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## **HMDA 2017 and 2018 Submission Exemptions**

Modifications to the Home Mortgage Disclosure Act and Regulation C have changed coverage for some low volume reporters. The question on everyone’s mind is, is my institution now exempt from HMDA reporting? The good news would be that some institutions that were previously HMDA reportable will now be exempt from collecting and reporting data in 2017. However, an institution’s exemption status will need to be reevaluated on an annual

basis to determine if the bank continues to qualify for an exemption.

If a financial institution doesn’t meet any of the following criteria it would be exempt from collecting and reporting HMDA data in 2017:

- Asset Size Test
- MSA Test
- Preceding Year Test
- Institutional Test
- Loan Volume Test

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## **Third Party Oversight of Bill Pay Providers**

Third party oversight is a hot button in recent examinations, especially for community banks who use a wide range of arrangements with third parties for products and services. Bill pay is no exception. The June 2016 Atlanta FDIC quarterly newsletter highlighted common issues noted in recent examinations concerning bill payment program oversight. In many cases, the newsletter states, bill pay agreements often specify certain types of payments as “prohibited” or “exception” payments.

For example, prohibited payments as defined by the agreements reviewed generally include payments made to payees outside of the United States, while exception payments often involve those made for tax and court ordered purposes, e.g. property taxes or child support.

Institutions are allowed to prohibit or classify specific transactions but notice should be given to the customer that the payment has been declined.

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### **Joint agencies issue final revisions to CRA Q&A**

On July 18, 2016, the joint agencies published final revisions to Interagency Questions and Answers Regarding Community Reinvestment. The Questions and Answers document provides additional guidance to financial institutions and the public on the agencies' CRA regulations.

The new and revised guidance addresses questions raised by bankers, community organizations, and others regarding the agencies' CRA regulations in the following areas:

- Availability and effectiveness of retail banking services
- Innovative or flexible lending practices
- Community development-related issues, including: economic development; community development loans and activities that revitalize or stabilize underserved nonmetropolitan middle-income geographies; and community development services development

- Responsiveness and innovativeness of an institution's loans, qualified investments, and community development services

For more information on the CRA, the agencies' CRA regulations, and the agencies' Questions and Answers, please visit the Federal Financial Institutions Examination Council website at [www.ffiec.gov](http://www.ffiec.gov).

The content of the new guidance is more critical for intermediate small banks and large banks under CRA standards. However, a small bank can also benefit from the guidance when seeking to earn extra CRA credit.

The Q&A document can be viewed at <https://www.ffiec.gov/cra/qnadoc.htm>.

### **New Uniform Residential Loan Application released**

On August 23, 2016 Freddie Mac and Fannie Mae released a new version of the Uniform Residential Loan Application (URLA). The new URLA reflects the upcoming Home Mortgage Disclosure Act (HMDA) changes that go into effect in January of 2018.

Because the new URLA is designed for 2018 changes, the press release from Freddie Mac and Fannie Mae indicated that the new URLA should not be used until effective and mandatory dates are issued. Additionally, the new URLA will be reviewed to determine what safe harbor provisions will be afforded to institutions who use the updated URLA.



### Updates to TRID Guidance and Proposal

Effective October 2016, updates were made to the CFPB TILA-RESPA Integrated Disclosure Rule Small Entity Compliance Guide to incorporate guidance from existing webinars to add clarity on various topics that remain unclear in the regulation.

The topics updated include:

- Record retention requirements for the Closing Disclosure (Section 2.3)
- Completing the Loan Estimate and Closing Disclosure (Sections 5.3 and 10.4)
- Formatting the Loan Estimate and Closing Disclosure (Sections 5.6, 5.7, 10.11, 13.3, and 13.4)
- Delivery requirements for the Loan Estimate and the special information booklet (Sections 6.5 and 15.7)
- Requirements upon receiving an application (Sections 6.7, 6.9, 6.10, and 6.11)
- Disclosing and determining good faith for services the borrower may shop (Sections 7.4, 7.6, 8.8)
- Disclosing seller-paid costs and providing seller disclosures (Sections 10.7, 11.5, 11.6, 11.7)
- Providing revised Loan Estimates and corrected Closing Disclosures (Sections 12.3 and 12.6)
- Guidance on construction loans
- Providing special information booklet (Section 15.1, 15.6, and 15.7)
- The absence of a HUD-1 comparison chart in the Closing Disclosure (Section 10.12)
- Additional guidance on providing revised Loan Estimates any time before the Closing Disclosure. (Section 8.1)
- Revisions to standardize the terminology for “revised Loan Estimates” and “corrected Closing Disclosures.”

- Revisions to move existing questions to place them next to other questions on related topics (Sections 6.8 and 8.1) and miscellaneous administrative changes.

Updates were also made to the TILA-RESPA Integrated Disclosure Rule Guide to the Loan Estimate and Closing Disclosure Forms. The guide includes updates to incorporate guidance from existing webinars and guidance, including miscellaneous administrative changes and additional clarification on:

- The Loan Estimate in the General Information, Loan Terms, Projected Payments Table, Loan Costs, Other Costs, Adjustable Payment Table, Adjustable Interest Rate Table, Contact Information, and Other Considerations sections.
- The Closing Disclosure in the General Information, Projected Payments Table, Loan Costs, Other Costs, Loan disclosures, Escrow Disclosures, and Other Disclosures sections.

