



MORTGAGE BANKERS ASSOCIATION

BY ELECTRONIC TRANSMISSION: 2019-NPRM-HMDAThresholds@cfpb.gov

June 12, 2019

The Honorable Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: NPRM regarding Home Mortgage Disclosure (Regulation C)

Dear Director Kraninger:

The Mortgage Bankers Association (MBA)¹ respectfully submits these comments on the Consumer Financial Protection Bureau's (Bureau's) Notice of Proposed Rulemaking (NPRM) published May 13, 2019.² In particular, we comment on the proposal to increase the transactional coverage threshold for closed-end loans from 25 loans in each of the preceding two calendar years, to either 50 or 100 loans, for both depository institutions and non-depository institutions.

While the NPRM would apply to all institutions that are otherwise subject to HMDA reporting, our comments below emphasize the perspective of institutions that engage in making business-to-business multifamily loans.

Executive Summary

MBA supports the proposal to increase the transactional coverage threshold for closed-end loans to 100 loans, rather than 50 loans, because the higher proposed threshold (applied to both depository and non-depository institutions) would better balance the benefits and burdens of HMDA reporting for affected institutions.

MBA further recommends that the Bureau analyze additional alternative thresholds between 100 and 250 loans (e.g., 125, 150, 175, 200, and 225 loans) and adopt a threshold greater than 100 loans if a higher threshold would similarly improve the balance of benefits and burdens.

¹ MBA is the national association representing the real estate finance industry, covering both single-family mortgages to consumers, and commercial/multifamily mortgages to business entities. Our members include all elements of the real estate finance ecosystem including mortgage companies, commercial banks, thrifts, REITs, securitization conduits, life insurance companies, and others in the mortgage lending field.

² 84 Fed. Reg. 20972 (May 13, 2019) (hereinafter NPRM).

MBA also supports increasing the transactional coverage threshold because an increased threshold would provide relief from HMDA reporting on business-to-business multifamily loans, at least for some lenders, which would be consistent with MBA's prior recommendations that business-to-business multifamily loans should not be subject to HMDA reporting, particularly following the enactment of the Dodd-Frank Act. Information on such commercial transactions is not necessary to achieve the Bureau's core consumer mission.

I. Increasing the threshold to 100 closed-end loans would appropriately improve the benefit-burden balance.

In the NPRM, the Bureau proposes to increase the transactional coverage threshold for closed-end loans from 25 loans in each of the preceding two calendar years to either 50 or 100 loans, as a way to improve the balance between the benefits of the HMDA data reported by lower-volume institutions and the burdens on those institutions of collecting and reporting that information. As between the two alternatives, MBA believes that a threshold of 100 loans achieves the better balance of benefits and burdens, for the reasons below.

A. The Bureau's analysis supports the conclusion that a threshold of 100 would have little impact on overall HMDA data.

The Bureau's analysis demonstrates that increasing the transactional coverage threshold to 100 closed-end loans would have "very little impact on the overall HMDA data," because the amount of data excluded would be insignificant as compared to the total data reported annually.³

This conclusion is supported by the Bureau's estimates. For example, the Bureau estimates that increasing the transactional threshold to 100 loans would exempt only about 4 percent of mortgage loans across the country for depository institutions; would exempt fewer than 1 percent of mortgage loans for non-depository institutions; and would reduce reportable HMDA data by 20 percent or more in fewer than 3 percent of low-to-moderate income census tracts or rural census tracts.⁴

In addition, based on the Bureau's 2017 figures, the increase to a threshold of 100 closed-end loans would mean that an estimated 146,000 additional loans would not be reported (including both depository and non-depository institutions), which would amount to only about 1.8 percent of the total of 8.2 million mortgage loans originated in 2017.⁵ This measure of the estimated impact further supports the conclusion that increasing the threshold to 100 loans would have very little impact on the overall HMDA data.

³ NPRM at 20977.

⁴ See NPRM at 20977-20979, 20984-20986.

⁵ See NPRM at 21004-21005.

B. Increasing the threshold to 100 closed-end loans would reduce the risk that HMDA data would generate false inferences about lending practices.

Another factor relevant to the balancing of benefits and burdens is the small sample size problem. As a general matter, smaller sample sizes are associated with low statistical power and inflated false discovery rates. Therefore, apparent lending patterns derived from a set of 25 or even 100 loans may in fact be the result of chance and randomness rather than lending practices. As a result, inferences about the lending practices of any individual institutions that are derived from those patterns may not be valid. Data that can readily lead to invalid inferences are unsuitable for public policy decisions.

