January 2021

Compliance Update

Community Bankers for Compliance Newsletter

INSIDE

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CFPB Issues Two Final Rules on Qualified Mortgage Loans

By Dale Neiss, CRCM; Consultant

Lenders are required to determine that consumers have the ability to repay mortgage loans. Loans that meet legal standards for Qualified Mortgage (QM) loans – as defined in Regulation Z [12 CFR 1026.43(e)] – are presumed to be loans for which consumers have such an ability to repay. On December 10, 2020, the CFPB issued two final rules related to QM loans.

General QM definition

One category of QMs is the General QM category. For General QMs, the ratio of the consumer's total monthly debt to total monthly income (DTI or DTI ratio) must not exceed 43 percent. The first final rule issued December 10, 2020, amends the General QM loan definition in Regulation Z. Among other things, the first final rule removes the General QM loan definition's 43 percent DTI limit and replaces it with price-based thresholds.

Another category of QMs consists of loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (government-sponsored enterprises or GSEs), while operating under the conservatorship or receivership of the Federal Housing Finance Agency (FHFA).

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The GSEs are currently under Federal conservatorship. In 2013, the CFPB established this category of QMs (Temporary GSE QMs) as a temporary measure that would expire no later than January 10, 2021 or when the GSEs cease to operate under conservatorship.

In a final rule released on October 20, 2020 (discussed in the Y&A November 2020 *Compliance Update*), the CFPB extended the Temporary GSE QM loan definition to expire on the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z (or when the GSEs cease to operate under the conservatorship of the FHFA, if that happens earlier).

In this final rule, the CFPB adopts the amendments to the General QM loan definition that are referenced in that separate final rule.

The mandatory compliance date for the first final rule is July 1, 2021. This final rule can be found at https://www.consumerfinance.gov/rules-policy/final-rules/qualified-mortgage-definition-under-truth-lending-act-regulation-z-general-qm-loan-definition/.

New category of QM

In the second final rule issued December 10, 2020, the CFPB created a new category for QMs, "Seasoned QMs." Seasoned QMs are loans that are:

- First-lien, fixed-rate covered transactions that have met certain performance requirements
- Held in portfolio by the originating creditor or first purchaser for a 36-month period
- Comply with general restrictions on product features and points and fees, and
- Meet certain underwriting requirements

The CFPB's primary objective with the second final rule is to ensure access to responsible, affordable mortgage credit by adding a Seasoned QM definition to the existing QM definitions.

The second final rule is effective March 1, 2021. This final rule is available at https://www.govinfo.gov/content/pkg/FR-2020-12-29/pdf/2020-27571.pdf. ❑

CFPB Enforcement Action Against Mortgage Lender

By Dee Bedell, CRCM; Consultant

The Consumer Financial Protection Bureau (CFPB) filed a complaint and proposed judgment in early December 2020 against Nationstar Mortgage LLC, doing business as Mr. Cooper, for alleged violations of the Consumer Financial Protection Act, Real Estate Settlement Procedures Act (RESPA), Regulation X (which implements RESPA), and the Homeowners Protection Act (which establishes protections related to private mortgage insurance, PMI). The CFPB announced that its actions were part of a joint effort between state regulators, state attorneys general and the CFPB.

If the proposed judgment is entered by the court, Nationstar would have to pay:

- About $73 million to redress consumer harm to more than 40,000 borrowers, and
- A $1.5 million civil money penalty to the CFPB

When combined with the concurrent state actions against Nationstar, the CFPB announced that the total monetary outlay related to Nationstar's actions should approximate almost $85 million for adversely affected consumers to date, and more than $6 million in other fees and penalties.

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Alleged conduct

The alleged conduct at the center of this controversy occurred between 2012 and 2015 and included:

- Failing to identify service transferred loans in existing trial modifications or transferred loans in the middle of the modification process, resulting in borrowers receiving permanent loan modifications only after unwarranted delays or being wrongfully denied for permanent modifications
- Moving forward with foreclosure and even conducting foreclosure sales after borrowers had submitted workout packages for loan modifications in response to correspondence from Nationstar allegedly representing that foreclosure would be stayed while the workout packages were being reviewed, or before any appeal had run its course
- Increasing permanent modification payments after the completion of a trial plan, a practice that was not permitted under the terms of modification programs being used
- Failing to disburse tax payments from escrow accounts in a timely manner, resulting in unnecessary penalties
- Failing to conduct annual escrow account analyses for loans subject to escrow that were in bankruptcy, leading to shortages and deficiencies that neither the bankruptcy court nor the borrowers could anticipate – Section 1024.17(i)(2) of Regulation X exempts a servicer from the annual escrow account statement requirement for loans that are in default, foreclosure or bankruptcy, but it does not exempt the servicer from the requirement to conduct annual escrow account analyses for those loans, and
- Failing to cancel and terminate PMI as required by the Homeowners Protection Act because of a misreading of the act's cancellation requirements (i.e., the act requires cancellation of PMI upon receipt of a borrower's written request if the loan-to-value reaches 80 percent of the original value of the property and certain other conditions are satisfied, like a good payment history)