A bank should review the changes in the guidance and make appropriate adjustments to its loan processing and compliance processes. To view these updated guides as well as to view other resources for real estate professionals and settlement agents visit <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/>

It should be noted that the comment period for proposed changes to Regulation Z related to TRID closed as of October 16, 2016. Once the proposed rules are finalized, we will be offering a webinar to help navigate all recent changes to the regulation and guidance related to TRID. Please stay tuned for more information.

### **CFPB issues final rule on prepaid accounts**

On October 5, 2016, the Consumer Financial Protection Bureau (CFPB) issued a final rule amending Regulations E and Z related to prepaid financial products. The new rule provides additional protection for consumers engaged in the purchase of prepaid products. The Prepaid Rule brings “prepaid accounts” under the definition of “account” in Regulation E. Prepaid accounts are defined as either of the following:

- An account that is marketed or labeled as “prepaid” and is redeemable upon presentation at multiple, unaffiliated merchants for goods and services or usable at automated teller machines (ATMs); or
- An account that meets all of the following:
  - Is issued on a prepaid basis in a specified amount or is capable of being loaded with funds after issuance;
  - Whose primary function is to conduct transactions with multiple, unaffiliated merchants for goods or services, to conduct transactions at ATMs, or to conduct person-to-person (P2P) transfers; and

### **CFPB Amends Mortgage Servicing Rules**

The CFPB recently finalized amendments and clarifications to Regulation X RESPA and Regulation Z Truth in Lending as they relate to mortgage servicing requirements. The amendments cover: defining delinquency, force-placed insurance, requests for information, early intervention, loss mitigation, prompt payment crediting, periodic statements, and an updated small servicer definition. In keeping with the current regulations banks that qualify under the small servicer exemptions have somewhat reduced compliance burdens. The CFPB has published a quick reference guide for small

- Is not a checking account, a share draft account, or a negotiable order of withdrawal (NOW) account.

In addition, payroll card accounts and government benefit accounts are prepaid accounts under the Prepaid Rule’s definition.

If a financial institution offers products meeting the definition of a “prepaid account,” the institution will be subject to pre-acquisition and initial disclosure requirements, error resolution requirements, periodic statements or the periodic statement alternative – unless certain information is available to the consumer – and an internet posting and submission of prepaid account agreements to the CFPB. Furthermore, if the prepaid account offers overdraft credit features, the card will be treated as a credit card under Regulation Z.

To review the comprehensive definitions and requirements of the Prepaid Rule visit the following link.

<http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/prepaid-rule/>

servicers on its website at the following link below. Further, the majority of these rules will be effective on 10/19/17 with the remaining effective on 4/19/18.

Stay tuned for more detail on the rules in upcoming editions of the Compliance Pipeline.

CFPB Small Servicer Quick Reference:  
[http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/o8042016\\_cfpb\\_Mortgage\\_Servicing\\_Small\\_Servicers\\_and\\_Key\\_Provisions.pdf](http://s3.amazonaws.com/files.consumerfinance.gov/f/documents/o8042016_cfpb_Mortgage_Servicing_Small_Servicers_and_Key_Provisions.pdf)

### **Military Lending Act Clarification**

On July 22, 2015, the Department of Defense amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). Several questions and concerns about the final rule were posed by financial institutions and the DOD issued clarifications on the final rule. Several clarifications were made that are of significant importance to community banks. First, the DOD clarified that the rule applies to purchase transactions secured by the property purchased where

additional funds are advanced as part of the purchase for other purposes. Second, financial institutions are allowed to take a security interest in a specific deposit account such as a CD. The prohibition of deposits only applies to the general right of setoff.

The entire Q&A clarification can be found at: <https://www.federalregister.gov/documents/2016/08/26/2016-20486/military-lending-act-limitations-on-terms-of-consumer-credit-extended-to-service-members-and>

### **Third Party Oversight of Bill Pay Providers** *Continued from Page 1*

Another issue noted by the FDIC and seen in our client reviews is bill payment agreements including provisions stating that no investigation is required for disputes of “prohibited” or “exception” payments. This language erroneously absolves these types of transactions from the consumer protection provided under Regulation E. Incorrectly stating that consumer protections are not available may result in the consumer not disputing a transaction. Depriving consumers of Regulation E rights may result in consumer harm. It is important for institutions to review their bill payment agreements for compliance with applicable regulations.

