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RESIDENTIAL

More HMDA Rule Changes on the Horizon

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After working hard to implement the Home Mortgage Disclosure Act (HMDA) rule changes adopted by the Consumer Financial Protection Bureau (CFPB) in October 2015, and mainly implemented in January 2018, the mortgage industry will need to gear up to implement additional changes that are on the horizon. In May 2019 the CFPB issued both proposed HMDA rule changes and an advance notice of proposed rulemaking (ANPR).

Proposed Rulemaking. The proposed rulemaking would modify the loan volume thresholds to report closed-end loans and open-end lines of credit. The current loan volume thresholds are the origination of at least 25 closed-end mortgage loans in each of the prior two years and the origination of at least 500 open-end lines of credit in each of the past two years. The October 2015 amendments provide for a threshold of 100 open-end lines of credit, but the threshold was temporarily increased to the 500 level for years 2018 and 2019 after the CFPB determined it needed to reassess the threshold because the burdens on institutions to report open-end lines of credit may be greater than it originally assumed.

The CFPB proposes to increase the 25 closed-end loans threshold to 50 loans in each of the prior two years, but also requests comment on a threshold of 100 loans. Under the prior HMDA rule, for non-depository mortgage lenders the volume threshold was 100 closed-end home purchase and/or refinance loans in the prior year.

The CFPB also proposes to extend the temporary 500 line of credit threshold so that it applies for years 2020 and 2021, and then establish a permanent threshold of 200 lines of credit in each of the prior two years on January 1, 2022.

The proposed rulemaking also would incorporate into the HMDA rule an interpretive rule issued by the CFPB in September 2018 to implement the partial exemption from HMDA reporting for smaller loan volume banks and credit unions that was adopted in 2018 as part of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Basically the partial exemption limits the reporting obligations of qualifying depository institutions to the HMDA data categories that existed prior to the October 2015 amendments. To qualify for the partial exemption a depository institution could not have received a Community Reinvestment Act (CRA) rating of “needs to improve record of meeting community credit needs” in each of its two most recent CRA examinations, or a rating of “substantial noncompliance in meeting community credit needs” in its most recent CRA examination. An institution also needs to stay within a volume cap, which for closed-end loan reporting is 500 or fewer loans in each of the prior two years and for open-end line of credit reporting is 500 or fewer credit lines in each of the prior two years.

An institution that relies on the partial

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exemption would complete the applicable fields in its Loan/Application Register by entering a specific code that signifies that the institution is exempt from reporting the item. Even if an institution qualifies for the partial exemption, it may elect to report for all HMDA data fields.

In late July the CFPB announced it was reopening until October 15, 2019 the comment period with regard to the proposed threshold for reporting closed-end loans and the proposed permanent threshold to report open-end lines of credit. This will permit interested parties to provide comments based on 2018 HMDA data information that the CFPB will release late summer. However, the CFPB will not be able to implement any change to the closed-end loan threshold on January 1, 2020 as originally planned, so the CFPB requests comment on the appropriate implementation date.

ANPR. In the ANPR, to develop a proposed rule the CFPB seeks comment on three aspects of the October 2015 amendments to the HMDA rule:

- New data points that the CFPB added based on the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and existing data points that were revised by the CFPB.
- The free-form text fields that apply to certain data points.
- The application of HMDA to business or commercial purpose loans made to a non-natural person and secured by a multi-family dwelling.

In the Dodd-Frank Act Congress paved the way for the expansion of

HMDA reporting by specifying new items of information and authorizing the CFPB to require additional information. The new data points added based on the items specified by Congress are the applicant's age and credit score, the property value and address, the loan term, whether the loan provides for any non-fully amortizing payments, the total loan costs or total points and fees, the period of any introductory rate, the term of any prepayment penalty, the application channel, and the NMLSR ID of the loan originator. Congress also authorized the CFPB to require a universal loan identifier, and the CFPB modified the existing identification number requirement to provide for the combined legal entity identifier/universal loan identifier.

The CFPB added new data points based on the discretionary authority provided by Congress, and the CFPB also modified the requirements to report the loan purpose and occupancy type, and the applicant's race and ethnicity. The new data points are the discount points; origination charges; interest rate; combined loan-to-value ratio; debt-to-income ratio; lender credits; whether the loan is an open-end line of credit; whether the loan is a reverse mortgage; the automated underwriting system (AUS) used and the result provided by the system, if applicable; the reasons for denial (previously optional reporting); the total units in the property; for multi-family properties, the total units that are income restricted by law; for a manufactured home, whether the loan is secured by the home or by the home and land, and whether the consumer owns or leases the land; and whether the loan is for a business or commercial purpose.

The CFPB seeks comment on the new and revised data points. In particular the CFPB seeks input on the operational challenges to collect and report the data, and the benefits of the data in relation to the costs to collect and report the data. Clearly, the CFPB has greater flexibility to remove or modify data points that it added based on its discretionary authority than it does with data points specified by Congress.

The CFPB also seeks comment on the free-form text fields that institutions must complete in certain cases (i.e., when selecting "Other" for the denial reasons, the AUS used and the AUS result). The CFPB specifically asks for comments on the costs and benefits associated with the free-form text fields, and whether there are better alternatives to the fields.

Finally, the ANPR addresses the coverage of business- or commercial-purpose loans, which must be reported if the loan satisfies any of the covered loan definitions in the HMDA rule. The CFPB seeks comment on whether a business- or commercial-purpose loan made to a non-natural person and secured by a multi-family dwelling should be excluded from HMDA reporting. The exclusion of such loans from HMDA reporting would result in many non-bank multi-family lenders no longer having to report HMDA data.

The comment period on the ANPR is open until October 15, 2019 (the original comment period was extended).

