

Client Alert.

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Just When You Thought It Was Safe to Take a Summer Vacation: CFPB Proposes Extensive New HMDA Rules

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Yesterday, the Consumer Financial Protection Bureau (CFPB) published its long-awaited new proposed revisions to its Home Mortgage Disclosure Act (HMDA) rules. The 573-page proposed rules would make sweeping changes to Regulation C, which implements HMDA, dramatically expanding financial institutions' HMDA reporting and compliance obligations, as well as their fair lending work more broadly. The changes include required reporting of 37 new data fields (20 of which are not required by HMDA and represent additional information the CFPB would like to collect) and required quarterly (rather than annual) reporting for larger institutions. We summarize here the key proposals, how they compare to current HMDA requirements, and what this all might mean for HMDA reporters in the future. (Hint: not many smiling faces.) Comments on the proposed rule are due by October 22, 2014.

BACKDROP

HMDA was enacted in 1975, and has expanded over the years from a statute aimed at basic monitoring and redlining prevention, to one widely used by regulators and advocates as a fair lending tool. It requires many depository institutions and other lenders to report information about the home loans that they decision, originate, or purchase. According to the CFPB, as of 2012, about 7,400 financial institutions reported HMDA data relating to about 18.7 million loans. In 2010, the Dodd-Frank Act directed the CFPB to expand HMDA data reporting to include additional information about the applicants, lenders, and loans.

In February 2014, the CFPB announced that it was beginning the required rulemaking process and was considering adopting not only the Dodd-Frank requirements, but also requiring reporting of extensive additional data. The CFPB also announced that it was looking into ways to streamline HMDA reporting and reporting thresholds. As an initial step, the CFPB convened a Small Business Review Panel to seek early feedback. Since then, the CFPB has been largely mum about the rule, reporting in June only that it "has begun work in preparation" to implement the changes. Surprisingly, unlike other significant regulatory initiatives, the CFPB held no "field hearing" announcing with fanfare the new proposed rules, but merely a dry press release yesterday about the proposal.

THE PROPOSED RULES

Yesterday, the Bureau published its extensive proposed rules, along with the Small Business Review Panel's detailed report. The proposal is largely in line with the Bureau's February 2014 announcement. We provide a summary and comparison below.

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1. Who's Covered

TODAY	AS PROPOSED
<p>Depository institutions that satisfy HMDA's asset test for coverage must submit HMDA data. This includes, for example, a number of banks that make only one home-purchase loan in a given year.</p> <p>Non-depository mortgage lenders may be required to report only if they make at least 100 loans.</p>	<p>Standardized Threshold: Would generally require that institutions report HMDA data if they make 25 or more closed-end loans or reverse mortgages in a year. (The CFPB reports that this would reduce the number of reporting institutions by 25%.)</p> <p>The CFPB indicates it is planning to conduct additional outreach regarding the proposed 25-loan threshold number.</p>

2. What's Reported

The proposed rules would significantly expand HMDA data reporting, adding not only 17 new data fields responsive to Dodd-Frank requirements, but also 20 more fields that the CFPB believes are necessary to "fill information and data gaps" in its monitoring of "access to credit," "how the Ability-to-Repay rule is impacting the market" and "developments in specific markets such as multifamily housing, affordable housing, and manufactured housing." These changes are summarized below, and listed in detail in the proposed rules.

TODAY	AS PROPOSED
<p>Types of Loans</p> <ul style="list-style-type: none"> • Home purchases, home improvement, and refinance applications and loans. • HELOC reporting is optional. • Certain reverse mortgages are not covered. 	<p>Types of Loans</p> <ul style="list-style-type: none"> • "Dwelling-Secured Test": Home purchases, home improvement, and refinance applications and loans that are secured by a dwelling must be reported. • Includes HELOCs, even if not taken out for a consumer purpose or by a consumer. • Eliminates reporting of home improvement loans not secured by a dwelling.
<p>Data Includes</p> <ul style="list-style-type: none"> • Application information (application number, date, type, purpose, amount). • Action taken (type, date, denial reason optional). 	<p>Data Required by Dodd-Frank: 17 Data Points Covering</p> <ul style="list-style-type: none"> • Total points and fees, and rate spreads for all loans. • "Riskier loan features" used in the past, such as prepayment penalties, teaser rates, and non-amortizing features.

