

# The Home Mortgage Disclosure Act (HMDA) Rule

In 2015, the Bureau of Consumer Financial Protection (CFPB) issued a final rule to amend HMDA that significantly expanded the data points to be collected and reported by lenders. The rule also changed the coverage requirements for institutions, transactions and reporting. In 2018, the CFPB finalized its publication policy for data collected in 2018 and, in response to potentially serious consumer privacy issues, indicated they will open a rulemaking to reconsider various aspect of the 2015 HMDA final rule. MBA supports this review to address consumer privacy issues as well as conduct further cost-benefit analysis of discretionary fields added by the CFPB.

## OVERVIEW

- The new HMDA rule requires reporting on 48 data fields—adding 25 new data fields to the current 23—but also modifying 14 of the existing fields. The new data fields include those mandated by the Dodd-Frank Act, as well as numerous fields added by the CFPB under its discretionary authority.
- Covered institutions are required to collect, record and report information for approved-but-not-accepted preapproval requests for home purchase loans (the collection, recording and reporting of this information is currently optional).
- Lenders were required to collect the new data required by the rule for loan actions on or after January 1, 2018, and to report this data by March 1, 2019 using the CFPB's web-based submission tool for HMDA data reporting.
- On August 24, 2017, the CFPB issued a final rule making technical corrections, in order to clarify and make changes to certain requirements adopted by the 2015 HMDA rule. The 2017 final rule clarified aspects of collecting and reporting race and ethnicity, clarified the definitions of key terms such as “multifamily dwelling” and “Automated Underwriting System” (AUS), and clarified the reporting requirements for home improvement loans secured by mixed-use property. The rule further clarified the range of excluded transactions.
- CFPB has indicated that penalties will not be assessed with respect to good faith errors for data collected in 2018 and reported in 2019, and resubmission of data will not be required unless for material errors.
- On September 7, 2018, the CFPB issued an interpretive and procedural rule implementing the requirements of section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), a recently passed law which amended certain provisions of HMDA. The rule clarifies several issues related to

EGRRCPA's partial exemptions for insured depository institutions and insured credit unions.

- Allows insured depository institutions and insured credit unions covered by a partial exemption the option to report exempt data fields as long as they report all data fields within any exempt data point for which they report data;
  - Counts loans and lines of credit that are otherwise HMDA reportable in determining eligibility for the partial exemptions;
  - Clarifies which of the data points in Regulation C are covered by the partial exemptions;
  - Designates a non-universal loan identifier for partially exempt transactions for institutions that choose not to report a universal loan identifier; and
  - Clarifies the Act's exception to the partial exemptions for negative Community Reinvestment Act examination history.
- On December 21, 2018, the CFPB finalized its policy guidance on the disclosure of HMDA data. However, the CFPB simultaneously announced that it intends to conduct a separate notice-and-comment rulemaking in 2019 to consider additional comments on what HMDA data will be disclosed in future years.

## IMPACT

- The HMDA rule, in its current form, brings major challenges to the residential mortgage industry, including:
  - Extensive implementation costs for systems and business process changes immediately on the heels of the implementation of the TILA-RESPA Integrated Disclosure (TRID) rule;
  - Privacy and data security concerns, because the new data set contains confidential information—such as credit scores—which if improperly released could cause significant harm to borrowers' claims against lenders, and even undermine homeownership.

## MBA'S POSITION / NEXT STEPS

- As MBA urged, the CFPB announced its intention to open a new rulemaking to reconsider aspects of the 2015 HMDA final rule. Once published, MBA will engage its members to prepare comments for the proposal.
- MBA continues to seek an exemption from HMDA reporting for business-to-business loans secured by multifamily properties.
- MBA will continue to urge the CFPB to provide authoritative, written guidance—developed with stakeholder input—on difficult implementation issues as they arise. The CFPB's requests for information are at least in part a result of MBA's efforts.
- In addition to written guidance, MBA has requested that the CFPB also regularly engage with the industry to understand and address implementation concerns as they arise.