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## The CFPB's HMDA Strategy

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Last week on October 15th, the Consumer Financial Protection Bureau ("Bureau") issued the Final Rule ("Rule") of the Home Mortgage Disclosure Act ("HMDA"). The Rule is hundreds of pages long, providing numerous important changes to HMDA data collection and reporting requirements. Ostensibly, the Rule is meant to provide distinct means by which to determine fair lending analytics. However, as a practical matter, the data derived therefrom will likely lead to fair lending enforcement actions. I am preparing a thorough analysis of the Rule and will publish an article shortly on its mandates and implications.

By some estimates, the Rule doubles the amount of data collected from creditors and requires new reporting timing requirements. The Bureau may take the position that a more streamlined process is being implemented in order to obtain a much broader understanding of fair lending compliance, but a process that is extensively attenuated does not necessarily translate into actionable intelligence. It will take some time for lenders to learn how to manage the new data sets, prepare system solutions, and institute adequate training formats. Each of the foregoing will mean new, substantial investments in technology and human resources.

It is worth noting that the Dodd-Frank Act required the CFPB to update HMDA's regulatory compliance mandates in areas such as race and gender of consumers. This initiative was based on expanding HMDA's data collection from roughly 20 data points. Now the Rule, via Regulation C, the implementing regulation of HMDA, includes some 48 categories, including 25 new data sets and the modification of 14 existing ones.

As but one example, the new information requirements will cause creditors to provide the property value, term of the loan, duration of any teaser or introductory interest rates. The other information to be collected that was not previously collected is considerable.

Although the compliance effective date for most of the new Regulation C requirements is January 2018, creditors will have to be very cautious in phasing in the entirety of the HMDA data collection process. For instance, the Rule should be reviewed for the new data points and data sets in order to prognosticate the impact on creditors' fair lending initiatives. Consideration ought to be given to conducting a fair lending review not only with the current data points but also the Rule's new data points. This may not ultimately be possible for most lenders, because existing review analytics do not actually have the technology yet to produce substantive findings. But, when such technology becomes available, such enhanced fair lending reviews should be considered as a proactive undertaking for the compliance function.

Just because the compliance effective date is months away does not mean that an endeavor toward building a rebuttable defense is futile. Litigation will come as the Rule is used by the Bureau, private plaintiffs, and other market participants to seek, respectively, enforcement and potentially large settlements. Once the new HMDA data is released, a fertile ground will be ready for fair lending litigation. Because of the huge number of data points and data sets, litigators will be in a position to allege patterns and practices involving discriminatory activity. Other information being collected, such as debt-to-income ratios, interest rates, and credit data would provide the bases for allegations of fair lending violations.



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