

October 20, 2017

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th St. SW, Suite 3E-218
Washington, DC 20219

Via electronic submission

Re: OCC Community Reinvestment Act Regulations (Docket ID OCC-2017-0008)

To Whom It May Concern,

The Consumer Bankers Association (“CBA”)¹ appreciates the opportunity to respond to the Office of the Comptroller of the Currency’s (“OCC”), the Board of Governors of the Federal Reserve System’s (“Board”), and the Federal Deposit Insurance Corporation’s (“FDIC”) (collectively, the “Agencies”) request for comment on the proposed rulemaking amending the Community Reinvestment Act (“CRA”). CBA’s members have long been committed to meeting the needs of their communities, and values the CRA’s role in this process. However, CBA feels that the proposed rule amending the CRA acts counter to the CRA’s purpose, and will negatively impact our members as they work to provide products and services meeting the most pressing needs of lower income families and communities.

Introduction.

The CRA was designed to help financial institutions meet the credit needs in the communities they serve, including low-and-moderate-income (“LMI”) communities, subject to safe and sound lending. Through implementing regulations, the Agencies developed different evaluation standards for institutions of different types and sizes. In revisions made to the CRA in 1995,² the definition of “home mortgage loans” in the retail lending assessment were amended, relying on the scope of loans covered under the Board’s Regulation C,³ which implemented the Home Mortgage Disclosure Act (“HMDA”). Regulation C required institutions to report data to their supervisory agency on originations, purchases, and applications for loans for home purchases or home improvement.⁴

¹ The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly \$3 trillion in consumer loans, and provide \$270 billion in small business loans.

² 60 FR 22156 (May 4, 1995).

³ 12 CFR 203 (1995).

⁴ 12 CFR 203.1(c) (1995).

The Agencies revised Regulation C in 2002 to include “refinancing” in the loans that were reportable under HMDA and Regulation C,⁵ and, in 2005, changed the definition of “home mortgage loan” to include “home improvement loans”, “home purchase loans”, and “refinancing”. In 2011, the Consumer Financial Protection Bureau (“Bureau”) took over rulemaking authority for HMDA under the Dodd-Frank Wall Street Reform and Consumer Protection Act, and on October 15, 2015, issued a final rule revising Regulation C.⁶ These revisions will take effect January 1, 2018.

Under the revisions to Regulation C, traditional purpose-based reporting is changed to a dwelling-secured standard for all closed-end loans and open-end lines of credit. As such, most closed-end mortgage loans, closed-end home equity loans, home-equity lines of credit, and reverse mortgages will now be lumped together with the products defined as “home mortgage loans”, and reportable under HMDA and Regulation C. Home improvement loans not secured by a dwelling will no longer be reportable transactions, but may be considered at the option of a financial institution that collects and maintains data on these loans under the category of “other secured consumer loan” or “other unsecured consumer loan,” as appropriate.⁷ Under the revisions, home improvement loans not secured by a dwelling may still be evaluated by the Agencies under the lending test in circumstances where the consumer lending constitutes a “substantial majority of the institution’s business”, as defined under the Interagency Questions and Answers as, “so significant a portion of an institution’s lending by activity and dollar volume of loans that the lending test evaluation would not meaningfully reflect lending performance if consumer loans were excluded.”⁸

General Comments

I. Home Equity Loans Should not be Included with Home Mortgage Loans for Purposes of CRA, but Kept Separate and Included in the Analysis only at the Option of the Financial Institution.

CBA recommends the Agencies not include home equity products in the mortgage data to be evaluated for CRA purposes, i.e. refinances, home improvement loans, and home purchase loans. Merging these fields will confuse the data financial institutions must report to their CRA examiners without serving the underlying principles of the CRA. Instead, the data should be included at the option of the institution, and reported as a separate category for easier identification.

Collapsing home equity products into the broader definition which includes refinances, home purchases, and home improvement will do much to confuse the mortgage data and little to advance the purposes of CRA. The CRA was based on the principle that banks have an affirmative obligation to serve their entire community, including LMI geographies. Treating home equity products in the same manner as purchase money mortgages or other real estate secured lending fails to address the significant differences in the availability and use of these

⁵ 12 CFR 203.1 (c) (2004).

⁶ 12 CFR 1003.

⁷ 12 CFR __.12(j)(3) or (4).

⁸ Q&A Section __.22(a)(1)-(2).

products across different geographies and incomes. In order to have a home equity loan, it is necessary first to have home equity. Banks work hard to make loans to LMI borrowers to help them become home owners, where possible. Whether through federal housing administration lending, state bond programs, lending programs through Fannie Mae and Freddie Mac, or high loan-to-value products at individual financial institutions, various means are employed to safely and soundly lend to lower income consumers to encourage homeownership. But frequently – almost invariably – LMI consumers will be in homes with less home equity than higher income consumers. They will be in properties with lower value, and borrowing with products that are higher loan-to-value at the outset. With less equity to draw on in LMI geographies and for LMI borrowers, home equity loans are not as common, except in the infrequent cases of rapid appreciation in developing markets.

