

## SPECIAL ALERT: CFPB ADOPTS SIGNIFICANT EXPANSION OF HMDA REPORTING REQUIREMENTS

On October 15, the Consumer Financial Protection Bureau (the CFPB or Bureau) issued a [final rule](#) that will expand the scope of the Home Mortgage Disclosure Act (HMDA) data reporting requirements while seeking to streamline certain existing requirements.<sup>1</sup> Although some of the new data points the Bureau is requiring are expressly mandated by the Dodd-Frank Act, the Bureau is also requiring a significant number of new data points based on discretionary rulemaking authority granted by the Act.

While we describe the amended rule below in greater detail, highlights include:

- Expanded data-collection under the revised rule will begin on January 1, 2018, and reporting will begin in 2019. The Bureau would have been allowed under Dodd-Frank to require data-collection beginning in 2017 (at least nine months after issuance of the rule) but responded to industry requests for more time to convert systems to meet the extensive new data-collection requirements of the amended rule.
- The amended rule substantially expands the number of data points collected from financial institutions, including requiring reporting of rate spreads on most originated loans and lines of credit, not just higher-cost closed-end loans. However, the Bureau still has not decided the extent to which this information, which includes sensitive personal data such as credit scores, will be publicly available. It will solicit additional public input on privacy concerns before it determines how much of the information will be disclosed.
- The amended rule will require financial institutions to report home equity lines of credit (HELOCs) and reverse mortgages. However, in response to widespread criticism by industry commenters, the CFPB did not adopt its proposal to require reporting of all commercial-purpose loans secured by a dwelling.
- The amended rule does not make significant substantive changes to the definition of an “application” or to the “broker rule,” but it does reorganize and clarify existing Commentary provisions on those issues.
- The amended rule requires both depository and nondepository institutions that originated at least 25 closed-end mortgage loans or at least 100 open-end lines of credit in each of the two preceding calendar years to report HMDA data, so long as the institution meets all of the other tests for coverage of that type of institution.

### I. Revised Scope of HMDA Reporting Requirement

#### *a. Institutions Required to Report*

The amended rule revises the loan-volume threshold for determining which institutions are required to report HMDA data. Generally, depositories and non-depositories must report to the Bureau if they originate at least 25 closed-end or reverse mortgages, or at least 100 open-end lines of credit, in the two

---

<sup>1</sup>

A blackline of the final regulatory and Commentary text is available at [http://www.buckleysandler.com/uploads/1082/doc/Blackline\\_of\\_proposed\\_vs\\_final\\_HMDA\\_amendments.pdf](http://www.buckleysandler.com/uploads/1082/doc/Blackline_of_proposed_vs_final_HMDA_amendments.pdf).

previous calendar years. The triggers will be applied separately—an institution will report closed-end and reverse mortgages only if it meets the 25-mortgage trigger and will report open-end lines of credit only if it meets the 100-lines-of credit trigger. The Bureau rejected industry suggestions to set a trigger substantially higher than 25 closed-end or reverse mortgages per year, noting the value to local governments of information about the activities of lower-volume institutions.

Currently, the loan-volume trigger is based only on activity in the previous calendar year. Expanding it to two years will give startups more time to prepare for HMDA compliance. Depository institutions will still be exempt if, among other things, they are below the minimum asset threshold, but the dollar-volume and asset tests for non-depository institutions have been removed and the Bureau rejected industry suggestions to retain or increase the current 100 loan-originations-per-year trigger.

#### *b. Loans That Must Be Reported*

The amended rule requires reporting of all loans and lines of credit secured by a dwelling that are for personal, family, or household purposes. This means that all home-equity lines of credit for consumer purposes, as well as reverse mortgages, will be reported on the Loan/Application Register (LAR).

The CFPB decided not to adopt its proposal to require reporting of commercial loans secured by a residential structure, except for commercial loans for the purpose of home purchase, home improvement, or refinancing. Furthermore, home improvement loans not secured by a lien on a dwelling will no longer be reported on the LAR.

#### *c. Quarterly Reporting for High-Volume Originators*

The Bureau generally adopted its proposal to require financial institutions that report a large volume of entries to submit data to the Bureau within 60 calendar days after the end of each calendar quarter. However, in response to industry comments, the final rule provides a broader safe harbor for correction of errors and omissions in quarterly data, which is designed to allow larger institutions to continue to apply “rigorous scrubbing” only to their annual HMDA submissions. The Bureau also has delayed the effective date for quarterly reporting to January 1, 2020—a year after annual reporting of expanded HMDA data begins. The Bureau reduced the threshold for reporting from the proposed 75,000 entries on the LAR for the preceding calendar year to 60,000 in the final rule, but purchased covered loans will not be counted. The Bureau indicates that, based on 2013 HMDA data, 29 institutions would have been required to make quarterly reports in 2014.

