June 12, 2019

Docket No. CFPB-2019-0021 or RIN 3170-AA76
Notice of Proposed Rulemaking, HMDA Reporting Thresholds

To Whom it May Concern:

The undersigned organizations (158 national and local organizations) oppose the proposal of the Consumer Financial Protection Bureau (CFPB) to exempt thousands of lending institutions from reporting the Home Mortgage Disclosure Act (HMDA) data. As the CFPB recognizes, HMDA is a sunshine statute that holds lending institutions publicly accountable for making loans responsibly to traditionally underserved populations. The statutory purposes of HMDA are to assess whether lenders are meeting the housing needs of local communities, inform public sector investment decisions, and to detect and prevent discrimination.

The CFPB's unnecessary proposal to exempt a large segment of lenders from HMDA reporting requirements will undermine the effectiveness of HMDA in achieving its statutory purposes. The CFPB must withdraw its proposal to increase the threshold for reporting since the objective of that proposal, reducing lender costs, has already been largely achieved by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) passed by Congress in 2018.

This comment letter maintains that:

- The CFPB has issued this proposed rule before the public has been able to access the complete HMDA data for the first year of the new data enhanced by the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010. Therefore, this rulemaking has not provided the public with a meaningful opportunity to comment as required by the Administrative Procedure Act. Moreover, the CFPB itself will not benefit from fully informed comments based on an analysis of the new HMDA data.
- The public visibility of HMDA has motivated lending institutions to increase safe and sound lending to traditionally underserved borrowers and communities. The visibility of HMDA also makes it effective for CRA and fair lending enforcement. The CFPB's proposal undermines HMDA's effectiveness by replacing visibility with secrecy regarding the lending activity of thousands of lenders.
- Raising reporting thresholds and dramatically reducing the number of institutions reporting HMDA data will lead to another round of abusive and discriminatory lending. A sizable segment of lenders are more likely to engage in unfair and deceptive practices when data is concealed on loan term and conditions and their overall lending patterns to borrowers of different races, genders, and income levels. Unscrupulous lenders will calculate that without publicly available data, members of the public and agencies will have a harder time detecting predatory lending.
- The general public, researchers, and federal agencies will have an incomplete picture of lending trends in thousands of census tracts and neighborhoods if several institutions no longer report HMDA data. This violates one of the essential purposes of HMDA to determine if housing and credit needs are being met.

- HMDA compliance costs are modest, not significant as the CFPB suggests. Therefore, the benefits of HMDA data outweigh the costs of reporting the data. Lenders of all sizes have been reporting HMDA data for decades without undue burden.
- As well as hiding abusive practices in the closed-end lending marketplace, the proposed reduction in open-end reporting will re-introduce risky lending to neighborhoods that are recovering from the financial crisis and can least afford another round of defaults.

This Proposal is not Consistent with the Administrative Procedure Act

At the outset, the undersigned organizations maintain that this rulemaking undermines the objectives of the Administrative Procedure Act (APA) to fully inform federal agencies of the impacts of proposed rules by providing the public with meaningful opportunities to comment. The CFPB has issued this proposed rule before the public has been able to access the complete HMDA data for the first year of the new data enhanced by the Dodd Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd Frank Act). The Dodd Frank Act enhanced HMDA data by adding several variables regarding loan terms and conditions. EGRRCPA exempted most of the smaller volume lenders from reporting the new Dodd Frank variables though they will still be reporting HMDA data.

The full HMDA dataset for 2018, the first year of data with the new Dodd Frank variables, will be released at some point this summer or fall, most likely after the end of the comment period for this proposed rule change. The public will therefore not be able to use the most current data to determine the impact of the proposed threshold changes in terms of the numbers of lenders exempted from HMDA reporting. Economic conditions can significantly influence annual loan volumes; therefore, an additional year of data analysis using the 2018 data would be valuable for estimating the impacts of the threshold changes.

