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May 3, 2017

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

Re: Docket No. CFPB-2017-0009, Amendments to Equal Credit Opportunity Act (Regulation B) Ethnicity and Race Information Collection

Dear Ms. Jackson,

The Independent Community Bankers of America<sup>1</sup> appreciates the opportunity to provide comments to the Consumer Financial Protection Bureau (“CFPB” or “Bureau”) on its proposed amendments to Regulation B (“the proposal”) which implements the Equal Credit Opportunity Act. The Bureau indicates that the proposal will provide creditors additional flexibility in the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants so that they could better align with recent changes to Regulation C which implements the Home Mortgage Disclosure Act (“HMDA”).

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<sup>1</sup> 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](http://www.icba.org).

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Community banks continue to implement and comply with an unprecedented number of new and amended consumer protection regulatory requirements put into effect over the past several years. These new rules touch virtually every consumer product and service community banks offer with more change to come. The burden in complying with these rules is substantial and mounting.

ICBA supports efforts, such as the proposal, to align regulatory requirements and provide much needed compliance relief to community banks. However, we urge the Bureau to make clear that all creditors will be permitted to use the new 2016 Uniform Residential Loan Application (“URLA”) whether they report HMDA data or not.

## **Background**

With some exceptions, Regulation B prohibits a creditor from inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction. One of these exceptions requires creditors to request, collect and retain – but not report – otherwise prohibited demographic information in connection with certain dwelling-secured loans. These required categories correspond to the Office of Management and Budget standards for the classification of Federal data on ethnicity and race minimum standards.

In October 2015, the Bureau issued a revised Regulation C which significantly expands the amount of data lenders are required to report under HMDA. These new requirements will more than double the amount of data that most mortgage lenders are required to report on each covered loan application. Included in these changes are revised requirements for collecting and reporting applicant demographic information. Additionally, while revised Regulation C will require financial institutions to permit applicants to self-identify using disaggregated ethnicity and race categories, it does not require or permit covered institutions to use the disaggregated subcategories when collecting and reporting the applicant’s ethnicity and race based on visual observation or surname.

Fannie Mae and Freddie Mac (“the Enterprises”) have also recently issued a revised and redesigned URLA which is the standard application document used by most mortgage lenders, even for those loans which are not intended for sale to the Enterprises. The 2016 URLA updates the questions regarding race and ethnicity information to mirror the revised Regulation C requirements.

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## ICBA Comments

Community banks have a strong track record of providing access to credit in the communities in which they are located and take their fair lending obligations very seriously. The proposed amendments to Regulation B would permit creditors additional flexibility in how they collect applicant ethnicity and race information to better match the revised Regulation C requirements which become effective next year. Community banks work hard to comply with laws and regulations and ICBA supports efforts to align regulatory requirements which will reduce compliance burden for community banks.

The implementation of the revised Regulation C and the adoption of the 2016 URLA represent a huge investment in time and resources for community bank mortgage lenders. These changes will require community banks to train staff, update policies and procedures, and add additional quality control measures to ensure data integrity.

Currently, creditors are not required by Regulation C, nor are they permitted by Regulation B, to request applicants self-identify using disaggregated ethnicity and race categories. However, beginning January 1, 2018 revised Regulation C will require financial institutions to permit applicants to self-identify using disaggregated ethnicity and race categories. The Bureau is proposing to amend Regulation B to permit a creditor to collect this information under certain circumstances, provided the information is collected in compliance with Regulation C.

Specifically, the Bureau is proposing that a creditor collecting an applicant's information under Regulation B, may do so by using either aggregate ethnicity and race categories – as is currently required – or ethnicity and race categories and subcategories set forth in revised Regulation C. ICBA supports these proposed changes, as maintaining differing and inconsistent collection requirements would substantially burden smaller lenders such as community banks.

The current Regulation B appendix includes five model forms, each designated for use in a particular type of consumer credit transaction. The fifth model form is the 2004 URLA. While use of the model forms is optional, if a creditor uses the appropriate model form, that creditor is deemed to be acting in compliance.

After the URLA was revised by the Enterprises, the Bureau issued a Bureau Approval Notice which approved use of the 2016 URLA and deemed a creditor that uses the form in compliance with the relevant Regulation B provisions.

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Given the release of the 2016 URLA and the CFPB's approval of the use of that form, the Bureau is proposing to remove the 2004 URLA from the list of model forms in the Regulation B appendix. The Bureau will not replace the 2004 URLA form with the 2016 URLA as a model form as it believes including it is unnecessary.

While the 2016 URLA will no longer be listed as a model form in the Regulation B appendix, ICBA's understanding of the proposal is that all lenders, including community banks, which use the 2016 URLA with disaggregated ethnicity and race category questions - regardless of their HMDA reporting status - will be deemed in compliance with Regulation B. However, we are concerned that the proposal does not clearly state this in either the proposed regulatory text or commentary which may lead to compliance uncertainty for many smaller-volume mortgage lenders that do not report HMDA data. ICBA encourages the CFPB to add language to the final rule making this explicit.

Additionally, the Bureau is proposing to permit the collection of disaggregated ethnicity and race information by certain creditors who are not subject to the revised Regulation C in a given calendar year, but may become subject to reporting in the following calendar year. In the proposal, under certain circumstances, a financial institution may collect information regarding applicants' demographic information if it submits HMDA data in any of the preceding five calendar years. Financial institutions would be permitted to collect applicant demographic information for up to five years after it fell below the loan reporting volume thresholds.

Similarly, if an institution exceeded a loan volume threshold in the first year of a two-year threshold period, the institution may, in the subsequent year, collect applicant demographic information for covered loans. The creditor would be permitted to collect such information regardless whether it becomes subject to HMDA reporting at the end of the two-year period.

ICBA believes these approaches are appropriate and will enable community banks that choose to maintain their collection practices consistently the ability to do so. ICBA requests that the Bureau underscore the voluntary nature of these collection practices. While collecting and retaining information that is not currently required by Regulation C, but may be required in an upcoming year, could be beneficial for some creditors, it may be more burdensome for others. Mandating such collection in anticipation of HMDA reporting creates an unnecessary burden for community banks.

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## Conclusion

Thank you for the opportunity to comment on this proposal. Please contact me, Joe Gormley, at [Joseph.Gormley@icba.org](mailto: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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