Proposed judgment

In addition to the monetary consequences described above, the proposed judgment would obligate Nationstar to take the following actions:

- Implement policies, processes, and controls designed to: permit borrowers to submit consumer complaints online; provide borrowers with timely and accurate information about how to submit consumer complaints, notices of error, etc.; have sufficient personnel to review and resolve consumer complaints, notices of error, etc.; consider all information available, including information submitted by borrowers and internal information, when analyzing consumer complaints, notices of error, etc.; document each error alleged in consumer complaints, notices of error, etc. and how the errors were resolved; correct any errors and communicate the resolution to borrowers; and identify the root cause of any errors or issues that Nationstar believes may be caused by systemic issues
- Conduct annual escrow account analyses at the end of the escrow account computation year as required by section 1024.17 of Regulation X and send escrow account statements and periodic statements that contain accurate information about borrowers' escrow accounts
- Pay escrowed items in a timely manner as required by section 1024.17(k) of Regulation X
- Implement policies and procedures designed to comply with the requirement in section 1024.38 of Regulation X to have policies and procedures reasonably designed to facilitate transfers of information during servicing transfers
- Refrain from offering permanent loan modifications for which the monthly principal and interest (P&I) payment exceeds the P&I payment under a trial modification, unless applicable law, the applicable modification program, or investor requirements permit doing so, or the borrower fails to make all the required payments due under a trial modification
- Implement policies, processes, and controls designed to: provide accurate communications to borrowers about when PMI may be cancelled or terminated; and cancel and terminate PMI as required by the Homeowners Protection Act, and
- Perform an annual lookback and remediation audit for four years following the effective date of the judgment in order to determine whether any borrowers have received permanent loan modifications with P&I payments that exceed the P&I payments in their trial modifications and redress any consumer harm

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In addition to these actions, the proposed judgment requires Nationstar to submit a compliance plan for review. The proposed judgment also requires Nationstar's board of directors to take certain actions, including "[a]uthoriz[ing] whatever actions are necessary….to fully comply with the [proposed judgment]…." The proposed judgment also includes reporting and recordkeeping requirements.

The CFPB press release announcing this action, which includes links to the complaint and proposed settlement, may be read at https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-multiple-states-enter-settlement-nationstar-mortgage-llc-unlawful-servicing-practices/.

As mortgage servicing may become a more scrutinized area because of the pandemic and the potential for consumer harm, financial institutions may want to review the proposed judgment and the complaint to see whether their policies and procedures are designed to comply with the requirements that led to the complaint and settlement. ❑

CFPB Conducting Sweep to Enforce MLA

By William J. Showalter, CRCM, CRP; Senior Consultant

The Consumer Financial Protection Bureau (CFPB) is conducting a broad sweep of investigations of multiple lenders that may be violating the Military Lending Act (MLA). The MLA puts in place protections in connection with extensions of consumer credit for active-duty servicemembers and their dependents, who are defined as "covered borrowers." These protections include a maximum allowable annual percentage rate of 36 percent, known as a Military Annual Percentage Rate (MAPR), a prohibition against required arbitration and required payment by allotment, and certain mandatory loan disclosures.

While the CFPB directly supervises the largest banks, as well as nonbank lenders, its actions feed into decision making at other financial regulatory agencies. Therefore, these enforcement actions should be of interest to all banks and thrifts.

Military lender pays $2.175M to settle charges

The CFPB announced that it issued a consent order against Omni Financial of Nevada, Inc. (Omni). The agency found that Omni violated the MLA, Electronic Fund Transfer Act (EFTA), and Consumer Financial Protection Act of 2010 (CFPA) in connection with making installment loans. Omni, which has its principal place of business in Las Vegas, Nevada, and operates using the names Omni Financial and Omni Military Loans, specializes in lending to consumers affiliated with the military. It originates tens of thousands of loans each year, with individual loans typically ranging from $500 to $10,000.

In addition to lending to active-duty servicemembers and their dependents, Omni lends to civilians and non-covered servicemembers, such as military retirees. The CFPB found that Omni requires all of its borrowers to provide bank-account information and authorize Omni to withdraw funds from that account on the first business day after each missed payment. Omni's requirement that consumers allow it to withdraw funds from their bank accounts violates EFTA's prohibition against requiring consumers to preauthorize electronic fund transfers as a condition of receiving credit. The agency also found that these EFTA violations constituted CFPA violations.

