

## Home Mortgage Disclosure Act: CFPB Finalizes Amendments to Regulation C Implementing Significant Changes to HMDA Reporting

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### Executive Summary

The Consumer Financial Protection Bureau (“CFPB” or “Bureau”) has released a final rule that modifies the requirements of Regulation C, which implements the *Home Mortgage Disclosure Act* (“HMDA”), to amend: the types of institutions and transactions subject to the regulation; the types of data institutions are required to collect; and, the processes for reporting and disclosing collected data (“HMDA Rule”). These changes are significant in both scale and scope, and will require mortgage lending institutions subject to Regulation C to:

- Collect more data (25 new and 14 modified data points) on an expanded scope of loan transactions (to include most dwelling-secured transactions, with some exceptions), and to report that data through new web-based submission channels.
- Report and disclose the expanded HMDA dataset on a quarterly basis, when the lender meets the volume threshold identified in Regulation C (a combined total of 60,000 covered loans and applications, excluding purchased loans, in the preceding calendar year).
- Assess and upgrade, as needed, the capabilities of their compliance management systems to collect, validate, report, and disclose the expanded dataset on a timely basis, giving thought to policies, procedures, monitoring, corrective-action processes, and training, paying particular attention to data reporting issues, such as data integrity, systems constraints, manual reconciliations, resource constraints, analytical challenges, and governance requirements.
- Consider, from an internal perspective, managing and leveraging the expanded dataset to enhance other compliance functions (such as fair lending analysis) and safety and soundness concerns (such as those related to credit risk and regulatory reporting), and to consider, from an external perspective, the potential impact from heightened public scrutiny of more available key lending data.

Most of the new requirements will become effective January 1, 2018, with reporting beginning in 2019. Large-volume lenders must begin quarterly reporting in 2020.

### Background

Under the current Regulation C, depository institutions (i.e., banks, savings associations, and credit unions) and for-profit nondepository mortgage lending institutions are required to submit and publicly disclose certain HMDA data if they meet criteria set forth in the rule. Whether a depository institution is required to report and publicly disclose data depends on its asset size, the location of its home and branch offices, the extent to which it engages in residential mortgage lending, and the extent to which the institution or its loans are federally related. Whether a for-profit nondepository mortgage lending institution is required to report and publicly disclose data depends on its size, the location of its home and branch offices, including the extent of its business in Metropolitan Statistical Areas (MSAs), and the extent to which it engages in residential mortgage lending.

Institutions subject to Regulation C are required to report originations and purchases of mortgage loans (home purchase and refinancing) and home improvement loans, as well as mortgage loan applications that do not result in originations. The information reported under Regulation C currently includes, among other items: application date; loan or application type, purpose, and amount; property location and type; race, ethnicity, sex, and annual income of the loan applicant; action taken on the loan application (i.e., originated, approved not accepted, denied, or withdrawn), and the date of that action; whether the loan is subject to the *Home*

*Ownership and Equity Protection Act of 1994* ("HOEPA"); lien status (first lien, subordinate lien, or unsecured); and certain loan price information.

In 2008, Comptroller of the Currency John Dugan announced a pilot initiative that required certain mortgage lenders (larger national banks) regulated by the Office of the Comptroller of the Currency ("OCC") to collect data points that were not part of the regular HMDA reporting but were used by the agency in its fair lending screening process. The pilot was designed to test the feasibility for lenders to collect this information and submit it to the agency at the same time they submitted their HMDA data, and to assess the value of the information to the agency in focusing fair lending reviews. Dubbed "HMDA Plus," the information included factors, such as loan-to-value ratios, credit scores, and debt service ratios, among others. Lenders continue to make this information available.

In 2010, the *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank Act") gave rule writing authority for HMDA, and its implementing regulation, Regulation C, to the CFPB and directed the Bureau (Section 1094 of the Dodd-Frank Act) to expand the scope of mortgage application and loan data that must be compiled, maintained, and reported pursuant to HMDA. The law delineated specific data points that the Bureau must capture, additional data points that the Bureau might deem to be appropriate to capture, and the Bureau's authority to mandate the collection of "such other information as the Bureau may require."

Concurrently, the Dodd-Frank Act gave the CFPB supervisory authority over the consumer compliance activities of the largest bank and nonbank financial institutions, and the CFPB has similarly requested and analyzed HMDA Plus data to screen for fair lending issues. While many of these additional data points are being incorporated into the new HMDA rules, there are still elements that the OCC or the CFPB may request under HMDA Plus that remain beyond the new HMDA data points.

