

May 4, 2017

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

RE: Docket No. CFPB-2017-0009

Dear Ms. Jackson:

The undersigned organizations appreciate the opportunity to comment on the Consumer Financial Protection Bureau (CFPB)'s proposal to reconcile the requirements of the Equal Credit Opportunity Act (ECOA) and the Home Mortgage Disclosure Act (HMDA). The HMDA dataset is a critical source of publicly-available data on access to mortgage credit, and we support the CFPB's efforts to facilitate accurate data reporting by lenders that may not be required to report HMDA data every year.

Benefits of HMDA Data

In 2010, Congress passed the Dodd Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which made critical updates to HMDA, including expanding the data that lenders are required to report and authorizing the CFPB to require additional reporting. In its 2015 HMDA rulemaking, the CFPB took important steps to ensure that HMDA data will include the information necessary to fulfill HMDA's purposes in the current mortgage lending landscape.

The CFPB is well aware of the benefits of publically available HMDA data. HMDA data allows the public to assess whether lending institutions are meeting community mortgage lending needs. The data also helps public sector agencies identify areas in need of public investment, which could then attract private sector investment. Finally, HMDA data is critical to identifying and documenting possible discrimination.¹

As detailed in previous comments to the CFPB, HMDA data has allowed community groups to negotiate pledges to increase responsible lending with banks involved in the merger application process. HMDA data is also instrumental for the development of Assessment of Fair Housing Plans (AFHs) required by the Department of Housing and Urban Development (HUD) and which help jurisdictions address racial disparities in lending and access to economic opportunities. Because of the immense value of HMDA data in promoting fair access to credit and affordable housing, we urge the CFPB to expeditiously complete this rulemaking process and also to decide how to publicly disseminate the new HMDA data fields.

¹ <http://www.ffiec.gov/hmda/history.htm>

Reconciling ECOA and HMDA

We support the CFPB's proposal to provide an exception to the general ECOA prohibition on data collection and retention for lenders that seek to collect HMDA data even when they are not required to report HMDA data to the CFPB. A lender must collect and publicly report HMDA data if it makes 25 closed-end mortgage loans or 100 open-end lines of credit annually. The CFPB recognizes that some smaller-volume lenders may make fewer loans than the reporting threshold in some years and exceed the threshold in other years. The lenders, however, may want to keep their data collection system operating so that they will not incur start-up costs in future years should they later exceed the reporting thresholds. Accordingly, we support the CFPB's use of its ECOA authority to allow small lenders to collect HMDA data for up to five years even if they are not required to report during this time period.

Five years is an appropriate time period to allow for collection. It allows smaller-volume lenders to keep their collection systems updated in the event they become HMDA reporters. Moreover, a time period longer than five years suggests that a lender will remain below HMDA reporting thresholds so these lenders do not have a pressing need to keep their data collection systems updated. The proposed five year time period will help improve the accuracy and consistency of HMDA data by increasing lenders' familiarity with and experience collecting the data.

The CFPB has also proposed updating its reference to model forms to incorporate changes that Fannie Mae and Freddie Mac made to their uniform residential loan application (URLA). We agree with this approach. Fannie Mae and Freddie Mac updated their URLA forms in 2016 to incorporate the additional race and ethnicity categories that the CFPB added to HMDA data in the 2015 rulemaking. Since many lenders use the URLA, we agree with the CFPB that the update to Regulation B should facilitate URLA use.

Disaggregated and Aggregated Race and Ethnicity Categories

The CFPB's 2015 HMDA rule requires lenders to report disaggregated data for Latino/a and Asian loan applicants who choose to share their ethnicities, which supports fair lending analysis. This change addressed a persistent problem in the existing HMDA data, namely that Latino/a and Asian loan applicants of different ethnicities have vastly different experiences applying for home loans. For example, analysis of HMDA data for Asian loan applicants often shows access to low-cost loans comparable to the access enjoyed by white applicants. Many groups that work with lower-income people and recent immigrants report, however, that Hmong, South Asian and Filipino loan applicants often are targeted by predatory lenders and have greater difficulties accessing affordable loans than white applicants. In response to these concerns and the presentation of studies showing uneven experiences among Asian communities, the CFPB's final HMDA rule allows loan applicants to voluntarily report whether they are Asian Indian, Japanese, Chinese, Korean, Filipino, Vietnamese, or other Asian. Similarly, for Hispanic loan applicants, the CFPB's final HMDA rule allows loan applicants to indicate whether they are Mexican, Puerto Rican, Cuban or other Hispanic.

