The Home Mortgage Disclosure Act

May 2016

Introduction

The Home Mortgage Disclosure Act, better known as HMDA, requires a lender to publicly disclose information about its mortgage-related loans. Enacted in 1975, the intent of HMDA is to help determine whether financial institutions are serving the housing needs of their communities. HMDA originally focused on identifying redlining practices, but in the years that followed, it expanded its fair lending oversight, and became a cornerstone for fair lending reviews. Over the next few years, recent large-scale changes to the types of data reported and utilized are intended to further HMDA's honorable goal.

Although almost no one would argue with the intent of the HMDA rules, many in compliance would agree it can be one of the biggest headaches. The sheer number of reportable fields – each with their own nuances – makes mistakes more commonplace. The recently issued final rule greatly expands the number of reportable fields.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) required specific changes to HMDA. Dodd-Frank also transferred rule-making authority to the CFPB to implement those changes and any others it deemed necessary. The CFPB issued the HMDA final rule on October 15, 2015. These changes greatly increased the number of fields required by HMDA reporting. The reporting fields now include those mandated by the Dodd-Frank Act itself, as well as several that the CFPB felt were necessary. The goal of the rule is to bring more transparency to mortgage lending to further HMDA's purpose of ensuring institutions are not engaging in any discriminatory behavior.

The new rules simplify certain aspects of HMDA, but the sheer number of reportable fields is daunting and these changes should not be taken lightly.

Changes in Institutional Coverage

The recent changes will be implemented at different times over the next few years. The first changes affect which institutions are required to report HMDA data, and will come in two phases. The scope of institutions subject to HMDA will first narrow in 2017. At that time, a financial institution must meet all coverage criteria for depository institutions under the current rules (asset size, location, loan activity, and federally-related test), and make at least 25 home purchase loans, including a refinancing of home purchase loans, in both 2015 and 2016. A for-profit mortgage lending institution will have to meet the location test as well as a loan volume or amount test, and loan volume or asset size.

In January 2018, the definition of financial institution will be revised with the new rule defining depository institutions and non-depository financial institutions. In the new rule, all reporters are either a depository institution or a non-depository financial institution. A depository institution is a bank, savings association, or credit union. In 2018, it will be subject to HMDA reporting if it meets the asset size, location, federally-related test, loan activity test, and loan volume threshold. A non-depository financial institution is a for-profit mortgage lending institution other than a bank, savings association, or credit union. For non-depository financial institutions, it will have to meet the location and loan volume threshold tests.

Changes to Reportable Loans/Applications

Once you determine you are a HMDA reporter, the new rules apply to applications taken on or after January 1, 2018.

The new requirements simplify what qualifies as a HMDA loan by adopting a straightforward dwelling-secured test to determine if an application is HMDA reportable. Essentially, a consumer-purpose loan that is secured by a dwelling is HMDA reportable. The current purpose test is irrelevant for consumer loans, making home improvement loans that are not dwelling-secured no longer reportable.

The new rule does not differentiate between open-end and closed-end consumer loans for the dwelling-secured applicability test, meaning HELOCs are no longer optional reporting. In addition, the new dwelling-secured test makes both home equity loans and home equity lines of credit reportable regardless of the purpose. In the past, the purpose provision of home equities was an area of confusion as only certain home equity loans were reportable. Now, as long as the home equity loan or line of credit is a consumer purpose, it will be reported.

For commercial loans, the new rule adopts the dwelling-secured standard of the consumer loans, while retaining the current purpose test. If a commercial loan is for the purpose of home purchase, home improvement, or refinancing AND secured by a dwelling, it is reportable.

Changes were also made to when pre-approval requests are reported. The new rule removes the optional reporting of pre-approval requests that are approved, but not accepted, making these required reporting. Pre-approval requests for loans that are secured by multifamily dwellings, open-end lines of credit, and reverse mortgages, however, are not reportable.

Loan Purpose

There are some slight changes to the loan purpose category. The definition of refinance has been streamlined. A refinance currently is “any dwelling-secured loan that replaces and satisfies another dwelling-secured loan to the same borrower.” “To the same borrower” is interpreted to mean that any applicant on the original loan must also be on the new loan. If the original loan had joint applicants, the new loan must also include those same joint applicants. The new rule removes that requirement, and a loan still meets the definition of a refinance if one borrower is on both the new and old loans.

