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CFPB Bulletin 2013-11

Date: October 9, 2013

Subject: Home Mortgage Disclosure Act (HMDA) and Regulation C – Compliance Management; CFPB HMDA Resubmission Schedule and Guidelines; and HMDA Enforcement

In this bulletin, the Consumer Financial Protection Bureau (CFPB or Bureau) addresses mortgage lenders' compliance with the Home Mortgage Disclosure Act (HMDA)[1] and its implementing regulation, Regulation C.[2] Specifically, this bulletin:

1. Provides guidance on compliance with HMDA and Regulation C to depository and non-depository mortgage lenders subject to the CFPB's jurisdiction that must collect and accurately report data under HMDA, by highlighting how mortgage lenders may effectively structure HMDA compliance management systems;

2. Announces the CFPB's HMDA Resubmission Schedule and Guidelines, which will apply to the Bureau's HMDA data integrity reviews beginning on or after January 18, 2014; and

3. Discusses factors that the CFPB may consider when evaluating whether to pursue a public HMDA enforcement action.

HMDA and Regulation C

HMDA and Regulation C require certain lenders to collect and report information about most mortgage applications as well as most originated and purchased

[1] 12 U.S.C. §§ 2801–2810.
[2] 12 C.F.R. pt. 1003.

mortgage loans (HMDA data). Ensuring the accuracy of HMDA data is vital to carrying out the statute's purposes, which are to provide the public with loan data that can be used to:

1. Help determine whether financial institutions are serving the housing needs of their communities;
2. Assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and
3. Assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.[3]

In addition, the Bureau uses HMDA data extensively in discharging the rule-writing, research, supervisory, and enforcement responsibilities conferred upon it by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[4] Accordingly, the CFPB views the accuracy of HMDA data as an important element of its consumer protection mission.

HMDA Compliance Management

Given the importance of accurate HMDA data to fulfilling the statute's purposes, the CFPB is committed to ensuring that Bureau-supervised mortgage lenders, whether depository or non-depository institutions, develop and/or maintain appropriate HMDA compliance management systems designed to ensure the accuracy of HMDA data. The scope, complexity, and size of each CFPB-supervised institution's lending operations vary, and we expect that compliance management systems will be calibrated accordingly. Based on the CFPB's supervisory experience, effective HMDA compliance management systems frequently include:

- Comprehensive policies, procedures, and internal controls to ensure on-going compliance with the collection and reporting requirements set forth in HMDA and Regulation C;
- As appropriate to the size and complexity of the institution, comprehensive and regular internal, pre-submission HMDA audits, to test and evaluate data accuracy, and that include a reasonable amount of transactional analysis, written reports detailing findings, and recommendations for corrective actions;

[3] 12 C.F.R. § 1003.1(b)(1).
[4] *See* 12 U.S.C. § 5493(b)(1)(B); § 5511; § 5512(c)(1).

- Reviews of any regulatory changes that may have occurred since the prior examination and/or data collection and reporting cycle;
- Reporting systems that are appropriate given the volume of the institution's lending operations;
- One or more individuals assigned responsibility for oversight, data entry, and data updates, including the timely and accurate reporting of the institution's data;
- Appropriate, sufficient, and periodic employee training to ensure that responsible personnel understand HMDA and Regulation C standards and reporting requirements;
- Effective corrective action in response to previously identified deficiencies; and
- As appropriate, board and management oversight.

Each institution should ensure that its HMDA compliance management system is tailored appropriately to its operations. The CFPB also encourages institutions to apply the Bureau's HMDA Resubmission Schedule and Guidelines, which are discussed below, to manage HMDA compliance and facilitate effective corrective action on self-identified errors.

CFPB HMDA Resubmission Schedule and Guidelines

The CFPB's HMDA Resubmission Schedule and Guidelines[5] (Resubmission Schedule) take an approach that is similar to the approach taken by other federal regulators: examination teams should ask institutions to correct and resubmit the HMDA Loan Application Register (LAR) when the number of errors in a sample exceeds a resubmission threshold.[6] However, the Bureau's guidelines will apply different standards depending on whether or not the institution has 100,000 or more HMDA LAR entries.

Under the Resubmission Schedule, which sets forth guidance to CFPB examination teams, institutions reporting fewer than 100,000 HMDA LAR entries should correct and resubmit HMDA data when 10 percent or more of a sample of HMDA LAR entries contains errors. In certain cases, sample error rates below 10 percent

[5] The CFPB HMDA Resubmission Schedule and Guidelines are part of the CFPB's HMDA Examination Procedures, *available at* http://www.consumerfinance.gov/guidance/supervision/manual/

[6] The CFPB currently applies the Federal Reserve Board's resubmission thresholds, *available at* http://www.federalreserve.gov/boarddocs/caletters/2004/0404/CA04-4Attach3.pdf. For HMDA data integrity reviews that are scheduled to begin on or after January 18, 2014, the thresholds in the CFPB HMDA Resubmission Schedule and Guidelines will apply.

— or below five percent in an individual data field — may call for resubmission if the errors prevent an accurate analysis of the institution's lending.

Given the significance of their impact on access to mortgage credit, institutions reporting 100,000 or more HMDA LAR entries should correct and resubmit HMDA data when at least four percent or more of a sample of entries from the HMDA LAR contains errors. Resubmission thresholds are lower at institutions with 100,000 or more HMDA LAR entries because a lower sample error rate at these institutions could nonetheless reflect a larger number of HMDA LAR entries with errors than a comparable error rate at an institution with a smaller HMDA LAR. In certain cases, error rates below the four percent threshold — or below two percent in an individual field — may call for resubmission if the errors prevent an accurate analysis of the institution's lending.

The CFPB will take appropriate corrective action to ensure that the institution's HMDA data set is accurate, and that any compliance management weaknesses that led to the errors are corrected.

Enforcement of HMDA and Regulation C

In addition to requiring correction and resubmission of HMDA data by certain institutions based on the applicable resubmission thresholds, the CFPB may, in appropriate circumstances, also take public enforcement action. In determining whether to pursue a public enforcement action, the Bureau will consider relevant factors, including, for example:

- The size of an institution's HMDA LAR and the observed error rate;
- Whether an institution self-identified its HMDA errors outside the context of an active examination or examination-related activity, and independently took appropriate corrective action; and
- If the institution has previously been on notice regarding high HMDA LAR errors such that the institution should have known of on-going HMDA LAR error rates in excess of the resubmission threshold:
  - whether error rates observed during the current exam are sufficiently lower such that they should be viewed as a sign of substantial progress in improving HMDA compliance management; or
  - whether, despite notice, error rates have remained high or have increased.

Through a public enforcement action, the CFPB may seek civil money penalties and other corrective action as appropriate. In determining the appropriate size of any penalty it seeks, the Bureau will consider the factors set forth above as well as the following factors, as appropriate, which are set forth in the Consumer Financial Protection Act of 2010:

- The size of financial resources and good faith of the person charged;
- The gravity of the violation or failure to pay;
- The severity of risks to or losses of the consumer, which may take into account the number of products or services sold or provided;
- The history of previous violations; and
- Such other matters as justice may require.[7]

[7] 12 U.S.C. § 5565(c)(3).