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COURT RULING OVERTURNS HMDA REPORTING THRESHOLD FOR SMALL ENTITIES

A federal judge recently moved to vacate Consumer Finance Protection Bureau (CFPB) regulations that expanded the number of small-volume lenders deemed to be exempt from Home Mortgage Disclosure Act (HMDA) reporting requirements. The court ruling partially invalidated legal exemptions that allowed small mortgage lenders to avoid reporting closed-end loan data under HMDA.

HMDA rules provide that mortgage lenders must report HMDA data when their loan volume meets specific thresholds in the two preceding calendar years. Regulation C provides two separate thresholds, one for reporting closed-end mortgage loans and the other for reporting open-end lines of credit. Lenders that do not meet either threshold in a given year are not required to collect and report any HMDA data.

In 2015, the CFPB set the closed-end threshold at 25 closed-end mortgage loans in each of the two preceding calendar years, and the open-end threshold at 100 open-end lines of credit in each of the two preceding calendar years. In 2020 the CFPB increased the threshold of exempt institutions to 100 closed-end mortgage loans in each of the two preceding calendar years. The 2020 rule also set the permanent threshold for open-end lines of credit at 200 open-end lines in each of the two preceding calendar years, starting in calendar year 2022.

The recent court decision invalidated the closed-end loan exemption expansions but did not impact the threshold of 200 open-end lines of credit originated in each of the prior two years. The court vacated and remanded the closed-end mortgage loan reporting threshold to the CFPB for further action. The CFPB is expected to issue instructions regarding how to comply with the HMDA requirements to institutions affected by the ruling in the near future.

It is recommended that banks expecting to exceed the closed-end threshold of 25 closed-end mortgage loans in each of the two preceding calendar years (as established in 2015) begin to make HMDA reporting preparations, as it is likely that reporting obligations will resume for the 2023 calendar year.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.