

MEMORANDUM TO: Robert E. Feldman
Executive Secretary

Charles Yi
General Counsel

Mark E. Pearce
Director, Division of Depositor and Consumer Protection

FROM: Patience R. Singleton
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SUBJECT: Community Reinvestment Act Regulation – Correction of
Final Rule

Recommendation

Staff recommends that the General Counsel and the Executive Secretary, using previously delegated authority, approve for publication in the **Federal Register**, the attached inter-agency Correction of Final Rule of a previously issued final rule entitled “Community Reinvestment Act Regulations” (the CRA final rule), published on November 24, 2017.¹

The Correction of Final Rule addresses two additional comment letters, one from the Independent Community Bankers Association (ICBA) and the other from the Consumer Bankers Association (CBA), that were timely submitted but inadvertently excluded in the rulemaking record of the CRA final rule. Generally, the final rule amended the CRA regulations to update the existing definitions of “home mortgage loan” and “consumer loan,” as well as related cross references and the CRA public file content requirements, to reflect recent revisions required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) made by the Consumer Financial Protection Bureau (Bureau) to Regulation C, which implements the Home Mortgage Disclosure Act (HMDA).

¹ 82 FR 55734 (Nov. 24, 2017).

Background

Since 1995, the FDIC together with the Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies), have used the scope of HMDA reportable transactions as defined under Regulation C to determine the scope of loans to be included in the definition of “home mortgage loan” in the Agencies’ CRA regulations. As the scope of reportable loans under Regulation C has changed over time, so has the CRA regulation definition of “home mortgage loan.”

On October 15, 2015, the Bureau finalized revisions to Regulation C to implement amendments required by the Dodd-Frank Act to the HMDA (2015 HMDA Rule).² The 2015 HMDA Rule added several new requirements, clarified several existing requirements, and modified the institutional and transactional coverage of Regulation C. Most provisions of the 2015 HMDA Rule became effective on January 1, 2018. Under revised Regulation C, closed-end mortgage loans and open-end lines of credit (HELOCs) secured by a dwelling are required to be reported; home improvement loans that are not secured by a dwelling are no longer reportable for HMDA purposes. Because of the changes in the scope of reportable transactions under revised Regulation C, the Agencies believed it was necessary to change the definition of “home mortgage loan” in their CRA regulations to conform to the new scope of reportable transactions under HMDA.

In anticipation of the Bureau finalizing the 2015 HMDA Rule, on September 20, 2015, the Agencies published a Joint Notice of Proposed Rulemaking (NPR) to amend their regulations implementing the CRA.³ The Agencies proposed to amend the definition of “home mortgage loan” in the CRA regulations to mean a “closed-end mortgage loan” or an “open-end line of credit,” as defined in revised Regulation C, unless the transaction was excluded under Regulation C. The Agencies also proposed to amend the definition of “consumer loan” in the CRA regulations by removing the subcategory of “home equity loans” since home equity loans and home equity lines of credit would be captured in the revised definition of “home mortgage loan.” The Agencies also proposed changes to the public file content requirements, removal of unnecessary cross references as a result of the proposed amended definitions, and removal of an obsolete reference to the Neighborhood Stabilization Program.

On October 20, 2017, the comment period for the NPR ended. At that time, the Agencies believed they had only received two comment letters on the proposed amendments. One comment was from a community organization and the other from a financial institution. Both of these commenters supported the changes proposed by the Agencies, but also made additional suggestions unrelated to the proposal.

On November 14, 2017, the FDIC Board of Directors approved the CRA final rule by notational vote. On November 24, 2017, following approval by the other

² 80 FR 66128 (Oct. 28, 2015).

³ 82 FR 43910 (Sept. 20, 2017).

Agencies, the CRA final rule was published in the **Federal Register**, approving the amendments as proposed based on the two comments originally received by the Agencies.

On December 18, 2017, OCC legal staff notified FDIC legal staff that two additional comment letters had been received by the OCC. According to the OCC, the comment letters, one from ICBA and the other from the CBA, were timely received but, due to a clerical error, were excluded from consideration in the final rule.

Issue

The attached Correction of Final Rule supplements and corrects the Supplementary Information section of the CRA final rule by addressing the two additional comment letters from the ICBA and the CBA. The ICBA supported the conforming changes, but recommended that the Agencies consider home improvement loans only if the bank opted to report them. The CBA did not support the inclusion of home equity loan products in the definition of “home mortgage loan,” arguing that low- and moderate-income (LMI) individuals generally do not have equity in their homes and, when there is available equity, LMI individuals do not use these products because they do not need the tax incentives generally available to users of home equity products. In addition, the CBA suggested that home improvement loans have their own subcategory within the “consumer loan” definition. Finally, the CBA recommended that the Agencies eliminate the CRA loan application register (LAR) since banks were no longer required to provide a paper HMDA LAR to the public.

After analyzing the comment letters from the ICBA and the CBA, staff recommends that no changes to the regulatory text in the CRA final rule be made. However, staff recommends that the Agencies revise the administrative record to include the correct number of public comments received, the analysis of all comments received, and the Agencies’ responses to the comments.

The delegated authority to approve the Correction of Final Rule is contained in the Board Case for the CRA final rule and the accompanying Board Resolution, which provides that the Executive Secretary and the General Counsel have the authority to make technical, nonsubstantive or other conforming changes where necessary to ensure that the FDIC can issue the final rule in the **Federal Register** and to take such other actions and issue such other documents related to the rule as they deem necessary or appropriate to fulfill the Board's objective in connection with the rule.

Effective Date

The sections of the Correction of Final Rule are effective as if they had been included in the Supplementary Information section of the CRA final rule, effective January 1, 2018.

Approve:

Robert E. Feldman, Executive Secretary

3/12/18

Date

Charles Yi, General Counsel

2/27/18

Date

Concur:

Mark Pearce, Director, DCP

3/9/18

Date