Using the 2018 data, members of the public, advocates, and researchers can more fully examine which lenders would be exempt from HMDA reporting, including those that had been involved in lawsuits or investigations over abusive or discriminatory lending. The full dataset for 2018 would enable community organizations and other stakeholders to more carefully determine which lenders in their locality would be exempt from reporting under the proposed thresholds. These calculations are now difficult to make because the lack of complete data for 2018 means that an analyst does not have a complete list of lenders and their loan volumes for each locality. Only the full dataset for the 2018 data would enable the public to provide informed comments on the CFPB's threshold proposal and the impacts of EGRCPA.

Analyses assessing the impacts of threshold changes are complex and very difficult to undertake in a thirty day comment period (it is likely it took expert staff at the CFPB considerably longer than one month to estimate impacts of threshold changes on the number of overall loans reported and loans in various census tracts). A thirty day comment period is inappropriate and not sufficient given the complexity of these proposed changes.

A recent Congressional Research Service report on the 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."[1]

This rulemaking has not provided the public with a meaningful opportunity to comment as required by the APA. Therefore, the CFPB itself will not benefit from fully informed comments based on an analysis of the new HMDA data. The CFPB will lack critical information with which to make the fairest and most effective rule regarding thresholds.

The Public Nature of HMDA Data Increases Safe and Sound Lending and Roots out Abusive and Predatory Lenders

The public visibility of HMDA data motivates banks to increase their lending to people of color, low- and moderate-income borrowers, and women. In 1989, Congress amended the HMDA statute to require information on the demographics of the loan applicants in addition to the census tract location of the loan.[2] Shortly, thereafter bank lending to underserved borrowers and communities surged. In 1997, former Comptroller of the Currency Eugene Ludwig remarked, "Since 1993, home mortgage loans to low and moderate income census tracts have risen by 33 percent. Mortgage loans to minorities are up almost 38 percent, with African Americans and Hispanics accounting for most of that gain."[3] Moreover, the Department of Treasury found that banks increased home lending to low- and moderate-income (LMI) borrowers and census tracts by 39 percent from 1993 to 1998, double the increase of 17 percent to middle- and upper-income borrowers and tracts.[4] The time period from the early through the mid-1990s was before the surge of high-cost and abusive loans. Thus, the increase in lending was not due to predatory lenders seeking to take advantage of vulnerable populations but instead reforms to HMDA and the Community Reinvestment Act during this time period boosted the public accountability of lenders to make loans to traditionally underserved populations.

For decades, the public has used HMDA data to uncover and address redlining and other fair lending and fair housing violations. An investigative journalist, Bill Dedman, was an early user of HMDA data in a major fair lending investigation. In 1988, a series of powerful articles called the "Color of Money" in the Atlanta Journal-Constitution documented striking lending disparities between white and African American middle-income neighborhoods in Atlanta.[5] After this series of articles, the Department of Justice (DOJ) under the administration of George H. Bush used HMDA data to pursue one of the first federal lending discrimination lawsuits

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[1] 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

[2] Federal Financial Institutions Examination Council, *History of HMDA*, https://www.ffiec.gov/hmda/history2.htm

[3] Remarks of Eugene A. Ludwig Comptroller of the Currency before the National Urban League, August 5, 1997, OCC, https://www.occ.treas.gov/news-issuances/news-releases/1997/nr-occ-1997-78.html

[4] Robert Litan, Nicolas Retsinas, Eric Belsky and Susan White Haag, "The Community Reinvestment Act After Financial Modernization: A Baseline Report," produced for the United States Department of the Treasury, April 2000.