The consent order requires that Omni pay a $2.175 million civil money penalty and imposes injunctive relief to stop ongoing violations and prevent future violations. In addition, the consent order requires Omni to provide notice of the CFPB's findings to all customers repaying their loans by allotment along with notice that they may change their repayment method. Omni also must provide training to employees and is prohibited from providing any incentives to employees or performance evaluations that consider the number or rate of consumers who choose to repay by allotment.

The consent order is available at: https://files.consumerfinance.gov/f/documents/cfpb_omni-financial-of-nevada-inc_consent-order_2020-12.pdf.

CFPB sues online lender for MLA violations

The CFPB also has filed a lawsuit against LendUp Loans, LLC. The agency alleges that LendUp violated the MLA in connection with its extensions of credit.

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LendUp, which has its principal place of business in Oakland, California, is an online lender that offers single-payment and installment loans to consumers. The CFPB's complaint, filed in the U.S. District Court for the Northern District of California, seeks an injunction, as well as damages, redress to consumers, disgorgement of ill-gotten gains, and the imposition of civil money penalties.

The CFPB alleges that, since October 2016, LendUp has made over 4,000 single-payment or installment loans to over 1,200 covered borrowers in violation of the MLA. The agency claims that LendUp's violations of the MLA include extending loans with an MAPR that exceeds the MLA's 36 percent cap, extending loans that require borrowers to submit to arbitration, and failing to make certain required loan disclosures, including a statement of the applicable MAPR.

A copy of the complaint filed in federal district court in the Northern District of California is available at: https://files.consumerfinance.gov/f/documents/cfpb_lendup-loans-llc_complaint_2020-12.pdf. ❑

Alert Issued on COVID-19 Vaccine Scams & Cyberattacks

The Financial Crimes Enforcement Network (FinCEN) issued a Notice to alert financial institutions about the potential for fraud, ransomware attacks, or similar types of criminal activity related to COVID-19 vaccines and their distribution. This Notice also provides specific instructions for filing Suspicious Activity Reports (SAR) regarding such suspicious activity related to COVID-19 vaccines and their distribution.

The notice is available at https://www.fincen.gov/sites/default/files/shared/COVID-19%20Vaccine%20Notice%20508.pdf. ❑

FinCEN Issues New 314(b) Sharing Information

By William J. Showalter, CRCM, CRP; Senior Consultant

In prepared remarks at the American Bankers Association/ American Bar Association Financial Crimes Enforcement Conference, Kenneth Blanco, Director of the Financial Crimes Enforcement Network (FinCEN), announced that FinCEN was issuing important guidance clarifying how financial institutions may fully utilize FinCEN's 314(b) information sharing program. A new 314(b) Fact Sheet was issued as the result of the feedback provided by financial institutions and through the agency's experiences. It is intended to clarify in greater detail the circumstances where 314(b) applies, with the hope of enhancing participation and utility of the 314(b) program.

FinCEN rescinded previously issued guidance (FIN-2009-G002) and a former administrative ruling (FIN-2012-R006) with the publication of the new Fact Sheet.

Background

Section 314(b) encourages (not requires) financial institutions to share information with other financial institutions that participate in the program in order to identify and report activities that may involve terrorist activity or money laundering. It also provides protection (safe harbor) from civil liability, but the safe harbor does not extend to sharing of information across international borders.

If a financial institution chooses to voluntarily participate in section 314(b) information sharing, policies, procedures, and processes should be developed and implemented for sharing and receiving information. Like with the 314(a) process – which involves sharing information with law enforcement through FinCEN – a point of contact for receiving and providing information should be designated.

To retain the safe harbor from liability, a financial institution must notify FinCEN of its intent to engage in information sharing with other financial institutions and that it has established and will maintain adequate procedures to protect the security and confidentiality of the information. The notice to FinCEN to share information is effective for one year. Instructions on submitting a notification form (initial or renewal) are available at www.fincen.gov/section-314b.

Additionally, a financial institution must take reasonable steps to verify that the other financial institution with which it intends to share information has also submitted the required notice to FinCEN.