For lenders not required to report HMDA data (CFPB refers to these lenders as Regulation B lenders), the CFPB has proposed allowing them to collect either aggregated or disaggregated

racial and ethnic categories. In contrast, HMDA reporters (Regulation C lenders) are required to report disaggregated categories if applicants provide them. The CFPB reasons that Regulation B lenders are typically smaller lenders and may not have yet adopted the URLA or other reporting forms that incorporate the disaggregated categories. The CFPB suggests it would be burdensome for these smaller scale lenders to adopt these forms immediately but that these lenders may adopt the forms over time.

We respectfully disagree. Since one of the purposes of the proposed rule is to prepare lenders to submit HMDA data, lenders should be required to update their systems after a reasonable phase-in period so that they are accurately collecting HMDA data and will be prepared to submit correct data should they cross the reporting threshold. A possible phase in period is two years, meaning that Regulation B lenders would be required to use the disaggregated categories in 2020. It is likely that a number of Regulation B lenders are near the HMDA reporting threshold, so they are likely to need to submit the disaggregated categories sooner rather than later. Finally, since Fannie Mae and Freddie Mac's URLA make it easy to record these categories, we believe there are readily available means to accurately collect data in a manner that adheres to the 2015 HMDA rule. We recommend that the CFPB require Regulation B lenders to collect disaggregated race and ethnicity data to ensure uniform data collection and to facilitate fair lending analysis.

We urge the CFPB to be consistent in its final rule. The proposed rule includes comment 13(a)–8 that would allow a Regulation B lender to choose on an application-by-application basis whether to report disaggregated race and ethnicity categories. This introduces the possibility that the data collection system the Regulation B lender is developing and/or maintaining will be haphazard and will not have consistent methods for collecting race and ethnicity categories. Since an application-by-application option for collecting these categories encourages the development of inaccurate reporting systems, the CFPB must delete its proposed comment 13(a)-8.

We agree with the CFPB that a Regulation B lender should be required to observe and record race and ethnicity in cases of in-person applications when the applicant has not indicated his or her race or ethnicity. This conforms with Regulation C requirements and would therefore facilitate consistent data collection.

We also support the CFPB's proposal to require Regulation B lenders that collect HMDA data to retain the data in their records for a period of 25 months, just as Regulation C lenders are required to do. Data retention could prove critical, if a fair lending matter arises. Moreover, data collection and retention by Regulation B lenders will also enable them to more effectively monitor their fair lending performance and take corrective action when the data suggests such action is warranted. Data collection may motivate a lender to take proactive and timely correction of any fair lending issues which would not only benefit the general public but also lender itself in avoiding any damage to its reputation or enforcement actions by a regulatory agency.

Conclusion

The proposed rule will serve an important function in facilitating compliance with HMDA, ECOA and fair lending laws. It will promote more reliable and accurate HMDA data reporting by allowing smaller lenders that fall in and out of HMDA reporting requirements to maintain consistent data collection systems.

We thank the CFPB for providing us with this opportunity to comment. If you have any questions, please contact Josh Silver of NCRC at 202-464-2733 or Alexis Iwanisziw of the New Economy Project at 212-680-5100.

Sincerely,

Affordable Homeownership Foundation, Inc., FL

Americans for Financial Reform

Association for Neighborhood and Housing Development, NY

Buffalo Urban League

California Reinvestment Coalition

Center for Responsible Lending

Casa of Oregon

Center for NYC Neighborhoods

CFED

City of Dayton Human Relations Council, OH

Consumer Action

Consumer Federation of America

Empire Justice Center, NY

GAP Community Development Resources, Inc., TN

Greenlining Institute, CA

Manna, Inc., Washington DC

Metropolitan Milwaukee Fair Housing Council

NAACP

NAACP Legal Defense and Educational Fund, Inc

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of its low-income clients)

National Fair Housing Alliance

Neighborhood Housing Services of the East Bay, CA

New Economy Project, NY

Peoples' Self Help Housing, CA

R.A.A. – Ready, Aim, Advocate, MO

Toledo Fair Housing Center, OH

Woodstock Institute, IL