In addition to the change in definitions, two additional categories were added to the loan purpose category; cash-out refinance and other. Since the new rule moved away from the purpose test to a dwelling-secured test, there will be loans that do not meet the current categories of purchase, home improvement, and refinance, and will thus be reported as “other.” The field is reported numerically, and there is no need to specifically identify the purpose. Because risk levels differ between a refinance and a cash-out refinance, there is now a way to differentiate.

Loan Amount

The major change to the loan amount category will affect HELOCs. Currently, HELOCs are optional reporting, but when an institution opts to report a HELOC, it only reports the amount that is used for a HMDA-reportable purpose, and not the portion of the line that may be used for a non-HMDA purpose (such as debt consolidation). Since the purpose test is no longer relevant for consumer loans, the full amount of the line is reported.

Property Type

A number of changes are occurring in the “property type” field. Property type is currently recorded by indicating whether the loan application is for a one-to-four family home, a manufactured home, or a multifamily dwelling. This exact field is no longer reported. Instead, there are additional fields that allow an institution to report more in-depth information about the property. New fields include the construction method (Site-built or Manufactured Home) and the number of units in the dwelling. There are also separate, more detailed fields if the property is either a manufactured home or multifamily property. If the property is a manufactured home, an institution will have to report whether it includes the land, as well as information regarding the land property interest. If the property is multifamily, the number of affordable units will need to be reported.

Owner Occupancy

The current HMDA rules require an institution to report whether the dwelling securing the loan is owner occupied as a principal dwelling, not owner occupied as a principal dwelling or not applicable. The new rules remove the NA option from the field, due to the fact that all reportable loans must be dwelling-secured. It also requires more specific reporting as to what constitutes non-owner occupied. The non-owner occupied category has been split into two options, second residence or investment property.

Lien Status

Since all reportable loans must be dwelling-secured, the lien status field has been amended to remove the option for not secured by a lien. In the new rules, you must also report the lien status on purchased loans, which is currently not reported. Therefore, the only options that remain for this field are secured by a first lien, or secured by a subordinate lien.

Borrower Information

To ensure institutions are not discriminating, HMDA requires that government monitoring information (GMI) be collected on all natural persons. GMI includes the race, ethnicity, and sex of both the applicant and the co-applicant. Although this concept has not changed, the categories have been expanded to include both aggregate categories and subcategories. For example, rather than ethnicity allowing the applicant to choose only the broad category of Hispanic or Latino, the ethnicity category will now allow applicants to further identify themselves as Mexican, Puerto Rican, Cuban, or Other Hispanic or Latino with a place to write-in the appropriate ethnicity.

The applicant must be allowed to first self-identify, but cannot be required to provide this information. If the application is taken in-person, this information is still collected based on visual observation or surname. In doing so, the financial institution will only use the aggregate category. For example, if the applicant does not wish to supply their ethnicity information, the loan officer would indicate the applicant is Hispanic, but would not further identify the applicant as Mexican. Only an applicant may identify using a subcategory. Although collecting information based on visual observation or surname is not new, there is a new reportable field for you to report separately how the information for race, ethnicity, and sex was collected.

The new rules also add age to the LAR to help further identify the borrower(s). Age will be reported as a whole number based on the date of birth provided on the application. So if the application shows the date of birth on 1/3/1980 for an application taken on 1/2/2018, the age is reported as 37.

Loan Information

In addition to the amendments to current fields that have already been discussed, there are a number of new fields that will need to be captured and reported to provide more information about the characteristics of the borrower and the loan.

Underwriting

The new rule adds a number of fields relating to underwriting factors that were relied upon in making the credit decision including:

- Credit score or scores
- Name/version of the credit scoring model (Equifax Beacon 5.0, Fair Isaac, FICO Risk Score Classic 04, etc.)
- Debt-to-income ratio
- Name of the automated underwriting system information that is used to evaluate the application

Loan Type/Features

In addition to the borrower specific information, new fields have also been added relating to the specific characteristics of the loan. You will now need to indicate on the LAR (in separate fields) if the loan is a reverse mortgage, open-end line of credit, or made primarily for business purposes. The new rules also require details regarding the specific loan type and features – if applicable – including fields for:

- Loan term
- Prepayment Penalty Term
- Interest Rate
- Intro Rate Period
- Balloon payment
- Interest-only payments
- Negative amortization
- Other non-amortizing features

Closing Disclosure Information

For loans subject to Regulation Z, the following information from the Closing Disclosure must be reported:

- Total loan costs
- Total points and fees
- Origination charges
- Discount points
- Lender credits

Lender Information

To better identify how the application was sourced and who handled the application, an institution must also separately report how the application was submitted, whether it was initially payable to your institution, the mortgage loan originator identifier, the unique loan identifier, and the application channel.

