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THE NEW HMDA RULE'S EXPANDED ETHNICITY AND RACE CATEGORIES

HMDA's new rule provides that when applicants fill out the requested ethnicity, race, and sex information, they can supply their own descriptions by writing in an unlimited number of self-identified subcategories under race and ethnicity. The financial institution, however, may report only a total of five categories and subcategories combined. The authors describe the rule, the problems it creates for financial institutions, and the open questions on which the CFPB should provide further guidance.

By Michael Flynn and Kimberly Monty Holzel *

The Consumer Financial Protection Bureau's rulemaking related to the Home Mortgage Disclosure Act ("HMDA") has generated considerable discussion in the financial services industry. Most recently, the new HMDA rule ("New Rule"), issued by the Consumer Financial Protection Bureau ("Bureau") on October 15, 2015, and clarifications and technical corrections to the New Rule ("Clarifications") issued by the Bureau and published in the Federal Register on September 13, 2017, have become the sources of focus among practitioners regarding the goals of HMDA and the ways in which the data are ultimately utilized. A significant portion of the conversation revolves around the requirements for collecting and reporting government monitoring information ("GMI") concerning applicants' ethnicity, race and sex. This article discusses some of the issues that the New Rule and the Clarifications raise concerning the GMI requirements.

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To comply with Regulation C,[1] which implements HMDA, certain financial institutions are required to collect and submit yearly HMDA reports to their applicable regulatory and supervisory agencies in connection with mortgage loan originations and purchases, as well as applications that do not complete the origination process. Additionally, financial institutions are obligated to make a redacted form of their HMDA data available to the public, which are currently accessible in both aggregate and loan-level formats. Accurate HMDA reporting by financial institutions is crucial because regulatory agencies use the data not only to make investment decisions for neighborhoods or determine whether institutions are fulfilling the housing needs of their communities, but also to evaluate financial institutions' lending practices, identify potential patterns of discrimination, and enforce

[1] 12 C.F.R. Part 1003.