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Fact Sheet

The main themes of the just-issued 314(b) Fact Sheet are:

- Financial institutions may share under Section 314(b) information relating to activities that they suspect may involve possible terrorist financing or money laundering. This includes, but is not limited to, information about activities they suspect involve the proceeds of a specified unlawful activity (SUA). Importantly, our guidance clarifies that:
  - Financial institutions do not need to have specific information that these activities directly relate to proceeds of an SUA, or to have identified specific proceeds of an SUA being laundered.
  - Financial institutions do not need to have made a conclusive determination that the activity is suspicious.
  - Financial institutions may share information about activities as described, even if such activities do not constitute a "transaction." This includes, for example, an attempted transaction, or an attempt to induce others to engage in a transaction. This clarification is significant and addresses some uncertainty with sharing incidents involving possible fraud, cybercrime, and other predicate offenses when financial institutions suspect those offenses may involve terrorist acts or money laundering activities.
  - In addition, the guidance notes that there is no limitation under Section 314(b) on the sharing of personally identifiable information, or the type or medium of information that can be shared (to include sharing information verbally).
- An entity that is not itself a financial institution under the Bank Secrecy Act may form and operate an association of financial institutions whose members share information under Section 314(b). Notably, this includes compliance service providers.
- An unincorporated association governed by a contract among the group of financial institutions that constitutes its members may engage in information sharing under Section 314(b).

The Fact Sheet may be accessed at https://www.fincen.gov/sites/default/files/shared/314bfactsheet.pdf. ❑

Flood Community Suspensions

By Bill Elliott, CRCM; Manager of Compliance Services

Effective December 20,2020, the Federal Emergency Management Agency (FEMA) issued a final rule to identify communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension because of noncompliance with the floodplain management requirements of the program.

If FEMA receives documentation that the community has adopted the required floodplain management measures before the effective suspension date given in this rule, the suspension will not occur.

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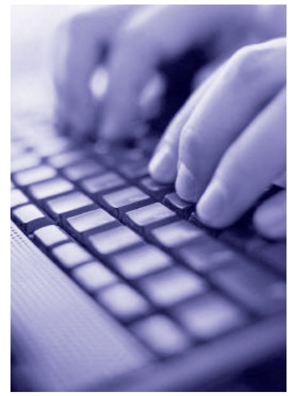

Federal Deposit Insurance Corporation
http://www.fdic.gov

Office of the Comptroller of the Currency
http://www.occ.gov

Federal Reserve
http://www.federalreserve.gov

Housing and Urban Development
http://www.hud.gov

Federal Financial Instutions Examination Council
http://www.ffiec.gov

U.S. Department of Treasury
http://www.treas.gov

Financial Crimes Enforcement Network
http://www.fincen.gov

Consumer Financial Protection Bureau
http://www.consumerfinance.gov

The NFIP enables property owners to purchase federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives, new and substantially improved construction, and development in general from future flooding.

The National Flood Insurance Act of 1968 prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. Communities will be suspended if they do not meet the requirements. As of the suspension date flood insurance will no longer be available in the community.

Some communities do not meet the statutory requirement for compliance with program regulations, and face removal from the program. Therefore, flood insurance will no longer be available in those communities, which puts banks at risk for any property they may have a mortgage against in the impacted areas. Therefore, banks should follow this issue in the areas in which they operate, so they are not suddenly exposed to hugely increased risks.

No direct federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified Special Flood Hazard Areas (SFHA) for communities not participating in the NFIP and identified for more than a year on FEMA's initial Flood Insurance Rate Map (FIRM) for the community as having flood-prone areas.

Each community receives six-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met before the effective suspension date.

A community's current NFIP participation status can be verified at any time on the CSB section at www.fema.gov.

The areas that are impacted by this rule include parts of Iowa, Michigan, South Dakota, Texas, and Wisconsin. If your institution has mortgages in these states, we encourage you to review the list, which can be found at https://www.federalregister.gov/documents/2020/12/28/2020-28478/suspension-of-community-eligibility. ❑

2019 CRA Lending Data Available

By William J. Showalter, CRCM, CRP; Senior Consultant

The three Federal Financial Institutions Examination Council (FFIEC) agencies with Community Reinvestment Act (CRA) responsibilities – the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of the Comptroller of the Currency (OCC) – have announced the availability of data on small business, small farm, and community development lending reported by certain commercial banks and savings institutions, pursuant to the CRA.

The FFIEC has prepared a disclosure statement from the reported 2019 CRA data, in electronic form, for each reporting commercial bank and savings institution. The FFIEC also has prepared aggregate disclosure statements of small business and small farm lending for each of the metropolitan statistical areas and each of the non-metropolitan counties in the United States and its territories. These statements are available for public inspection on the FFIEC web site – www.ffiec.gov/cra.

