



CFPB Issues Guidance on HMDA's Invalidated 100 Closed-End Loan Threshold*

In 2020, the CFPB increased the Regulation C threshold for depository institutions from 25 to 100 closed-end mortgage loans and from 100 to 200 open-end lines of credit, in each of the two preceding calendar years. As BCG reported in the October 2022 Newsletter, in September 2022, the U.S. District Court for the District of Columbia vacated the increased 100 closed-end mortgage loan threshold. *Nat'l Cmt. Reinvestment Coal. v. Consumer Fin. Prot. Bureau*, 2022 U.S. Dist. LEXIS 174183 (D.D.C. Sept. 23, 2022). As a result, it was not clear whether the CFPB would: (i) appeal the decision; (ii) issue a proposed rule to reinstate the 100 closed-end loan threshold with better analysis and more support for the threshold; or (iii) issue a proposed rule to adopt a different threshold of something between 25 and 100 closed-end loans.

On December 6, 2022, the CFPB did none of the above, but instead issued a blog posting on the matter. In that blog posting, the CFPB noted the district court's ruling and concluded that "[t]he 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." In other words, it does not seem as if the CFPB will be appealing the district court's decision, but is reverting back to the 25 closed-end loan threshold.

The next question is when is the 25 closed-end loan threshold in effect? Here is what the CFPB said in this regard:

The CFPB recognizes 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. In these limited circumstances, in allocating the CFPB's enforcement and supervisory resources, the CFPB does not view action regarding these institutions' HMDA data as a priority. Thus, 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 CFPB's blog posting did not speak to 2023 and beyond. It is possible that the CFPB could initiate enforcement actions or cite HMDA violations for failures to report closed-end mortgage loan data collected in 2023 for institutions subject to the CFPB's jurisdiction that meet the 25 closed-end mortgage loan threshold in 2022 and 2021 (and meet the rest of the coverage requirements). **As a result, CFPB-supervised institutions should look to see if they have met that 25 closed-end mortgage loan threshold and, if so, start collecting data on covered applications as soon as possible so that they stand ready to report the required data if they take action on that application in 2023.**

Whether the other agencies will follow the CFPB remains an open question. Thus, institutions that are supervised by those other agencies should contact the appropriate agency for guidance.

For more information, contact Stephanie Shea at [SShea@ABLawyers.com](mailto:sshea@ablawyers.com).

12/06/2022

Copyright © 2022
Aldrich & Bonnefin, PLC
All Rights Reserved

***Advertisement. This information is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. Contacting Aldrich & Bonnefin PLC does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.**