[5] The Color of Money: Text of the Pulitzer-winning articles, http://powerreporting.com/color/

against one of the largest lenders in Atlanta, Decatur Federal Savings and Loan.[6] Since then, public agencies at all levels have used HMDA data per its statutory purposes of anti-discrimination enforcement and to determine where public sector investment can further increase private sector lending. More recently, journalists Emmanuel Martinez and Aaron Glantz, authored "Kept Out," an expose highlighting continued mortgage redlining in 61 U.S. cities, using HMDA data, that resulted in city, state, and federal actions to address pervasive racial disparities in bank branching and mortgage lending patterns.[7]

Raising the Threshold to 50 or 100 Loans Would Enable Hundreds, if Not Thousands, of Lenders to Hide Abuses behind a Veil of Secrecy

The CFPB's Notice of Proposed Rulemaking would increase the number of loans banks may make before reporting any data under HMDA. Currently, the threshold for reporting HMDA data is 25 closed-end loans, which reduced the number of HMDA reporters by 22 percent when it went into effect after the CFPB's 2015 HMDA rulemaking. In 2015, the CFPB decided against a higher threshold exempting more lenders stating that, "The Bureau concluded that, if it were to set the closed-end coverage threshold higher than 25, the resulting loss of data at the local level would substantially impede the public's and public officials' ability to understand access to credit in their communities."[8] Inexplicably, however, the CFPB is now reversing itself and is proposing to raise the threshold to 50 or 100 loans. The CFPB is inviting comments on even higher thresholds of 250 or 500 loans. These possible thresholds would reduce the number of HMDA depository institution reporters by at least an additional 17 percent for a threshold of 50 loans to as much as an additional 81 percent for a threshold of 500 loans.[9]

Raising the threshold would likely eliminate HMDA reporting for thousands of institutions. If the threshold is raised to 50 loans, about 36 percent of depository institutions (banks and credit unions) will not be reporting HMDA loans (estimates based on 2013 HMDA data).[10] Based on 2017 data, the CFPB estimates that 760 institutions issuing 37,000 loans would be exempt from reporting if the threshold was raised to 50 loans.[11] If the threshold is raised to 100 loans, 53 percent of the depository institutions will not report HMDA data (based on 2013 data).[12] Overall, 1,720 institutions that made 147,000 loans in 2017 would be exempt from reporting HMDA data under a 100 loan threshold.[13] Although the CFPB is not proposing to raise the threshold to 250 loans, it asks for comments on higher thresholds. The CFPB estimates that moving the threshold

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[6] Excerpt in *Color and Money, Politics and Prospects for Community Reinvestment in Urban America*, Gregory D. Squires and Sally O'Connor, State University of New York Press, 2001, p. 7.

[7] Emmanuel Martinez and Aaron Glantz, Kept Out, For people of color, banks are shutting the door to homeownership, February 2018, https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/

[8] CFPB, Proposed Rule, Docket No. CFPB-2019-0021, pp. 17-18, original double-spaced version posted on agency website, https://files.consumerfinance.gov/f/documents/cfpb_nprm-hmda-regulation-c.pdf

[9] CFPB Proposed Rule, p. 17, p. 20, and p. 24.

[10] CFPB, Final Rule, Docket No. CFPB-2014-0019, Federal Register / Vol. 80, No. 208 / Wednesday, October 28, 2015 / Rules and Regulations, p. 66279, https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-26607.pdf

[11] CFPB Proposed Rule, p. 118.

[12] CFPB Final Rule, 2015, p. 66279.

[13] CFPB Proposed Rule, p. 119.

to 250 loans would exempt 67 percent of depository institutions or 2,850 institutions from HMDA reporting.[14]

Raising the thresholds to 50 or higher would make it more likely that lending institutions would engage in abusive behavior. They will calculate that without publicly available data on lending patterns and loans terms and conditions, members of the public as well as federal agencies will have a harder time detecting discriminatory or predatory practices.

