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October 15, 2019

Comment Intake
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: Comments on Proposed Rulemaking on Home Mortgage Disclosure Data Points and Coverage; Docket No. CFPB-2019-0020 or RIN 3170-AA97

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) advance notice of proposed rulemaking (“ANPR”) related to the Home Mortgage Disclosure Act (“HMDA”).

The ANPR seeks input on whether to make changes to data points implemented through the October 2015 Final HMDA Rule (“2015 HMDA Rule” or “new HMDA Rule”). Additionally, the Bureau is issuing this ANPR to solicit comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C.

Background

HMDA was enacted in 1975 and requires certain financial institutions to provide mortgage data to the public. HMDA’s original purpose was to provide the public and public officials with data to help determine whether financial institutions are serving the housing needs of the communities in which they are located while helping public officials determine if public sector investments are allocated in a way to best improve the private investment environment.² Congress later expanded HMDA to require financial institutions to report racial characteristics, gender and income information on borrowers. Regulation C implements HMDA and establishes

¹The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ nearly 750,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$5 trillion in assets, nearly \$4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

² 12 CFR 1003.1.

specific requirements for the collection, recording, reporting and disclosure of mortgage lending information.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“DFA” or “Dodd-Frank”)³ transferred rulemaking authority for HMDA to the CFPB, effective July 2011. The Dodd-Frank Act also amended HMDA to add new data points and gave the Bureau discretionary authority to require additional information from covered institutions. In July 2014, the Bureau proposed amendments to Regulation C to implement the Dodd-Frank changes and new data points it deemed appropriate to further HMDA’s purposes. The new HMDA Rule, issued on October 15, 2015, requires covered institutions to collect an additional 48 unique data fields on most residential mortgage loan applications. Collection of the new data points began on January 1, 2018, with the reporting of that data beginning in 2019.

With the passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (“EGRRCPA”), certain insured depository institutions became exempt from reporting the new data fields required under section 304(b)(5) and (6) and added by the 2015 HMDA Rule, provided they originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years.

Executive Summary

ICBA understands the purpose of HMDA reporting and recognizes the significance HMDA data has in showing how financial institutions are serving the housing needs of their communities. ICBA also understands that the additional requirements established by the DFA were intended to root out and protect consumers from predatory lending tactics which played a significant role in the financial crisis. However, community banks need relief from the onerous collection and reporting requirements. As we asserted in our 2014 comment letter in response to the proposed rule to amend HMDA⁴, we continue to maintain the position that we do not agree the benefits outweigh the costs associated with the DFA requirements, and the additional requirements set by the Bureau.

Facing more regulatory challenges as additional requirements and restrictions are being placed on them, especially the smaller community banks, is proving to be more and more difficult. Bank executives, loan and compliance officers, managers, and other bank staff spend a significant number of hours complying with regulatory requirements in order to provide information to regulators, document banking transactions, and deliver correct and timely disclosures to consumers. And while no one regulation by itself is significantly overwhelming, the cumulative effect of all the consumer regulations implemented over the last 10 years, particularly with regards to mortgage lending, has been tremendous, especially for smaller community banks. The disproportionate burden of regulatory and paperwork requirements

³ Public Law 111-203, 124 Stat. 1376, 1980, 2035-38, 2097-101 (2010)

⁴ ICBA’s Comment Letter in response to the Proposed Rule Amending Regulation C to Implement Amendments to HMDA. October 29, 2014. (“ICBA Comment Letter 2014”).

placed on community banks has diminished their ability to maintain acceptable economies of scale, support the credit needs of the customers who rely on these banks as a primary source for financial products and services, serve their communities, and contribute to their local economies.

Most community banks are, by definition, locally owned and operated institutions with strong ties to the customers and communities they serve. These local banks continue to thrive because they provide loans to all eligible customers. Community bank residential mortgage lending enables many first-time home buyers to achieve the American dream of homeownership. As relationship-based lenders, community banks also explore all loan options—including home equity lines of credit (HELOCs) and second mortgages—to find the best fit for each borrower.

ICBA appreciates the Bureau considering proactive steps to provide regulatory relief to community banks that are saddled by the costly task of collecting and reporting HMDA data. To help facilitate the CFPB's considerations, ICBA contends the following:

- The financial costs associated with HMDA compliance represent one of the most challenging burdens for community banks.
- The CFPB should eliminate the collection and reporting of discretionary HMDA data not mandated by Dodd-Frank.
- The CFPB should eliminate the revised data points given the lack of an adequate justification, and the unintended risks associated with reporting.
- The CFPB should exclude the reporting of business and commercial credit as this information does not contribute to the analysis of HMDA data.