The final issue noted by the FDIC is that service providers often do not disclose to the customer the manner the bill payment is remitted. Specifically, when an online bill payment is scheduled by the bank’s customer, the service provider may elect to send funds to the payee electronically or by paper check. Depending on the payee’s procedures, the method of payment may result in consumer harm. From the newsletter, when the bill payment service provider furnishes a laser draft, it issues a check using customers’ specific routing and account numbers. This type of payment has no specific clearing schedule and will only clear after the payee

has signed and deposited the check. Alternatively, service providers may advance funds by issuing a check against the service providers’ own accounts. To ensure that the payment arrives by the date specified by the consumer, the service provider will mail the check generally up to 10 days in advance of the payment date that the consumer has selected. The funds, however, would be debited from the consumer’s account on the date specified for the payment by the consumer, regardless of when the underlying check actually clears. When a customer lacks sufficient funds on the date that the service provider attempts to debit the account for the bill payment, the attempted debit may be returned by the consumer’s financial institution. This results in a debt owed by the consumer to the third-party service provider, since the funds have already been advanced on the consumer’s behalf.

Third party oversight and consumer harm are two of the principal areas reviewed in current examinations. Bill pay is a popular feature in many community banks, especially with tax payments coming due soon. It is critical that institutions review their bill pay agreements to ensure clarity and avoid potential consumer harm claims.

### **HMDA 2017 and 2018 Submission Exemptions**

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Below is a summary of the five criteria for determining 2017 institutional coverage for HMDA reporting for banks, savings associations, and credit unions. Please note different criteria applies for other mortgage lending institutions.

- Asset Test:** If the financial institution falls below the asset size threshold as of December 31, 2016 it would be exempt from collecting and reporting HMDA data for 2017. The asset size varies from year to year and is based upon the Consumer Price Index of Urban Wage Earners and Clerical Workers. For 2016, the collection and submission asset size limit was \$44MM as of December 31, 2015. As of the publish date of this article the 2017 asset size limits have not been announced.
- MSA Test:** The Metropolitan Statistical Area (MSA) Test determines whether a bank has a home or branch located in a MSA. If a bank does not have a home or branch located in a MSA, it is exempt from HMDA data collection and reporting for 2017.
- Preceding Year Test:** In 2016, did the institution originate at least one home purchase loan or refinancing of a home purchase loan secured by a first lien on a one- to four-family dwelling? If the Bank did not originate one of the above transactions, it is exempt from HMDA collection and reporting for 2017.
- Institutional Test:** This test contains three parts. Is the institution federally insured or regulated? Was the mortgage loan(s) referred to in the Preceding Year Test above insured, guaranteed, or supplemented by a Federal agency? Was the loan intended for sale to Fannie Mae or Freddie Mac? If the answer to all of these questions is no, a bank is exempt from HMDA collection and reporting in 2017.
- 2017 Loan Volume Test:** This tests whether a bank originated at least 25 home purchase loans or refinance of home purchase loans in each of the prior two years. For coverage purposes a refinancing of a home purchase loan means a new obligation that satisfies and replaces an existing obligation by the same borrower, in which the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents; or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings. If the bank originated less than 25 home purchase loans or refinancing of home purchase loans in either 2015 or 2016 it will not be required to collect and report HMDA data for 2017.

The Loan Volume Test is critical for lower volume reporters who will need to conduct an analysis to determine if the institution will be required to collect and report HMDA data for 2017. However, it is important to note that the criteria to determine an institutions coverage will be different for collection and reporting in 2018 and going forward. For collection and reporting of HMDA data in 2018 the Loan Volume Test criteria will consider whether the Bank originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or at least 100 open-end lines of credit in each of the two preceding calendar years. In other words, an institution could qualify for an exemption during 2017 but may be required to collect and report under the 2018 criteria for institutional coverage.

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### **HMDA 2017 and 2018 Submission Exemptions**

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A bank that becomes exempt from HMDA collection and reporting because of the 2017 Loan Volume test should have processes in place to easily identify possible HMDA covered closed-end and open-end mortgage loans to accurately calculate institutional coverage criteria in 2018 and future years. Banks that could have a change in its HMDA reporting status should also update compliance risk assessments, policies and procedures, as well as provide training to loan staff to account for the differences in ECOA government monitoring requirements as compared to HMDA government monitoring and reporting requirements.

#### Helpful links

CFPB HMDA Implementation Page:

<http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/hmda-implementation/>

CFPB HMDA Institutional Coverage Guidance

[http://files.consumerfinance.gov/f/201510\\_cfpb\\_2017-hmda-institutional-coverage.pdf](http://files.consumerfinance.gov/f/201510_cfpb_2017-hmda-institutional-coverage.pdf)

[http://files.consumerfinance.gov/f/201510\\_cfpb\\_2018-hmda-institutional-coverage.pdf](http://files.consumerfinance.gov/f/201510_cfpb_2018-hmda-institutional-coverage.pdf)

### **Changes in 2017 HMDA Submission Process**

HMDA Data collected in 2017 for submission in 2018 will no longer be submitted to the FFIEC but will at that time be submitted to the CFPB via their HMDA Platform. If your bank uses a third party vendor for HMDA software purposes, verify that the vendor will have a product ready in a timely fashion during 1st quarter 2017. For lower volume reporters it appears that the CFPB will have options available in the near future to facilitate reporting.

See the CFPB's press release here for more detail: <http://www.consumerfinance.gov/data-research/hmda/des-update-2017>

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