Property Information

Finally, the new rules require much more detailed reporting on the dwelling that secures the loan, including the property value and the combined loan-to-value ratio that was relied upon in making the credit decision.

Data Submission Requirements

A reporting institution will still report HMDA data to its regulator as it always has, but depending on the size of your institution the frequency of this reporting may change. For certain institutions that reported a combined total of 60,000 applications and covered loans in the preceding calendar year, beginning May 30, 2020 the LAR must be submitted to regulators quarterly. There will be somewhat of a grace period for any inaccuracies or omissions on the quarterly reporting as long as the institution has made a good faith effort to report accurately, and corrected the mistake on the annual LAR. Errors on quarterly reports will likely not have the same repercussions and negative implications as resubmission currently does.

For all other institutions, the annual March 1st submission remains, although a web-based submission tool must be used for reporting.

Disclosure Requirements

An institution is no longer required to provide HMDA disclosure statements and the modified LAR upon request. Institutions should instead direct the requestor to the CFPB's website, where both disclosure and modified LAR will be available. Branch signage is affected by this change, and the notice posted at the institution will need to direct the consumer to the CFPB's website.

Conclusion

HMDA is a necessary and important regulation. It provides transparency into how financial institutions are serving their communities, and works to ensure that no discriminatory behavior is occurring. Prior to the amendments, some fair lending information was masked. The data could supply approval/denial rates based on race, ethnicity, or sex, but the data was often too general, and could give the appearance of a fair lending issue where there was none. The new fields attempt to shed light on the data and provide more detailed information to determine whether the difference in the decision or pricing was justified based on a reason other than a discriminatory one. Regulators will have access to this information, but it is unclear what information will be included on the public LAR. Therefore, it is also unclear how much transparency will be provided to community groups and other consumer-based organizations that request HMDA data.

The problem with transparency is that too much is not always a good thing. Although transparency is good from a fair lending perspective, the same would not hold true from a privacy perspective. There will have to be a balance of the information that is reported on the LAR and what is made available to the public to ensure consumer privacy is protected. If all the required fields are made public, it would not be difficult to ascertain the true identity of the applicant, which in turn would reveal very personal information available to anyone with the Internet. The CFPB has not issued what the modified public LAR will look like yet, but it will need to toe the line between fair lending and privacy.

Only time will tell the effectiveness of the HMDA changes, but the hope is that the changes will provide greater transparency in mortgage lending, and still protect consumer information.

Action Items

Prior to 2018, the amount of planning involved to accommodate the magnitude of changes should be addressed sooner rather than later. Some areas to think about:

- Review timelines to see what changes apply to your institution.
- Determine what departments, employees, and systems are going to be affected by the changes.
- Create a project plan to implement necessary changes.
- Revise government monitoring collection forms for use beginning January 1, 2018.
- Revise branch signage to reflect change in disclosure requirements.
- Review what system changes need to be made. Try to automate as much as possible.
- Update HMDA checklists and job aids to reflect the new fields and amendments to current fields.
- Review the resources available from the CFPB on their HMDA implementation page and check frequently to ensure no changes to the final rule have occurred.

  http://www.consumerfinance.gov/regulatory-implementation/hmda
- Train your board, senior management, and all applicable staff. Ensure that upper management is abreast of the changes, and what will need to happen before 2018.

Training all relevant staff is of vital importance to any institution's plans to deal with the upcoming HMDA changes. BAI is committed to providing resources beneficial to our 1,700+ customer institutions' preparation for the coming changes to Home Mortgage Disclosure Act (HMDA) reporting requirements. In addition to receiving complimentary expert insights, webinars, and whitepapers, BAI customers will have access to updated and new courseware well in advance of the new HMDA reporting requirements taking effect.

For additional information on HMDA please view the BAI Webinar: Preparing for Enhanced HMDA Data Collection and Reporting and visit BAI.org.