July 27, 2017

Entering the HMDA Homestretch: CFPB Proposes Temporary Increase in HELOC Reporting Threshold, Releases New and Updated Filing Resources

By Donald C. Lampe, Angela E. Kleine, and Ryan J. Richardson

As we have previously reported, in October 2015, the Consumer Financial Protection Bureau (CFPB) issued a sweeping final rule ("2015 Final Rule") to amend Regulation C, which implements the Home Mortgage Disclosure Act (HMDA). The bulk of the 2015 Final Rule will become effective on January 1, 2018. With the effective date drawing nearer, the CFPB has proposed an amendment to the 2015 Final Rule, which would, for calendar years 2018 and 2019, increase the threshold for collecting and reporting data on home equity lines of credit (HELOCs). Specifically, the proposed amendment would require only those institutions originating 500 or more HELOCs in each of the two preceding years to collect and report HMDA data on HELOC originations and applications. Additionally, the CFPB has recently released several new and updated resources for HMDA filers, including an illustrative guide to assist filers in preparing loan/application registers for data collected in 2018 and beyond. This alert summarizes these recent developments.

I. PROPOSED TEMPORARY INCREASE TO HELOC REPORTING THRESHOLD

Currently, Regulation C permits, but does not require, financial institutions to collect and report data on HELOCs that are for home purchase or home improvement purposes.[1] As amended by the 2015 Final Rule, Regulation C will require depository and non-depository institutions to collect and report data on HELOCs, irrespective of the purpose of the credit, if the institution originated at least 100 HELOCs in each of the two preceding calendar years (and the institution falls within other applicable coverage criteria).[2] The preamble to the 2015 Final Rule included extensive explanation of the CFPB's reasoning in establishing the 100-HELOC threshold. 80 Fed. Reg. at 66,162. Specifically, the CFPB estimated that the threshold would (i) exclude from coverage about 3,000 institutions with low HELOC originations, and (ii) require reporting from only about 750 institutions, the combined originations of which comprise an estimated 88% of the U.S. HELOC market. 80 Fed. Reg. at 66,281-282. Based on these estimates, the CFPB believed the 100-HELOC threshold appropriately balanced the costs and benefits of requiring financial institutions to report HELOC lending activity. The CFPB acknowledged, however, that its estimates were based on limited, imperfect data. 80 Fed. Reg. 66,162.

On July 20, 2017, the CFPB published in the *Federal Register* a proposed rule ("Proposed Rule") to increase the HELOC coverage threshold, for a period of two years, from 100 HELOC originations in each of the two preceding years to 500 HELOC originations in each of the two preceding years. If made final, the Proposed Rule would become effective contemporaneously with the bulk of the 2015 Final Rule on January 1, 2018. Thus, in effect, the Proposed Rule would, for calendar years 2018 and 2019, exclude institutions originating fewer than 500 HELOCs in either of the two preceding calendar years from the requirement to collect and report HMDA data on HELOC originations and applications. 82 Fed. Reg. 33,455, 33,459.

[1] Data with respect to "[h]ome-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase" is "optional data," which a financial institution may report. 12 C.F.R. § 1003.4(c)(3).

[2] *See* 2015 Final Rule, 80 Fed. Reg. 66,128, 66,308-309 (Oct. 28, 2015) (to be codified at 12 C.F.R. §§ 1003.2(g)(1)(v)(B) and (g)(2)(ii)(B) (eff. Jan. 1, 2018)).

In the preamble to the Proposed Rule, the CFPB noted that HELOC originations appear to have increased significantly since the agency drafted and issued the 2015 Final Rule. Specifically, the Proposed Rule cited credit union Call Report data, which reflects a 31 percent increase in HELOC originations between 2013 and 2015.[3] Assuming other depository and nondepository institutions experienced similar increases in HELOC origination volume during the same period, the CFPB believes that the 100-HELOC coverage threshold may not, in fact, strike the appropriate balance between the costs and benefits of requiring financial institutions to report HELOC lending activity. The CFPB states that its rationale for a temporary increase in the HELOC threshold is to relieve the compliance burden on low-volume originators while the CFPB assesses whether to adjust the threshold permanently and, if so, to what level. 82 Fed. Reg. at 33,458-460.

The increased HELOC threshold would not affect the obligation to collect and report data on closed-end mortgage loans if the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years (and the institution falls within other applicable coverage criteria).[4]

Comments on the Proposed Rule are due July 31, 2017.

