

# Client Alert

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## HOLY HMDA! CFPB Finalizes Changes to Home Mortgage Disclosure Rule

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On October 15, 2015, the CFPB released a final rule amending Regulation C, 12 C.F.R. part 1003, which implements the Home Mortgage Disclosure Act (HMDA). Like the August 2014 proposed rule, the final rule includes changes to Regulation C in four broad areas: (1) the types of institutions required to collect and report HMDA data; (2) the types of transactions and applications subject to collection and reporting requirements; (3) the data that must be collected and reported; and (4) the method and frequency of reporting data and making data available to the public.

This alert provides a high-level summary of the major changes to Regulation C in each of these four areas. We are continuing to examine the 796-page (and 560-footnote!) issuance, and we plan to provide a more detailed description and analysis following that review.

**Schedule of effective dates.** The final rule will become effective over a three-year period. The critical dates are:

- **January 1, 2017.** The coverage test for depository institutions subject to Regulation C changes. Specifically, in addition to the existing coverage tests, depository institutions that originated fewer than 25 home purchase loans (including refinancings of home purchase loans) during each of the last two calendar years will no longer be subject to the rule as of January 1, 2017. For example, depository institutions that originated fewer than 25 home purchase loans in either 2015 or 2016 will be excluded from collection and reporting requirements in 2017.
- **January 1, 2018.** The bulk of the rule becomes effective on January 1, 2018. As summarized below, major changes include (1) uniform loan volume coverage criteria for all institutions, (2) new transactional coverage criteria that apply collection and reporting requirements to all consumer loans and lines of credit secured by a dwelling, (3) new data collection requirements, and (4) new electronic data submission requirements. The new collection requirements will apply to loans and lines of credit for which any final action is taken on or after January 1, 2018.
- **January 1, 2019.** Additional amendments related to electronic data submission and public disclosures become effective January 1, 2019. Also, institutions will report the first data collected under the new collection requirements by March 1, 2019.
- **January 1, 2020.** Quarterly reporting begins for large-volume lenders (i.e., lenders reporting a combined 60,000 or more applications and loans in the preceding calendar year). The first data under the new reporting schedule (for the first quarter of 2020) must be submitted by May 30, 2020.

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**Covered institutions.** Like current Regulation C, the final rule contains different coverage criteria for depository institutions and non-depository institutions; however, the final rule includes a uniform loan-volume threshold for all institutions. Generally, the uniform threshold for coverage is the origination of 25 closed-end mortgage loans or 100 open-end lines of credit in each of the past two calendar years. The threshold becomes effective for all institutions on January 1, 2018. (As noted above, a portion of the threshold—origination of fewer than 25 closed-end mortgage loans in each of the past two years—becomes effective for depository institutions on January 1, 2017.)

With respect to depository institutions, the final rule adds the new loan-volume threshold to the existing coverage tests, which include an asset-size component. With respect to non-depository institutions, the final rule adds the new-loan volume threshold and removes existing coverage tests, which include a loan-production component (in dollars) and an asset-size component.

The effect of the new threshold is that low-volume depository institutions will not be required to collect and report data. By eliminating other coverage criteria for non-depository institutions, however, more of those institutions will be required to collect and report data.

**Covered transactions.** Current Regulation C ties collection and reporting requirements to consumer loans based on the loan's purpose—namely, if a loan is for a home purchase, home improvement, or refinancing. Amended Regulation C in part discards the purpose-based criteria in favor of a collateral-based test. As of January 1, 2018, data must be collected and reported on consumer loans that are secured by a dwelling, regardless of the purpose of the loan. Thus, if a consumer applies for a loan to be used for educational expenses, the loan is covered if it is secured by a dwelling.

Additionally, the collection and reporting requirements generally apply to all consumer dwelling-secured loans, regardless of whether the loan is a closed-end mortgage or an open-end line of credit. Under the current rule, open-end lines of credit secured by a dwelling (i.e., HELOCs) for home improvement or home purchase purposes are reportable at the lender's option. Beginning January 1, 2018, data must be collected and reported on all lines of credit secured by a dwelling, regardless of the purpose of the loan.

In a welcome departure from the proposed rule, the final rule retains the purpose-based criteria—in addition to the new collateral-based test—for business and commercial loans. (The proposed rule would have required collection of data on all consumer and business dwelling-secured loans regardless of purpose.) As of January 1, 2018, however, data must be collected and reported on a business or commercial loan or line of credit only if that loan or line of credit is secured by a dwelling and made for a home purchase, home improvement, or refinancing.

As proposed, unsecured loans are no longer covered, even if made for home improvement purposes.

**Loan-level data.** The Dodd-Frank Wall Street Reform and Consumer Protection Act mandated that the CFPB revise Regulation C to require the collection and reporting of approximately 13 new data points. The CFPB used its authority under HMDA to require the collection and reporting of roughly twice that number of new data points, in addition to the approximately 25 data points required under the current rule. In total, the final rule requires the collection of 48 data points. Of the 48, nine remain largely unchanged from the current rule, 14 have been modified from the current rule, and 25 are new.

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Highlights among the 25 new data requirements are the (1) applicant/borrower's age; (2) total loan costs or total points and fees; (3) origination charges; (4) discount points; (5) interest rate; (6) prepayment penalty term; (7) applicant/borrower's debt-to-income ratio; (8) loan-to-value ratio; (9) introductory rate period; (10) non-amortizing features; (11) applicant/borrower's credit score; (12) property value; (13) application channel; (14) NMLSR ID of the originator; and (15) name and result of the automated underwriting system used.

Though not included in the proposed rule, the final rule significantly modifies the collection of data related to the ethnicity and race of the borrower/applicant. As amended, Regulation C disaggregates many of the data fields used to denote these characteristics under the current rule. For example, under the current rule, where a borrower might identify as "Hispanic or Latino," the amended rule permits the borrower to specify "Mexican," "Puerto Rican," "Cuban," or "Other." Additionally, for selections like "Other," the final rule allows additional information (e.g., Argentinian, Colombian) to be provided.

The final rule includes several data points that were not proposed, including (1) the amount of lender credits, and (2) whether the loan is for a business or commercial purpose. Conversely, several proposed data points were not included in the final rule, including (1) whether the loan is a qualified mortgage under Regulation Z, (2) the initial draw on an open-end line of credit, and (3) the interest rate that the borrower would have received if the borrower paid no bona fide discount points.

**Reporting and public disclosure.** Data collected in 2017 (to be collected under the existing collection requirements and reported by March 1, 2018) will be reported through an electronic submission tool, which the CFPB will make available at some future date. Appendix A, which articulates instructions for completing the current Loan/Application Register, will be deleted effective January 1, 2019. New instructions will be integrated into the electronic submission tool beginning in 2019.

Also, beginning with data for 2017, the CFPB plans to make HMDA public disclosure statements available on its website. Institutions will no longer be required to maintain modified Loan/Application Registers onsite, and the final rule includes model language for required postings in home and branch offices to refer interested persons to the CFPB's website. The preamble to the rule states that the CFPB is continuing to consider what data to make public in light of privacy concerns.

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. (Loan purchases are excluded from the threshold calculation.) 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.

**What's next.** The new rules will have a significant impact on HMDA reporters. The costs of changing systems, capturing additional data fields, and integrating systems will be dramatic. Reporting the new detailed data also will likely affect fair lending compliance obligations. Among other things, requiring the collection of vast amounts of new data could lead to technical reporting errors, and the CFPB has made clear that HMDA data integrity is an integral part of fair lending compliance and enforcement.

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