

Client Alert

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Big Data, Big Government – Big Trouble? A Hard Look at the Final HMDA Rule

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If all goes according to plan, financial institutions will report over 250 million data points related to mortgage loan applications and originations in 2018. If the mortgage market returns to the high volumes seen in 2005, that number could top 750 million. This is an estimate of the data that the Consumer Financial Protection Bureau (CFPB) will require financial institutions to collect and report under the new Home Mortgage Disclosure Act (HMDA) Rule. That's right, NSA. Be jealous.

As previously reported, on October 15, 2015, the CFPB released a final rule (the "Rule") amending Regulation C, 12 C.F.R part 1003, which implements HMDA. Shortly thereafter, on October 20, 2015, we published a high-level summary of the Rule, describing the major changes to Regulation C across four broad areas:

- 1) Covered institutions, i.e., the types of institutions required to collect and report HMDA data;
- 2) Covered transactions, i.e., the types of transactions and applications subject to collection and reporting requirements;
- 3) Loan-level data, i.e., the data about transactions that institutions must collect and report; and
- 4) Reporting and disclosure, i.e., the method and frequency of reporting data and making that data available to the public.

This follow-up alert digs deeper into the Rule, while continuing to track its changes according to the four areas listed above. We give particular attention to some of the less-than-intuitive intricacies of the coverage tests for institutions and transactions, as well as to the new and modified loan-level data requirements.

EFFECTIVE DATES

The amendments in the Rule will roll out over four different effective dates between January 1, 2017, and January 1, 2020, but the date on which most of the amendments in the Rule will become effective is January 1, 2018. Most notably, institutions must begin collecting new data for applications they receive and loans they originate on or after January 1, 2018. More detailed information about the effective dates is at the end of this alert.

CHANGES TO COVERED INSTITUTIONS

The headline change to institutional coverage criteria is the "uniform loan-volume threshold." Under the uniform threshold, both depository institutions and non-depository institutions will be covered by Regulation C if, in addition to other existing criteria, they originated at least 25 covered closed-end mortgage loans or 100 covered open-end lines of credit in each of the previous two calendar years. So, shouldn't all institutions that make a

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relatively small number of mortgage loans (or lines of credit) be happy? In a word: No. While the Rule does in fact establish a uniform loan-volume standard for all institutions, it also eliminates two existing coverage criteria for non-depository institutions, resulting in more—potentially far more—non-depository institutions being covered by the Regulation. So, for non-depository institutions, what the Bureau has given with one hand, it has taken away with the other.

Specifically, the Rule removes the current coverage requirement that, in the preceding calendar year, a non-depository institution have originated home purchase loans (including refinancings) equaling: (a) at least 10 percent of the institution's origination volume in dollars, or (b) at least \$25 million. The Rule also removes the current coverage requirement that a non-depository institution: (a) have total assets of more than \$10 million as of the preceding December 31, or (b) have originated at least 100 home purchase loans (including refinancings) in the preceding calendar year. Under the current rule, a non-depository institution must satisfy at least one prong (either (a) or (b)) of both of these coverage criteria in order to be covered. By removing these coverage thresholds for non-depository institutions, the Rule will increase the number of non-depository institutions required to collect and report data. On the other hand, the Rule will decrease the number of depository institutions covered, because the Rule adds the uniform loan-volume threshold to the existing coverage criteria for those institutions.

The bullets below break down the changes to the coverage tests for both groups.

- **Depository institutions.** Current Regulation C requires depository institutions to collect and report HMDA data if they (1) meet certain asset-size criteria (currently \$44 million), (2) meet certain federal relationship criteria (e.g., the institution is insured or otherwise regulated by the federal government), (3) on the preceding December 31, had a home or branch office in a metropolitan statistical area (MSA), and (4) in the preceding calendar year, originated at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one- to four-family dwelling.

Amended Regulation C will retain these criteria but add the uniform loan-volume threshold. For depository institutions, the loan-volume threshold will roll out in two phases:

- **January 1, 2017:** A depository institution will be subject to Regulation C if it meets the existing criteria *and* originated at least 25 home purchase loans (including refinancings) in each of the two preceding calendar years.
- **January 1, 2018:** A depository institution will be subject to Regulation C if it meets the existing criteria *and* originated (a) at least 25 covered closed-end mortgage loans in each of the past two years *or* (b) at least 100 covered open-end lines of credit in each of the two preceding calendar years. (The terms "closed-end mortgage loan" and "open-end line of credit" are defined as part of the new transactional coverage criteria, which also become effective on January 1, 2018. As discussed further below, covered open-end lines of credit by definition are secured by a dwelling.)