Background

The CRA is intended to encourage federally insured commercial banks and savings institutions to help meet the credit needs of the local communities in which they are chartered. The regulations that implement the CRA require commercial banks and savings institutions with total assets of above an annually adjusted threshold to collect and report data regarding their small business and small farm lending and community development lending. The mandatory reporting threshold is adjusted annually for changes in the Consumer Price Index. For 2019, that threshold was $1.284 billion.

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The small business and small farm lending data reported under the CRA regulations differ from the data reported on home mortgage lending under the Home Mortgage Disclosure Act (HMDA) in several respects. Unlike the HMDA data, the CRA data include information only on loans originated or purchased, not on applications that are denied by the institution or for some other reason do not result in an origination. In addition, the CRA data do not include information about applicant income, sex, race, or ethnicity, although the CRA data do indicate whether a loan is extended to a borrower with annual revenues of $1 million or less. Finally, the CRA data are not reported application-by-application, as HMDA data are, but rather are aggregated into three loan-size categories and then reported at the census tract level.

The following analysis of nationwide summary statistics is based on data compiled by the FFIEC for institutions reporting under the CRA regulations.

Overview of 2019 data

For 2019, a total of 695 lenders reported on their originations and purchases of small business and small farm loans, including 126 with assets below the mandatory reporting threshold and that reported either voluntarily or because they elected to be evaluated as a "large" institution during CRA examinations. This was a decrease from the 700 lenders reporting 2018 data last year, due to a decrease in voluntary reporters that more than offset a small increase in mandatory reporters.

Banks and savings institutions with assets of less than $1.284 billion were not required to report data on their 2019 small business and small farm lending. However, institutions of that size may voluntarily report such information, and they must report the information if they elect to be evaluated as "large" institutions.

Reporting institutions' small business and small farm lending is a significant portion of total small business and small farm lending by commercial banks and savings institutions. Analysis of Bank Call and Thrift Financial Report data on small loans to businesses and farms indicates that CRA reporters account for about 74.4 percent of the small business loans outstanding measured by dollars and 31.3 percent of the small farm loans outstanding measured by dollars extended by all commercial banks and savings institutions. During 2019, banks and thrifts with assets of $1.284 billion or more (as of December 31, 2018) accounted for 98 percent (by dollars) of reported small business loan originations. The very largest institutions – 118 reporters with assets of $10 billion or more – accounted for about 73 percent of CRA reported small business loans originated in 2019 (by dollars).

In the aggregate, about 7.6 million small business loans, totaling $265 billion, and over 205,000 small farm loans, totaling over $14 billion, were reported having been originated or purchased in 2019.

The CRA data provide information about the size of small business and small farm loans. Measured by number of loans, about 94 percent of the small business loans and 80 percent of the small farm loans were for amounts under $100,000. Measured by dollars, the distribution differs – about 39 percent of the small business loan dollars and about 29 percent of the small farm loan dollars were extended through loans of less than $100,000.

The CRA data also include information on how many of the reported loans were extended to businesses or farms with revenues of $1 million or less. About 49 percent of the number of reported small business loans (about 35 percent measured by dollars) and 59 percent of the number of reported small farm loans (about 69 percent measured by dollars) were extended to firms or farms with revenues of $1 million or less.

Geographic distribution

CRA performance assessments include an analysis of the distribution of small business and small farm loans (of all types) across census tracts grouped into four relative income categories: low-, moderate-, middle-, and upper-income. Overall, the distribution of the number and the dollar amounts of small business loans across these categories largely parallels the distribution of population and businesses across these four income groups, although lending activity in upper-income areas exceeds the share of businesses and population in such areas. The share of reported loans going to upper-income tracts was about 39 percent of the number and 37 percent of the total dollar amount in 2019.

In the distribution of small business lending reported under the CRA between urban/suburban and rural areas, small business loans are heavily concentrated in urban/suburban areas (91 percent of the number and 90.5 percent of the total dollar amount of all small business loans), as are the bulk of the U.S. population and the number of businesses. The majority of small farm loans (over 59 percent of the number of loans and over 63 percent of the total dollar amount of such loans) were extended in rural areas.

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CD lending

In addition to information about small business and small farm lending, institutions covered by the CRA data-reporting requirements disclose the number and dollar amount of their community development (CD) loans.

Among the 695 institutions reporting for 2019, 619 extended CD loans. The dollar volume of such lending reported by those over the mandatory reporting threshold comprised the vast majority of reported CD loans. All lenders reported just nearly $112 billion in CD loans for 2019, an eight percent increase from 2018.

How to obtain CRA data

CRA data may be obtained from the FFIEC – at www.ffiec.gov/cra. In addition, individual CRA-reporting institutions must make it available to the public.

