The CFPB should amend HMDA regulations (Regulation C) to exempt business-to-business loans secured by multifamily property.

BACKGROUND

The Home Mortgage Disclosure Act (HMDA) requires mortgage lenders to collect and report information on specific data points pertaining to their lending practices. The Dodd-Frank Act of 2010 transferred administration of HMDA to the Consumer Financial Protection Bureau (CFPB). It also authorized the CFPB to require the collection of additional mortgage lending information.

The CFPB implements HMDA under "Regulation C." The CFPB finalized the new rules amending Regulation C on October 15, 2015, with most new Dodd-Frank HMDA provisions taking effect on January 1, 2018. We summarize key provisions below. In 2020, the CFPB amended Regulation C to increase the threshold for HMDA reporting from 25 to 100 loans originated in each of the preceding two years, which was effective for 2020 and later reporting years.

Covered Transactions
Financial institutions must report data for all applications, originations (including assumptions), and purchased loans relating to commercial mortgage loans secured by multifamily properties and small business loans secured by a dwelling. Covered institutions must also collect and report data on loan applications that were approved but not accepted.

Covered Institutions
Financial institutions that originate at least 100 covered commercial mortgage loans secured by a multifamily property in each of the two preceding calendar years, and that meet other specifications for either depository or non-depository financial institutions, will be required to collect and report HMDA data.

Privacy Policy
On December 21, 2018, the CFPB released its final privacy guidance governing how it will publicly disclose the 2018 HMDA data reported in early 2019. Specific to multifamily, the Bureau agreed with MBA’s recommendation that the number of units should be disclosed only in bands (5 to 24; 25 to 49; 50 to 99; 100 to 149; and 150 and over) and that the affordable units should be disclosed as a percentage rather than number of units. However, the Bureau did not agree that information from the fields ACTIONS TAKEN and REASONS FOR DENIAL on multifamily loans should be excluded from the public HMDA data; that multifamily data should be disclosed only at the state rather than census tract level; or that multifamily loan size should be disclosed in bins with greater than $10,000 increments.
ADVOCACY AND RECOMMENDATIONS

In our view, business-to-business loans secured by multifamily property should be exempt transactions. They do not involve consumers, so these transactions should fall outside of the CFPB’s statutory consumer-focused mission and objectives and applying HMDA reporting requirements designed with single-family lending in mind to multifamily lending is unduly burdensome.

On May 2, 2019, the CFPB issued an advance notice of proposed rulemaking (ANPR) asking for input on whether the burden of reporting on business-to-business loans secured by multifamily property was justified by furthering the purposes of HMDA. MBA led coalition responses submitted June 11 and October 15, 2019.

The ANPR was a positive development because it appeared to lay the foundation for a possible future rulemaking to exempt business-to-business loans secured by multifamily properties – directly addressing the issue MBA has been bringing to the Bureau’s attention. On the other hand, the change of administration in 2021 has dimmed the prospects for such a change.

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