Thus, on January 1, 2018, a depository institution will be covered by Regulation C if it originated at least 100 covered open-end lines of credit in each of 2016 and 2017, even if it did not originate 25 closed-end mortgages in each of 2016 and 2017. (This assumes the asset size and other criteria are also satisfied.)

- **Non-depository institutions.** Current Regulation C requires non-depository institutions to collect and report HMDA data if they (1) meet certain mortgage origination volume criteria (i.e., 10 percent of total volume in dollars, or \$25 million), (2) meet certain asset size or additional mortgage origination volume criteria (i.e., \$10

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million in assets or 100 home purchase loan originations), and (3) on the preceding December 31, had a home or branch office in a MSA. As discussed above, amended Regulation C eliminates the existing origination-volume and asset-size criteria and replaces them with the uniform loan-volume threshold.

On January 1, 2018, a non-depository institution will be subject to Regulation C if (1) on the preceding December 31, it had a home or branch office in an MSA, and (2) it originated (a) at least 25 covered closed-end mortgage loans in each of the two preceding calendar years, or (b) at least 100 covered open-end lines of credit in each of the two preceding calendar years. Thus, for example, on January 1, 2018, a non-depository institution will be covered by Regulation C if it has an office in an MSA and it originated 30 closed-end mortgages in each of 2016 and 2017.

The Bureau estimates that the new coverage criteria will *exclude* from coverage approximately 1,400 depository institutions that are currently covered by the rule and *include* about 450 non-depository institutions that are not currently covered by the rule.

CHANGES TO COVERED TRANSACTIONS

Current Coverage Criteria for All Transactions

Under current Regulation C, covered institutions must collect and report data on closed-end, dwelling-secured loans made for home purchase and refinancing purposes. In addition, covered institutions must collect and report data on closed-end loans made for home improvement purposes, regardless of whether the loan is secured by a dwelling. Collecting and reporting data on home-equity lines of credit (HELOCs) is optional. Generally, current Regulation C draws no distinction between loans made for a consumer or business purpose. That is, both consumer-purpose and business-purpose loans are reportable only if they satisfy the Regulation's specific "purpose" test—that the loan is to purchase a dwelling, refinance a dwelling-secured loan, or make home improvements.

New Coverage Criteria for Consumer-Purpose Transactions

Amended Regulation C eliminates the specific purpose-based criteria for consumer-purpose loans and replaces them with a single test: Consumer-purpose transactions are covered by the Rule if they are secured by a dwelling. Whether a transaction is for home purchase, home improvement, or refinancing purposes is no longer relevant to coverage for consumer-purpose transactions; coverage is determined solely by whether the transaction is secured by a dwelling. For example, if a consumer applies for a closed-end, dwelling-secured loan to pay for educational expenses, the transaction will be covered under the amended rule. Likewise, if a consumer applies for a closed-end, dwelling-secured loan to finance personal expenses like a wedding or a vacation, the transaction will be covered under the amended rule. (If a consumer applies for a loan that will be used for business purposes, that transaction is governed by the rules for business credit, discussed below.)

Importantly, the dwelling-secured criterion for consumer-purpose loans eliminates the requirement to collect and report data on unsecured home improvement loans, which are covered under the current rule. Thus, under the amended rule, institutions will no longer have to collect data on unsecured loans.

In addition, open-end lines of credit secured by a dwelling (i.e., HELOCs) will be fully covered by amended Regulation C. Previously, reporting HELOCs was optional. Under the amended rule, covered institutions must

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report consumer-purpose lines of credit secured by a dwelling regardless of the specific purpose of the credit. Thus, if a consumer applies for a HELOC to be used for educational, personal, or any other consumer-purpose, the transaction will be covered under the amended rule.