Reporting banks and thrifts must make their CRA disclosure statements available in their CRA public files within three business days after receipt from the FFIEC. The disclosure statements must be available for at least two years.

The entire public file, including CRA disclosure statements, must be made available in the institution's main office and in at least one branch in each additional state where it does business. A CRA notice must be posted in the lobbies of all offices of all banks and thrifts – CRA data reporters and non-reporting institutions. ❑

Agencies Adjust CRA Asset-Size Thresholds

By Dale Neiss, CRCM; Consultant

The Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC) announced the annual adjustment to the asset-size thresholds used to define small bank and intermediate small bank under the Community Reinvestment Act (CRA) regulations. The Office of the Comptroller of the Currency (OCC) has not yet made its own announcement of a similar annual adjustment.

The annual adjustments are required by the CRA rules. Financial institutions are evaluated under different CRA examination procedures based upon their asset-size classification. Those meeting the small and intermediate small institution asset-size thresholds are not subject to the reporting requirements applicable to large banks unless they choose to be evaluated as a large institution.

Threshold adjustment – FRB & FDIC

Annual adjustments to these asset-size thresholds are based on the change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. As a result of the 1.29 percent increase in the CPI-W for the period ending in November 2020, the definitions of small and intermediate small institutions for CRA examinations will change as follows:

- "Small bank" means an institution that, as of December 31 of either of the prior two calendar years, had assets of less than $1.322 billion.
- "Intermediate small bank" means a small institution with assets of at least $330 million as of December 31 of both of the prior two calendar years and less than $1.322 billion as of December 31 of either of the prior two calendar years.

These asset-size threshold adjustments are effective January 1, 2021. In addition, the agencies will post a list of the current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council (https://www.ffiec.gov/cra).

The joint FDIC-FRB press release is available at https://www.fdic.gov/news/press-releases/2020/pr20140.html.

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OCC status

The OCC rewrote its CRA rule, released in June 2020. That final rule provides for different performance standards by bank type, which are:

- Small banks with assets less than or equal to $600 million, adjusted annually
- Intermediate banks with assets greater than $600 million and less than or equal to $2.5 billion, adjusted annually
- Banks with assets greater than $2.5 billion, adjusted annually, and banks that opt into the general performance standards (GP standards or GPS banks), and
- Wholesale and limited purpose banks

The June 2020 rule retains a strategic plan option available to all types of banks.

The small bank and intermediate bank asset size thresholds shall be adjusted annually and published by the OCC based on the year-to-year change in the average of the CPI-W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest $100,000. But, this annual adjustment has not yet been released.

Impact of “intermediate small” status

The CRA performance of an “intermediate small bank” is evaluated on the same basis as a “small bank,” plus a “community development performance” element.

“Small bank” CRA performance is gauged using the following criteria:

- Loan-to-deposit (LTD) ratio, adjusted for seasonal variation, and (as appropriate) other lending-related activities
- Percentage of loans and (as appropriate) other lending-related activities located in the bank’s CRA assessment area(s) (AA)
- Bank’s record of lending to and (as appropriate) engaging in other lending-related activities for borrowers of different income levels, as well as businesses and farms of different sizes
- Geographic distribution of the bank’s loans
- Bank’s record of taking action (if warranted) in response to written complaints about its performance in helping to meet credit needs in its AA

An “intermediate small bank” is evaluated under the standards listed above, as well as a “community development” test encompassing the following additional criteria:

- Number and amount of “community development loans”
- Number and amount of “qualified investments”
- Extent to which the bank provides “community development services”
- Bank’s responsiveness through such activities to community development lending, investment, and service needs

The “intermediate small bank” designation clearly is a step up from “small bank” status on the way to the full “large bank” evaluation method, which revolves totally around a bank’s lending, investments, and services performance. ❑

HMDA Exemption Threshold Revised

By William J. Showalter, CRCM, CRP; Senior Consultant

The Consumer Financial Protection Bureau (CFPB) has announced that the asset-size exemption threshold for depository institutions under Regulation C, which implements the Home Mortgage Disclosure Act (HMDA), will be increased to $47 million for 2020 data collection.

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This threshold is subject to adjustment annually, effective each January 1. The latest adjustment is effective January 1, 2021.

Background

The HMDA requires most depository institutions and certain for-profit, nondepository institutions to collect, report, and disclose data about applications for, and originations and purchases of, home mortgage loans, home improvement loans, and refinancings. Data reported include the type, purpose, and amount of the loan; the race or national origin, sex, and income of the loan applicant; and the location of the property. The purposes of HMDA include helping to determine whether financial institutions are serving the housing needs of their communities and assisting in fair lending enforcement.

