Regulation C – HMDA Final Rules

In 2015, the Consumer Financial Protection Bureau (CFPB) issued a new final rule amending Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). The rule adjusts the types of institutions and types of transactions that are subject to Regulation C. It also changes the information that covered institutions are required to collect, record and report; and adjusts the processes for reporting and disclosing the data. In August 2017, the CFPB issued a final rule to make technical corrections, provide clarifications, and to temporarily adjust the open-end line of credit collection and reporting threshold. In October 2019, a final rule extended the temporary threshold of 500 open-end lines of credit for an additional two years. A new final rule, published in May 2020, included amendments that, when effective, will adjust these thresholds further.

Updated Alert Date: May 21, 2020

Status: 2015/2017 Rules - Key Effective Dates Range - 01/01/2017 to 01/01/2020
2019 Rule Effective 01/01/20
2020 Rule Effective Date 07/01/2020, except for amendatory instructions 5, 6, and 7, which are effective 01/01/2022

Links:
Final Rule - 10/28/2015
Institutional Coverage - 01/01/2017 - 12/31/2017
Institutional Coverage - 01/01/2018
Final Rule - 08/23/2017
Final Rule - 10/10/2019
Final Rule - 05/12/2020
Institutional Coverage - 07/01/2020 - 12/31/2021
Institutional Coverage - 01/01/2022

Pursuant to the Dodd-Frank Act, the CFPB issued a final rule amending Regulation C, implementing HMDA requirements. Besides modifying institutional and transactional coverage, the rule adds new reporting requirements and provides clarifying information. In August 2017, the CFPB issued a final rule to further amend Regulation C which helps clarify and support 2018 requirements and provides some relief for certain institutions that originate a low volume of open end lines of credit. Some highlights from the **2017 rule** include the following:

- **A Temporary Increase to the Open-End Threshold** – The threshold for collecting and reporting data on open-end lines of credit is increasing from **100** to **500** for 2018 and 2019. This means that institutions originating fewer than 500 open-end lines of credit in either of the two preceding years will not be required to begin collecting such data until January 1, 2020. *However, see information on the 2019 rule's threshold extension as noted below.*

- **Adjustments and Clarifications to Definitions** – Besides adjusting the definition of "financial institution" to account for the updated open-end threshold, other definitions were clarified. "Closed-end mortgage loan" was clarified with commentary on dwelling-secured extensions of credit, including a reference that installment land sales contracts, depending on the circumstances, may or may not involve extensions of credit. Other terms, including but not limited to "multifamily dwelling," were also clarified.

- **Exclusions and Optional Reporting** – The new final rule creates a reporting exclusion for certain transactions related to New York Consolidation, Extension and Modification Agreements (CEMAs) and provides clarification of transactions that are excluded as temporary financing. The rule also addresses the option of reporting loans that are otherwise excluded.

- **Other Adjustments** – The new rule also includes adjustments and corrections to Appendix B (form and instructions for data collection) and Appendix C (procedures for generating a check digit).

The **2019** new final rule, among other things, extends the Bureau's 2017 rule's temporary increase of 500 open-end lines of credit threshold (see 1st bullet above) to January 1, 2022. *NOTE: Information on the 2019 final rule's provisions related to partial exemptions is included in a separate Compliance Alert.*

In **May 2020,** the Bureau published a new final rule that adjusts the regulation's institutional and transactional coverage thresholds, as follows:

- **Effective July 1, 2020** – the closed-end coverage threshold is raised from 25 to 100 closed-end mortgage loans. See information below that relates to the definition or "financial institution," as well as the impact on transactional coverage.
- **Effective January 1, 2022** - the open-end coverage threshold is lowered from 500 to 200 open-end lines of credit. *This adjustment is timed to become effective when the temporary threshold of 500 open-end lines of credit (as implemented by the 2017 rule and extended by the 2019 rule) expires.*

NOTE: *Compliance stakeholders should be aware that the definition of "financial institution" in 1003.2(g) includes criteria that is based on* ***"each"*** *of the two preceding calendar years. Stakeholders should also be aware that the citation related to "excluded transactions" in 1003.3(c) includes criteria that is based on* ***"either"*** *of the two preceding calendar years.*

What Are The Significant Effective Dates For HMDA?