The CFPB states that 7,062 financial institutions reported HMDA information for approximately 11.9 million mortgage applications, preapprovals, and loans in 2014. The Bureau adds that, although the HMDA dataset is the leading source of information about the mortgage market, it has not kept pace with the market's evolution and did not provide adequate information about certain loan features that helped contribute to the mortgage crisis, such as adjustable-rate mortgages and non-amortizing loans. As such, the "Bureau believes that the HMDA data must be updated to address the informational shortcomings exposed by the financial crisis and to meet the needs of homeowners, potential homeowners, and neighborhoods throughout the nation." The CFPB issued a proposed rule to amend Regulation C in June 2014 to implement, as directed, the requirements of Section 1094 of the Dodd-Frank Act (which the CFPB stated improved the utility of the HMDA data) and to make other modifications that change the institutional and transactional coverage to reflect market conditions, reduce burden on financial institutions, and address gaps in the HMDA data regarding certain segments of the housing market. The HMDA Rule is substantially similar to the Bureau's 2014 proposal, except that certain data points have not been included, such as the proposed requirements to report qualified mortgage status or the initial draw on an open-end line of credit.

The CFPB's Office of Fair Lending and Equal Opportunity is tasked with oversight and enforcement of federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the *Equal Credit Opportunity Act* and the *Home Mortgage Disclosure Act*.

## New Requirements under the HMDA Rule

Key features of the HMDA Rule are outlined below.

### Covered Institutions

Depository institutions that originate fewer than 25 home purchase loans, including refinancings, (as those terms are defined in the current Regulation C) in both calendar year 2015 and 2016, would not be subject to HMDA reporting under Regulation C in 2017 even if they meet the asset-size, location, federally related, and loan activity tests under the current Regulation C requirements.

The HMDA Rule adopts a uniform loan-volume threshold for all institutions. Beginning January 1, 2018, an institution will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loans in each of the two preceding calendar years or at least 100 covered open-end lines of credit (note: covered transactions discussed below) in each of the two preceding calendar years, and it meets other applicable coverage requirements (“covered institutions”).

- A depository institution will be subject to Regulation C if it originated at least 25 covered closed-end mortgage loans or at least 100 covered open-end lines of credit in each of the two preceding calendar years, and it meets the current asset-size, location, federally related, and loan activity tests under Regulation C.
- A for-profit nondepository mortgage lending institution will be subject to Regulation C if it meets the new loan-volume thresholds – it originated at least 25 covered closed-end mortgage loans or at least 100 covered open-end lines of credit in each of the two preceding calendar years – and it satisfies the existing location test that requires it to have a home or branch office in an MSA on the preceding December 31.
- Institutions that meet only one of the thresholds would not be required to report data for the other. For example, an institution that originates at least 25 covered closed-end mortgage loans but originates fewer than 100 open-end lines of credit in each of the two preceding calendar years would only be required to report data for its closed-end mortgage loan activity.

## Covered Transactions

Regulation C currently requires covered institutions to report HMDA data about applications for, and originations of, closed-end home purchase, home improvement, and refinancing loans. The HMDA Rule adopts a “dwelling secured” standard for transactions covered by Regulation C beginning January 1, 2018. At that time, all loans or lines of credit that are for personal, family, or household purposes and are secured by a dwelling will be covered, making most consumer-purpose transactions, including closed-end home-equity loans, home-equity lines of credit, and reverse mortgages, subject to the regulation. Most commercial-purpose transactions (i.e., loans or lines of credit not for personal, family, or household purposes) are subject to the regulation only if they are for the purpose of home purchase, home improvement, or refinancing. Home improvement loans that are not secured by a dwelling, and all agricultural-purpose loans and lines of credit (even if dwelling-secured) will be excluded.

Also beginning January 1, 2018, covered institutions will be required to collect, record, and report information for approved but not accepted requests for preapproval of home purchase loans (i.e., this will no longer be an optional data point). However, preapproval requests for open-end lines of credit, reverse mortgages, and home purchase loans to be secured by multifamily dwellings will not be covered transactions under the HMDA Rule.

