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Via Electronic Submission

January 21, 2022

Comment Intake—HMDA Assessment
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: [Docket No. CFPB–2021–0018] Request for Information Regarding the HMDA Rule Assessment

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ welcomes the opportunity to respond to the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) Request for Information (“RFI”) on its Home Mortgage Disclosure Act (“HMDA”) Rule Assessment. The Bureau is conducting a voluntary assessment of the final rule on HMDA issued in October 2015 and related amendments (collectively, “the HMDA Rule”) in order to evaluate its effectiveness in meeting its stated goals, purposes, and objectives.

Background

HMDA was enacted in 1975 and requires certain financial institutions to provide mortgage data to the public. HMDA’s original purpose was to provide the public and public officials with data to help determine whether financial institutions are serving the housing needs of the communities in which they are located while helping public officials determine if public sector investments are allocated in a way to best improve the private investment environment.² Congress later

¹The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA 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 nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

² 12 CFR 1003.1.

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expanded HMDA to require financial institutions to report racial characteristics, gender, and income information on applicants. Regulation C implements HMDA and establishes specific requirements for the collection, recording, reporting, and disclosure of mortgage lending information.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“DFA” or “Dodd-Frank”)³ amended HMDA to add new data points and gave the CFPB discretionary authority to require additional information from covered institutions. In July 2014, the Bureau proposed amendments to Regulation C to implement Dodd-Frank changes and new data points it deemed appropriate to further HMDA’s purposes. The HMDA Rule, issued on October 15, 2015, required covered institutions to collect an additional 48 unique data fields on most residential mortgage loan applications. Collection of the new data points began on January 1, 2018, and reporting of that data began in 2019.

In 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (“EGRRCPA”) in which certain insured depository institutions that originated fewer than 500 closed-end mortgage loans or 500 home equity lines of credit (“HELOC”) in each of the two preceding calendar years became exempt from reporting data fields⁴ added by the 2015 HMDA Rule.

On April 16, 2020, the Bureau issued a final rule raising reporting thresholds for closed-end mortgage loans from 25 to 100 loans. The final rule also raised the reporting threshold for HELOCs from 100 to 200 after the temporary 500-loan threshold expires, January 1, 2022.

General Comments

ICBA members understand the purpose of HMDA reporting and recognize the significance HMDA data has in showing how financial institutions are serving the housing needs of their communities. ICBA also understands that the additional requirements established by the DFA were intended to root out and protect consumers from predatory lending tactics, which played a significant role in the financial crisis.

Combined with additional requirements and restrictions, HMDA reporting represents another regulatory challenge for community banks. Bank executives, loan and compliance officers, managers, and other bank staff spend a significant number of hours complying with regulatory requirements to provide information to regulators, documenting banking transactions, and delivering correct and timely disclosures to consumers. The cumulative effect of all regulations,

³ Public Law 111-203, 124 Stat. 1376, 1980, 2035-38, 2097-101 (2010)

⁴ HMDA section 304(b)(5) and (6); 12 U.S.C. 2803(b)(5) and (6)

particularly with regard to mortgage lending, has been tremendous – especially for smaller community banks. The disproportionate burden of regulatory and paperwork requirements placed on community banks has diminished their ability to maintain acceptable economies of scale, to support the credit needs of the customers who rely on these banks as a primary source for financial products and services, to serve their communities, and to contribute to their local economies.

Most community banks are, by definition, locally owned and operated institutions with strong ties to the customers and communities they serve. These local banks continue to thrive because they provide loans to all eligible customers. Community bank residential mortgage lending enables many first-time home buyers to achieve the American dream of homeownership. As relationship-based lenders, community banks also explore all loan options—including HELOCs—to find the best loan product for each borrower.