2016	*No new regulatory requirements go into effect. Collect 2016 data as required by current rule * (for reporting in 2017)*	*Submit 2015 data as required under current rule * & submit to FRB*
2017	*Jan. 1 – Effective date for excluding "low volume" institutions. Collect 2017 data as required by current rule * (for reporting in 2018)*	*Submit 2016 data as required under current rule * & submit to FRB*
2018	*Jan. 1 – Effective date for most provisions related to institutional & transactional coverage, and data collection, recording, reporting & disclosure. Collect 2018 data as required under new rule ** (for reporting in 2019)*	*Submit 2017 data as required under the current rule * & submit to CFPB*
2019	*Jan. 1 – Effective date for changes to enforcement provisions & add'l amendments to reporting provisions. Collect 2019 data as required under new rule ** (for reporting in 2020)*	*Submit 2018 data as required under the new rule ** & submit to CFPB*
2020	*Jan. 1 – Effective date for quarterly reporting requirements. Collect 2020 data as required under new rule ** (for reporting in 2021 and, if institution is a quarterly reporter, 2020) Jul. 1 – Closed –end mortgage threshold increases from 25 to 100.*	*Submit 2019 data as required under the new rule ** & submit to CFPB*
2021	*Collect 2021 data as required under Reg. C (for reporting in 2022 and, if a quarterly reporter, 2021)*	*Submit 2020 data to the CFPB, as required under. Reg. C*
2022	*Collect 2022 data as required under Reg. C (for reporting in 2023 and, if a quarterly reporter, 2022) Jan. 1 – Open-end line of credit threshold adjusts from 500 to 200*	*Submit 2021 data to the CFPB, as required under. Reg. C*

** Data collected and reported under Reg. C, prior to amendments effective on 1/1/18.*
*** Data collected and reported under Reg. C, as amended by new final rules issued in October 2015 & August 2017.*

How Is The Definition of "Financial Institution" Changing?

The new rule changes institutional coverage of the regulation. Currently, institutions covered include depository institutions that originate one first-lien home purchase loan or refinancing secured by a one- to-four-unit dwelling and that meet other criteria for a "financial institution." Under this new rule, the regulation adopts a **loan-volume threshold**, which changes coverage of the regulation.

- **Effective 01/01/2017 through December 31, 2017** - The loan-volume threshold test refers to an institution having originated at least **25 home purchase loans** (including refinancings of home purchase loans) in each of the previous 2 calendar years. See the link above which further describes institutional coverage beginning January 1, 2017.

- **Effective 01/01/2018** – The loan-volume threshold test is readjusted and refers to an institution having originated at least **25 closed-end mortgage loans** or at least **500 open-end lines of credit** in each of the 2 preceding calendar years. See the links above which further describe institutional coverage beginning January 1, 2018.

- **Effective 07/01/2020** – The closed end coverage threshold is being amended from **25** to **100 closed-end mortgage loans** in each of the two proceeding calendar years. *See the link above which further describes institutional coverage beginning July 1, 2020.*

- **Effective 01/01/2022** – The open-end lines of credit threshold is being amended from the **temporary threshold of 500 open-end lines of credit** to **200 open-end lines of credit** in each of the two preceding calendar years. *See the link above which further describes institutional coverage beginning January 1, 2022*.

In summary, a bank; savings association; or credit union will be subject to Regulation C if it meets all of the regulation's criteria, including the loan volume threshold tests, as that criteria becomes effective. *There may be different criteria for nondepository institutions, which are not discussed in this Alert.*

How Is Transactional Coverage Changing?

The new HMDA rule modifies the types of transactions that will be covered by the regulation. Effective January 1, 2018, the regulation adopts a "dwelling-secured" standard for transactional coverage. When this becomes effective, "covered loans" will generally include:

- **Closed-end mortgage loans** – which refers to an extension of credit, secured by a lien on a dwelling, and not an open-end line of credit; and

- **Open-end lines of credit** – which refers to an extension of credit, secured by a lien on a dwelling, and an open-end plan in which:
  - the lender reasonably contemplates repeated transactions;
  - the lender may impose a finance charge from time-to-time on an outstanding balance; and
  - the amount of credit may be extended to the borrower during the term of the plan is generally made available to the extent that any outstanding balance is repaid.

The CFPB has provided some guidance and clarifications that help apply this standard. For example:

- An institution may rely on Regulation Z to determine whether they have an **open-end line of credit**. A **business-purpose** transaction that is exempt from Regulation Z, but is otherwise open-end credit under the regulation, would be an open-end line of credit under the HMDA rule if it is an extension of credit, secured by a lien on a dwelling and is not an excluded transaction.

- An "**extension of credit**" generally requires a new debt obligation. A loan modification, where the existing debt obligation is not satisfied and replaced is not generally a "covered loan." Also, individual draws on an open-end line of credit are not separate extensions of credit. NOTE: The rule does provide 2 exceptions to the standard that an "extension of credit" involves a new debt obligation. Those exceptions are for: a) assumptions and b) certain New York State supplemental mortgages.

Effective in 2018, the new rule does contain a lengthy list of **excluded transactions**, which includes some existing categories of excluded transactions, clarifications for some categories, as well as some new categories of excluded transactions. Of note, the following are included on the list of excluded transactions:

- A closed-end mortgage loan if the institution originated fewer than 25 closed-end mortgage loans in each of the 2 preceding calendar years.

- An open-end line of credit if the institution originated fewer than 500 open-end lines of credit in each of the 2 preceding calendar years.