## New and Modified Data Points

Covered institutions will collect, record, and report new and modified HMDA information about originations of, purchases of, and applications for covered loans beginning January 1, 2018. In particular, the CFPB identifies 25 new and 14 modified data collection points that will become part of the HMDA dataset addressing:

- Information about the applicants and borrowers, including the applicant or borrower age, credit score, debt-to-income ratio, combined loan-to-value ratio, ethnicity, race, gender;
- Information about the application channel (whether the application was made directly to the institution), the name of the automated underwriting system used, the results generated by that system, the type of entity that purchased the loan, and the reason for denial;
- Information about the property securing the loan, including the construction method, property value, occupancy, and additional detail information for manufactured and multifamily housing;
- Information about the features of the loan, including the purpose of the loan, total loan costs or total points and fees, origination charges, discount points, lender credits, interest rate, rate spread, prepayment penalty term, loan-to-value ratio, loan term, introductory rate period, non-amortizing features, the type of loan (reverse mortgage, open-end line of credit, business or commercial purpose), and whether it is a preapproval; and
- Unique identifiers, including a mortgage loan originator identifier (based on the National Mortgage Licensing System and Registry), legal entity identifier, universal loan identifier, and the property address.

Modifications to some of the existing data points are intended to better align the data points with “well-established industry standards” and definitions. Modifications to the data related to ethnicity, race, and sex of an applicant or borrower require covered institutions to report how the information was collected, whether on the basis of visual observation or surname, in cases where an application is made in person and the applicant chooses not to report the information. Institutions must allow applicants that choose to self-identify ethnicity and race data to use disaggregated ethnicity and race subcategories though institutions collecting information based on visual observation or surname must only use aggregated ethnicity and race data.

## Data Submission

Beginning in 2018, the CFPB will require all covered institutions to report HMDA data using a new web-based submission tool. The HMDA Rule amends Regulation C’s Appendix A (Form and Instructions for Completion of the HMDA Loan/Application Register) effective January 1, 2018, to require covered institutions to submit their Loan/Application Register (LAR) electronically. Under this requirement, institutions will submit their 2017 HMDA data (collected under the current rule) using the new submission tool and procedures that will be forthcoming from the CFPB. Beginning January 1, 2019, covered institutions will be required to report the new dataset established by the HMDA Rule using the web-based submission tool and procedures that will, again, be forthcoming from the CFPB, and Appendix A will be removed from Regulation C.

## Quarterly Reporting

Beginning in 2020, the HMDA Rule requires quarterly reporting by covered institutions that reported a combined total of at least 60,000 covered loans and applications (excluding purchased loans) in the preceding calendar year. In addition to their annual data submission, these larger-volume reporters will submit HMDA data for the first three quarters of the year on a quarterly basis. Quarterly reports will be due within 60 days of the end of each quarter; the first quarterly submission will be due no later than May 30, 2020.

The CFPB explains that more timely data “will allow regulators to determine, in much closer to ‘real time,’ whether financial institutions are fulfilling their obligations to serve the housing needs of communities in which they are located,” and “allow for more effective interventions or other actions by the agencies and other public officials.” Similarly, the Bureau states that “quarterly data will allow for deeper and timelier analyses of the lending activities of large volume lenders,” specifically acknowledging the ability to make comparisons of recent data from similar lenders during fair lending examinations. Large-volume lender quarterly data will be publicly available.

## Public Disclosure

Beginning in 2018, covered institutions will be able to fulfill their obligation to publicly disclose HMDA data by providing a notice that their disclosure statement and modified LAR are available on the CFPB’s web site. The CFPB has not yet determined which new information items will be made publicly available and has stated that it plans to use a “balancing test” to determine whether, and how, HMDA data should be modified prior to its disclosure. The test refers to balancing the importance of releasing data to accomplish the public disclosure purposes underlying HMDA against the potential harm to the privacy interests of an applicant or borrower that may result from the release of data without modification. It is the CFPB’s position that, “considering the public disclosure of HMDA data as a whole, applicant and borrower privacy interests arise under the balancing test only where the disclosure of HMDA data may both substantially facilitate the identification of an applicant or borrower in the data and disclose information about the applicant or borrower that is not otherwise public and may be harmful or sensitive.” The Bureau will provide at a later date a process for the public to provide input on the application of the balancing test to determine the HMDA data to be publicly disclosed. The CFPB currently hosts a web-based tool that allows the public to download and filter HMDA data.

## Enforcement

The HMDA Rule does not make substantive changes to the enforcement provisions of Regulation C but rather maintains the current stance on bona fide errors, stressing that institutions must develop and maintain appropriate compliance management systems that are reasonably designed to ensure the accuracy of the data. Large-volume institutions required to submit quarterly HMDA reports beginning in 2020 that make a good-faith effort to fully and accurately report all data required within 60 calendar days after the end of each calendar quarter will not be in violation of the regulation if some data are inaccurate or incomplete, provided the institution

corrects or completes the data prior to submitting its annual LAR. The Bureau states that most error-related issues are best addressed through supervisory policy, rather than regulatory language.