ICBA Comments

ICBA consistently advocates for relief for community banks by pointing out how complex, redundant, expensive and overly onerous data collection and reporting is since the implementation of the 2015 HMDA Rule. To prepare for our response to this ANPR, ICBA surveyed members for their input on the most onerous HMDA data points. Our comments below reflect responses from our members.

Increased Costs

The increased compliance burdens associated just with Dodd Frank's requirements were immediately obvious during the proposed rule phase of the rule. However, the Bureau's decision to tap into its discretionary authority to add fourteen additional data points⁵ was a

⁵ Reasons for denial; total origination charges; discount points; amount of lender credits; interest rate; debt-to-income ratio; combined loan-to-value ratio; manufactured home secured property type; manufactured home land property interest; number of multifamily affordable units; the automated underwriting system used in evaluating

step too far that provides no additional value to HMDA's original purpose, nor Dodd-Frank's amendments. Further, regulatory analysis of data fields required by Dodd-Frank, in conjunction with those fields already mandated prior to the 2015 HMDA Rule amendments, provide more than sufficient information to detect any evidence of potential fair lending violations. Instead, these additional requirements place exorbitant and unreasonable costs on many community banks.

The aforementioned ICBA survey indicates that nearly 80% of the respondents are required to report HMDA data.⁶ The same survey reveals, that on average, survey respondents make just over 300 closed-end mortgage loans a year. ICBA members indicate that new HMDA data collection requirements often result in excessive costs, onerous time investment, and confusion on how to correctly input data. These burdens are intensified among smaller community banks, typically those that make 25 to 350 closed-end loans every year and have relatively small staffs.

Prior to 2015, lenders were required to report 39 data fields. The new HMDA rule now requires reporting of 110 data fields. Prior to 2015, the Bureau possessed the data and tools to identify discrimination and discriminatory practices in mortgage lending. Nevertheless, the decision to require additional fields was not supported with data justifying the decision.

The financial costs associated with HMDA reporting represent one of the most challenging regulatory aspects for community banks. Our recent survey indicates that 50% of community banks reported over \$10,000 in estimated annual data collection costs while 25% reported costs exceeding \$25,000. The results also paint a very clear picture of the financial burden associated with data collection. Many small banks describe how difficult it is for a limited staff to devote the required time needed to accurately input HMDA data. For example, one bank with \$550 million in assets has only one employee dedicated to overall compliance. Another bank, with only \$82 million in assets, is subject to HMDA reporting because one of its three branches happens to be in an MSA. Citing HMDA data collection as a large drain on resources, the bank documented over 400 employee hours to complete the 2018 HMDA Loan Application Register ("LAR"). Another bank reported it has incurred costs equal to the addition of three full-time employees since the expansion of the new HMDA rule have gone into effect.

Among community banks, some of the common themes and challenges surrounding HMDA data collection include the difficulties of data collection, subsequent reviews conducted by consultants, monetary costs⁷, and staff training. Furthermore, many bankers continually cite a lack of clarity about the data points and a general concern about keeping up with changing regulations and rules.

an application and the result generated; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit; and whether the loan is primarily for a business or commercial purpose.

⁶ Community bank HMDA data and anecdotes cited in this letter come from a survey sent out to ICBA members in May 2019. ("2019 Survey")

⁷ ICBA's HMDA survey asked community banks to specify the ongoing costs of HMDA data collection.

Having to comply with requirements that were not mandated by the DFA has caused community banks to significantly reconstitute their entire mortgage lending functions, or departments, in some instances. Large banks typically have dedicated legal and consulting resources, separate underwriting and loan processing departments or centers, and larger compliance staff which position them to easily address changes and absorb regulatory costs. This uneven playing field places community banks, especially the smaller banks, at a severe competitive disadvantage, ironically, with some of the same entities responsible for the predatory lending practices that helped cause the financial crisis. Such a disadvantage impedes community banks' ability to serve their customers and communities.

Eliminate the Collection and Reporting of Data Not Mandated by the Dodd-Frank Act

ICBA strongly urges the CFPB to eliminate the additional HMDA data points not specifically required by the DFA. One of the primary sources for the increased compliance burden community banks have generally reported was the Bureau's decision to utilize its discretionary authority to add new data points. Based on 232 responses to our survey: the *combined loan to value ratio ("CLTV"), debt-to-income ratio ("DTI"), and business or commercial loan purpose flag, were the top three most onerous data points to collect.*⁸

Not surprisingly, these are the same data points ICBA argued against during the rulemaking phase in response to the 2014 proposed rule. We made the following arguments which support our 2019 survey responses:

- *CLTV - ICBA strongly urges the CFPB not to require this data to be submitted and disclosed. As the CFPB itself recognizes, a CLTV reporting requirement poses challenges. We are particularly concerned that CLTV ratios may not be entirely accurate and quite difficult for community banks to capture, track, and report.*⁹
- *DTI ratio - The CFPB should not require community banks to disclose the DTI ratio as it is not always used in loan underwriting, is incomplete for purposes of understanding the consumer, and there could be privacy issues with its public disclosure particularly in small markets and rural communities.*¹⁰
- *Business or commercial loan purpose flag - ICBA urges the CFPB to exempt the reporting of business and commercial credit from the loan/application register ("LAR") as other consumer regulations do not address these loans to the extent that Regulation C does. This information does not provide greater clarity on housing discrimination and is burdensome for community banks to report, especially given most of the data points and new data point requirements are related to consumer lending.*¹¹

⁸ 2019 Survey

⁹ ICBA Comment Letter 2014, page 10.

