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CFPB Proposes Increase in Threshold for Coverage under HMDA

June 19, 2017

The Consumer Financial Protection Bureau ("CFPB") has proposed a change in the Home Mortgage Disclosure Act ("HMDA") reporting rules that is intended to exclude a greater number of financial institutions from having to collect and report HMDA data.

Under regulatory amendments issued in October 2015 and slated to take effect on January 1, 2018, a financial institution does not have to collect and report HMDA data if the institution did not originate at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding years. After further review of this issue, the CFPB is proposing to increase the threshold amount for open-end lines of credit to 500 in each of the two preceding calendar years (the "Proposal").

I. Background

HMDA requires covered financial institutions to collect, report and disclose data on mortgage loans. Pursuant to the Dodd-Frank Act, the CFPB issued extensive amendments in 2015 affecting what financial institutions are subject to HMDA, and significantly expanding the data that covered institutions are required to collect and report.

With regard to what institutions are covered by HMDA, the CFPB set a threshold that is based on the number of mortgages originated by an institution in the prior two years. Under current rules, commencing January 1, 2018, an institution will not be subject to HMDA if the institution did not originate at least 25 closed-end mortgage loans or 100 open-end lines of credit in each of the two preceding calendar years. However, please note that an institution that makes loans over these threshold amounts may still be excluded from coverage under other tests.

These threshold amounts have another impact with respect to HMDA obligations. If an institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years but did not originate at least 100 open-end lines of credit in that time span, the institution will be subject to HMDA as of January 1, 2018, but will not have to collect and report data on open-end lines of credit.

II. Proposed Change

Many community financial institutions have advised the CFPB that these volume thresholds are too low and have requested reconsideration of the thresholds. The CFPB reviewed this issue and is now proposing to increase the threshold amount for open-end lines of credit to 500 in the two preceding calendar years. The CFPB declined to propose an increase in the threshold volume for closed-end mortgage loans (which is set at 25).

Accordingly, under the Proposal, an institution will not be subject to HMDA if the institution did not originate at least 25 closed-end mortgage loans or 500 open-end lines of credit in each of the two preceding calendar years. Also, if an institution originated at least 25 closed-end mortgage loans in each of the two preceding years but did not originate at least 500 open-end lines of credit in that time span, the institution will be subject to HMDA as of January 1, 2018, but will not have to collect and report data on open-end lines of credit.

The CFPB is proposing to raise the volume threshold for open-end lines of credit for two years so as to give the agency time to further evaluate the threshold amounts. If the Proposal is adopted and the CFPB does not make any further changes in the volume thresholds over the next two years, the threshold for open-end lines of credit will revert back to 100 in 2020.

III. Further Information

Comments on the Proposal must be submitted to the CFPB by July 31, 2017. The CFPB expects to issue a final determination on the Proposal shortly thereafter, so financial institutions will have sufficient time to make any necessary compliance adjustments in advance of January 1, 2018, effective date for the extensive HMDA amendments.

Please note that this advisory is a general overview of the proposed amendments to the HMDA requirements and is not intended as a comprehensive explanation of all aspects of the amendments or as formal legal advice. If you have any questions regarding the Proposal or HMDA compliance in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com.

For instance, a depository institution under the asset-size threshold (currently $44 million) or without a home or branch office in a metropolitan statistical area (MSA) will not be subject to HMDA regardless of the number of mortgages loans originated in the prior two years.

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