II. NEW AND UPDATED RESOURCES FOR HMDA FILERS

Throughout July 2017, the CFPB has released several new and updated resources for HMDA filers. The primary new resource document, entitled "HMDA Loan Scenarios," is an illustrative guide to assist filers in preparing loan/application registers (LARs) for data collected in 2018 and beyond (i.e., data collected after the enhanced collection and reporting requirements in the 2015 Final Rule become effective). As currently drafted, HMDA Loan Scenarios covers three basic hypothetical loans: (1) a fully amortizing, 30-year conventional loan to co-borrower individuals (i.e., natural persons) to purchase a single-family home; (2) a fully amortizing, 30-year conventional loan to a corporation to purchase a multi-family home as an investment property; and (3) an adjustable-rate HELOC with a 10-year term to co-borrower individuals (i.e., natural persons) for home improvement purposes. For each hypothetical loan, the narrative explains the relevant facts (e.g., loan amount, interest rate, costs, and features) and "maps" the facts into a mock LAR record.

Additionally, the CFPB has released updated versions of the "Technology Preview," which explains the basic steps for interacting with the web-based HMDA submission tool currently being developed by the CFPB, and the Filing Instructions Guides (FIGs) for 2017 and 2018, which provide detailed guidance on completing the LAR for data collected in 2017 and 2018, respectively. Revisions to the FIGs are generally technical, not substantive, in nature, and relate to formatting options for specific LAR data fields. For example, according to the updated FIG for 2018, the loan amount data field will permit entry of whole dollars (e.g., $100,000) or dollars and cents ($100,000.00), and the property ZIP code data field will permit entry of a five-digit ZIP code (e.g., 54321) or a nine-digit ZIP code (e.g., 54321-1234).

The new and updated resources are available on the CFPB's HMDA implementation website, under the "Resources for filers" tab.

Contact:

Donald C. Lampe
(202) 887-1524
dlampe@mofo.com

Angela E. Kleine
(415) 268-6214
akleine@mofo.com

Ryan J. Richardson
(202) 887-8761
rrichardson@mofo.com

[3] Industry-wide data on HELOC origination volumes is not available. However, credit unions are required to report HELOC originations in their periodic Call Reports. The CPFB relies on HELOC origination volumes in credit union Call Report data as a representative sample of industry trends. *See* 82 Fed. Reg. at 33,459.

[4] *See* 2015 Final Rule, 80 Fed. Reg. at 66,308-309 (to be codified at 12 C.F.R. §§ 1003.2(g)(1)(v)(A) and (g)(2)(ii)(A) (eff. Jan. 1, 2018)).

Financial Services Team

California		New York	
Alexis A. Amezcua	(415) 268-6557	James M. Bergin	(212) 468-8033
Elizabeth Balassone	(415) 268-7585	Meghan E. Dwyer	(212) 336-4067
Roland E. Brandel	(415) 268-7093	David J. Fioccola	(212) 336-4069
Sarah Nicole Davis	(415) 268-7478	Marc-Alain Galeazzi	(212) 336-4153
Henry M. Fields	(213) 892-5275	Adam J. Hunt	(212) 336-4341
Joseph Gabai	(213) 892-5284	Jessica Kaufman	(212) 336-4257
Angela E. Kleine	(415) 268-6214	Mark P. Ladner	(212) 468-8035
Jim McCabe	(415) 268-7011	Jiang Liu	(212) 468-8008
James R. McGuire	(415) 268-7013	David H. Medlar	(212) 336-4302
Mark David McPherson	(212) 468-8263	Barbara R. Mendelson	(212) 468-8118
Ben Patterson	(415) 268-6818	Michael B. Miller	(212) 468-8009
Sylvia Rivera	(213) 892-5734	Judy Man Ni Mok	(212) 336-4073
Nicholas Alan Roethlisberger	(415) 268-7534	Jeffrey K. Rosenberg	(212) 336-4130
William L. Stern	(415) 268-7637	Mark R. Sobin	(212) 336-4222
Nancy R. Thomas	(213) 892-5561	Joan P. Warrington	(212) 506-7307
Lauren Lynn Wroblewski	(415) 268-6458		

Washington, D.C.		Washington, D.C. (continued)	
Rick Fischer	(202) 887-1566	Donald C. Lampe	(202) 887-1524
Adam J. Fleisher	(202) 887-8781	Jeremy R. Mandell	(202) 887-1505
Natalie A. Fleming Nolen	(202) 887-1551	Amanda J. Mollo	(202) 778-1609
Calvin D. Funk	(202) 887-6930	Obrea O. Poindexter	(202) 887-8741
Julian E. Hammar	(202) 887-1679	Ryan J. Richardson	(202) 887-8761
Oliver I. Ireland	(202) 778-1614	Sean Ruff	(202) 887-1530
Crystal N. Kaldjob	(202) 887-1687	Trevor R. Salter	(202) 887-1527
Steven M. Kaufmann	(202) 887-8794	Nathan D. Taylor	(202) 778-1644

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer*'s A-List for 13 straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations. Prior results do not guarantee a similar outcome.