¹⁰ Id., page 7.

¹¹ Id., page 11.

While only the top three onerous points are listed, ICBA staunchly advocated against the CFPB exercising its authority to include additional data points beyond those that were required by the Dodd-Frank Act. Not only have the discretionary data requirements proven costly for community banks, it is unclear what useful fair lending conclusions would be found with this additional information that could not be found by pre-2015 HMDA data.

Moreover, the collection of additional data fields will never fully explain every underwriting or pricing factor, given other legitimate non-discriminatory reasons considered prior to making the lending decision. As such, our position remains the same as it did prior to the 2015 changes. The Bureau should not have used its discretionary authority to mandate data requirements beyond those mandated by DFA. Without data and evidence indicating otherwise, the economic, compliance, and regulatory costs and risks outweigh the benefits of a non-statutory requirement. ICBA strongly urges the CFPB to eliminate all the additional data points it created under its discretionary authority.

Revised Data Points

The Bureau significantly expanded and complicated the requirements for collecting data regarding an applicant's race, ethnicity, and sex without adequately explaining how the collection would aid in determining the housing needs of a particular community. The Bureau also failed to explain how this additional information could not be obtained by the data required prior to the 2015 HMDA Rule change.

This expansion has presented community banks with challenges in updating their data collection procedures and applications to ensure they offer applicants appropriate options, such as the ability to select one or more race or ethnicity subcategories. The expansion also includes an option for applicants to utilize the free-form text fields which lenders are then required to submit. This requirement has resulted in the deployment of extra resources just to ensure accurate information is obtained due to the inherent complexity and subjectivity involved.

While the Bureau views this expansion as beneficial, a combined forty-five percent of our members have indicated that the revised race and ethnicity data points are specifically problematic, excessive, and overwhelming. Our members report: the amount of data fields required on each loan is overwhelming; that many of their customers are confused by the options or do not know their ethnicity; that customers often use the free form text fields incorrectly; and, many customers enter information that is not accurate.

Given these challenges, banks are nevertheless required to submit the information. Absent an adequate justification for such data, the effectiveness of the data is questionable. The collection and reporting of these two data points could unintentionally result in a false pattern of discrimination, lead to potential fair lending violations, and expose community banks to legal and reputational risk. Therefore, ICBA strongly urges the CFPB to eliminate the revised data points.

Business-or Commercial-Purpose Loans Should Be Excluded from HMDA Reporting

Small business lending is a crucial service community banks provide and is the core of economic prosperity in the communities they serve. As a matter of fact, ICBA members made sixty-five percent of their multi-family loans to commercial entities.¹² Reporting information regarding business- and commercial-purpose transactions only increases the burden on community banks. These loans are underwritten much differently than consumer loans and considerations given to each commercial purpose loan could vary. Furthermore, underwriting systems are typically geared toward mortgage lending which results in additional cost to accommodate commercial lending HMDA reporting, developing new processes, or settling on the overwhelming and time-consuming task of manual inputs – all of which inflicts additional training and compliance-monitoring burdens and additional costs to borrowers.

Including these loans for HMDA reporting has negatively impacted community bank operations and could impede this lending in the future. ICBA urges the CFPB to exclude the reporting of business and commercial credit from the LAR. This additional discretionary data point adds more regulatory burden for community banks but does not contribute any benefit to the analysis of HMDA data.

Conclusion

Community banks take pride in supporting their communities in countless ways, ranging from tailoring a unique mortgage loan that larger banks do not have the time to consider, to working with someone of limited means who wants to open their first checking account. Community banks want to see their towns and cities grow and flourish. Excessive regulation and the onerous costs of HMDA data collection and reporting prevent small banks from doing what they do best – connecting and lending to customers who otherwise might not have access to banking, much less a mortgage.

ICBA appreciates the Bureau considering ways to lessen the burden on community banks brought on by the 2015 HMDA Rule. If you have any questions or would like additional information, please contact Rhonda Thomas-Whitley (Rhonda.Thomas-Whitley@icba.org) at 202-659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President & Regulatory Counsel

¹² 2019 survey