

Client Alert

October 15, 2013

CFPB Reaches Consent Orders for HMDA Violations

By **Don Lampe*** and **Ashley Hutto-Schultz**

On October 9, 2013, the Consumer Financial Protection Bureau (“CFPB”) reached consent orders with two companies, Mortgage Master, Inc. (“Mortgage Master”) and Washington Federal, encompassing payment of civil penalties for violations of the Home Mortgage Disclosure Act (“HMDA”). The two orders resulted from examinations conducted by the CFPB that uncovered “violations of law and deficiencies” in the HMDA compliance systems of each entity.¹ Under HMDA, mortgage lenders that meet certain threshold conditions must collect loan-level data in order to fulfill federal reporting requirements. HMDA reporting covers home purchase loans, home improvement loans, and refinancing transaction applications during each calendar year.² HMDA does not provide for private rights of action. Financial institutions that are found to be in violation of HMDA, however, may be subject to administrative sanctions or civil money penalties. With the two consent orders, the CFPB demonstrated that it will initiate enforcement actions to ensure that institutions comply with HMDA’s requirements.

MORTGAGE MASTER CONSENT ORDER

Mortgage Master is a nondepository mortgage lending institution headquartered in Massachusetts that originates and refinances home loans. Based on loan volumes, Mortgage Master was subject to HMDA and Regulation C. The CFPB’s examination and review that led to the consent order analyzed HMDA reporting data for 21,015 loans from 2011.

As part of the consent order, the CFPB noted that Mortgage Master had previously been subject to a review conducted by the Massachusetts Division of Banks (“DOB”) regarding the entity’s 2007 HMDA-Loan Application Register (“HMDA-LAR”); the review resulted in a settlement due to findings of HMDA error rates that “exceeded applicable resubmission thresholds.”³ As part of a settlement with DOB, Mortgage Master was required to: (1) establish procedures to ensure HMDA compliance; (2) review and re-file all erroneous data within the 2007 HMDA-LAR; (3) establish policies and procedures for training staff to ensure HMDA compliance; (4) prepare a report to the DOB explaining the re-filed HMDA data; and (5) pay a \$25,000 administrative penalty. Since its settlement with Mortgage Master in 2012, the DOB’s reports found that Mortgage Master’s HMDA error rates exceeded applicable resubmission thresholds.

¹ Consent Order, Washington Federal, File No. 2013-CFPB-0005 at 1 (October 9, 2013); Consent Order, Mortgage Master, Inc., File No. 2013-CFPB-0006 at 1 (October 9, 2013).

² See 12 U.S.C. §§ 2801 – 2810.

³ Consent Order, Mortgage Master, Inc., File No. 2013-CFPB-0006 at 4 (October 9, 2013).

Client Alert

Subsequent to the Massachusetts DOB's review, the CFPB initiated an examination of Mortgage Master in May 2012 that revealed significant errors in the institution's 2011 HMDA reporting of 21,015 mortgage loan applications. In addition, the CFPB found that, although Mortgage Master "maintained a HMDA compliance system, the system did not maintain procedures [that were] reasonably adapted to avoid such errors" in its HMDA-LAR.⁴ According to the consent order, Mortgage Master is required to pay a civil penalty of \$425,000, correct and resubmit its 2011 HMDA data, and improve its HMDA compliance management system. To accomplish improvements in its HMDA compliance, the order requires Mortgage Master to hire an independent consultant to complete and submit to the CFPB a Consultant Report regarding the company's HMDA compliance system, and also requires the creation and implementation of a Compliance Plan.

WASHINGTON FEDERAL CONSENT ORDER

Washington Federal is an insured depository institution headquartered in Seattle, Washington that, in 2010, reported data on 5,785 loans in its 2011 HMDA-LAR. Based on the CFPB's examination, Washington Federal's reported data contained a 38 percent sample error rate, which exceeded the CFPB's acceptable threshold and triggered CFPB's enforcement action. The CFPB found that Washington Federal did not maintain "procedures reasonably adapted to avoid such high error rates in its HMDA-LAR."⁵ However, unlike Mortgage Master's consent order, the Washington Federal order did not mention previous violations or state regulatory issues related to HMDA compliance. Washington Federal is required to pay a civil penalty of \$34,000, submit a Compliance Plan that corrects the errors in its current HMDA compliance system, and submit a Compliance Progress Report to the CFPB within 90 days after the order.

CFPB'S APPROACH

CFPB Director Richard Cordray commented that these actions should "send a strong signal that no mortgage lending institution – whether bank or nonbank – should be able to mislead the public with erroneous data."⁶

The CFPB also published a bulletin that outlines relevant factors that are considered in determining whether to pursue a public enforcement action, including: (1) the size of an institution's HMDA-LAR and the observed error rate; (2) whether the institution self-identified HMDA errors and independently took appropriate action; and (3) whether the institution has been on notice regarding high HMDA-LAR rates and, if so, whether those rates have increased or decreased.⁷

LESSONS FROM THESE ACTIONS?

These actions present several takeaways for mortgage lending professionals:

- The strong nexus between examinations and enforcement actions at the CFPB. Both of these proceedings arose in connection with CFPB examinations, and the Mortgage Master case represented the first CFPB consent order arising from a CFPB examination of a nonbank mortgage lender.

⁴ *Id.* at 5.

⁵ Consent Order, Washington Federal, File No. 2013-CFPB-0005 at 4 (October 9, 2013).

⁶ CFPB Takes Action Against Nonbank and Bank for Inaccurate Mortgage Loan Reporting (October 9, 2013) (<http://www.consumerfinance.gov/newsroom/cfpb-takes-action-against-nonbank-and-bank-for-inaccurate-mortgage-loan-reporting/>).

⁷ CFPB Bulletin 2013-11 (October 9, 2013).

Client Alert

- The importance of compliance with consumer protection laws not thought to be at the “core” of a risk-based compliance program. After all, HMDA and its implementing regulation, Regulation C, set forth reporting requirements but do not provide for private rights of action for failure to comply. This did not discourage the CFPB from seeking administrative relief, in the form of costly civil money penalties and mandatory compliance management requirements.
- The CFPB’s belief that inaccurate data released to the public under requirements of law may be misleading to consumers. The CFPB by its own accounts is a data-driven agency, and its consumer protection functions could be thwarted if mandated data is not accurately reported to the public.
- The CFPB’s continued emphasis on fair lending and anti-discrimination. As Director Cordray stated in the press release, “When financial institutions report inaccurate information, it obstructs the purpose of the Home Mortgage Disclosure Act and makes it more difficult for the CFPB to discover and stop discriminatory lending.”
- HMDA Regulation C amendments are under advisement at the CFPB, per amendments to HMDA in the Dodd-Frank Act. These actions, and other examination activity of the CFPB, may impel the CFPB to tighten up HMDA reporting requirements.

Contact:

Don Lampe

(202) 887-1524

dlampe@mofo.com

Ashley Hutto-Schultz

(202) 887-1683

ahuttoschultz@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We’ve been included on *The American Lawyer’s* A-List for 10 straight years, and *Fortune* named us one of the “100 Best Companies to Work For.” Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.

*Not admitted in the District of Columbia; limited to federal practice; admitted only in North Carolina.