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CFPB Makes You Go HMmmDA*

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October, 2013

The Consumer Financial Protection Bureau (CFPB) has turned its attention to the Home Mortgage Disclosure Act (HMDA), announcing two enforcement actions, a bulletin, guidelines, and a new way to review HMDA data all within the last few weeks. This article reviews these recent actions and examines what may be next.

Under HMDA, financial institutions and mortgage companies must report information about home mortgage loan applications to their supervisory agencies; that information can be used to determine if there is discrimination in home lending. The Federal Financial Institutions Examination Council publicizes the HMDA data every year. The Dodd-Frank Act transferred HMDA rulemaking authority from the Federal Reserve Board (Board) to the CFPB and made the CFPB one of the agencies that can enforce HMDA.

Enforcement Actions

On October 9, the CFPB announced two enforcement orders regarding inaccuracies in 2011 HMDA data. The entities did not admit or deny the allegations in the consent orders.

According to the first consent order, Mortgage Master, a nonbank mortgage originator, reported 21,015 loans and the sample error rate "unreasonably exceeded" the resubmission threshold.[1] The CFPB alleges that the entity did not maintain reasonable procedures to avoid such errors, and is required to pay a $425,000 civil money penalty. CFPB collaborated with Massachusetts Division of Banks, which also identified a large amount of errors in the data filing. In the second order, Washington Federal, a bank, reported data on 5,785 loans, had a 38 percent sample error rate, and is

*The information contained in this newsletter does not constitute legal advice. This newsletter is intended for educational and informational purposes only.

[1] ***Mortgage Master Consent Order.***

ordered to pay a $34,000 civil money penalty.[2] Both entities must resubmit their 2011 HMDA data and develop an effective HMDA compliance management system.

These are the first enforcement orders CFPB has issued under HMDA. While the civil money penalties are not nearly the levels of other penalties the CFPB has assessed, these orders do highlight CFPB's emphasis on collecting accurate data, as it often identifies itself as a data driven agency.

Bulletin

In conjunction with these orders, the CFPB released a bulletin emphasizing the importance of submitting correct mortgage loan information under HMDA.[3] The bulletin outlines the components of an effective compliance management system and discusses factors the CFPB may consider when evaluating whether to pursue a public enforcement action.

According to the bulletin, effective HMDA compliance management systems include:

- Comprehensive policies, procedures, and internal controls to ensure on-going compliance;
- Comprehensive and regular internal, pre-submission HMDA audits, to test and evaluate data accuracy, including transactional analysis, written reports and recommendations for corrective actions, as appropriate, based on the entity's size and complexity;
- Reviews of any regulatory changes that may have occurred since the last examination and/or data collection and reporting;
- Appropriate reporting systems given the volume of lending;
- Persons responsible for oversight, data entry, and data updates;
- Employee training;
- Effective corrective action in response to previous deficiencies; and

[2] ***Washington Federal Consent Order.***
[3] ***CFPB HMDA Bulletin.***

- Board and management oversight.

In determining whether to pursue a public enforcement action, the CFPB will consider relevant factors including:

- The size of an institution's HMDA data and the error rate;
- Whether an institution self-identified its HMDA errors outside the context of an active examination or examination-related activity, and independently took appropriate corrective action; and
- If the institution has previously been on notice regarding errors, whether error rates are significantly lower showing substantial progress or whether the error rates have remained high or have increased.

This is not a definitive list as it is only examples of what the CFPB will consider. These factors are in line with those previously announced in the CFPB's June bulletin regarding responsible business conduct, self-policing, self-reporting and remediation.[4]

Resubmission Guidelines

As part of the October 9 announcement, the CFPB released its HMDA Resubmission Schedule and Guidelines.[5] These guidelines determine thresholds for acceptable error rates in data samples tested by examiners, and when an entity may be required to resubmit its HMDA data. While the CFPB's approach is similar to other federal regulators in many respects, the CFPB will now apply a new standard for entities that have 100,000 or more HMDA-reported loans. The CFPB states that the standard is stricter "because a lower sample error rate... could reflect a larger number of errors than a higher sample error rate at an institution" with a smaller amount of reported loans.

A comparison with the Federal Reserve Board's guidelines highlights some key differences. Under both sets of guidelines, the process begins with an initial streamlined review, which includes examining a small sample of

[4] ***Responsible Conduct Bulletin.***
[5] ***HMDA Resubmission Schedule and Guidelines.***

loans, and if a certain number of errors are found, the full loan sample must be reviewed. That process, size of streamlined sample, and standard of errors is slightly different, but let's focus on the standards and process after the initial review.