Until 1997, HMDA exempted depository institutions in metropolitan statistical areas (MSA) with assets of $10 million or less, as of the previous year end, from its data-collection and reporting requirements. This asset cutoff was set by the original HMDA statute in 1975 and was not changed for over 20 years.

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 amended HMDA to modify the exemption threshold for small depository institutions and to require annual changes based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million.

Significant changes to HMDA coverage and reporting were mandated by the Dodd-Frank Act and were effective for 2018 HMDA data collection.

Revised coverage

The CFPB determined that the CPIW increased by 1.3 percent during the 12-month period ending November 2020. Therefore, a corresponding change is being made to the asset threshold for HMDA coverage. This means that depository institutions with assets of $48 million or less as of December 31, 2020, are exempt from data collection in 2021.

Financial institutions should keep in mind that this change does not affect their responsibility to report HMDA data they may have been required to collect in 2020 by March 1, 2021.

The CFPB final rule may be read at https://www.govinfo.gov/content/pkg/FR-2020-12-22/pdf/2020-28230.pdf. ❑

HPML Escrow Threshold Adjusted

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The Consumer Financial Protection Bureau (CFPB) announced an annual update of rules affecting higher-priced mortgage loans (HPML) in the last few days of 2019 that is effective with the new year. This rule affects escrow requirements for HPMLs, and the changes were effective January 1, 2021.

Background

The Dodd-Frank Act (DFA) amended the Truth in Lending Act (TILA) to include a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. The DFA also generally permits an exemption from the HPML escrow requirement for a creditor that: (1) operates predominantly in rural or underserved areas; (2) has total annual mortgage loan originations (together with all affiliates) that do not exceed a limit set by the CFPB; (3) retains its mortgage obligations in portfolio; and (4) meets any asset-size threshold and any other criteria as the CFPB may establish.

The CFPB issued Regulation Z changes in 2013 to implement the DFA requirements for HPML escrow accounts.

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Escrow change

In its 2013 escrows final rule, the CFPB set the asset-size threshold for exemption at $2,000,000,000, to be adjusted automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) for each 12-month period ending in November, with rounding to the nearest $1 million.

For 2020, the threshold was $2.202 billion. During the 12-month period ending in November 2020, the average of the CPI–W increased by 1.3 percent. As a result, the exemption threshold is increased to $2.230 billion for 2021. Thus, loans made by creditors with total assets (together with the assets of their affiliates that regularly extended first-lien covered transactions) of less than $2.230 billion as of December 31, 2020, that meet the other requirements specified in Regulation Z [12 CFR 1026.35(b)(2)(iii)] will be exempt in 2021 from the escrow-accounts requirement for HPMLs.

The CFPB is amending the Official Staff Commentary on Regulation Z (Truth in Lending) to implement the change in the asset-size threshold to qualify for an exemption from the requirement to establish an escrow account for an HPML. Therefore, creditors with assets of $2.230 billion or less as of December 31, 2020, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for HPMLs in 2021.

The adjustment to the escrows exemption asset-size threshold also increases the thresholds for small-creditor portfolio and balloon-payment qualified mortgages (QM) under Regulation Z.

- The requirements for small-creditor portfolio QMs [12 CFR 1026.43(e)(5)(i)(D)] reference the escrow asset threshold.

- Likewise, the requirements for balloon-payment QMs [12 CFR 1026.43(f)(1)(vi)] also reference the escrow asset threshold. Balloon-payment QMs that satisfy all applicable criteria [12 CFR 1026.43(f)(1)(i) through (vi) and 1026.43(f)(2)], or the conditions set forth in 12 CFR 1026.43(e)(6), including being made by creditors that do not exceed the escrow asset threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages [12 CFR 1026.32(d)(1)(ii)(C)].

Final rule

The final rules are effective January 1, 2021. The escrow revisions final rule is available at https://www.govinfo.gov/content/pkg/FR-2020-12-22/pdf/2020-28231.pdf. ❑

Compliance Calendar

This calendar is designed to help you address current and upcoming requirements related to compliance with federal consumer protection and other select rules. The calendar is not intended as general advice on when to perform ongoing compliance management functions, but as a reminder of due dates for completing these tasks. And, as always, consult the particular law or regulation for details on coverage, etc.

January 2021

- Open Production Period related to revised URLA and updated AUS begins January 1, 2021 for all lenders.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2020 by January 31, 2021.
- Update FHHLDS home loan activity format with fourth calendar quarter 2020 data by January 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2021

- Annual reinstatement period ends for lapsed MLO and bank registrations under SAFE Act on February 28, 2021.