ICBA appreciates the Bureau evaluating HMDA’s effectiveness in meeting its stated goals, purposes, and objectives. To help facilitate the CFPB’s evaluation, ICBA offers the following:

- The measures undertaken by many community banks to comply with the 2015 HMDA Rule has resulted in increased regulatory burden.
- Costs associated with new and revised data points and coverage thresholds have been exorbitant without the commensurate benefit of DFA’s purpose.
- Data fields required by DFA and data fields mandated prior to the 2015 HMDA Rule amendments provided more than sufficient information in detecting any evidence of potential fair lending violations.
- The Bureau should eliminate the collection and reporting of data not mandated by the DFA.
- Higher thresholds than those provided in the 2020 final rule for both closed-end loans and HELOCs will provide additional relief.

ICBA Comments

The activities undertaken by financial institutions to comply with HMDA

As HMDA reporting has become more complex, it has increased the need for staffing within loan operations and IT departments. In conversations with our members, the number of full-time employees (“FTEs”) required to comply with new and revised data points has increased drastically and continues as the loan volume increases. Community banks have also had to invest more in their software applications to accommodate annual system updates for filing and reporting, advising stakeholders on various software solutions, and troubleshooting.

Client interaction has also suffered as a result of the additional data points. Many community banks have had to undertake additional measures to combat adverse impacts on the application process – such as processing delays, working with customers concerned about privacy, and

requiring enhanced staff training on the nuances that define a HMDA-covered loan. Community banks expend considerable time and resources to ensure that appropriate data is collected and to avoid errors that may result in false fair lending violations.

Furthermore, community banks have undertaken a number of measures to comply with new HMDA requirements, including enhanced and extensive record keeping, transaction recording, data validation, and compilation for filing. Prior to the 2015 HMDA Rule, many community banks engaged third-party consultants to review and validate their HMDA data. That trend has not only continued after the new HMDA Rule but has caused community banks to increase their budgets to accommodate more frequent third-party reviews within the last year.

Costs associated with data points and revised coverage thresholds.

The increased compliance burdens associated just with Dodd-Frank's requirements were immediately apparent during the proposed rule phase of the rulemaking process. However, the Bureau's decision to tap into its discretionary authority to add fourteen additional data points⁵ was a step too far that provides no additional value to HMDA's original purpose or Dodd-Frank's subsequent amendments. Further, the data fields required by Dodd-Frank, in conjunction with those fields already mandated prior to the 2015 HMDA Rule amendments, provide more than sufficient information to detect any evidence of potential fair lending violations. Prior to 2015, the Bureau possessed the data and tools to identify discrimination and discriminatory practices in mortgage lending. Nevertheless, the decision to require additional fields was not supported with data to justify the decision. These additional requirements place exorbitant and unreasonable costs on many community banks without the commensurate benefit of DFA's purpose.

In 2019, ICBA surveyed its members for their input on the most onerous HMDA data points.⁶ The financial costs associated with HMDA reporting represent one of the most challenging regulatory aspects for community banks. According to ICBA's 2019 survey, 50 percent of community banks reported over \$10,000 in estimated annual data collection costs, while 25 percent reported costs exceeding \$25,000. Many small banks described the difficulty of having

limited staff to devote the required time needed to accurately input HMDA data.⁷ The survey also revealed that among community banks, some of the common themes and challenges

⁵ HMDA section 304(b)(5) and (6) reasons for denial; total origination charges; discount points; amount of lender credits; interest rate; debt-to-income ratio; combined loan-to-value ratio; manufactured home secured property type; manufactured home land property interest; number of multifamily affordable units; the automated underwriting system used in evaluating an application and the result generated; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit, and whether the loan is primarily for a business or commercial purpose.

⁶ Community bank HMDA data and anecdotes cited in this letter come from a survey sent to ICBA members in May 2019. ("ICBA 2019 HMDA Survey")

⁷ For example, one bank with \$550 million in assets has only one employee dedicated to overall compliance. Another bank, with only \$82 million in assets, is subject to HMDA reporting because one of its three branches is

surrounding HMDA data collection included the difficulties of data collection, subsequent reviews conducted by consultants, monetary costs, and staff training.⁸

The financial costs associated with HMDA reporting continue to represent one of the most challenging regulatory compliance aspects for community banks. For example, members have recently shared that their resource and compliance costs doubled because of HMDA requirements. This includes increased operational and compliance costs associated with staffing, personnel training, system enhancements, data collection, tracking, and reporting.

