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May 25, 2017

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Docket No. CFPB-2017-0010, Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure October 2015 Final Rule

Dear Ms. Jackson,

The Independent Community Bankers of America¹ appreciates the opportunity to provide comments to the Consumer Financial Protection Bureau (CFPB or Bureau) on its Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure October 2015 Final Rule (revised Regulation C). Revised Regulation C represents a sea change in the amount and type of data to be collected as well as how it will be reported. These changes are just the latest in an unprecedented number of new and amended consumer regulatory requirements put into effect over the past several years. ICBA understands that

¹ The Independent Community Bankers of America®, the nation's voice for more than 5,800 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 52,000 locations nationwide, community banks employ 760,000 Americans, hold \$4.7 trillion in assets, \$3.7 trillion in deposits, and \$3.2 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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some of this change was required by statute, but we strongly urge the CFPB to mitigate the impact of the new HMDA requirements on community banks by:

- making optional the reporting of new data;
- exempting more small volume lenders;
- addressing privacy concerns;
- establishing reasonable data resubmission guidelines; and
- excluding all commercial loans.

In addition to these recommendations, ICBA supports proposed technical amendments excluding construction-only loans from reporting; creating a safe harbor for bona fide errors in census tract reporting; and creating non-applicable fields for certain reporting requirements. We also encourage the Bureau to provide additional examples of the operation of the loan volume test.

Background

Beginning January 1, 2018, revised Regulation C sharply increases the amount of HMDA data to be collected and reported. For each application they receive, many community banks will be required to provide 48 categories of data spread over 110 data fields. Over half of the required data is new and much of it was added at the CFPB's discretion.

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 and whether there are any lending patterns in violation of anti-discrimination laws. However, ICBA is quite concerned that revised Regulation C's requirements will force community banks to exit the mortgage market due to the additional regulatory burden, thereby reducing consumer choice. This risk is especially acute in rural areas where consumers may not have access to multiple lenders.

Time and resources spent on reviewing HMDA data for submission will increase exponentially due to the collection and reporting mandates under revised Regulation C. In the 2015 HMDA final rule, the Bureau estimates the new data collection requirements will increase the cost of each closed-end mortgage application by \$23 and the cost of each open-end line of credit application by \$41.40 for "representative low complexity institutions."² These costs will inevitably be passed onto consumers. For community banks already struggling to comply with many new regulatory mandates, the increased reporting under revised

² Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. at 66268.

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Regulation C is an additional burden. While large national lenders can spread these increased costs over pools of thousands or even millions of loans, community banks with much smaller lending portfolios do not have that ability. Finally, many smaller volume community bank lenders will continue to compile their loan application registers (LARs) manually which will require additional staff time and the new fields will create more opportunities for inadvertent errors.

Make Implementation of Revised Regulation C Optional until Fundamental Issues are Addressed

ICBA strongly encourages the CFPB to make optional the implementation of the additional data required under the revised Regulation C for no less than one year. As described throughout this letter, there are a multitude of issues – including compliance burden and privacy – that should be addressed before revised Regulation C becomes effective. At the same time, some community banks indicate that having begun installing new software, revising systems, and training staff, they would find it difficult to revert to the previous status quo. Making the new data optional is an equitable solution which provides relief to those lenders who need it, but also recognizes the efforts other firms have invested in implementing the new requirements.

Significantly Increase Loan Reporting Thresholds

Under current law, financial institutions with assets of less than \$44 million (adjusted annually) and institutions with no offices in metropolitan statistical areas are exempt from reporting under HMDA. The revised Regulation C creates an additional loan volume exemption for lenders that originate fewer than 25 closed-end mortgages and fewer than 100 open-end lines of credit annually. For closed-end loans, the small volume lender exemption will cover 1,400 institutions, according to CFPB estimates, and a maximum of approximately 51,000 applications.³ This represents an infinitesimal fraction of the more than 11 million annual mortgage records reported through HMDA in 2013. For open-end loans, the small volume lender test would exclude 12 percent of the market according to CFPB estimates.⁴

ICBA urges that the loan volume threshold for HMDA reporting be increased to 1,000 closed-end mortgages and 2,000 open-end lines of credit. Increasing the thresholds would provide relief for many more small lenders without significantly impacting the mortgage data available to the CFPB or impairing the purpose of the HMDA statute.