New Coverage Criteria for Business-Purpose Transactions

The coverage test for commercial- and business-purpose loans and lines of credit is similar to, but narrower than, the test for consumer-purpose transactions. First, like the test for consumer-purpose transactions, business-purpose transactions are covered only if secured by a dwelling. Thus, unsecured transactions will be exempt. Second, open-end lines of credit will be covered. Unlike the test for consumer-purpose transactions, however, the Rule retains the specific purpose test for business-purpose, closed-end mortgages and extends that test to business-purpose, open-end lines of credit.

Thus, a commercial- or business-purpose loan is covered only if it is secured by a dwelling *and* it is made to purchase a dwelling, to refinance a dwelling, or to make home improvements. Likewise, a commercial or business-purpose open-end line of credit is covered if it is dwelling-secured *and* it is made to purchase a dwelling, to refinance a dwelling, or to make home improvements.

Importantly, if a consumer (i.e., an individual) applies for a loan or line of credit and the proceeds will be used for a business purpose, the business-purpose transactional coverage criteria apply. Such a loan or line of credit is not covered unless the specific purpose of the transaction is to purchase a dwelling, refinance a dwelling-secured obligation, or to make home improvements. Commercial or business-purpose loans and lines of credit for other purposes— for example, to start a business—will not be covered, even if they are secured by a dwelling.

The chart below summarizes the changes to transactional coverage.

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SUMMARY OF CHANGES TO HMDA TRANSACTIONAL COVERAGE					
Purpose of Loan HI – Home Improvement HP – Home Purchase R – Refinance		Consumer-Purpose Credit		Commercial- or Business-Purpose Credit	
		Current Rule	Amended Rule	Current Rule	Amended Rule
Closed-End Loan	Dwelling-secured	Reportable only if for HI, HP, or R	Reportable regardless of purpose	Reportable only if for HI, HP, or R	Same as current rule; Reportable only if for HI, HP, or R
	Not dwelling-secured	Reportable only if for HI	Not reportable	Reportable only if for HI	Not reportable
Open-End Line of Credit	Dwelling-secured	Optional	Reportable regardless of purpose	Optional	Reportable only if for HI, HP, or R
	Not dwelling-secured	Not reportable	Not reportable	Not reportable	Not reportable

Additional Considerations Regarding Transactional Coverage

- **“Dwelling”:** The definition of “dwelling” remains unchanged from the current rule. It continues to include second homes, vacation homes, and investment properties.
- **Preapprovals:** Under current Regulation C, covered institutions, at their election, may report requests for preapproval for home purchase loans that the institution approved but that the applicant did not accept. As amended, Regulation C will require covered institutions to report preapproval requests for home purchase loans that were approved but not accepted. Preapproval requests for home purchase open-end lines of credit, home purchase reverse mortgages, and home purchase loans secured by a multifamily dwelling are excluded from the requirement. As is the case under the current rule, requests for preapproval for a purpose other than a home purchase will not be reportable.
- **Coverage:** As discussed above, institutions generally will be covered by Regulation C if, in addition to other criteria, they originated at least 25 covered closed-end mortgage loans or 100 covered open-end lines of credit in each of the previous two calendar years. If an institution satisfies one of these two criteria but does not satisfy the other, the institution need only collect and report data for the type of transactions that qualified the institution for coverage. In this circumstance, institutions are not required to collect data for the other type of transactions.
 - For example, if Lender A originates 50 covered closed-end mortgage loans in each of 2017 and 2018 but only originates 90 covered open-end lines of credit in one or both of those years, then, in 2019, Lender A will only collect and report data on the covered closed-end mortgage loans. Likewise, if Lender B originates 200 covered open-end lines of credit in each of 2017 and 2018 but only

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originates 15 covered closed-end mortgage loans in one or both of those years, then, in 2019, Lender B will only collect and report data on the covered open-end lines of credit.

- While the above exclusion may be helpful to some institutions, the exclusion will also require institutions to monitor their volume of transactions to determine if, in future years, they will need to collect and report data for the excluded transaction type.
- **Agricultural Purpose:** Under current Regulation C, a loan to purchase property for an agricultural purpose is not covered as a home purchase loan, even if a dwelling is situated on the property. Amended Regulation C clarifies that all dwelling-secured loans and lines of credit for an agricultural purpose are excluded from coverage, not just transactions to purchase a home.