Finally, the current regulatory procedure of requiring a depository institution to make at least one single family loan for home purchase or refinancing before it is even considered as a HMDA reporter must be changed. Even if a lender has not originated a single family home purchase or refinance loan, it could be a major lender in the geographical areas it serves. For example, if it made 25 or more multifamily loans, it could finance housing for thousands of tenants. Also, the two year look-back period could also potentially exclude lenders that rely on New York CEMA loans in cases in which a high volume of CEMA lending in 2017 would not count as loans since CEMAs are present in the 2018 HMDA data but not the 2017 data. In addition, if a lender made 200 home improvement loans, it is a significant lender in its community but would not be a HMDA reporter due to the threshold counting rules. These lenders must publicly report HMDA data so agencies and members of the public can see if they are serving housing needs responsibly and in a non-discriminatory manner.

CRA and Fair Lending Enforcement Weakened by Exempting Lenders from HMDA Reporting

If the CFPB raises the threshold to 50 or 100 loans, the public will no longer be able to identify smaller volume lenders that are making few loans to underserved populations or have very high denial rates to people of color or modest income borrowers. This, in turn, reduces information available to federal agencies which undertake more extensive fair lending investigations, often based on the data analysis they receive from community-based organizations. Moreover, federal and state agency fair lending and CRA exams will become more difficult and burdensome for regulatory agencies and the HMDA-exempt lenders since the agencies will now have to ask for internal data from the lenders instead of using the HMDA data.

Eliminating HMDA data for several lenders will make fair lending enforcement more difficult and allow predatory lenders to continue their practices. A few years ago, legal aid societies filed a lawsuit against Emigrant Savings Bank. The bank and its affiliates are likely to be exempt from HMDA reporting. For example, Emigrant Funding, an affiliate of the bank reported just 86 applications in its HMDA data in 2017. In 2016, a federal jury found that Emigrant violated the Equal Credit Opportunity Act, the Fair Housing Act, and the New York City Human Rights Law by targeting African-Americans and Hispanics with predatory loans. The bank and its affiliate focused on vulnerable borrowers with credit scores under 600. The loans were “no doc” loans, meaning that the lender’s underwriters did not verify the borrowers’ ability to repay. If the borrower missed one loan payment, the bank would raise the loan’s interest rate to 18 percent,

[14] CFPB Proposed Rule, p. 24.

leading many borrowers to default and experience foreclosures.[15] This case would have been more difficult to pursue in the absence of HMDA data which documented a pattern and practice of targeting people and communities of color.

Raising the thresholds for reporting will also imperil enforcement against unfair and deceptive lending. In a report to Congress, the CFPB found that "the reverse mortgage market is increasingly dominated by small originators, most of which are not depository institutions. The changing economic and regulatory landscape faced by these small originators creates new risks for consumers."[16] Many of these lenders could be exempt from reporting HMDA data in the wake of an increase in the reporting threshold. The CFPB and the general public would have considerably less data with which to monitor the practices of these lenders.

Like fair lending and consumer protection enforcement, CRA examination will become more difficult and less able to hold banks accountable if the CFPB increases the reporting thresholds. Frontier State Bank, based in Oklahoma City, Oklahoma, has assets of $607 million. The most recent CRA exam records 110 HMDA loans but most of these are purchased loans since the bank pursues a strategy of purchasing loans. The bank failed its CRA exam and its lending test, receiving a Needs-to-Improve rating for the overall rating and the rating on the lending test. It did not make any loans to LMI borrowers or purchase any loans made to LMI borrowers during 2016, the year of data analyzed by the exam.[17] At more than half a billion dollars, the bank has the capacity to market to and make loans to LMI borrowers but chooses against doing so.

If banks like Frontier are exempt from reporting HMDA data in the future, community groups cannot hold them accountable for making good faith efforts to serve LMI borrowers. Examiners will also have a harder time conducting exams since they will now have to go onsite and retrieve data from the bank's internal files. Now, they can do most of their analysis off-site, using the publicly available HMDA data. Exams will become more burdensome and intensive on-site for both the bank and the examiner. CRA will become less effective and more burdensome for small and mid-size banks which remain important sources of credit in large parts of the country.

