ICBA's Recommended Regulatory Relief Provisions

April 6, 2017

1. Expand Exemption Thresholds Under the Home Mortgage Disclosure Act (HMDA) and Repeal New Data Points

Reason for Change

The CFPB's new rule under HMDA, when it becomes effective, will require covered banks and credit unions to collect and report 48 unique data points on each mortgage loan they make, more than double the number of data points covered lenders are currently required to collect. The proliferation of data points will amplify the number of inadvertent data entry errors and penalties, especially among institutions that upload data manually, including many community banks and small credit unions.

The new rule's exemption thresholds – 25 closed-end mortgages and 100 open-end lines of credit – will exempt less than 1 percent of the nearly 10 million annual mortgage applications and loans reported through HMDA. There is an opportunity to provide relief for many more small lenders without materially impacting the mortgage data available to the CFPB or impairing the purpose of the HMDA statute. According to CFPB data, exempting lenders with a loan volume of less than 100 closed-end mortgages would reduce the number of loan applications and loans reported through HMDA by only 2 percent.

ICBA recommends the HMDA exemption threshold for low volume mortgage lenders be amended as follows.

- Depository institutions that have originated 1,000 or fewer closed-end mortgages in each of the two preceding calendar years will be exempt from reporting on such loans.
- Depository institutions that have originated 2,000 or fewer open-end lines of credit in each of the two preceding calendar years will be exempt from reporting on such loans.

The exemption thresholds will be applied separately so that a lender may be exempt from reporting on its closed-end mortgages but not on its open-end lines of credit, or vice versa.

ICBA also recommends that statutory authority for the additional data points be repealed.

Introduced Legislation

The language below is included in the Home Mortgage Disclosure Adjustment Act (S. 3215, 114th Congress), introduced by Senator Mike Rounds (R-SD). Rep. Thomas Emmer (R-MN) introduced a similar bill in the House (H.R. 4997). We suggest that this language be amended to reflect the thresholds recommended above.

Suggested Bill Language

SEC. 2. DEPOSITORY INSTITUTIONS SUBJECT TO MAINTENANCE OF RECORDS AND DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—Section 304 of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803) is amended—

(1) by redesignating subsection (i) as paragraph (3) and adjusting the margins accordingly; and

(2) by inserting before paragraph (3), as so redesignated, the following:

"(i) EXEMPTIONS.—

"(1) CLOSED-END MORTGAGE LOANS.—With respect to a depository institution, the requirements of subsections (a) and (b) shall not apply with respect to closed-end mortgage loans if the depository institution originated less than 100 closed-end mortgage loans in each of the 2 preceding calendar years.

"(2) OPEN-END LINES OF CREDIT.—With respect to a depository institution, the requirements of subsections (a) and (b) shall not apply with respect to open-end lines of credit if the depository institution originated less than 200 open-end lines of credit in each of the 2 preceding calendar years.".

(b) TECHNICAL CORRECTION.—Section 304(i)(2) of the Home Mortgage Disclosure Act of 1975, as redesignated by subsection (a), is amended by striking "section 303(2)(A)" and inserting "section 303(3)(A)".

Additional Provision

The legislative language below would repeal authority for new data points. ICBA expects this language to be included in the forthcoming version of the Home Mortgage Disclosure Adjustment Act for the 115th Congress.

DATA POINTS.—Section 304(b) of the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(b)) is amended by striking paragraphs (5) and (6) and in paragraph (4), by striking ''age."

2. Automatic Qualified Mortgage Status for Loans Held in Portfolio

Reason for Change

The "qualified mortgage" (QM)/ability-to-repay rule is overly complex and prescriptive and excludes otherwise creditworthy mortgages. When a community bank holds a mortgage in portfolio, it has every incentive to ensure it understands the borrower's financial condition and to work with the borrower to structure the loan properly and make sure it is affordable. For this reason, mortgages held in portfolio by a community bank should have automatic "qualified mortgage" (QM) status under the CFPB's ability-to-repay rule so that they are not subject to unwarranted legal risk.

Introduced Legislation

This provision has been included in a number of bipartisan bills introduced in the House and Senate since the 112th Congress, including the Clear Relief Act (S. 812, 114th Congress), introduced by Senators Jerry Moran and Jon Tester.

Suggested Bill Language (from S. 812, 114th Congress)

Section 129C(b)(2) of the Truth in Lending Act (15 U.S.C. 1639c(b)(2)) is amended—

(1) by adding at the end the following:

"(F) SAFE HARBOR.—In this section—

"(i) the term 'qualified mortgage' includes any mortgage loan that is originated and retained in portfolio for a period of not less than 3 years by a depository institution having less than $XXX in total assets; and

"(ii) loans described in clause (i) shall be deemed to meet the requirements of subsection (a)."; and

(2) in subparagraph (E)—

(A) by striking "The Bureau may, by regulation," and inserting "The Bureau shall, by regulation,"; and

(B) by striking clause (iv) and inserting the following:

"(iv) that is extended by an insured depository institution that—

"(I) originates and retains the balloon loans in portfolio for a period of not less than 3 years; and

"(II) together with its affiliates has less than $XXX in total consolidated assets.".

