

Director Kathy Kraninger  
Consumer Financial Protection Bureau  
1700 G St. N.W.  
Washington, D.C. 20552

Dear Director Kraninger:

The undersigned organizations respectfully request that you re-issue the Notice of Proposed Rulemaking (NPRM) and the Advanced Notice of Proposed Rulemaking (ANPR) regarding the Home Mortgage Disclosure Act (HMDA) and hold 90 day public comment periods for both. The CFPB should re-issue the NPRM and ANPR after it has released the Snapshot National Loan Level Dataset for the 2018 HMDA data and the CFPB's analysis and report of the data (for the 2017 data, this analysis was called *Data Point: 2017 Mortgage Market Activity and Trends: A First Look at the 2017 HMDA Data*).<sup>1</sup> We believe that only with the 2018 HMDA data and the CFPB's own review of the data can interested parties have a meaningful opportunity to comment on the NPRM and the ANPR as required by the Administrative Procedure Act (APA).

The CFPB announced the NPRM and the ANPR on its website on May 2, indicating that it will hold a 30 day comment period on the NPRM and a 60 day public comment period on the ANPR, commencing with the publication of the NPRM and the ANPR in the Federal Register.<sup>2</sup> The NPRM and ANPR are wide ranging. The NPRM proposes to change the HMDA data reporting threshold from 25 closed end loans to 50 or 100 closed end loans (the CFPB asks for comments on other, higher thresholds as well). The agency is also proposing that the open-end loan threshold be retained at 500 loans through 2022 and then set at 200 loans. These changes could eliminate data reporting for thousands of lending institutions and reduce the publicly available HMDA data by hundreds of thousands of loans. In addition, the NPRM is a dense 275 pages and describes several changes to regulatory language and commentary. Changes of this magnitude require that the general public have the most recent data and analysis in order to provide the most informed comments to the bureau.

The ANPR is likewise sweeping in its scope. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 required that the CFPB enhance HMDA data by adding a number of mandatory data points on loan terms and conditions and also provided the CFPB with discretionary authority to add more data points. The CFPB asks the general public in the ANPR to opine on the utility of the mandatory and discretionary Dodd Frank data points in furthering the purposes of HMDA.

Even though the CFPB is asking profound and difficult questions, it is not providing the public with sufficient data and analysis tools with which to answer these questions. The year 2018 is the first year in which the new Dodd-Frank HMDA data will be publicly available. However, the national level dataset, referred to as Snapshot National Loan Level Dataset by the CFPB, has not

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<sup>1</sup> For 2017 national level data and CFPB analysis, see <https://www.consumerfinance.gov/data-research/research-reports/cfpb-data-point-mortgage-market-activity-and-trends/>

<sup>2</sup> Consumer Financial Protection Bureau Proposes Changes to HMDA Rules, <https://www.consumerfinance.gov/about-us/newsroom/bureau-proposes-changes-hmda-rules/>

been publicly released. Likewise, the CFPB in prior years has analyzed the data, reviewing trends of applications, loan approvals, and denials by demographics of borrower groups in a report called Data Point. Both the raw data and the CFPB analysis are critical for members of the public to assess the strengths and weaknesses of the data in furthering HMDA's statutory purposes which include assessing whether lenders are meeting credit needs. The raw data and CFPB analysis provide necessary information for the general public to develop specific suggestions about how to improve the reporting methods of various data points in order to improve their utility in furthering the purposes of HMDA. In addition, the raw data will provide more insight into the impacts of the CFPB's proposal to eliminate HMDA data reporting for thousands of lenders.

Without the 2018 raw data and CFPB's analysis, the CFPB will receive comments that are substantially less useful for its rulemaking. The general public will be reduced to making educated guesses about these critical issues rather than using the data to provide specific and insightful comments. As a result, we believe that the ability of the CFPB to issue well-informed and reasoned rule will be compromised.

We also do not understand the reasons for not waiting until the 2018 data and CFPB analysis is available. The CFPB indicates that rules resulting from the NPRM will not take effect until January 2020. The issues raised in the ANPR probably will not lead to rule changes until subsequent years. The CFPB released the 2017 data and analysis in May of last year. We would anticipate that our request for delay until the data and analysis are released will at most result in a few months delay and possibly as little as a one or two month delay.

A recent Congressional Research Service report on the Administrative Procedure Act (APA) states that the APA requires a "meaningful opportunity for public comment." The report states, "although the APA sets the minimum degree of public participation the agency must permit, the legislative history of the APA suggests that matters of great importance, or those where the public submission of facts will be either useful to the agency or a protection to the public, should naturally be accorded more elaborate public procedures."<sup>3</sup>

We, the undersigned organizations, maintain that the ANPR and NPRM involve matters of great importance in that HMDA is a sunshine statute providing publicly available data so that lenders meet community credit needs and refrain from discriminating against protected classes. Another statutory purpose of HMDA is to assist public sector officials at all levels of government to determine how public sector investment can attract private sector investment to where it is needed. The quality of the data critically influences HMDA's ability to execute its mission. The public has keen insight into the quality of the data but will be severely handicapped in offering its views if it does not have a chance to review the new Dodd-Frank data during the public comment period. On Friday, May 3, the CFPB held an informational call about the NPRM and ANPR in which CFPB staff could not provide information on when the 2018 data and the CFPB's analysis of the data will be available.

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<sup>3</sup> Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, Congressional Research Service, March 2017, p. 2, <https://fas.org/sgp/crs/misc/R41546.pdf>

We look forward to your reply to our request. Please reply to Josh Silver, Senior Advisor, NCRC at [jsilver@ncrc.org](mailto:jsilver@ncrc.org) or 202-464-2733.

Sincerely,

Americans for Financial Reform Education Fund

Association for Neighborhood and Housing Development

California Reinvestment Coalition

CASA of Oregon

Center for NYC Neighborhoods

Consumer Federation of America

Empire Justice Center

The Leadership Conference on Civil and Human Rights

Metropolitan Milwaukee Fair Housing Council

NAACP

National Community Reinvestment Coalition

National Consumer Law Center on behalf of its low income clients

National Council of Asian Pacific Americans (NCAPA)

National Fair Housing Alliance

Northwest Indiana Reinvestment Alliance

Prosperity Now

Ohio Fair Lending Coalition

Woodstock Institute