The results of our 2019 survey and recent discussions with our members paint a very clear picture of the financial burden associated with HMDA data collection. Furthermore, many bankers continually cite a lack of clarity about the data points and a general concern about keeping up with changing regulations and rules.

Having to comply with requirements that were not mandated by the DFA caused many community banks to significantly reconstitute their entire mortgage lending functions or, in some instances, departments. Large banks typically have dedicated legal and consulting resources, separate underwriting and loan processing departments or centers, and larger compliance staff which position them to easily address changes and absorb regulatory costs. This uneven playing field places community banks, especially the smaller banks, at a severe competitive disadvantage with some of the same entities responsible for the predatory lending practices that helped cause the financial crisis. Such a disadvantage impedes community banks' ability to serve their customers and communities.

Data Points

The Bureau significantly expanded and complicated the requirements for collecting data regarding an applicant's race, ethnicity, and sex without adequately explaining how the collection would aid in determining the housing needs of a particular community. The Bureau also failed to justify how this additional information could not be obtained by the data already required prior to the 2015 HMDA Rule change.

This expansion also presented community banks with challenges in updating their data collection procedures and applications to ensure they offer applicants appropriate options, such as the ability to select one or more race or ethnicity subcategory. The expansion also includes an option for applicants to utilize the free-form text fields, which lenders are then required to submit. This requirement has resulted in the deployment of extra resources just to ensure accurate information is obtained due to the inherent complexity and subjectivity involved.

located in a Metropolitan Statistical Area. Citing HMDA data collection as a large demand on resources, the bank documented over 400 employee hours to complete the 2018 HMDA LAR. Another bank reported it has incurred costs equal to the addition of three full-time employees since the expansion of the new HMDA rule have gone into effect.

⁸ ICBA's HMDA survey asked community banks to specify the ongoing costs of HMDA data collection.

While the Bureau views this expansion as beneficial, a combined forty-five percent of our members have indicated that the revised race and ethnicity data points are specifically problematic, excessive, and overwhelming. Our members report that the number of data fields required on each loan is overwhelming; many of their customers are confused by the options; customers often use the free-form text fields incorrectly, and many customers enter information that is not accurate.

Given these challenges, banks are nevertheless required to submit the information even though, absent an adequate justification for such data, the effectiveness of the data is questionable. The collection and reporting of these two data points could unintentionally result in a false pattern of discrimination, lead to potential fair lending violations, and expose community banks to legal and reputational risk. Therefore, ICBA strongly urges the CFPB to eliminate the revised data points.

Thresholds

The aforementioned ICBA 2019 survey indicated that nearly 80% of the respondents were required to report HMDA data.⁹ The same survey revealed, that on average, survey respondents originated just over 300 closed-end mortgage loans per year. ICBA members indicated that new HMDA data collection requirements often result in excessive costs, onerous time investment, and confusion on how to correctly input data. These burdens are exacerbated among smaller community banks, typically those that make 25 to 350 closed-end loans every year and have relatively small staffs.

Information about the Rule’s effectiveness in meeting its purposes and objectives

ICBA maintains that the data fields required by Dodd-Frank, in conjunction with those fields already mandated prior to the 2015 HMDA Rule amendments, provided more than sufficient information to aid in detecting any evidence of potential fair lending violations, and more than sufficient information to analyze whether banks were meeting the needs of the community. The additional fields went beyond what is useful.

