Clarification re HMDA Covered Transactions from Monthly Telephone Briefing

At the BCG Monthly Telephone Briefing held on February 19, 2016 one participant had a question the speakers wanted to re-think.

Question: Under the amendments to Regulation C (HMDA) that become effective on January 1, 2018, is the following loan reportable: a closed-end mortgage secured by a dwelling the borrower owns free and clear to provide cash out for non-specific purposes?

Revised Answer: Yes, unless the institution could demonstrate that the non-specific purposes were a primarily business or commercial purpose. Under the HMDA amendments, assuming the lender is a HMDA-covered institution, it generally must report all "covered loans." A "covered loan" means a closed-end mortgage loan or open-end line of credit, unless excluded by Section 1003.3(c) of the regulation. The term "closed-end mortgage" means an extension of credit that is secured by a dwelling, except open-end (revolving) credit. There is no longer any "purpose" test in the definition of a covered loan. Thus, almost any loan that is secured by a dwelling is potentially HMDA reportable under the new rules unless expressly excepted. There are a number of exceptions in Section 1003.3(c) of the regulation but none for the type of loan asked about, a "hard money" equity loan.

Only if the loan was for a primarily business purpose would it be excepted. Section 1003.3(c)(10) excludes a loan made primarily for a business or commercial purpose from HMDA reporting, but the exception has three major exclusions. If a loan meets the definition of a "home purchase loan," "home improvement loan" or "refinancing" under HMDA it is <u>not</u> excluded from reporting even if it is for business purpose. On the facts given, the loan did not refinance another loan (the definition of a refinancing is a loan that satisfies and replaces an existing dwelling-secured obligation by the same borrower), nor is it for the purpose of purchasing or improving a dwelling (the stated purpose of the loan was non-specific). Thus, if the loan was for a primarily business purpose (but not for home purchase or home improvement) it would be non-reportable.

18500 von karman avenue, suite 300, irvine, california 92612
phone: (800) 742-3600 • fax: (949) 474-0617
email: bcg@ablawyers.com • website: www.bankerscompliancegroup.com