Lenders should also be aware that the new rule does expand the types of **preapproval requests** that are reported, but also excludes certain requests for some types of loans from the scope of reportable preapproval requests. First, the reporting of preapproval requests that are approved but not accepted will be **required**, instead of optional. Second, preapproval requests regarding home purchase loans to be secured by multifamily dwellings and preapproval requests for open-end lines of credit and reverse mortgages are not reportable.

Effective with the 2020 rule, transactional coverage is impacted by the new thresholds for closed-end mortgage loans, effective July 1, 2020, and open-end lines of credit, effective January 1, 2022. Impact of these amendments on transactional coverage can be found in Reg. C 1003.3(c), excluded transactions, which refers to the number of closed-end mortgage loans and open-end lines of credit, in "**either"** of the two preceding calendar years.

What Is Changing With Regard to Reportable Data?

The new HMDA rule significantly revises the data that must be collected, recorded and reported, effective January 1, 2018. The data includes some existing data points, modified data points and new data points. An institution will collect, record and report the new and modified data points under the new rule for covered applications and loans on which **final action** is taken **on or after January 1, 2018**. This also applies to **purchases** of covered loans that occur **on or after January 1, 2018**.

The HMDA rule **adds** new data points for:

- Property Address
- Applicant or borrower age
- Credit score
- Total loan costs or total points and fees
- Origination charges
- Discount points
- Lender credits
- Interest rate
- Prepayment penalty term
- Debt-to-income ratio
- Combined loan-to-value ratio
- Loan term
- Introductory rate period
- Non-amortizing features
- Property value
- Manufactured home secured property type
- Manufactured home land property interest
- Total units
- Multifamily affordable units
- Application channel
- MLO NMLSR identifier
- Automated underwriting system information
- Reverse mortgage indicator
- Open-end line of credit indicator
- Business or commercial purpose indicator

What Else Should You Know?

- The CFPB is developing a new web-based submission tool for reporting HMDA data. Covered institutions will use that new tool for reporting data beginning in 2018.
- Beginning in 2019, covered institutions will report the new required dataset, using the electronic submission tool and revised procedures.
- Beginning in 2020, the rules require quarterly reporting for covered institutions that reported a combined total of at least 60,000 applications and covered loans in the preceding calendar year. The first quarterly submission will be due by May 30, 2020.
- The new rule also contains some disclosure changes. Beginning in 2018, covered institutions will no longer be required to provide a disclosure statement or a modified Loan/Application Register (LAR) upon request. Instead, institutions will reply to requests that its disclosure statement and modified LAR are available on the CFPB's website. Sample language is provided. The rule also contains a requirement that the posted notice of availability of data must convey that the institution's data is available on the CFPB's website. Sample language is provided.

Recommendations for Next Steps

***Early Considerations**: Review and apply the definition changes of "financial institution" (effective 1/1/17 and 1/1/18) to determine institutional coverage. Assess which of the institution's products and services involve covered loans. Consider this information, as well as new requirements, and begin formulating the impact at your institution. Consider departments impacted, staffing, resources, reporting volume changes, systemic impacts and vendor / service provider impacts.*

By January 1, 2017:

1. Review your HMDA-related policy as it relates to applicability. Update, as needed, to reflect institutional coverage and the new definition for "financial institution." Collect and report HMDA data as required. *Note: The CFPB refers to this date and change as one in which low volume depository institutions may be excluded from coverage*.

By January 1, 2018:

1. Review your HMDA-related policy as it relates to applicability. Update, as needed, to reflect new institutional and transactional coverage, as well as collection, recording, reporting and disclosure of data.
2. Review HMDA procedures and resolve inconsistencies caused by the final rule. This should include:
   a. Identification of covered transactions.
   b. Collection and recordation of required data points.
   c. Procedures for electronic submission of data.
   d. Appropriate responses to requests for HMDA data (FFIEC disclosure statement and modified LAR).
3. Consider the implementation of additional controls that support the accuracy of recorded data. This may involve a back- end, independent review of data and source material and may be temporary or ongoing.
4. Ensure your posted notice of availability of HMDA data references availability of the institution's HMDA data on the CFPB's website.
5. Work with service providers and vendors that will be impacted by this change to ensure systems are designed to support compliance.
6. Train applicable staff on the requirements of the final rule and internal policies and procedures. Ensure this includes lending staff that have a role in providing application and loan information, HMDA operations staff that are involved in the collection and recordation of data, as well as compliance staff that support the process.

By January 1, 2019:

1. Review your HMDA-related procedures and adjust for changes regarding reporting requirements. Beginning in 2019, institutions are required to submit the new dataset electronically, in accordance with the 2015 rule.

By January 1, 2020:

1. Determine whether your institution is a larger-volume reporter and is required to report data quarterly. If so, adjust procedures and implement processes for managing the new quarterly reporting provisions.

By July 1, 2020:

1. Review the 2020 Rule and determine impact of the new closed-end mortgage loan threshold and as needed, adjust HMDA processes.

By January 1, 2022:

1. Review the 2020 Rule and determine impact of the new open-end line of credit threshold and as needed, adjust HMDA processes.