

Re:
Docket No. CFPB-2017-0021,
RIN 3170-AA76:

**Proposed Home Mortgage Disclosure
(Regulation C) Temporary Increase in
Institutional and Transactional Coverage
Thresholds for Open-End Lines of Credit**

Mortgage Bankers Association

July 31, 2017



MORTGAGE BANKERS ASSOCIATION

July 31, 2017

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

Re: Docket No. CFPB-2017-0021, RIN 3170-AA76: Proposed Home Mortgage Disclosure (Regulation C) Temporary Increase in Institutional and Transactional Coverage Thresholds for Open-End Lines of Credit

Dear Ms. Jackson:

The Mortgage Bankers Association (MBA)¹ appreciates the opportunity to comment on the two-year temporary increase in transactional coverage thresholds for open-end lines of credit proposed by the Consumer Financial Protection Bureau (CFPB or Bureau) to amend the Home Mortgage Disclosure rule (Regulation C).

MBA appreciates the CFPB's efforts to address industry's concerns considering the complex systems and process changes needed to implement the Home Mortgage Disclosure Act (HMDA) rule. While we support the proposed increase in the reporting threshold for open-end lines, we believe additional efforts are needed, including:

- Temporarily suspending mandatory reporting for all open-end lines;
- Increasing the threshold for closed-end multifamily loans to 100 loans; and
- Implementing a one-year delay in mandatory collection and reporting of "new data points"—those that are required for loans acted on in 2018.

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

Please note the reasons for this last request were detailed in the comment letter that MBA filed with the Bureau on May 25, 2017 (in response to its 2017 HMDA proposed rule) and reiterated in the letter MBA jointly submitted to the Bureau with several trade associations on July 28, 2017 (see Appendix A).

MBA Supports this Revision

In its October 1, 2015 rule amending Regulation C, the Bureau requires greatly expanded data on mortgages which, for the first time, includes open-end lines. Prior to that, reporting on open-end lines was optional. The rule does not, however, require such reporting from institutions that originated less than 100 open-end lines in each of the two preceding reporting years.

As stated in the preamble to this amendment of the rule, the Bureau received input that the threshold of 100 loans was too low. Accordingly, the Bureau is proposing here to increase the threshold to 500 or more open-end lines for two years (2018-19). During that time, the Bureau will reconsider the issue and avoid requiring institutions originating less than 500 loans to collect and report data.

MBA greatly appreciates and shares these concerns. Requiring reporting of open-end lines comes in the midst of what is the greatest expansion of HMDA data collection ever. This expansion includes doubling the data points required to be collected and revision of most of those that are currently required. These changes alone are resulting in very considerable costs. Reporting open-end lines, which for most companies are a separate line of business, requires separate training and systems changes and therefore entails substantially greater costs.

MBA Recommends Temporarily Suspending the Open-End Line Reporting Requirement Entirely

The preamble notes that because of concerns about increased burdens, the Federal Reserve decided not to require reporting of open-end lines as it introduced other requirements in the early 2000s. We respectfully submit that this approach remains appropriate now, as well. MBA is supportive of holistic reforms that are not based on an institution's size, charter, or business model. Accordingly, we would encourage temporary suspension of the open-end line reporting requirement entirely for now as other requirements are implemented. Lenders that choose to do so may report open-end lines voluntarily, as they may now.

MBA Recommends Increasing the Transactional Coverage Threshold for Closed-End Multifamily Lines of Credit

Consistent with the principles underlying the proposal to increase the HMDA coverage threshold for open-end lines, MBA recommends that the Bureau also consider increasing the threshold for reporting closed-end multifamily mortgage loans. Specifically, we recommend increasing the HMDA reporting threshold for closed-end multifamily mortgage loans from 25 originations in either of the preceding two calendar

years² to 100 originations. That is, if a lender's multifamily mortgage originations did not meet that transactional coverage threshold for either of the two preceding years, the lender would not be required to report HMDA data on its multifamily mortgage loans. We note that this threshold would be consistent with the 100-origination transactional coverage threshold for non-depository institutions under the current rule.³

