

July 28, 2017

Ms. Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

Re: Home Mortgage Disclosure Act (Regulation C) Temporary Increase in Institutions
And Transactional Coverage Thresholds for Open-End Lines of Credit
Docket No. CFPB-2017-0021 or RIN 3170-AA76

Dear Ms. Jackson:

The American Bankers Association (ABA)¹ supports the proposal by the Bureau of Consumer Financial Protection (Bureau) to increase temporarily the threshold below which small volume lenders would be exempt from collecting and reporting data about home equity lines of credit (HELOCs) under the Home Mortgage Disclosure Act (HMDA), as implemented by Regulation C. However, we encourage the Bureau to make the increase permanent and not limit it to two years. Moreover, we oppose the proposed change in terminology from “each” to “either” of the preceding years to determine coverage.

Background

Regulation C, as amended by the Bureau in October 2015 (2015 HMDA Final Rule), requires the collection and reporting of data regarding open-end, dwelling secured lines of credit, or HELOCs. However, the 2015 HMDA Final Rule includes an exclusion for financial institutions that originate fewer than 100 HELOCs in each of the two preceding calendar years. On July 14, 2017, the Bureau proposed to amend the 2015 HMDA Final Rule to raise the threshold from 100 HELOCs in *each* of the two preceding calendar years to 500 HELOCs in *either* of the two preceding calendar years.

The proposed increase to the threshold is intended to decrease the burden with preparation for the changes to the HMDA reporting that takes effect on January 1, 2018. The increased threshold would only be in effect for 2018 and 2019 to let the Bureau study the impact that the increased threshold would have on the overall usefulness of the HMDA data. Without any additional regulatory action, the threshold would revert back to 100 HELOCs in 2020.

Prior to the 2015 HMDA Final Rule, the collection and reporting of HELOC data was voluntary, although regulators have considered collecting data on HELOCs over the years. When it adopted the extensive changes to the HMDA reporting regime in October 2015, the Bureau decided to require data on HELOCs as part of its changed focus to collect data on all residence-secured loans. In adopting the revisions to HMDA in 2015, the Bureau estimated that using a

¹ The American Bankers Association is the voice of the nation’s \$17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9 trillion in loans.

threshold of 100 HELOCs in each of the preceding two years would cover 749 lenders and capture approximately 88% of the market. The Bureau further estimated that if the threshold is increased to 500 HELOCs in each of the preceding two calendar years, the requirements would apply to only 231 lenders, but still would capture 76% of the market. While the Bureau also considered raising the threshold to 1,000 HELOCs per year instead of using a 500 HELOC threshold, they concluded that this would diminish the value of the HMDA data since it would only capture 49% of the overall HELOC market.

The Bureau asserts that information received by the Bureau *since* issuing the 2015 HMDA Final Rule,

[H]as caused the Bureau to question its assumption ... that low-complexity (tier 3) institutions process their home-equity lines of credit on the same data platforms as their closed-end mortgages, which in turn drove the Bureau's corresponding assumptions that the one-time costs for these institutions would be minimal.... The Bureau likewise has heard anecdotal evidence suggesting that the ongoing costs for these institutions – which the Bureau estimated would be under \$10,000 per year and add under \$60 per line of credit – could be at least three times higher.²

Due to its reassessment of the potential burdens on creditors, the Bureau is proposing this increase. However, other than the increase to the HELOC transactional coverage threshold the Bureau plans no other substantive changes at this time.

ABA Comments

ABA supports the increase in the threshold from 100 loans to 500 loans, which will reduce the number of institutions reporting HELOC data but will also help alleviate the burden for low-volume lenders. Still, many institutions continue struggling to implement the new data collection requirements. Unfortunately, that preparation has been severely impacted by the lack of finality in certain elements of the rule. Two other HMDA proposals are still pending: the technical changes proposed earlier this year as well as the resubmission standards published early in 2016. In addition to those pending rules, the Bureau has yet to finalize and make available the software that lenders will use for submitting HMDA data. Lenders are also concerned about how the lack of privacy protections will impact their customers, whose personal financial data may be expropriated or exposed to identity theft. As a result, to ensure quality data and a less burdensome and costly transition, ABA continues to advocate for a delay in the implementation date until these crucial issues are adequately addressed.

ABA encourages the Bureau to increase the threshold for HELOCs to 500 loans per year permanently and not temporarily. Based on the Bureau's own estimates, a 500 loan open-end transactional coverage threshold still provides data on approximately three quarters of the open-end loan application volume. In other words, the Bureau's goals for understanding how lenders are serving their markets will be met, while at the same time easing the burdens for many lenders and consumers.

ABA opposes the proposed change in the time period considered for determining whether the exclusion applies. As noted previously, the 2015 HMDA Final Rule contained an exclusion with

² Home Mortgage Disclosure (Regulation C) Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit, 82 Fed. Reg. 33459 (proposed July 20, 2017) (to be codified at 12 C.F.R. pt. 1003).

respect to an open-end line of credit if a financial institution originated fewer than 100 such lines of credit in *each* of the two preceding calendar years. In footnote 4 of the proposal, the Bureau characterizes this as a “drafting error,” yet states, “the intent was to require that a financial institution have exceeded the threshold in both of the preceding calendar years to be subject to open-end line of credit reporting.”³ However, by changing the term to “either” instead of “each,” the meaning becomes the opposite of what the Bureau intends. Either would mean that the lender need only exceed the limit in one of the two preceding years to be subject to reporting. ABA believes that the original language reflects the Bureau’s intent and is the appropriate policy choice. Lenders should not be required to begin reporting if they exceed the threshold in a single year. Therefore, we oppose the change from “each” to “either.”

At the same time it considers increasing the threshold for HELOCs, ABA urges the Bureau to reconsider its decision not to increase the transactional coverage threshold for closed-end loans. When the Bureau was revising the HMDA standards in 2015, ABA recommended that the threshold for closed-end loans be increased to 250 loans per year. As with HELOCs, the higher threshold provides a much more workable standard for the industry that would still achieve the goals for HMDA. Due to the burdens with reporting, we have been receiving comments from smaller volume mortgage lenders that they plan to take steps to limit their lending activities in order to *stay below* the current threshold. Further, some of these lenders are located in rural communities where they may be the only readily available lender for consumers. Therefore, the lower threshold for closed-end loans is likely to have a negative impact on consumers across a variety of communities and geographies.

Conclusion

ABA encourages the Bureau to implement this proposal but to make it permanent. ABA also recommends that the Bureau not change the terminology from *each* to *either* since that will have the opposite effect of what the Bureau intends. It is critically important that the Bureau finalize the pending changes and propose steps to protect consumers’ privacy. And finally, since there is less than six months until lenders and consumers will be impacted by these significant changes without finalized regulation, guidance or software from the Bureau, ABA urges the Bureau to defer the effective date to avoid serious disruptions to the market.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert G. Rowe, III", with a horizontal line extending from the end of the signature.

Robert G. Rowe, III
Vice President & Associate Chief Counsel, Regulatory Compliance

³ *Id.* at 33455.