On a macro level, CRA and fair lending enforcement and monitoring will be less accurate and rigorous if the CFPB raises the HMDA reporting thresholds. Recently, NCRC conducted analysis showing that the typical bank issued more loans to LMI borrowers and census tracts than independent mortgage companies.[18] In other words, a higher percentage of banks issued a higher percentage of home loans than independent mortgage companies to LMI borrowers and census tracts. A significant amount of the difference could be due to lower volume lenders

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[15] Legal Services NYC, Jury Finds Emigrant Bank Liable for Discrimination in First Reverse Redlining Case to be Tried in Federal Court, https://www.legalservicesnyc.org/news-and-events/press-room/1033-jury-finds-emigrant-bank-liable-for-discrimination-in-first-reverse-redlining-case-to-be-tried-in-federal-court

[16] CFPB, Reverse Mortgages: Report to Congress, June 28, 2012, p. 9, https://files.consumerfinance.gov/a/assets/documents/201206_cfpb_Reverse_Mortgage_Report.pdf

[17] FDIC, CRA Exam of Frontier Sate Bank, November 2017, https://www5.fdic.gov/CRAPES/2017/21978_171113.PDF

[18] Jason Richardson and Josh Silver, NCRC, *Home lending to LMI borrowers and communities by banks compared to non-banks*, April, 2019, https://ncrc.org/home-lending-to-lmi-borrowers-and-communities-by-banks-compared-to-non-banks/

among both banks and mortgage companies. Raising the thresholds could obscure patterns such as this which would then reduce the ability of policymakers and federal agencies to adjust the application of CRA and the fair lending laws in a manner that would improve lender performance in serving traditionally underserved populations.

Reducing Reporting will make it Difficult to Determine if Lenders are Meeting Needs

Raising the thresholds would also imperil HMDA's statutory purpose of accurately assessing whether housing and credit needs are being met. If, for example, the threshold is raised to 100 loans, the number of HMDA reported loans will fall by 20 percent or more in 2,200 LMI tracts and in a similar number of rural tracts.[19] Members of the public, journalists, academics, and public agencies will not be able to accurately assess whether credit and housing needs are being met in the wake of this significant loss of data.

The census tracts experiencing an artificial drop in lending due to newly HMDA-exempt lenders are likely to include a disproportionate number of neighborhoods that are underserved in terms of low loan volumes per capita. The neighborhoods are likely to range from distressed urban neighborhoods, communities of color, neighborhoods with high numbers of immigrants, and rural and tribal areas. A large loss of HMDA reporting will create a distorted view of lending trends in these underserved areas and will make it more difficult for stakeholders to determine if revitalization efforts are succeeding. In some cases, lending will appear to be lower than it actually is. The overall impact of raising the threshold will be to frustrate HMDA's purposes of determining whether credit needs are being met and whether public investment has succeeded in rejuvenating the housing and lending markets in struggling neighborhoods.

If the CFPB Diminishes Open End Lending Data, a New Round of Abuses and Defaults Will Occur

The CFPB is also proposing to increase the threshold for reporting open end lines of credit often called Home Equity Lines of Credit (HELOCs). In the years before the financial crisis, HELOC lending was riddled with abuses that resulted in distress and/or foreclosure for large numbers of homeowners. The CFPB states that investors would purchase homes and would take out open-end loans with high loan-to-value ratios that often ended up in default. In 2008 Congressional testimony, former Comptroller of the Currency John Dugan reports that national bank losses on home equity loans were three times higher in 2007 than 2006.[20] These loans were not visible in the HMDA database before the Dodd Frank enhancements.

Under the CFPB's proposal to permanently increase the threshold to 200 open end lines of credit, 401 lenders making 69,000 open end lines of credit would be exempt from reporting HMDA data. Also, raising the threshold from 100 to 200 loans would reduce the number of reporting institutions by 40 percent.[21] This is too many lenders and loans escaping the scrutiny of public

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[19] CFPB Proposed Rule, p. 23.