We believe that the higher threshold for multifamily mortgage originations, which are generally business-to-business rather than consumer transactions, would maintain a more appropriate balance between the regulatory burdens and the potential public policy benefits of HMDA reporting. As the Bureau observed, the burden of the one-time costs of implementing the new HMDA reporting requirements can be substantial, and the impact of that cost can be particularly substantial in the case of smaller-volume multifamily lenders. In addition, HMDA reporting of multifamily loans in particular creates the potential for privacy risk for both borrowers and lenders because, depending on the data points the Bureau elects to make public, third parties may be able to identify individual multifamily properties from HMDA data. Together, these factors create an unintended incentive for smaller-volume multifamily lenders to cap lending at less than 25 originations to avoid the reporting burdens and privacy risks triggered by HMDA reporting, which could create an unwarranted impediment to the availability of capital to support rental housing. Finally, we believe the limited information value of HMDA data on such a small number of multifamily mortgage loans from a multifamily lender does not justify the corresponding burden of collecting and reporting that data.

In sum, we believe an increase in the threshold from 25 to 100 multifamily mortgage originations in either of the preceding two years would have minimal impact on the Bureau's ability to fulfill its mission, but would substantially reduce the regulatory burden for affected smaller-volume multifamily lenders. For that reason, MBA recommends that the Bureau consider this change.

MBA Believes the New Data Collection Requirements Should be Delayed One Year

As we explained in the attached letter as well as our earlier comment, we believe that in any event, a one-year delay for all of the new reporting requirements should be introduced. Although we appreciate the CFPB's work to facilitate implementation, the CFPB's regulatory process and technological framework for this rule are still incomplete. Proposed amendments to the rule, including this one, are not yet finalized. Moreover, the HMDA data reporting portals, geocoding tools, data validation, and finalized Filing Instruction Guides (FIG) have not yet been issued. All of these items are needed to ensure compliant business processes and systems changes by the effective date.

² See 12 CFR § 1003.2(f)(1)(v)(A), (2)(ii)(A) (eff. Jan. 1, 2018).

³ See 12 CFR § 1003.2, Definition of Financial Institutions, (2)(iii)(B) (current rule) ("**Financial institution** means: ... A for-profit mortgage-lending institution (other than a bank, savings association, or credit union) that: ... in the preceding calendar year, originated at least 100 home purchase loans, including refinancings of home purchase loans.").

Additionally, the CFPB has not yet begun its public process of applying the balancing test needed to determine which of the new data will be released to the public. If it is determined some data should not be released, follow-on issues that need to be addressed include data security controls and, more broadly, whether such data should be routinely collected and reported at all. These concerns should be addressed before the new data points are required.

Finally, inasmuch as new data must be collected for loans where action is taken on or after January 1, 2018, given the standard timeline from application to closing, data for January 1, 2018 actions needs to be collected in the last several months of 2017. This timeframe suggests that at this point there is insufficient opportunity for many lenders to revise policies, train staff, or adjust their Compliance Management Systems appropriately. Nor is there time for vendors to integrate and test forthcoming requirements to ensure an effective implementation.

For all of these reasons, we respectfully urge delay of the mandatory implementation date for the new data points to give both the Bureau and the industry sufficient time to complete, test, and implement compliant data collection and HMDA reporting processes, as well as to address data privacy issues.

To facilitate testing and progress towards full implementation, the Bureau should allow those institutions that choose the flexibility to incorporate some or all of the new data requirements into their data collection for 2018 on a voluntary basis. Such an approach requires careful work and MBA would welcome the opportunity to meet with the Bureau on this and similar issues to ensure a fruitful transition. During the implementation period, the current data requirements of Regulation C would continue to apply and address the public purposes of HMDA.

Conclusion

In sum, we appreciate your decision to increase the reporting threshold for open-end lines of credit, we favor the temporary suspension of mandatory open-end reporting entirely, we urge raising of the closed-end multifamily limits and, finally, we urge a suspension of the collection of new data points for one year. Additionally, in our correspondence, we have asked that decisions be made and communicated to stakeholders on these requests as soon as possible so that undue costs are not incurred and lenders and the government can focus on the steps needed to ensure effective implementation going forward.