C. A threshold of 100 loans would provide meaningful burden relief for lower-volume lenders.

In the NPRM, the Bureau estimates that increasing the transactional coverage threshold from 25 to 100 loans would reduce operational costs associated with reporting closed-end loans by approximately \$8.1 million per year.

That would be a substantial reduction in regulatory burden. Moreover, based on input from our members, that estimate of current burden/potential relief may be low. For example, the three-tiered approach to estimating costs does not seem to account for the unique challenges of adapting business and multifamily lending to HMDA regulations and HMDA reporting infrastructure designed with single-family consumer mortgage lending in mind. The result is a highly manual and costly reporting process not reflected in the \$8.1 million estimate.

The cost estimate in the NPRM also does not take into account the non-financial regulatory cost, including the cost in time and attention that could otherwise be devoted to making additional loans. Similarly, it does not capture the non-financial “cost” to borrower confidentiality arising from the risk that properties and borrowers can be re-identified by publicly disclosed HMDA data (in effect, resulting in the functional equivalent of a data breach). Taking these additional factors into account, it is clear that increasing the threshold to 100 would provide regulatory relief to affected institutions that is even more meaningful than would be suggested by the \$8.1 million cost estimates.

Finally, time is a factor affecting regulatory burden and relief. To spare affected institutions from the burden of preparing to comply with a reporting requirement that will not apply, MBA urges the Bureau to finalize an increase in the transactional coverage threshold as soon as is reasonably practicable.

D. A threshold of 100 loans would improve the balance of benefits and burdens.

We believe an analysis of the financial and non-financial costs of collecting and reporting on closed-end loans for lenders that fall below a 100 loan threshold demonstrates that those costs far outweigh the minimal or negative HMDA value of the information on the relatively small numbers of mortgages that would not be collected and reported.

In addition, we believe these factors are comparable across depository and non-depository institutions.

II. An alternative of increasing the threshold to a level between 100 and 250 closed-end loans may further improve the balance of benefits and burdens.

The Bureau conducted analyses of the benefit and burden impacts of increasing the threshold to 50, 100, 250, or 500. Based on the results of that analysis, the Bureau proposed two alternative thresholds: 50 or 100 closed-end loans in each of the preceding two calendar years.

While we appreciate the scope of that analysis, the large gap between a threshold of 100 and a threshold of 250 may overlook other alternative thresholds. For example, an analysis of possible thresholds of 125, 150, 175, 200, and 225 could reveal an alternative threshold that would better balance benefits and burdens than a threshold of either 50 or 100 would. Accordingly, we recommend that the Bureau conduct such an analysis and take action to implement a higher threshold as appropriate.⁶

III. An increase in the transactional coverage threshold would provide appropriate HMDA relief to some multifamily lenders.

Increasing the closed-end loan threshold would effectively provide relief from HMDA reporting on business-to-business multifamily loans, for some institutions, particularly for some non-depository institutions that engage in multifamily lending and that do not also offer or engage in consumer financial products or services.⁷

For affected institutions, this outcome would be consistent with MBA's view that business-to-business multifamily loans should be exempt from HMDA reporting, particularly following the enactment of the Dodd-Frank Act, because information on such commercial transactions is not

⁶ To the extent that doing so would require an additional rulemaking, we recommend that the Bureau first finalize an increase in the threshold to 100 closed-end loans, and then further increase the threshold as appropriate, consistent with applicable rulemaking procedures.

⁷ Institutions that are not "covered persons." See 12 U.S.C. § 5481(6).

necessary to achieve the Bureau's core consumer mission.⁸ For that additional reason, MBA supports increasing the transactional coverage threshold to at least 100 closed-end loans.

Likewise, we appreciate that the Bureau is currently reconsidering the application of HMDA to business-to-business multifamily loans, as well as the costs and benefits of the Bureau's added discretionary data points, as part of its Advance Notice of Proposed Rulemaking.⁹ We look forward to addressing both issues in our response to that notice.

* * *

We appreciate the Bureau's reconsideration of Regulation C, and the opportunity to participate in that process.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Broeksmit", with a stylized flourish at the end.

Robert D. Broeksmit, CMB
President and Chief Executive Officer
Mortgage Bankers Association

⁸ See, e.g., 12 U.S.C. §§ 5511(a), (b); 5512(b)(2).

⁹ 84 Fed. Reg. 20049 (May 8, 2019).