Recommendations for modifying, expanding, or eliminating any aspects of the HMDA Rule

Eliminate the Collection and Reporting of Data Not Mandated by the Dodd-Frank Act

ICBA strongly urges the CFPB to eliminate the additional HMDA data points not specifically required by the DFA. One of the primary sources for the increased compliance burden community banks have generally reported was the Bureau’s decision to utilize its discretionary authority to add new data points. Based on 232 responses to our 2019 survey, the combined loan-to-value ratio (“CLTV”), debt-to-income ratio (“DTI”), and business or commercial loan purpose flag were the top three most onerous data points to collect.

⁹ (“ICBA 2019 HMDA Survey”)

As we stated in our previous comment letter in response to the Bureau’s 2014 proposed rule, ICBA reiterates the following:

- *CLTV - ICBA strongly urges the CFPB not to require this data to be submitted and disclosed. As the CFPB itself recognizes, a CLTV reporting requirement poses challenges. We are particularly concerned that CLTV ratios may not be entirely accurate and quite difficult for community banks to capture, track, and report.*¹⁰
- *DTI ratio - The CFPB should not require community banks to disclose the DTI ratio as it is not always used in loan underwriting, is incomplete for purposes of understanding the consumer, and there could be privacy issues with its public disclosure particularly in small markets and rural communities.*¹¹
- *Business or commercial loan purpose flag - ICBA urges the CFPB to exempt the reporting of business and commercial credit from the loan/application register (“LAR”) as other consumer regulations do not address these loans to the extent that Regulation C does. This information does not provide greater clarity on housing discrimination and is burdensome for community banks to report, especially given most of the data points and new data point requirements are related to consumer lending.*¹²

While only the top three onerous points are listed, ICBA staunchly advocated against – and continues to advocate against –the CFPB including additional data points beyond those that were required by the DFA. Not only have the discretionary data requirements proven costly for community banks, but it is unclear what useful fair lending conclusions would be found with this additional information that could not be found by pre-2015 HMDA data.

Moreover, the collection of additional data fields will never fully explain every underwriting or pricing factor, given other legitimate non-discriminatory reasons considered when making a lending decision. As such, our position remains the same as it did prior to the 2015 changes. The Bureau should not have mandated data requirements beyond those required by DFA. Without data and evidence indicating otherwise, the economic, compliance, and regulatory costs and risks outweigh the benefits of a non-statutory requirement. ICBA strongly urges the CFPB to eliminate all the additional data points it created under its discretionary authority.

Increase the Reporting Threshold

ICBA consistently advocates for relief for community banks by detailing how complex, redundant, expensive, and overly onerous data collection and reporting has been since the implementation of the 2015 HMDA Rule. While ICBA advocated instituting higher thresholds for closed-end mortgages and making permanent the 500-loan threshold for HELOCs, we applauded the Bureau increasing the thresholds in 2020 and appreciate that the final rule offers relief that will help community banks, particularly those in rural and small markets, to continue

¹⁰<https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-regulators/2014/hmda-comment-letter.pdf>, page 10.

¹¹ Id., page 7.

¹² Id., page 11.

to meet the needs of local customers and communities. Nevertheless, ICBA continues to believe that higher thresholds than those provided in the 2020 final rule for both closed-end mortgages and HELOCs provides the most effective and efficient way to maintain a balanced approach that promotes the purposes of DFA with the limited and already strained resources of community banks. We also strongly urge against a reversal that decreases 2020 thresholds because doing so would have a negative impact on small lenders and hurt access to credit to those who need it most.

Conclusion

Community banks take pride in supporting their communities in countless ways, including offering unique mortgage loans tailored to individual customers that larger banks do not typically provide. Community banks want to see their towns and cities grow and flourish. The onerous costs of HMDA data collection and reporting prevent small banks from doing what they do best – connecting and lending to customers who otherwise might not have access to traditional banking services, much less mortgage loans.

ICBA appreciates the opportunity to respond to the Bureau’s proposal. If you have any questions or would like additional information, please contact Rhonda Thomas-Whitley at Rhonda.Thomas-Whitley@icba.org or by phone at 202-659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President & Regulatory Counsel