The Bureau's position is that the accuracy of HMDA data depends on good operational and validation processes and financial institutions have primary responsibility for these processes. Institutions must develop and maintain appropriate compliance management systems that are reasonably designed to ensure the accuracy of the data.

## Compliance Schedule

2017:	Low-volume depository institutions no longer subject to Regulation C
2018:	HMDA Rule becomes effective and is applicable to covered loans and applications for which final action was taken on or after January 1, 2018, and purchases of HMDA-reportable loans that occur on or after January 1, 2018 Electronic web-based submission required for 2017 data under the current rule
2019:	Electronic web-based submission of 2018 HMDA dataset collected under the HMDA Rule, and annually thereafter
2020:	Large-volume covered institutions begin quarterly reporting, using 2020 HMDA data, and each year thereafter.

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## Commentary

Simply stated, the HMDA Rule requires much more of institutions subject to HMDA data reporting under Regulation C – more data, more validation, more reporting, more frequent reporting, more analysis, and more disclosure. Institutions are encouraged to begin immediately to prepare for the significant changes this rule will introduce. The effort required to integrate the new information into the HMDA program should not be underestimated, even though many of the new data points may be currently collected by OCC- and CFPB-supervised institutions as a part of HMDA Plus. The data will now be subject to more formal requirements, including the expectations for data integrity and accuracy established under Regulation C, as well as additional scrutiny related to much of this information being available for public disclosure. In particular, institutions should assess the modifications, if any, needed to align their HMDA compliance program with the expanded requirements introduced by the new rule, including the collection of new data points and the expanded types and number of covered loans, giving consideration to program features in the following areas:

- Assessments of risk;
- Roles and responsibilities;
- Policies, procedures, and controls;
- Training and staffing (specific to HMDA as well as areas related to compliance and safety and soundness);
- Technology requirements and data analytics capabilities;
- Monitoring and testing;
- Issues management (corrective action processes and examinations/investigations); and
- Board reporting and regulatory reporting.

In recent years, the regulatory agencies have pressured financial institutions to improve their reporting capabilities, emphasizing the need for comprehensive, accurate, and timely submissions. The volume of data now required under HMDA as well as the increased reporting frequency for large-volume lenders, may strain the reporting systems and processes of many institutions and highlight potential issues for attention or improvement, such as data integrity, systems constraints, manual reconciliations, resource constraints, analytical challenges, and governance weaknesses. It is important for institutions to clarify the roles and responsibilities surrounding the specific data points (such as who owns the data and who has responsibility for its integrity and accuracy) as well as to develop lines of coordination between the users, producers, and filers of the data that is reported.

The Quality Management aspects of the related data and reporting will be an important part of program success. This includes the coordination of first line QC (Quality Control), second line QA (Quality Assurance), Compliance, Operations Risk Management, Credit Risk Management, Third Party Risk Management, related control functions, and with the assurance provided by Internal Audit. Coordination efforts include LOS (loan origination system) vendor data oversight, data and meta data management controls, operational controls associated with data quality, data reconciliation against G/L (General Ledger) or related source information, change management as operational processes evolve over time, web reporting interface functionality and controls, Regulation C reporting management and controls, and investor data delivery requirement controls. The Quality Management organizational participants should consider a central HMDS rules repository to help manage oversight. Notably, there have also been significant advances in technology in recent years, including the ability to automate tests, and organizations should consider adopting these advancements for Regulation C as they can offer many benefits. For instance, by automating quality management, companies are able to move away from statistical sampling of loan populations and instead, can test a larger sample population in generally the same amount of time. Similarly, data ingestion and data reshaping technologies, as well as testing algorithms, have the potential to do the following:

- Reduce staffing and overhead costs;
- Continuously improve loan quality;
- Reduce loan defects on a timely basis;
- Improve quality standards and efficiency;
- Provide scalable solutions that leverage quality professional expertise;
- Reduce testing time frames; and
- Provide higher assurance levels and reduce audit risk.

Finally, the expanded number of data points and expanded scope of transactions provides a vast amount of new information that covered institutions may use to enhance their own fair lending analysis. Institutions might want to consider evaluating how certain new data points, such as the debt-to-income ratio and the combined loan-to-value ratio, might reflect underwriting trends and potential safety and soundness issues related to credit risk. Regulators (both federal and state) and interested private parties (such as advocacy organizations and the press) will also be able to use the expanded dataset to analyze the mortgage lending activity and fair lending performance of covered institutions, and, in anticipation of such heightened scrutiny, institutions may want to assess how the array of new data points might be interpreted by third parties.

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