

April 7, 2023

Vol. XXXV, No. 3

HMDA CLOSED-END LOAN REPORTING THRESHOLD

The United States District Court for the District of Columbia recently issued an order vacating the 2020 Home Mortgage Disclosure Act (HMDA) Final Rule as to the loan volume reporting threshold for closed-end mortgage loans. The decision means that the threshold for reporting data on closed-end mortgage loans is now 25 loans in each of the two preceding calendar years, which is the threshold established by the 2015 HMDA Final Rule, rather than the 100-loan threshold set by the 2020 HMDA Final Rule. The 2020 Rule, which amended Regulation C, permanently increased the reporting threshold from the origination of at least 25 closed-end mortgage loans in each of the two preceding calendar years to 100 and permanently increased the threshold for collecting and reporting data about open-end lines of credit from the origination of 100 lines of credit in each of the two preceding calendar years to 200.

The Consumer Financial Protection Bureau (CFPB) in recognition that financial institutions affected by this change may need time to implement or adjust policies, procedures, systems, and operations to come into compliance with their reporting obligations, does not view action regarding these institutions' HMDA data as a priority. As a result, the CFPB does not intend to initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage loan data collected in 2022, 2021, or 2020 for institutions subject to the CFPB's enforcement or supervisory jurisdiction that meet Regulation C's other coverage requirements and originated at least 25 closed-end mortgage loans in each of the two preceding calendar years but fewer than 100 closed-end mortgage loans in either or both of the two preceding calendar years.

The Federal Deposit Insurance Corporation (FDIC) has followed the lead of the CFPB and announced that it does not intend to initiate enforcement actions or site HMDA violations for failures to report closed-end mortgage loan data for 2022, 2021, or 2020 by FDIC-supervised institutions that (1) are subject to Regulation C's other coverage requirements, and (2) originated at least 25 closed-end mortgage loans in each of the two preceding calendar years, but fewer than 100 closed-end mortgage loans in either or both of the two preceding calendar years.

The FDIC indicates that FDIC-supervised institutions may elect to report data voluntarily for those years, but the FDIC does not expect those institutions to collect and report data retroactively for closed-end mortgage loans covered by the Court's order vacating the CFPB 2020 HMDA Final Rule. Accordingly, institutions affected by the Court's order and that meet the reporting thresholds of 25 closed-end mortgage loans in each of the two preceding calendar years as of 2023, should start collecting data in 2023 and reporting data in 2024.

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 any specific legal advice about specific situations, members must consult and retain their own attorney.