The Agencies should also remain cognizant of the uses of home equity products that do not affect LMI communities. For instance, many home equity loans are used for consumers to purchase automobiles, due to the tax advantage these loans afford the borrower. However, the individuals taking home equity loans for these alternative purposes must itemize this loan as a tax deduction. Most LMI individuals do not deduct items from their taxes, as these items do not exceed the standard deduction, and some LMI individuals are below the threshold for paying income tax altogether; therefore, home equity products used for these purposes are rarely, if ever used by LMI individuals. This is just another example of why home equity products should not be lumped in with mortgage loans for CRA purposes.

Home equity products are currently optional and reported as a separate category of real-estate secured loans. We urge the Agencies to retain that categorization. CBA's members are concerned with how the new products being collapsed together will be measured in exams moving forward, especially with the lack of available peer data. With home equity products only viable in certain markets, it will be extremely difficult for CBA's members to draw appropriate comparisons between LMI and non-LMI communities, especially given the stark contrast between home equity products and other products, specifically home improvement loans. With no reliable peer data or experience assessing what product LMI borrowers may need or choose for their home equity needs, financial institutions will not be in a position to react or adjust to meet the needs of LMI borrowers. Therefore, any change to practice through CRA evaluations should only apply on a going-forward basis, once peer data has been released, and the financial institutions, agencies, and public have had a chance to understand what the data shows. Changing targets will also negatively impact multi-year CRA examinations that overlap with the January 1, 2018 effective date of the proposed rule.

Furthermore, if home equity products are included with mortgage data, financial institutions will have to employ "performance context" to explain the data, as they are not traditional products for LMI communities and geographies. Developing performance context can be time-consuming and deploy resources better used by the bank to serve community needs.

Given the lack of appropriate industry information for these combined products, financial institutions should be permitted to include home equity products at the institution's discretion. Home equity should be treated as a separate category, and if not considered optional, any changes should not be applied retroactively.

Finally, financial institutions may benefit from having the option to combine all traditional CRA mortgage categories, i.e. home purchase, home improvement, and home refinance, for purposes of the institution's CRA examination. In many LMI markets, there is an inverse relationship between home purchase and home refinance volumes. Allowing financial institutions the option to combine these categories would allow financial institutions to employ simpler strategies to meet benchmarks, by not having to reach benchmarks on each product separately. Such flexibility could greatly increase CBA members' ability to proactively and positively lend in LMI markets.

II. Home Improvement Loans Should not be lumped with "Other Secured" and "Other Unsecured".

Under the proposed changes to Regulation C, institutions that opt to report home improvement loans must maintain the data in machine readable form under either the "other secured consumer loan" or "other unsecured consumer loan" category as appropriate. However, with home equity lending now being placed under the "real-estate secured" category, instead of as one of the categories of consumer loans, it would benefit CBA's members and the Agencies to instead list home improvement loans as the fifth category of consumer loans. Institutions often create products for home improvement designed specifically for LMI communities. The value from a CRA perspective will be more easily recognized if home improvement loans, classified by the institution as home improvement, are reported separately from a bank's miscellaneous "other" consumer loans. Furthermore, if the targeted LMI product is through an affiliate, the institution will have to report all "other secured" or "other unsecured" consumer loans from that affiliate and all other affiliates if the bank wishes to include the home improvement product for consideration. Since home equity is no longer added as the fifth consumer loan category, we encourage home improvement to take its place.

III. Public File Requirements Should Eliminate CRA Loan Application Register Disclosure.

Under the proposed rule, financial institutions will no longer be required to provide HMDA disclosures directly to the public. Instead, the proposed rule will only require financial institutions to provide a notice that clearly conveys to the public that the public may obtain a copy of the institution's disclosure statement on the Bureau's website. As such, under the proposed rule, institutions required to report HMDA data only need to maintain the notice required under Regulation C in their CRA public file, and will not need to include data from their HMDA Loan Application Register (LAR). In addition to not requiring financial institutions to provide HMDA LARs to the public, financial institutions should similarly not be required to produce their CRA LARs in order to address the regulatory burden of producing these documents.

CBA greatly appreciates the opportunity to comment, and should you need further information, please do not hesitate to contact the undersigned directly.

Sincerely,

A handwritten signature in cursive script that reads "Stephen Congdon".

Stephen Congdon
Regulatory Counsel
Consumer Bankers Association
scongdon@consumerbankers.com