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

Dear Ms. Jackson:

The undersigned organizations appreciate the opportunity to comment on proposed technical changes to the Home Mortgage Disclosure Act (HMDA). The Consumer Financial Protection Bureau's (CFPB) proposal would improve the precision of HMDA data definitions and clarify reporting procedures. These changes, in turn, would enhance the accuracy of HMDA data and its value in assessing whether lenders are meeting community credit needs and in exposing housing and lending discrimination. The undersigned groups urge the CFPB to make only those technical changes to the HMDA rules that ensure accurate, comprehensive reporting by all covered lenders.

Loan Volume Thresholds

Retain the use of "each" in defining the threshold

Currently, Regulation C indicates that an institution is exempt from reporting HMDA data if it originated fewer than 25 closed-end loans or 100 open-end loans in each of the previous two years. The CFPB indicates that the word "each" is a drafting error and proposes to substitute the word "either." We ask the CFPB to retain the word "each" and not replace it with "either." The reporting threshold under the "each of the previous two years" standard would classify more institutions as HMDA reporters than the "either" standard.

Capturing more lenders would further HMDA purposes of assessment of credit needs and investigating possible fair lending violations. Even though they issue fewer loans, smaller volume lenders are still important institutions in rural areas or neighborhoods where the overall numbers of loans are low. Moreover, smaller institutions are not immune from fair lending problems and need to be held accountable. Finally, the CFPB in a proposed rule on reconciling HMDA and the Equal Credit Opportunity Act (ECOA) proposed allowing lenders that are close to the reporting threshold to report HMDA data even in years when they are not required to do so. Given that the CFPB expects that many lenders will prefer to report HMDA data consistently rather than starting and stopping reporting from year to year, maintaining the "each" standard for the reporting threshold will increase HMDA data's coverage of the mortgage lending market without triggering frequent and inconvenient changes in lenders' reporting procedures.

Voluntary Reporting

We support the CFPB's proposal to allow lenders to voluntarily report HMDA data if they are below reporting thresholds. We also agree that lenders voluntarily reporting data must report all of their loans, since selective reporting of loans could hide fair lending violations and compromise Community Reinvestment Act examinations.

Multifamily Lending

We remain concerned about the thresholds regarding which lending institutions are required to report HMDA data, particularly as it relates to multifamily buildings.

Unless a bank makes one single-family loan, they will not be subject to HMDA requirements. This rule prevents the public from understanding the lending patterns of multifamily lenders that do not make single family loans but are making hundreds, if not thousands, of multifamily loans. The regulation requires depository institutions to make at least one closed-end loan on a 1-4 family building before any additional thresholds are evaluated. More and more banks seem to be pulling out of 1-4 family lending, including ones that are active multifamily lenders. As a result, these lenders would be exempted from reporting their core lending business. New York Commercial Bank and New York Community Bank, for example, are bank affiliates of New York Community Bancorp and collectively one of the largest multifamily lenders in New York City. Yet, because New York Commercial Bank does not make 1-4 family loans, it has long been exempted from HMDA reporting (New York Community Bank does report HMDA data). Two other large-volume multifamily lenders, Dime Savings Bank of Williamsburgh and BankUnited announced in recent years that they would also stop making 1-4 family loans. We expect others may do the same. All multifamily lenders were underreported due to the lack of CEMA reporting, but now that CEMAs are included, we need full reporting from all multifamily lenders.

Similarly, we remain concerned about excluding bank and non-bank lenders that make fewer than 25 loans. For multifamily lending, even a small number of loans on large buildings impact a large number of people; thus, this lending data would be valuable to capture. At the very least, multifamily loans should be included in the thresholds to ensure that institutions specializing in multifamily lending are reporting data, regardless of whether they are making 1-4 family loans.

Do Not Adjust Current Close-End and Open-End Thresholds

Finally, we firmly maintain that any technical changes in the reporting thresholds should not be accompanied by increases in the number of loans for the reporting thresholds. Lender trade associations have proposed significant increases in reporting thresholds. Since HMDA reporting has been in effect for more than 40 years, lenders are well acquainted with HMDA reporting.

Moreover, the Federal Reserve Board and the CFPB have improved the efficiency of reporting procedures throughout the decades. The loss of additional reporters would not meaningfully reduce industry costs and would only further cloud the public's understanding about the extent to which lenders are meeting credit needs in a responsible manner consistent with fair lending laws.

Reporting of Consolidation Extension and Modification Agreement (CEMA) Loans

The proposals regarding CEMA reporting are sensible. Since preliminary financing is combined with refinancing in CEMA transactions, separate reporting of the preliminary financing would double count the preliminary financing and the subsequent CEMA refinancing. In other words, one final transaction would be counted as two in the HMDA data. This may make it appear that lenders are more successful in meeting credit needs than they actually are due to artificially inflated loan volumes.

Short Term Home Purchase and Home Improvement Loans

The CFPB sensibly proposes that short-term home purchase and home improvement loans be reported in HMDA data. In many neighborhoods, investors buy homes, renovate them, and then seek to sell them rapidly. This house flipping might keep the overall number of vacant and abandoned homes low in a community, but it is often abusive. Many property flippers charge inflated prices for homes with shoddy improvements that hide serious structural flaws. Local government agencies and community organizations therefore need information on the extent of home flipping in neighborhoods. The enhanced HMDA data with information on loan terms in months will help the public identify any communities where a significant amount of house flipping is occurring so that this activity can be more effectively monitored and addressed.

Ethnicity and Race Reporting Requirements

The undersigned groups support the CFPB's proposal to require lenders to carefully follow the preferences of applicants when reporting race and ethnicity categories and subcategories in HMDA data. The CFPB proposed that lenders should report only the categories and subcategories that applicants check off on their applications and not extrapolate category designations from race or ethnicity subcategories. For example, if an applicant indicates that her ethnicity is Mexican as a subcategory but does not indicate that she is Hispanic in the ethnicity category, the lender should report her ethnicity as Mexican in the subcategory field but leave the category field blank. This procedure would ensure that HMDA data reflect the applicant's preference to share that she or her family emigrated from Mexico but that she does not identify as Hispanic.

Conclusion

The undersigned organizations thank the CFPB for carefully and thoroughly reviewing the HMDA final rule and proposing technical clarifications with the aim of improving the accuracy and reliability of HMDA data. If you have any questions regarding our comment, please contact Josh Silver of NCRC at 202-464-2733 or Alexis Iwaniszіw of New Economy Project at 212-680-5100.

Sincerely,

Americans for Financial Reform
Association for Neighborhood and Housing Development, NY
California Reinvestment Coalition
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Empire Justice Center, NY
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of its low-income clients)
New Economy Project, NY
Ohio Fair Lending
Western New York Law Center
Woodstock Institute, IL