CHANGES TO LOAN-LEVEL DATA

The Dodd-Frank Wall Street Reform and Consumer Protection Act mandated that the CFPB revise Regulation C to require the collection and reporting of approximately 13 new data points. The CFPB used its authority under HMDA to require the collection and reporting of twice that number of new data points, in addition to the approximately 25 data points required under the current rule. In total, the Rule may require the collection of up to 54 data points. Of the 54, 10 remain largely unchanged from the current rule, 11 have been modified from the current rule, and 33 are new. (Note that not every data point must be collected for every application or origination. Some, for example, apply only to loans for manufactured homes.)

The data points unchanged by the Rule are: (1) Application Date, (2) Loan Type, (3) Action Taken, (4) Action Taken Date, (5) Property State, (6) Property County, (7) Property Census Tract, (8) Borrower/Applicant Sex, (9) Borrower/Applicant Income, and (10) HOEPA Status.

The two tables that follow summarize data points modified and added by the Rule, respectively.

SUMMARY OF DATA POINTS MODIFIED BY THE RULE			
	Data Point	Description of Modification	Current and Amended Citations
1	Universal Loan Identifier (ULI)	Current Regulation C only requires that the identifier be unique within institution. Amended Regulation C will require an identifier that contains the institution's legal entity identifier (LEI), an internally generated sequence of characters, and a check digit, as prescribed in Appendix C.	Current: 1003.4(a)(1). Amended: 1003.4(a)(1)(i).
2	Loan Purpose	Amended Regulation C adds (i) cash-out refinancing and (ii) purpose other than home purchase, home improvement, refinancing, or cash-out refinancing.	Current: 1003.4(a)(3). Amended: 1003.4(a)(3).
3	Preapproval	Amended Regulation C removes the requirement, at this data point, to indicate whether preapproval resulted in denial or origination. This information is collected in a separate data point.	Current: 1003.4(a)(4). Amended: 1003.4(a)(4).

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4	Occupancy Type	Current Regulation C only requires indication whether property is occupied as principal residence. Amended Regulation C adds use as second residence or investment property.	Current: 1003.4(a)(6). Amended: 1003.4(a)(6).
5	Loan Amount	Amended Regulation C adds specific methods to determine reportable loan amount for closed-end loans, open-end lines of credit, and reverse mortgages.	Current: 1003.4(a)(7). Amended: 1003.4(a)(7).
6	Borrower/ Applicant Ethnicity	Amended Regulation C, Appendix B disaggregates race and ethnicity categories to be completed by the borrower. See separate chart below.	Current: 1003.4(a)(10), Appx. B. Amended: 1003.4(a)(10)(i), Appx. B.
7	Borrower/ Applicant Race	Amended Regulation C, Appendix B disaggregates race and ethnicity categories to be completed by the borrower. See separate chart below.	Current: 1003.4(a)(10), Appx. B. Amended: 1003.4(a)(10)(i), Appx. B.
8	Type of Purchaser	Amended Regulation C removes proposed exclusion of this data point from quarterly reporting. Commentary alters potential selections to include loan participation interests sold to more than one company and swapped covered loans, among others.	Current: 1003.4(a)(11). Amended: 1003.4(a)(11).
9	Rate Spread	Current Regulation C requires disclosure of rate spread only if spread is greater than 1.5 percentage points for first-lien mortgages and greater than 3.5 percentage points for subordinate-lien mortgages. Amended Regulation C removes this condition and requires disclosure of rate spread for all loans subject to Regulation Z, other than assumptions, purchased covered loans, and reverse mortgages.	Current: 1003.4(a)(12). Amended: 1003.4(a)(12).
10	Lien Status	Amended Regulation C removes option for "loan not secured by lien on a dwelling."	Current: 1003.4(a)(14). Amended: 1003.4(a)(14).
11	Reason for Denial	Current Regulation C permits collecting and reporting reason for denial at the institution's election. Amended Regulation C makes collecting and reporting reason for denial mandatory.	Current: 1003.4(c)(1). Amended: 1003.4(a)(16).

