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SOURCE LINE

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CPAs & BUSINESS ADVISORS

NOT TOO EARLY TO THINK ABOUT HMDA

Enacted in 1975, the Home Mortgage Disclosure Act was designed with two purposes in mind. The first of these was to assist the public and government officials in determining whether or not financial institutions were serving the housing needs of their communities. Second, HMDA acts as a data resource to help officials direct public sector investments in ways that will encourage private investment in areas of need.

Later, Congress expanded the scope of the rule to include racial characteristics, gender and income information of applicants and borrowers. The purpose of this expansion was to better assist regulatory authorities in detecting redlining by banks or other violations of the Equal Credit Opportunity Act or Fair Housing Laws. The Dodd-Frank Act transferred authority over the regulation to the Consumer Financial Protection Bureau (CFPB) and directly amended the rule to add new data points.

New Rule, New Criteria for Determining if Your Institution is Covered

New qualifications for what creates a HMDA reportable institution go into effect January 1, 2017. A community bank that meets all of the following criteria between Jan. 1 – Dec. 31, 2017, will be a HMDA reportable institution:

1. The preceding December 31 assets were above the HMDA reporting threshold (currently \$44 million, subject to change annually)
2. The preceding December 31 the bank has a branch or home office in a Metropolitan Statistical Area (MSA)
3. The preceding year originated at least one first lien 1-4 family secured home purchase loan or refinanced a home purchase loan

4. The institution is federally insured or regulated; the mortgage loan was insured, guaranteed or supplemented by a federal agency or it was intended for sale to Fannie Mae or Freddie Mac

5. Each of the two preceding calendar years the institution originated at least 25 home purchase loans or refinances of home purchase loans

The qualifications for a HMDA reportable institution are expanded further in 2018. Effective January 1, 2018, if a community bank has met all five criteria above and/or originated more than 100 open-end lines of credit secured by a dwelling in each of the two preceding calendar years, then it will become a reportable institution. The 25 closed-end/100 open-end qualifiers operate independent from one another, meaning a bank will report closed-end mortgages only if it meets the 25 mortgages per year for each of the two preceding calendar years. A bank will report open-end lines of credit only if it originates 100 or more for each of the two preceding calendar years.

Increased Scope

The new rule expands the types of transactions that are reportable under the regulation. Beginning January 1, 2018, the following types of transactions will be included in reporting:

1. Open-end lines of credit secured by a dwelling
2. Home improvement loans secured by a dwelling (unsecured home improvement loans will not be reported)
3. Business-purpose loans that are secured by a dwelling if the funds are used for home improvement, home purchase or refinancing

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COMPLIANCE HELPLINE Q&A

COMPLIANCE HELPLINE AVAILABLE TO CLIENTS

Clients appreciate our Compliance Helpline, which is staffed by compliance professionals who have an average of 18 years industry experience. These professionals respond to questions immediately, or within 24 hours if research is needed.

The Compliance Helpline can be reached Monday through Friday 8 a.m. – 5 p.m. at:

855.239.8676
compliancehelp@eidebailly.com

Is it required to modify the Loan ID number when issuing a revised loan estimate due to a valid changed circumstance?

Section 1026.37(a)(12) requires that the creditor disclose a loan identification number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled as “Loan ID #.” Because the number must allow for the identification of the particular credit transaction, a creditor must use a unique loan identification number, i.e., the creditor may not use the same loan identification number for different, but related, loan transactions (such as different loans to the same borrower). Where a creditor issues a revised Loan Estimate for a transaction, the loan identification number must be sufficient to enable identification of the transaction pursuant to § 1026.37(a)(12).

Am I out of tolerance if a zero tolerance fee is rounded down to the nearest dollar on the Loan Estimate, resulting in a higher fee on the Closing Disclosure?

No. Per Section 1026.38(i) of the Truth in Lending Act, if the difference is strictly due to rounding, it is not a violation and you would answer “NO” to the “Did this change?” question on the Closing Disclosure.

Is a loan in a spouse’s name only excluded from the \$100,000 limit of loans to executive officers that are not for education or the purchase/construction/improvement/maintenance of a first lien secured dwelling?

A loan to an immediate family member (spouse or child) of an insider is not subject to Regulation O if the borrower is credit worthy, has the ability to repay the debt on their own, and the insider receives no economic benefit from the proceeds of the loan. If you can clearly demonstrate this, it can be excluded from the total loans outstanding to that insider. ■

We recommend you refer to your specific state’s statutes for requirements required in your state.

HMDA—continued from page 1

(this does not include agricultural-purpose transactions, even if they are dwelling secured)

Currently, for those banks that have a pre-approval program, reporting applications that are approved but not accepted is optional. Effective January 1, 2018, those banks with a preapproval program must report data for applications that are approved but not accepted.

Data Submission Process

The new rule has increased the number of data points from 26 to 48. It modifies existing data points as well. Collection of the new and modified data fields begins January 1, 2018. For an outline of the new and modified data points, refer to the CFPB’s Summary of Reportable Data found at www.consumerfinance.gov/regulatory-implementation/hmda/.

Disclosure Process

The CFPB is in the process of developing a new web-based data submission platform which will replace the current FFIEC module. This new method means banks will no longer be required to furnish their disclosure statement or modified LAR upon request, rather, banks may provide a notice to the inquirer that the information is accessible on the CFPB website. Attachment C to the CFPB’s “Small Entity Compliance Guide” provides sample language that banks may use for this notice. That guide can be found at www.consumerfinance.gov/regulatory-implementation/hmda/.