Under the Board's guidelines, if 5 percent of the loans in the full sample had an error in one "key field" (e.g., loan type, loan purpose, property type), an institution must correct and resubmit that key field for all loans. In addition, if 10 percent or more of the sample has an error in at least one of the key fields, then the institution must resubmit all of its HMDA data.

The CFPB's guidelines are the same as the Board's for institutions that report fewer than 100,000 entries, although there is no distinction of key data fields — the thresholds applies to all data fields. However, for an institution that reports 100,000 loans or more, if 2 to 4 percent of the sample has errors in one data field, the institution must correct and resubmit that data field for all loans. If 4 percent or more of the sample contains errors, the institution must correct and resubmit all data. The CFPB notes that even when an institution does not cross those thresholds, CFPB may require resubmission if the errors make analysis of the institution's lending unreliable.

A couple of examples help illustrate this difference.

Assume an institution reports 1,000 HMDA loans, and the initial streamlined review of 31 loans revealed more than one error, and thus the entire sample (79 loans) must be reviewed. Under the Board's guidelines, if at least 4 loans (5 percent of 79) have an error in one key field, that field needs to be corrected and resubmitted for all loans. If at least 8 loans (10 percent of 79) have an error in at least one of the key fields, all of the loans must be resubmitted. The analysis is the same under CFPB rules.

Now assume that an institution reports 100,000 loans. Under the Board's rules the process and thresholds are the same as it was for an institution with 1,000 loans. Under CFPB rules, 90 loans must be reviewed in the initial streamlined review and if there are more than 2 errors found, the full sample of 200 loans must be reviewed. If errors are found in 4 to 8 loans (2 to 4 percent of 200) in the same field, that field must be corrected and resubmitted for all loans. If 8 or more loans (4 percent or more of 200) have errors in any field, the institution must correct and resubmit all the data.

The bottom line: CFPB applies a stricter standard to institutions that report a large amount of loans. In the examples above, only 4 percent of sampled loans (8 of 200) must have an error to trigger resubmission for an institution with 100,000 or more loans; but for an institution reporting fewer loans, that same threshold is 10 percent (8 of 79). Furthermore, for all institutions, the CFPB does not differentiate between key data fields and other data fields, meaning even errors that are not at all material could trigger resubmission. This means additional compliance burdens for all institutions, especially those reporting a larger number of loans.

Reviewing Data

A few weeks prior to releasing these enforcement actions, bulletin and guidelines, the CFPB launched a web-based tool for the public to access and analyze HMDA data.[6] The website includes interactive maps and charts allowing the public to view HMDA data nationwide or by metropolitan area. The CFPB encouraged consumers, researchers, developers and companies to explore the data and submit comments with ideas to the CFPB. The CFPB has stated that they are continuing to work on this feature and will enhance it over time, including adding tools to allow users to filter the data.

The release of the HMDA data is certainly not new, but what is new is the interactive web-based format. HMDA data can be downloaded from the FFIEC's website, but not with interactive maps and charts, and it seems there is more to come.

This is along the lines of what the CFPB is doing with the consumer complaint data, and recently the National Community Reinvestment Coalition released its own analysis of certain complaint data along with recommendations for the CFPB based on the data.[7] It is expected that we will see analyses like this using the HMDA data.

Upcoming Rulemaking

In addition to the above actions, CFPB is preparing a rulemaking on expanding the data collected under HMDA. Section 1094 of the Dodd-Frank Act added more data fields to be collected including the total points and

[6] ***Mortgage Visualization Tool*** and ***CFPB HMDA website.***
[7] ***NCRC Analysis by Zip Code***.

fees, the difference between the APR and a benchmark rate, the value of the property, the channel through which the application was made, and the credit score of the applicant. Importantly, the CFPB is permitted to mandate the collection of any other additional information. CFPB may release a proposed rule as early as the beginning months of 2014.

Even those who do not make mortgage loans should be paying attention to the CFPB's actions on HMDA, as they likely foreshadow how the CFPB will treat data it collects on loans to small and minority-owned businesses under the Equal Credit Opportunity Act and section 1071 of the Dodd-Frank Act. CFPB Director Cordray indicated at a September hearing before the House Financial Services Committee that CFPB is beginning work on the HMDA rulemaking, and that work will help inform the small business data collection effort.

Stay tuned for more on CFPB's HMDA efforts.

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