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SUMMARY OF NEW DATA POINTS ADDED BY THE RULE

	Data Point	Description of Data Point	New Citation
1	Legal Entity Identifier	Identifier issued to financial institution by endorsed utility or committee.	Amended: 1003.4(a)(1)(i)(A)
2	Construction Method	Whether site-built or manufactured home. This point replaces "Property Type," i.e., whether single-family, multi-family, or manufactured home. "Single-family" versus "multi-family" data is gathered by the new "number of units" point below.	Amended: 1003.4(a)(5).
3	Property Address	Address of the property securing the loan or proposed to secure a loan.	Amended: 1003.4(a)(9)(i).
4	Borrower/Applicant Age	Applicant or borrower's age.	Amended: 1003.4(a)(10)(ii).
5	Credit Score	Credit score relied on in making the credit decision.	Amended: 1003.4(a)(15).
6	Credit Score Model	Name of credit score model used to generate each credit score.	Amended: 1003.4(a)(15).
7	Total Loan Costs or Total Points and Fees	If subject to TILA/RESPA integrated disclosures (TRID), total loan costs; if not subject to TRID, total points and fees as calculated pursuant to Regulation Z.	Amended: 1003.4(a)(17).
8	Origination Charges	If subject to TRID, borrower-paid origination charges.	Amended: 1003.4(a)(18).
9	Discount Points	If subject to TRID, discount points.	Amended: 1003.4(a)(19).
10	Lender Credits	If subject to TRID, amount of lender credits.	Amended: 1003.4(a)(20).
11	Interest Rate	Interest rate applicable to application or covered loan at closing or account opening.	Amended: 1003.4(a)(21).
12	Prepayment Penalty Term	If subject to Regulation Z, prepayment penalty term in months, if any.	Amended: 1003.4(a)(22).
13	Debt-to-Income Ratio	Ratio of debt to income relied upon; no calculation specified.	Amended: 1003.4(a)(23).
14	Loan-to-Value Ratio	Ratio of loan to value relied upon; no calculation specified.	Amended: 1003.4(a)(24).

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15	Loan Term	Scheduled number of months after which obligation will mature or terminate.	Amended: 1003.4(a)(25).
16	Introductory Rate Period	Scheduled number of months until the first date on which the interest rate may change.	Amended: 1003.4(a)(26).
17	Balloon Payment	Whether the transaction includes a balloon payment.	Amended: 1003.4(a)(27)(i).
18	Interest-Only Payment	Whether the transaction includes any interest-only payments.	Amended: 1003.4(a)(27)(ii).
19	Negative Amortization	Whether the transaction includes any negative amortization features.	Amended: 1003.4(a)(27)(iii).
20	Payments Other than Fully Amortizing Payments	Whether the transaction by its terms allows for payments other than fully amortizing payments.	Amended: 1003.4(a)(27)(iv).
21	Property Value	Value of the collateral property or proposed collateral relied upon.	Amended: 1003.4(a)(28).
22	Manufactured Home Type	Whether the covered loan is secured by a manufactured home with land or without land.	Amended: 1003.4(a)(29).
23	Manufactured Home Land Property Interest	Ownership or leasehold interest in land where manufactured home is located.	Amended: 1003.4(a)(30).
24	Total Units	Total number of dwelling units related to collateral property or proposed collateral.	Amended: 1003.4(a)(31).
25	Multifamily Affordable United	Total number of dwelling units related to collateral property or proposed collateral that are income-restricted under federal, state, or local affordable housing programs.	Amended: 1003.4(a)(32).
26	Application Channel	Whether application was submitted directly to institution.	Amended: 1003.4(a)(33)(i).
27	Obligation Initially Payable	Whether obligation was initially payable or would have been initially payable to institution.	Amended: 1003.4(a)(33)(ii).
28	NMLSR Originator ID	Loan originator identifier.	Amended: 1003.4(a)(34).

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29	Automated Underwriting System (AUS)	Name of AUS, if any.	Amended: 1003.4(a)(35)(i).
30	Result Generated by AUS	Result generated by the AUS, if any.	Amended: 1003.4(a)(35)(ii).
31	Reverse Mortgage	Whether the transaction is a reverse mortgage.	Amended: 1003.4(a)(36).
32	Open-end Line of Credit	Whether the transaction is an open-end line of credit.	Amended: 1003.4(a)(37).
33	Business or Commercial Purpose	Whether the transaction is primarily for a business or commercial purpose.	Amended: 1003.4(a)(38).