#### *d. Privacy and Disclosure to the Public*

The preamble to the final rule discusses heightened privacy concerns raised by the new data points described below. The Bureau has decided to defer consideration of which, if any, of the new data points will be made publicly available. It will use a “balancing test to determine whether and how HMDA data should be modified prior to its disclosure to the public in order to protect applicant and borrower privacy while also fulfilling the disclosure purposes of the statute” and will provide a process for the public to provide input on how that test should be applied to determine which HMDA data should be publicly disclosed.

Under the final rule, institutions will no longer be required to make a “modified” LAR, with certain fields removed to protect privacy, available to the public. Instead, they must provide a notice that clearly conveys that the institution’s modified LAR may be obtained on the Bureau’s website. This will shift the

responsibility to disclose HMDA data to the agencies, and the CFPB will determine at a later time which of the new data points to disclose publicly.

## II. New Data Points

The amended rule requires collection and reporting of a number of new data points. Starred data points indicate those items the Bureau will collect based on its own discretionary regulatory authority, while un-starred data points are new collection requirements mandated by the Dodd- Frank Act.

The Bureau notes that, in defining the new data points, it attempted to align the collection requirements with the Mortgage Bankers Association's Mortgage Industry Standards Maintenance Origination (MISMO) data standards and the Uniform Mortgage Data Program, which governs data delivery to Fannie Mae and Freddie Mac.

### *a. Borrower Information and Underwriting Characteristics*

The amended rule requires financial institutions to collect and report the following additional information about applicants and the characteristics of the loan. Other than age, these data points do not apply to purchased loans:

- Age.
- Credit Score. "Credit score" has the same meaning as in the Fair Credit Reporting Act—*i.e.*, it does not include the results of an automated underwriting system. A financial institution must report the credit score relied on in making the decision, as well as the name and version of the scoring model used to generate each credit score. Purchased loans are excluded from this requirement.
- \*Debt to Income Ratio.
- \*Combined Loan-to-Value Ratio.
- Application Channel. Whether the borrower submitted the application directly to the institution and whether the loan was—or in the case of an application, would have been—initially payable to the institution. The Bureau states that, by collecting these data points, it can identify whether the application was taken via a retail, wholesale, or correspondent channel. Application channel information is not reported for purchased loans.
- \*Automated Underwriting System. Financial institutions must indicate the name of the automated underwriting system (AUS) utilized to evaluate the application and the recommendation generated by the AUS.

### *b. Property Data*

Financial institutions must collect and report the following additional information regarding the subject property:

- Postal Address. The Bureau states that having this information will help facilitate a better understanding of lending trends in geographic divisions smaller than census tract. It further notes that this data may enable more precise analysis of lending patterns to identify potential fair lending redlining concerns.
- Property Value. This is the value, or, in the case of an application, the proposed value, relied on in making the credit decision.

- \*Number of Dwelling Units in the Property.
- \*Construction Method. Whether the property is “site-built” or “manufactured housing.”
- \*Manufactured Housing Information. (i) If the dwelling is a manufactured home and not a multifamily dwelling, whether the loan is or would have been secured by a manufactured home and land, or by a manufactured home and not land (this replaces a proposal to report the legal status of the property as real or personal property); and (ii) whether the applicant or borrower owns or leases the land on which the manufactured home is or will be located.
- \*Multifamily Housing Information. The number of individual dwelling units in multifamily dwellings that are income-restricted pursuant to federal, state, or local affordable housing programs.