CONTACT

Meghan Byrum
FI Compliance Associate
701.476.8398
mbyrum@eidebailly.com

MILITARY LENDING ACT AND EXPANDED PROTECTIONS

It is time to start preparing for changes coming to the Military Lending Act that will expand the protections provided to service members and their families. Most of these changes are effective October 3, 2016, and compliance is required beginning October 3, 2017, for credit extended for new credit card accounts under an open-end consumer credit plan.

What Is Affected

The rules apply to consumer credit which is defined as “credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and is subject to a finance charge or payable by a written agreement in more than four installments.” This will include vehicle title, installment, unsecured open-end lines of credit, payday, refund anticipation, credit cards and deposit advance loans. The rule provides exemptions for residential real estate and vehicle-secured purchase money loans. Covered transactions are capped at offering a Military Annual Percentage Rate (MAPR) at 36 percent, requiring disclosures to alert service members and their dependents of their rights and prohibiting creditors from requiring arbitration in the event of a dispute.

In addition to the finance charges under Regulation Z, the MAPR includes credit insurance premium or fee, debt cancellation or debt suspension fee, debt default, insurance and debt suspension plans, and application fees. The application fee is exempt for insured depository institutions for a closed-end loan that is subject to Regulation Z, as long as the term does not exceed nine months and the application fee is a fixed limit. If this credit is renewed within 12 months, the subsequent application fee is not eligible for exclusion. In addition, there are some exclusions for credit card fees that are “bona fide.”

Safe Harbor

The bank is provided with a safe harbor when they apply certain methods of assessing whether or not a consumer is a covered borrower. There are two options to obtain the safe harbor:

1. Using information obtained from the Military Lending Act database
2. Relying on information contained in a consumer report and both are subject to meeting recordkeeping requirements

Prior to October 3, 2016, the bank may continue to rely on the covered borrower statement obtained from the borrower. There are timing requirements for determining the covered borrower status. The creditor may only rely on an initial determination when a consumer initiates or establishes a transaction; or 30 days prior to when the creditor extends a firm offer of credit and the covered borrower responds within 60 days.



Oral Disclosure

The creditor, in addition to the written disclosures, must provide orally the statement of the MAPR and a description of the payment obligation, but they will no longer be required to provide the periodic rate and the total dollar amount of the MAPR. There are two options for the oral disclosures, in person or by providing a toll-free number that the borrower may use to obtain the disclosures. If the creditor elects to provide the toll-free number, it must be included on the application form or with the statement of MAPR. The rule provides model language for describing the MAPR. Disclosures are required only for new transactions.

To prepare for the changes, banks will want to consider utilizing a toll-free number for the service member or dependent to call to obtain the required oral disclosure, as well as follow up with third-party service providers to ensure that system changes will be made by October 3, 2016, so they can begin training staff. ■



CONTACT

Ann Rockswold
Principal
701-239-8507
arockswold@eidebailly.com

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Managing Editor: Liz Stabenow
Send comments to: possibilities@eidebailly.com

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MEET JASON KOHOUT

Jason Kohout is a financial institution compliance associate who joined Eide Bailly earlier this year. He is a graduate of Minnesota State University Mankato and has two years of banking industry experience as part of First National Bank Minnesota in Mankato.

As a financial institution compliance associate, Jason assists banks with meeting regulatory standards and brings his knowledge and excitement for his work into every interaction with clients.

"What I love most about my job is working with the various clients and really learning what's important to them and what is challenging them. Getting to know our clients in this way helps us deliver the experience and results they need and deserve." ■



Jason Kohout
FI Compliance Associate
507-304-6914
jkohout@eidebailly.com

COMPLIANCE REMINDERS/DUE DATES

Effective Date: January 1, 2016	Regulation	Description
	Regulation Z – Truth in Lending Act & Regulation M – Consumer Leasing	The 2016 adjustment for consumer credit transactions and consumer leases will remain at \$54,600. This means any consumer credit and/or consumer lease transaction greater than \$54,600 is NOT subject to Reg Z and Reg M requirements. However, private education loans and loans secured by real property (such as mortgages) are subject to the Truth in Lending Act regardless of the amount of the loan.
	Regulation Z – High Cost Mortgage (HCM)	The points and fees test thresholds used to determine whether a loan is a High Cost Mortgage changed to the following: If the loan amount is at least \$20,350 and the points and fees exceed 5% of the total loan amount; or the loan amount is less than \$20,350 and the points and fees exceed the lesser of 8% of the total loan amount or \$1,017.
	Regulation Z – Qualified Mortgage Points and Fees	For the purpose of a creditor's determination of a consumer's ability to repay a transaction secured by a dwelling, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed the following revised thresholds: \$101,749 and Up - 3 percent of the total loan amount \$61,050 to \$101,748.99 - \$3,052 \$20,350 to \$61,049.99 - 5 percent of the total loan amount \$12,719 to \$20,349.99 - \$1,017 Under \$12,719 – 8 percent of the total loan amount
	Regulation Z – High Priced Mortgage Loans (HPML)	The loan amount threshold used to determine whether a loan is exempt from the special appraisal requirements for HPMLs will remain at \$25,500 for 2016.
	Regulation Z – Small Creditor and Rural and Underserved Areas	The final rule expands the definition of "small creditor" by increasing the maximum number of first-lien mortgage loans from 500 to 2,000 and excludes from the count loans that are held in portfolio by the creditor and affiliates and include affiliates' assets to calculate the asset size limit; expands rural to include census blocks that are not in an urban area; provides grace periods when parameters are exceeded; creates a one-year qualifying period for rural or underserved creditor status and amend the temporary exemption for eligible small creditors that are able to make balloon payment qualified mortgages by extending the exemption period to April 1, 2016.