March 2021

- Regulation Z changes implementing “seasoned QM” rule effective March 1, 2021.
- Mandate & Pipeline Transition Period related to revised URLA and updated AUS begins March 1, 2021 when all lenders (selling loans to GSEs and other secondary market participants) must begin using the new systems – with one-year transition period for loans in the pipeline by this date.
- 2020 HMDA LAR must be submitted to the CFPB by March 1, 2021.

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- 2020 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2021 (except “small banks”).
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 14, 2021 (e.g., EDT, CDT, etc.).

April 2021

- Update information in CRA public file by April 1, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2021.
- Update FHHLDS home loan activity format with first calendar quarter 2021 data by April 30, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

May 2021

- Renewed FinCEN GTOs due to expire on May 4, 2021.
- Large HMDA reporters (60,000 or more entries in 2020) electronically file first calendar quarter 2021 LAR by May 30, 2021.

July 2021

- Regulation Z changes implementing changes to “general QM” rule mandatory beginning July 1, 2021.
- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2021 by July 31, 2021.
- Update FHHLDS home loan activity format with second calendar quarter 2021 data by July 31, 2021 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

August 2021

- Large HMDA reporters (60,000 or more entries in 2020) electronically file second calendar quarter 2021 LAR by August 29, 2021.

September 2021

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2021) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2021.

November 2021

- Transactions using the former URLA and legacy AUS will no longer be accepted beginning November 1, 2021.
- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2021.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 7, 2021 (e.g., EST, CST, etc.).
- Large HMDA reporters (60,000 or more entries in 2020) electronically file third calendar quarter 2021 LAR by November 29, 2021.

December 2021

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2021.

January 2022

- Regulation C (HMDA) changes related to open-end line data collection and reporting – permanently adjusting the coverage threshold to 200 open-end lines in each of previous two years – effective January 1, 2022.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2022.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2021 by January 31, 2022.
- Update FHHLDS home loan activity format with fourth calendar quarter 2021 data by January 31, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

February 2022

- Annual reinstatement period ends for lapsed MLO and bank registrations under SAFE Act on February 28, 2022.

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March 2022

- Retirement Date related to revised URLA and updated AUS – March 1, 2022. No legacy URLA and loan application submissions based on previous AUS specifications accepted from this date on (regardless whether dated before March 1, 2021). End of pipeline transition period.
- 2021 HMDA LAR must be submitted to the CFPB by March 1, 2022.
- 2021 CRA small business, small farm, and community development loan data must be submitted to applicable regulator by March 1, 2022 (except "small banks").
- Lenders begin using Daylight Time designations for rate lock expirations on TRID Loan Estimates on March 13, 2022 (e.g., EDT, CDT, etc.).

April 2022

- Update information in CRA public file by April 1, 2022.
- Update HMDA-LAR with loans and applications that reached final disposition in first calendar quarter 2021 by April 30, 2022.
- Update FHHLDS home loan activity format with first calendar quarter 2022 data by April 30, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

July 2022

- Update HMDA-LAR with loans and applications that reached final disposition in second calendar quarter 2022 by July 31, 2022.
- Update FHHLDS home loan activity format with second calendar quarter 2022 data by July 31, 2022 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].

August 2022

- Large HMDA reporters (60,000 or more entries in 2020) electronically file second calendar quarter 2022 LAR by August 29, 2022.

September 2022

- (Previously exempt lenders that experience a change in status regarding their exemption from the flood insurance escrow requirements in 2022) Notices providing the option to escrow flood insurance must be distributed to customers of all outstanding designated loans by September 30, 2022.

November 2022

- Annual renewal period begins for MLO registrations and updating bank information under SAFE Act on November 1, 2022.
- Lenders begin using Standard Time designations for rate lock expirations on TRID Loan Estimates on November 6, 2022 (e.g., EST, CST, etc.).
- Large HMDA reporters (60,000 or more entries in 2020) electronically file third calendar quarter 2022 LAR by November 29, 2022.

December 2022

- Annual renewal period closes for MLO registrations and updating bank information under SAFE Act on December 31, 2022.

January 2023

- "General performance standards" (GPS) banks must comply with assessment area, and data collection, recordkeeping, and reporting requirements beginning January 1, 2023. Also, wholesale and limited purpose bank must comply with data collection, recordkeeping, and reporting requirements on this date.
- Annual reinstatement period begins for lapsed MLO and bank registrations under SAFE Act on January 2, 2023.
- Update HMDA-LAR with loans and applications that reached final disposition in fourth calendar quarter 2022 by January 31, 2023.
- Update FHHLDS home loan activity format with fourth calendar quarter 2022 data by January 31, 2023 [non-HMDA reporting national banks receiving 50 or more home loan applications last year].