³ Id. at 66279.

⁴ Id. at 66281.

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Address Privacy Concerns

ICBA has long raised concerns that the revised Regulation C with its plethora of new data will allow the re-identification of borrowers, compromising their privacy and leaving them open to embarrassment and fraud. This problem will be especially acute for borrowers located in rural areas or less active markets. The new HMDA data provides a roadmap to consumers' financial lives with information about income, debts, and down payments. Even if not used for illegal purposes, this data could still be used by other actors to market unwanted products or services.

A recent report from the Office of Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau indicated that Bureau failed to secure sensitive and confidential enforcement data. The report found that data that should have been restricted was instead placed on a shared drive with "broad access" by Bureau employees and that the CFPB failed to follow its own "standards for handling and safeguarding sensitive information."⁵ Protection of personal consumer information must be a primary goal of the federal government, especially in light of the ongoing and highly-publicized public- and private-sector security breaches involving consumer financial and personal information.

ICBA has strongly urged the CFPB to address privacy concerns and the potential for consumer re-identification with the new HMDA rule. However, with less than eight months to go before community banks and others are required to start collecting the new data, the Bureau has yet to conclusively address the privacy implications of revised Regulation C. The Bureau's continuing silence on this issue is troubling and ICBA strongly urges the Bureau to address this serious concern prior to the collection of new data.

Establish Reasonable Data Resubmission Guidelines

While community banks make every effort to collect and report the correct HMDA data, entering up to 110 fields of data for each loan application will greatly increase the opportunity for error, especially among institutions that compile their LARs manually. ICBA is especially concerned that some of the fields, including the debt-to-income and combined loan-to-value ratios, will require additional calculations before they may be submitted, thereby compounding the likelihood

⁵ The CFPB Can Improve Its Practices to Safeguard the Office of Enforcement's Confidential Investigative Information, Executive Summary, The Office of Inspector General for the Board of Governors of the Federal Reserve System and the Consumer Financial Protection Bureau, <https://oig.federalreserve.gov/reports/cfpb-enforcement-confidential-investigative-information-may2017.htm>.

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for error. Considering this, ICBA encourages the Bureau to establish consummate adjustments to the reporting error thresholds for lower-volume lenders, including community banks.

Exclude All Commercial Credit

All commercial loans should be excluded from HMDA reporting. Information on commercial loans does not provide greater clarity on housing discrimination and will be burdensome for community banks to collect and report. Excluding commercial loans would be consistent with other statutes, such as the Truth-in-Lending Act and the Real Estate Settlement Procedures Act. In addition, commercial loans are typically structured differently than residential mortgages and often originated by separate departments within community banks.

The intent of HMDA is a focus on consumer single-family loans and the underwriting of these loans. Reporting on commercial credit will create additional regulatory burden for community banks and does not contribute any benefit to the analysis of HMDA data. Therefore, if the loan is not consumer credit for purchasing or refinancing a property securing a consumer dwelling, then data about the loan application should not be reportable.

Clarify Operation of the Lookback for Loan Volume Test

ICBA has received many inquiries from community banks regarding the operation of the two-year lookback period for the loan volume test. These tests, for both closed-end and open-end products will determine whether some community banks are required to report HMDA data. For both closed-end and open-end loans, ICBA's understanding is that in order to have to comply with reporting requirements, a lender who otherwise meets the institutional coverage tests would need to have originated more than the threshold amount of loans in both the preceding calendar years.

For example, under revised Regulation C, a community bank that originates at least 25 closed-end loans in both 2016 and 2017 would need to report data for the 2018 calendar year. Community banks report confusion over whether they must report if they otherwise meet the institutional coverage tests, but only exceed the loan volume test in one of the two preceding years; for example, if they originated 15 closed-end loans in 2015 and 35 closed-end loans in 2016. ICBA strongly encourages the CFPB to draft additional examples that clearly demonstrate the operation of the loan volume test.