Thank you for your consideration of our views. Should you have questions or wish to discuss these comments, please contact Ken Markison, Vice President and Regulatory Counsel, at (202) 557-2930 or kmarkison@mba.org or Justin Wiseman, Director of Loan Administration Policy, at (202) 557-2854 or jwiseman@mba.org.

Sincerely

A handwritten signature in black ink, appearing to read "Pete Mills". The signature is fluid and cursive, with the first name "Pete" being more prominent than the last name "Mills".

Pete Mills
Senior Vice President
Residential Policy and Member Engagement

**Appendix A:
July 28, 2017 Joint Trades Letter**

**American Bankers Association
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council of The Financial Services Roundtable
Mortgage Bankers Association**

July 28, 2017

Richard Cordray, Director
Consumer Financial Protection Bureau
1275 First St, NE
Washington, DC 20002

RE: Request for Delayed Implementation of the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule

Dear Mr. Cordray,

The undersigned trade associations representing the financial services industry respectfully request a delay of the January 1, 2018 effective date of one year for the mandatory collection of new data points under the Consumer Financial Protection Bureau's ("Bureau" or "CFPB") Home Mortgage Disclosure Act (HMDA) Regulation (Regulation C). We also would like to assist the CFPB in developing protocols for 2018 reporting so the year serves as a productive transition to the new data requirements for 2019.

Although we greatly appreciate the CFPB's work to facilitate implementation of this major data collection and reporting rule, the CFPB's regulatory process and technological framework for this rule are still incomplete. Proposed amendments to the rule are not yet finalized. Moreover, the HMDA data reporting portals, geocoding tools, data validation, and finalized Filing Instruction Guides (FIGs) are not yet issued. All of these items are needed to ensure compliant business process and systems changes by the effective date.

Additionally, the CFPB has not yet initiated a public process to apply the balancing test to determine which of the new data will be released to the public. This is a critical step, considering that the data includes private financial information such as borrowers' credit scores, debt-to-income ratios, and loan-to-value ratios. Studies show that even if private information is released in anonymous form, other data can be used to re-identify specific individuals and their data. If it is determined some data should not be released, follow-on issues that need to be addressed include data security controls and, more broadly, whether such data should be routinely collected and reported at all. These concerns should be addressed before the new data points are required.

Currently, the new data must be collected for loans where action is taken on or after January 1, 2018. Given the standard timeline from application to closing, data for January 1, 2018 actions can be expected to be collected in the several months of 2017. This timeframe suggests that there is now insufficient opportunity for lenders and vendors to test and integrate forthcoming requirements to ensure an effective implementation.

For all of the reasons set forth above, we strongly believe the Bureau should delay the mandatory implementation date for the new data points to give both the Bureau and the industry sufficient time to complete, test, and implement compliant data collection and HMDA reporting processes, as well as to address data privacy issues.

To facilitate testing and progress towards full implementation, the Bureau should allow those institutions that choose the flexibility to incorporate some or all of the new data requirements into their data collection for 2018 on a voluntary basis.^{1 2} Such an approach requires careful work and the undersigned would welcome the opportunity to meet with the Bureau on this and similar issues to ensure a fruitful transition.

Finally, we also ask that a decision be made and communicated to stakeholders on this request as soon as possible so that undue costs are not incurred and lenders and the government can focus on the steps needed to ensure effective implementation going forward. In the meantime, the current data requirements of Regulation C would continue to apply and address the public purposes of HMDA.

We appreciate your consideration of these important matters and the Bureau's work on the HMDA rule. We would also appreciate an opportunity to discuss our concerns with you in greater detail.

Thank you again for your consideration.

Sincerely,

American Bankers Association
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council of The Financial Services Roundtable
Mortgage Bankers Association

¹ For instance, the Bureau would sanction the collection of ethnicity, race, and sex information during 2018 using either the current collection format or the new format.

² It will be important for the CFPB to distinguish between the gathering and reporting of data. Those institutions that gather data voluntarily should not have to report that data. If, however, an institution elects to do so, it should be allowed to both voluntarily gather and report the identified data, but the voluntarily reported data should not be subject to the error/re-filing tolerances. This would be consistent with the safe harbor provided to institutions that voluntarily report SARs data – i.e., no privacy action can be brought against an institution that reports the data in good faith.