3. Exempt Non-Systemically Important Financial Institutions from Basel III

Reason for Change

Basel III was originally conceived to apply only to the largest, systemically important and internationally active banks. Community banks have lower risks because they operate under a relationship-based model that cannot be measured solely by imposing analytical capital standards. Imposing complex and excessive capital standards on the nation's community banks will limit lending, investment, and credit availability in Main Street communities.

Basel I more accurately aligns community banks' regulatory capital with the types of assets they hold and the relationship model they follow. The Basel I capital framework has served the relationship-based banking model well for over a generation.

Introduced Legislation

This provision is included in Community Bank Access to Capital Act (S. 1816), introduced by Senators Mike Rounds and Roy Blunt. The House counterpart bill is H.R. 1523, introduced by Rep. Scott Garrett. In these bills the exemption threshold is $50 billion.

Suggested Bill Language

SEC. 2. BASEL III EXEMPTION FOR COMMUNITY BANKS.

(a) DEFINITION.—In this section, the term "community bank" means an "insured depository institution", as defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), or a holding company that owns or controls an "insured depository institution", that is not subject to the enhanced prudential standards of Section 115 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(b) PROMULGATION OF REGULATIONS.—Not later than 3 months after the date of enactment of this Act, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall each promulgate a regulation exempting community banks from any regulation issued to implement "Basel III: A global regulatory framework for more resilient banks and banking systems", as issued by the Basel Committee on Banking Supervision on December 16, 2010 and revised on June 1, 2011.

(c) CAPITAL REQUIREMENTS ADJUSTMENT.—The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall make the revisions to capital requirements as the Comptroller, the Board, and the Corporation, respectively, determine are necessary or appropriate in light of the regulations required under subsection (b).

4. Ease Escrow and Appraisal Requirements for Community Bank Portfolio Lenders

Reason for Change

Mandatory escrow requirements raise the cost of credit for those borrowers who can least afford it, and impose additional, unnecessary compliance costs for community bank lenders. Appraisal requirements have become costly in recent years, and rural American is experiencing a shortage of licensed appraisers. Escrow and appraisal requirements deter community bank mortgage lending and reduce borrower choice. Portfolio lenders have every incentive to ensure that collateral properties are accurately appraised and that taxes and insurance are paid on a timely basis. When a mortgage is held in portfolio by a community bank, it should be exempt from escrow requirements and the lender should be able to substitute an in-house "property evaluation" for a full residential property appraisal completed by a licensed appraiser.

Introduced Legislation

Escrow relief for portfolio lenders has been included in numerous bipartisan bills in the House and Senate, including the Clear Relief Act (S. 812, 114th), introduced by Senators Jerry Moran and Jon Tester.

Suggested Bill Language (from S. 812)

Section 129D(c) of the Truth in Lending Act (15 U.S.C. 1639d(c)) is amended—

(1) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively, and moving the margins 2 ems to the right;

(2) by striking "The Bureau" and inserting the following:

"(1) IN GENERAL.—The Bureau"; and

(3) by adding at the end the following:

"(2) TREATMENT OF LOANS HELD BY SMALLER INSTITUTIONS.—The Bureau shall, by regulation, exempt from the requirements of subsection (a) any loan secured by a first lien on the principal dwelling of a consumer, if such loan is held by an insured depository institution having assets of $XXX or less.".

5. Support Continued Robust Community Bank Small Business Lending. Repeal Onerous New Small Business Loan Data Collection Requirement for Small Financial Institutions.

Reason for Change

Section 1071 of the Dodd-Frank Act, which has yet to be implemented by the CFPB, creates a

new data collection and reporting requirement in connection with every small business loan application. Under the new requirement, a financial institution must inquire of every credit applicant whether it is woman-owned, minority-owned, or a small business. The financial institution must maintain a record of the response to this inquiry, and the record must be kept separate from the application and, where feasible, from the underwriting process. In other words, the requirement creates a separate bureaucracy within the financial institution that cannot be integrated with lending operations. This is especially inefficient, and may not be feasible in organizations that are too small to accommodate fire wall structures. Further, data collected by financial institutions and subsequently made public by the CFPB could compromise the privacy of applicants in small communities where an applicant's identity may be easily deduced, despite the suppression of personally identifying information. Community banks provide more than half of all small business loans, and we must not implement complex new rules that could drive them out of this critical market.

Introduced Legislation

This provision was included in the Too-Big-To-Fail Act (113th Congress), introduced by Senators David Vitter and Sherrod Brown. It is also included in the Right to Lend Act (H.R. 1766, 114th Congress), introduced by Rep. Robert Pittenger.

Suggested Bill Language

SEC. XX. SMALL BUSINESS LOAN DATA COLLECTION REQUIREMENT.

(a) REPEAL.—Section 704B of the Equal Credit Opportunity Act (15 U.S.C. 1691c–2) is repealed.

(b) CONFORMING AMENDMENTS.—Section 701(b) of the Equal Credit Opportunity Act (15 U.S.C. 1691(b)) is amended—

(1) in paragraph (3), by inserting "or" at the end;

(2) in paragraph (4), by striking "; or" and inserting a period; and

(3) by striking paragraph (5).

(c) CLERICAL AMENDMENT.—The table of sections for title VII of the Consumer Credit Protection Act is amended by striking the item relating to section 704B.