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Exclude Construction-Only Loans

ICBA strongly supports amending the revised Regulation C to make clear that construction-only loans are not reportable. Construction loans to homebuilders, investors, and others are a core product for many community banks. These loans finance the construction which provide homes to American families. According to an analysis of Federal Deposit Insurance Corporation data by the National Association of Home Builders, community banks with less than \$10 billion in assets made 64 percent of residential construction loans.⁶ Banks with assets between \$1 billion and \$10 billion accounted for 32 percent of residential construction loans, and banks between \$100 million and \$1 billion held 30 percent.⁷

Community banks often originate construction loans through their commercial lending operations and the loan application data is maintained in separate systems from traditional residential mortgage products. In addition, many community banks offering construction loans do not offer traditional residential mortgage products or have ceased offering them over the past few years due to the ever-increasing regulatory burden. Requiring that construction-only loans be reported would impose new burdens and would likely cause at least some community banks to abandon these products, thereby reducing choice in the marketplace.

Currently, Regulation C provides an exclusion for temporary financing.⁸ Under the text of the revised Regulation C and its commentary, it is unclear whether construction-only loans would be reportable. The Bureau is proposing to clarify the treatment of certain construction-only loans or lines of credit as temporary financing by amending comment 3(c)(3)-1 and adding new comment 3(c)(3)-2.

ICBA agrees with the Bureau's belief that expanding Regulation C's transactional coverage to require reporting of loans or lines of credit for the sole purpose of constructing a dwelling for sale, which are often extended to builders, would yield limited data to support HMDA's purposes because of the distinct pricing terms, underwriting standards, and loan features generally present in these transactions.

ICBA also agrees with the Bureau's belief that construction-only loans or lines of credit to a person exclusively to construct a dwelling for sale should continue to

⁶ Michael Neal, *The Distribution of Residential Construction Loans Among Banks*, Eye On Housing, National Association of Home Builders Discusses Economics and Housing Policy, April 12, 2017, <http://eyeonhousing.org/2017/04/the-distribution-of-residential-construction-loans-among-banks/>.

⁷ Id.

⁸ § 1003.4(d)(3).

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be excluded as temporary financing given their unique characteristics and limited value in furthering HMDA's purposes. Moreover, such loans or lines of credit will often be replaced by a buyer's permanent financing that is ultimately reported under HMDA and provides information about the property securing the longer-term loan, such as construction method and property value.

Provide Safe-Harbors for Bona-Fide Errors Related to Census Tract Reporting

The CFPB plans to make available on its web site a geocoding tool that financial institutions may use to identify the census tract in which a property is located. ICBA strongly supports an amendment to provide that a financial institution would not violate Regulation C by reporting an incorrect census tract for a particular property if the financial institution obtained the incorrect census tract number from the Bureau's geocoding tool if the financial institution entered an accurate property address into the tool and the tool returned a census tract for the address entered.

Create "Not Applicable" Loan Fields for Loan Purpose and Loan Originator ID

Investors may purchase loans after the effective date of the revised Regulation C which were originated before Regulation Z's loan originator rules became effective on January 10, 2014. As a result, the loan documents may not include the Nationwide Mortgage Licensing System and Registry (NMLSR) ID, even when the loan originator had been assigned one. In such a circumstance, it may impose considerable challenges to require purchasers to acquire this information.

In addition, the loan documents for purchased loans that are not covered by the loan originator rules under Regulation Z may not include the NMLSR ID either, even when the loan originator has an assigned NMLSR ID. Considering these issues, ICBA supports the addition of proposed comment 4(a)(34)-4 which would provide financial institutions the ability to report "not applicable" for loan purpose and the loan originator's NMLSR ID when reporting certain purchased loans originated prior to Regulation Z's loan originator rules becoming effective.

Conclusion

Thank you for the opportunity to respond to the proposal. We strongly urge the CFPB to: delay the implementation of the new data categories; significantly increase the loan tests under the revised Regulation C; and timely proceed to finalize the proposed clarifications. Please contact me, Joe Gormley, at

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Joseph.Gormley@icba.org or (202) 659-8111 with any questions regarding our comments.

Sincerely,

/s/

Joseph M. Gormley
Assistant Vice President and Regulatory Counsel

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