FDIC/FRB/NCUA/OCC:
Reg C's Closed-end Mortgage Loan Threshold is 25*

Regulation C implements HMDA. One component to Regulation C coverage is how many closed-end mortgage loans an institution originated in each of the two preceding calendar years. In 2020, the CFPB set that threshold at 100 – that is, 100 closed-end mortgage loans.

As the law firm previously reported to BCG members over the past few months, there have been quite a few developments as to this threshold. In September 2022, a district court vacated the 100 closed-end mortgage loan threshold, reducing that threshold to 25. In December 2022, the CFPB posted a blog and issued a technical amendment to Reg C, both reflecting the 25 closed-end mortgage loan threshold.

The CFPB also discussed its supervisory and examination approach in the blog post. In that post, it announced that it did 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. This applies 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. It was an open question as to what the other banking agencies were going to do.

Here is what is new – the FDIC, FRB, NCUA and OCC have issued guidance reflecting the 25 closed-end mortgage loan threshold. FDIC FIL-06-2023 (February 3, 2023); FRB CA 23-1 (January 31, 2023); NCUA 23-RA-01 (February 2, 2023); and OCC Bulletin 2023-5 (February 1, 2023).

Similar to the CFPB, the FDIC, FRB, NCUA and OCC said that they do not intend to initiate enforcement actions, cite violations, or assess penalties for failures to report closed-end mortgage loan data on reportable transactions conducted in 2022, 2021, or 2020 for affected banks that meet Regulation C's other coverage requirements. Also similar to the CFPB, the other agencies said that they recognized that institutions affected by this change may need time to implement the change. Then some of the agencies went on to say slightly different things.

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Both the FDIC and NCUA said that they intend to take a flexible supervisory and enforcement approach similar to the approach the CFPB announced in its December 2022 blog post. The FDIC went on to state that while any FDIC-supervised institution may elect to report data voluntarily for 2020-2022, the FDIC does not expect those institutions to collect and report data retroactively for closed-end mortgage loans covered by the court's ordering vacating the 100 closed-end mortgage loan threshold. 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 OCC said that examinations conducted in affected banks regarding HMDA reportable transactions from 2022, 2021, or 2020 will be diagnostic to help banks identify compliance weaknesses. Last, the OCC said that collection and submission of 2023 HMDA data will provide affected banks with an opportunity to identify gaps in and make improvements to their HMDA compliance management systems.

As of this article's drafting, we are still awaiting guidance from the FRB. We will discuss which institutions are subject to HMDA during BCG's February 2023 Monthly Telephone Briefing for BCG members.