy an asset-size threshold ($44 million in 2015), have a branch or home office in an MSA on the preceding December 31, originated at least one first-lien home purchase loan or refinancing secured by a one- to four-unit dwelling in the previous calendar year, and satisfy a "federally-related" test (i.e., the institution is federally insured or regulated or the loan previously mentioned was insured, guaranteed, or supplemented by a federal agency or intended for sale to FNMA or FHLMC).

For non-depository institutions, the above loan-volume threshold test replaces the current loan-volume or loan-amount test and Regulation C retains the criterion that the institution must have a branch or home office in an MSA on the preceding December 31.

<u>Transactional Coverage</u>

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Also not required by the Dodd-Frank Act, the Rule adopts a dwelling-secured standard for reporting all loans or lines of credit for personal, family, or household purposes, whether the purpose of the loan is to finance the property serving as security or another property. Accordingly, the amendments discard the purpose test that previously required the reporting of home improvement loans, whether or not dwelling-secured. Among other things, this makes the reporting of dwelling-secured consumer open-end credit mandatory (no longer optional).

Most commercial-purpose transactions are subject to Regulation C reporting only if they are for the purpose of home purchase, home improvement, or refinancing (i.e., the Rule retains Regulation C's traditional purpose test only for commercial-purpose transactions). The regulation does not apply to home improvement loans not secured by a dwelling, or agricultural-purpose loans/lines of credit. The regulation now uses the term "covered loans" as a shorthand term to refer to the universe of loans covered by HMDA.

· The CFPB specifically noted that Regulation C does not require the reporting of loan modifications. There are two exceptions for which HMDA reporting is required because they represent *new debt obligations* in substance if not in form:[3] (1) assumptions, including successor-in-interest transactions (this differs from CFPB interpretations under TILA Regulation Z); and (2) New York consolidation, extension, and modification agreements (CEMAs) used in place of refinancings (this only refers to CEMAs made under § 255 of the New York Tax Law). The CFPB recognized that its determination that these New York CEMAs must be reported departs from past FRB guidance that they did not need to be reported. The CFPB noted that this Regulation C definition of the term "modification" differs from that of Regulation B, which defines it to include the granting of credit in any form, including the renewal of credit and the continuance of existing credit in some circumstances.

· The amendments revise the definition of "dwelling." Briefly put, the definition includes primary residences, second homes, investment properties (homes), multifamily properties, and manufactured home communities (whether or not any individual homes also secure the loan). The term excludes recreational vehicle parks, recreational vehicles, and pre-1976 mobile homes. The regulation retains the existing discretion for financial institutions to determine the primary use for multifamily properties (such as mixed-used properties with five or more individual dwelling units). Properties that provide long-term housing with related services such as a combined medical care component are reportable, while properties that provide medical care are not (consistent with the exclusion of hospitals).

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