Additional Considerations Regarding Loan-Level Data

- As is the case under the current Regulation C, not all data points are required for all covered transactions. Here are key exclusions:
 - Data Points Not Required for Business- or Commercial-Purpose Loans:** (1) Rate Spread, (2) Total Loan Costs or Points and Fees, (3) Origination Charges, (4) Discount Points, (5) Lender Credits, and (6) Prepayment Penalty Term.
 - Data Points Not Required for Purchased Loans:** (1) Rate Spread, (2) Credit Score, (3) Credit Score Model, (4) Total Loan Costs or Points and Fees, (5) Prepayment Penalty Term, (6) Debt-to-Income Ratio, (7) Loan-to-Value Ratio, (8) Application Channel, (9) Obligation Initially Payable, (10) Automated Underwriting System, (11) Result Generated by Automated Underwriting System.
- TRID Data:** Four of the new data points must be obtained from the new TILA/RESPA integrated disclosures (TRID) provided to consumers for closed-end mortgage loans. For example, “discount points,” as disclosed pursuant to TRID, must be collected and reported for closed-end mortgage loans.

But, there is complexity to this approach. First, for these four data points, institutions will need to “link” or otherwise match the information disclosed on the TRID form with what is reported under the Rule. In addition, if an institution cures an erroneous disclosure as permitted under Regulation Z, see 12 C.F.R. §§ 1026.19(e)(3)(iv), (e)(4), that revised disclosure must be reported under Regulation C to the extent the revision affects information required under Regulation C. For example, assume an institution discloses that discount points are \$5,000 as part of its TRID disclosures, and the institution records that amount under Regulation C. Assume further that the institution discovers an error in the discount points disclosure under TRID, and it rediscloses the true amount as \$4,000 (and makes all other adjustments required by TRID). In this case, the institution must also correct the data recorded under Regulation C. Furthermore, if an institution reports data quarterly and already reported the amount as \$5,000, it must correct the amount and report \$4,000 in its annual reporting under Regulation C. Even though such corrections may occur infrequently, institutions will have to link or otherwise match any TRID redisclosures to the data they report under Regulation C. This will not likely be a simple task.

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- Ethnicity and Race Data:** The Rule significantly modifies the collection of data related to the ethnicity and race of the borrower/applicant. Amended Regulation C will allow applicants to add details about their ethnicity or race. Thus, additional data may be available about “subcategories” of race and ethnicity, as illustrated in the chart below. Importantly, institutions are not required or permitted to complete these “subcategories.”

SUMMARY OF DISAGGREGATION OF ETHNICITY AND RACE DATA FIELDS UNDER AMENDED REGULATION C		
Data Point	Current Regulation C	Amended Regulation C
Ethnicity	Hispanic or Latino	Hispanic or Latino Applicants are also permitted to provide: <ul style="list-style-type: none"> • Mexican • Puerto Rican • Cuban • Other Hispanic or Latino, with instructions to provide origin, e.g., Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard.
	Not Hispanic or Latino	Not Hispanic or Latino
Race	American Indian or Alaska Native	American Indian or Alaska Native Applicants are also permitted to provide the name of enrolled or principal tribe.
	Asian	Asian Applicants are permitted to also provide: <ul style="list-style-type: none"> • Asian Indian • Chinese • Filipino • Japanese • Korean • Vietnamese • Other Asian, within instructions to provide race, e.g., Hmong, Laotian, Thai, Pakistani, Cambodian.
	Black or African American	Black or African American
	Native Hawaiian or Pacific Islander	Native Hawaiian or Pacific Islander Applicants are also permitted to provide: <ul style="list-style-type: none"> • Native Hawaiian • Guamanian or Chamorro • Samoan • Other Pacific Islander, with instructions to provide race, e.g., Fijian, Tongan.
	White	White