*c. Product Features*

Financial institutions must collect and report the following additional information regarding the loan product:

- Borrower-Paid Loan Costs. The total loan-costs (borrower paid) disclosed under Regulation Z. The Bureau included this disclosure in place of a disclosure of points and fees because it found that they are a more comprehensive measure of loan costs and better facilitate comparisons among borrowers. Points and fees must still be disclosed for non-purchased loans that are subject to Regulation Z’s ability-to-repay requirements but not to TRID disclosures.
- \*Borrower-Paid Origination Charges. For loans that are subject to Regulation Z, the total of all itemized amounts that are designated borrower-paid at or before closing. This requirement aligns with the disclosure of “borrower- paid” charges in section A. Origination Charges on page 2 of the Closing Disclosure form adopted in the [TILA-RESPA Integrated Disclosure \(TRID\) rule](#).
- \*Discount Points. For loans that are subject to Regulation Z, the points designated as paid to the creditor to reduce the interest rate. The Bureau did not adopt a proposal to also disclose the “non-discounted” rate that the borrower would have received if he or she had not paid discount points to reduce the rate.
- \*Interest Rate.
- \*Loan Term.
- Introductory Period. The term in months of any introductory period after which the rate of interest may change.
- Non-Amortizing Features. Whether the contractual terms of the loan would result in balloon payments, interest only payments, potential negative amortization, or any other payments that are not fully amortizing.
- Prepayment Penalty. The term in months of any prepayment penalty.

The Bureau also did not adopt either (i) a proposal to require institutions to report whether the mortgage was a “qualified mortgage,” viewing information such as non-amortizing features and the term of any prepayment penalty as adequate substitutes for qualified mortgage status; or (ii) a proposal to require reporting of the amount of the first draw, if any, made at account opening of a HELOC or reverse mortgage.

*d. Identifiers*

Financial institutions must collect and report the following identifiers related to the application or loan:

- Universal Loan Identifier. An identifying number for each loan or application reported. If a loan origination was previously reported for HMDA purposes with a universal loan identifier, a financial institution must report the later purchase of the loan using the same universal loan identifier.
- \*Mortgage Loan Originator Identifier. The loan originator's NMLS number.

### III. Clarifications and Revisions to Existing Data Points and Definitions

In addition to requiring the collection and reporting of new data, the final rule includes a number of clarifications and revisions to the collection and reporting of existing data points, including:

- Principal Reasons for Denial. All reporters, rather than only certain OCC- and FDIC-supervised institutions, must now report reasons for denial. If the institution chose "Other" as one of the reasons for denial, the LAR must include a free-form text explanation of the reason.
- Occupancy Type. The current requirement to report whether the property is owner-occupied is replaced by a requirement to report whether it is a principal residence, second residence, or investment property.
- Lien Priority. This must now be reported on all loans, including purchased loans, which are excluded under the current regulation.
- \*Rate Spread. For all loans subject to TILA, other than assumptions, purchased loans, and reverse mortgages, the difference between the APR and the APOR for a comparable transaction as of the date the interest rate is set.
- HOEPA Status. The Bureau dropped a proposal to require financial institutions not only to identify a loan as a high-cost mortgage, but also to indicate the reason the loan triggers the HOEPA requirements—whether because of APR, points and fees, or both.
- Loan Type. In addition to home purchase and home improvement loans, the loan type now includes rate/term refinancings (called "refinancings") and "cash-out refinancings" and also includes a code for a purpose other than home purchase, home improvement, refinancing, or cash-out refinancing.
- Loan Amount. The loan amount is no longer rounded to the nearest thousand dollars, but rather the exact amount in dollars is reported.

The Bureau also commented on the following definitions and requirements:

- Application. The Bureau reiterated that it is unwilling to align the Regulation C definition of an "application" with the definition in Regulation Z (and in Regulation X) because the definitions serve different purposes.
- Reporting Repurchases. The revised Commentary to Regulation C includes additional guidance to assist financial institutions with reporting loan repurchases. Although the Bureau had proposed that institutions not report loans sold and repurchased in the same year, the final Commentary generally requires that they be reported as purchases (with an exception for assignments of legal ownership that operate as the functional equivalent of warehouse lines).
- Action Taken. The revised Commentary includes additional examples regarding conditional approvals (which are reported as declines if the loan does not close because of underwriting

conditions), and clarifications regarding which conditions are customary commitments or closing conditions and which are underwriting or creditworthiness conditions.

\*\*\*

Questions regarding the matters discussed in this Alert may be directed to any of our lawyers listed below, or to any other BuckleySandler attorney with whom you have consulted in the past.

- [John P. Kromer](#), (202) 349-8040
- [Jeffrey P. Naimon](#), (202) 349-8030
- [Benjamin K. Olson](#), (202) 349-7924
- [Clinton R. Rockwell](#), (310) 424-3901
- [Jonathan D. Jerison](#), (202) 349-8015
- [Warren W. Traiger](#), (212) 600-2375