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TODAY	AS PROPOSED
<ul style="list-style-type: none"> • Loan information (rate spread for certain higher-priced loans, lien status). • Property information (property type, owner/occupancy status, property location by MSA, state, county, census tract). • Some applicant information (ethnicity, race, sex, annual income). 	<ul style="list-style-type: none"> • Unique identifier for both the loan officer and the loan (replaces current Respondent/Reporter ID). • Application channel (retail, broker, other). • Property value and improved property location information ("Parcel ID"). • Borrower's age and credit score.
	<p>Additional Data: 20 Data Points Covering</p> <ul style="list-style-type: none"> • Debt-to-income ratio (DTI) • Combined loan-to-value ratio (CLTV) • Automatic underwriting system (AUS) results • Denial reasons (mandatory) • Qualified mortgage (QM) status • Additional points and fees information (interest rate received; risk-adjusted, pre-discounted interest rate; total origination charges; total discount points) • Additional property information (units financed, and construction method replacing property type; affordable housing deed restriction information) • Manufactured housing data • Unique financial institution identification number (replaces RIN)

3. When It's Reported

The CFPB proposes another major change for larger institutions: quarterly reporting. Currently, all HMDA reporters report annually. The new rules would require that, within 60 calendar days of the end of each calendar quarter, a financial institution that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year, would have to submit its loan application register containing all required HMDA data for that quarter. The CFPB estimates that the rule would impact about 28 financial institutions, which, combined, report about 50% of all HMDA-reported transactions.

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The CFPB says this proposal “is based on considerations relating to the timeliness of HMDA data submitted, the quality of the data submitted, and the Bureau’s desire to make annual HMDA data available to the public earlier than they are currently made available,” citing concerns that “under the current regime, HMDA data may be reported as many as 14 months after final action is taken on an application or loan.” The Bureau does, though, solicit comments on whether its new proposal “is appropriate, including any increase in costs resulting from the requirement.”

4. How It’s Reported

In February, the CFPB observed that many financial institutions are collecting the same or similar data for their own purposes, and that the Bureau was considering “methods to align the HMDA data requirements with well-established data standards already in use by a significant portion of the mortgage market.” It said that it was also consulting with other federal agencies about improvements to the HMDA data reporting and disclosure process, such as creating a web-based HMDA data-entry software.

The proposed rules, more specifically, would align many of the HMDA data requirements with the widely used Mortgage Industry Standards Maintenance Organization (MISMO) data standards. The CFPB also proposed a number of technical improvements, including geocoding improvements, web-based data submission (rather than the current software that must be reinstalled on local computers each year), and an improved process for editing HMDA submissions.

WHAT’S NEXT

The new rules would have significant impacts on any institution that reports HMDA data, or that might be required to report HMDA data under the new rules. The costs to change systems, capture numerous additional data fields, and integrate systems to comply with the new rules will be dramatic. And, especially for institutions meeting the 75,000 loan quarterly reporting threshold, the proposed rules would impose significant ongoing costs for those institutions.

Collecting and reporting the detailed, newly proposed data could also have an impact on borrowers and on institutions’ HMDA and fair lending compliance obligations. The proposed public reporting of geocoded data containing detailed information about a loan application, down to the applicant’s credit score, has raised real concerns among borrowers and privacy advocates.

And, from financial institutions’ perspective, more data means more room for error, as judgments must always be made about specific data. Although larger institutions may already be collecting much of the data (albeit not necessarily in the form the Bureau envisions), that data has never been required to meet the stringent accuracy requirements that the Bureau applies to HMDA data. As we’ve previously [reported](#), the CFPB has made clear through recent enforcement actions and guidance that it believes HMDA data integrity is an integral part of fair lending compliance and enforcement—and that erroneous HMDA data is tantamount to an illegal action that “misleads the public.”

More broadly, collecting and publicly reporting all of this new data will inevitably lead to additional scrutiny and the obligation to monitor the data not only for technical compliance, but also for any potential fair lending disparate impacts that the data reveal. As members of the Small Business Review Panel observed in their report, that would impose yet more burdens on lenders and, in particular, on smaller community institutions.

The CFPB is accepting comments on the proposed rule through October 22, 2014. For more information, check back with our [Mortgage and Fair Lending Group](#) and our [MoFoMoFi Mortgage Resource Center](#).

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