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CHANGES TO REPORTING AND PUBLIC DISCLOSURE

- **The Tool:** Data collected in 2017 (to be collected under the current collection requirements and reported by March 1, 2018) will be reported through an electronic submission tool, which the CFPB will make available at a future date. The landing page for the submission tool, www.consumerfinance.gov/hmda, is operational, but no details are provided yet.
- **Publication:** HMDA public disclosure statements for data collected in 2017 will be made available on the CFPB's website. Institutions will no longer be required to maintain modified Loan/Application registers onsite; instead, institutions must refer interested persons to the CFPB online database.
- **Privacy?:** The CFPB has yet to indicate what information from the new, much larger dataset it intends to make public. The preamble to the Rule includes several scenarios under consideration by the CFPB, including differing levels of access for the public, the press, and academics/researchers. The CFPB expressed its sensitivity to the privacy concerns implicated by gathering and maintaining such large amounts of personal data, including borrower addresses and credit scores. To address these concerns, the CFPB stated that it intends in the coming months to seek public comment on the privacy and data security questions surrounding the new HMDA data.
- **Timing:** Beginning in 2018, institutions will be required to record HMDA data internally within 30 days of the end of the quarter in which final action was taken. FFIEC examination guidance for depository institutions already mandates this practice, but Regulation C has not previously required quarterly recording, and this will be new for non-depository institutions.

Beginning in 2020, institutions with a combined total of 60,000 or more loan originations and applications will be required to report HMDA data on a quarterly basis. (Loan purchases are excluded from the threshold calculation.) For the first three quarters of each year, these large-volume institutions must report the required data within 60 calendar days of the relevant quarter's end. The first submission (for the first quarter of 2020) will be due on May 30, 2020. Fourth quarter data will be submitted with the annual submission, which will continue to be due by March 1 of the following year.

- **Appendix A**, which provides detailed guidance on how to complete the current Loan/Application Register, will be deleted effective January 1, 2019. New instructions will be integrated into the electronic submission tool beginning in 2019. Under current Regulation C, much of the detail surrounding both collection and reporting is contained in Appendix A. The Rule imported much of the collection detail in Appendix A to the regulation text and the commentary.

DETAILS ON THE EFFECTIVE DATES

- **January 1, 2017.** On January 1, 2017, a new coverage test will exclude depository institutions that make a small number of mortgage loans. Specifically, on January 1, 2017, in addition to the existing coverage tests for depository institutions, such institutions will be excluded from coverage if they originated fewer than 25 home purchase loans (including refinancings of home purchase loans) during either of the two preceding calendar years.
- **January 1, 2018.** The bulk of the rule becomes effective on January 1, 2018. As described above, this includes (1) new rules for which institutions are covered, (2) new rules for what types of loans are covered (e.g., only dwelling-secured transactions), (3) new data collection requirements, (4) new data recording requirements, and (5) new electronic data submission requirements. The new collection, recording, and reporting requirements will apply to loans and lines of credit for which any final action is taken on or after January 1, 2018.

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- **January 1, 2019.** Additional amendments related to electronic data submission and public disclosures become effective January 1, 2019. Also, institutions will report the data collected under the new requirements by March 1, 2019.
- **January 1, 2020.** Quarterly reporting begins for large-volume lenders (i.e., lenders reporting a combined 60,000 or more applications and loans in the preceding calendar year) as of the first quarter of 2020. The first data under the new reporting schedule must be reported by May 30, 2020.

WHAT THE RULE MEANS FOR COVERED INSTITUTIONS

Among the largest costs of the new Regulation C will be necessary updates to data-collection systems, including integration of those systems with application, underwriting, disclosure, origination, and purchased-loan intake platforms, as applicable.

In addition, HMDA compliance management takes on a whole new significance. The need for monitoring and controls tied to new HMDA protocols are a few years off, but the preparation curve promises to be steep. More data inevitably means more room for error, as judgments must always be made about specific data. While larger institutions may already be collecting much of the proposed new data (albeit not necessarily in the form the CFPB would now require), that data has never been required to meet the stringent accuracy requirements the bureau applies to HMDA data. Monitoring systems, just like collection systems, will require extensive updates, as will the form and substance of training for employees and management handling HMDA data.

Compliance is particularly important in today's fair lending environment. The CFPB has made clear through recent enforcement actions and guidance that it believes HMDA data is an integral part of fair lending compliance and enforcement, and that reporting erroneous HMDA data can amount to an illegal action that "misleads the public." The simultaneous use of public enforcement orders in reviewing HMDA compliance, coupled with dramatically increased reporting obligations, may heighten risks for HMDA reporters. And of course, reporting all of this new data will inevitably lead to additional scrutiny and the obligation to monitor data for potential fair lending risks. Institutions may need to be prepared to devote additional resources to evaluating potential fair lending matters, particularly where they will be reporting data on a quarterly basis.

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