[20] Testimony of Comptroller of the Currency John Dugan before the United States Senate Committee on Banking, Housing and Urban Affairs, March 2008, p. 12, https://www.occ.gov/news-issuances/congressional-testimony/2008/pub-test-2008-28-written.pdf

[21] CFPB Proposed Rule, pp. 130-131.

and agency review. A repeat of risky practices in vulnerable neighborhoods would thus be too likely to occur.

Perversely, the CFPB justifies its proposal to raise the permanent threshold to 200 open end loans by stating that open end lending has increased by 36 percent from 2013 through 2017.[22] The CFPB is concerned that with the rise of open end lending, more lenders would exceed the previous reporting threshold of 100 loans. However, an increase in open end lending would be a compelling reason to leave the threshold as is so that more lenders and lending would be subject to the visibility that HMDA provides.

HMDA Compliance Costs are Modest, Not Significant as CFPB Suggests

The CFPB has not accurately balanced the potential costs and benefits of its proposed changes. The CFPB cost estimates for HMDA reporting are modest while the loss of data associated with the higher reporting thresholds was deemed too damaging by the CFPB in its 2015 rulemaking.

Under EGRRCPA, the vast majority of lenders that make fewer than 500 closed-end loans or 500 open-end loans are already exempt from reporting the new HMDA data points added in the CFPB's 2015 rulemaking in response to passage of Dodd Frank. For example, all but 50 of the 1,720 lenders exempted by a 100 loan threshold would have been exempted from reporting the new Dodd Frank data.[23] These lenders report essentially the same data they have collected and reported for decades (with a modest addition in 2004 of data points such as lien status, pre-approvals, and pricing information for high-cost loans). It is therefore hard to fathom how these lenders could be experiencing any meaningful HMDA reporting burden. Instead, the major impact of raising the threshold is imperiling the effectiveness of HMDA in achieving its statutory purposes. Some stakeholders are seizing an opportunistic time to argue for deleting their HMDA reporting responsibilities rather than responding to a significant impediment to their business operations.

We also believe that these modest savings are an over-estimate since even in the absence of HMDA reporting, almost all of the data would still need to be collected by the lenders in order to comply with other statutes like the Truth in Lending Act and/or to sell loans to Fannie Mae or Freddie Mac or acquire FHA insurance for loans. For example, Adam Levitin, professor of law at Georgetown University, states that loan costs and fees are required to be reported to borrowers under the Truth in Lending Act and Real Estate Settlements Procedures Act. Data points such as debt-to-income ratio are required for compliance with the Qualified Mortgage rule while other data points such as combined loan to value ratio are collected as part of securitization data.[24]

Even if they are over-estimates, the CFPB's estimates for cost savings are modest for increasing the reporting threshold to 50 closed end loans. According to the CFPB, savings would equal "$2,200 for a representative low-complexity tier 3 institution, $32,800 for a representative

[22] CFPB Proposed Rule, p. 32.
[23] CFPB Proposed Rule, p. 119.
[24] Adam Levitin, New HMDA Regs Require Banks to Collect Lots of Data...That They Already Have, in Credit Slips, June 23017, https://www.creditslips.org/creditslips/2017/06/new-hmda-regs-require-banks-to-collect-data-they-already-have.html

moderate-complexity tier 2 institution, and $309,000 for a representative high-complexity tier 1 institution."[25] Tier 3 are the smaller institutions with fewer HMDA loans and fewer loan processing systems and Tier 1 are typically larger institutions with multiple loan processing systems.

Of the 760 institutions that would be exempt from reporting any HMDA data if the threshold is raised to 50 closed-end loans, 740 would have been exempted from reporting the new Dodd Frank data due to EGRRCPA. In addition, 727 of these would have been a "low complexity tier 3 institution" that would have saved only $2,200 if they no longer had to report HMDA. Combining the savings for institutions that were exempted from reporting Dodd Frank data and those that were not exempted from reporting the data, the total savings for these institutions would be about $2.2 million annually if the CFPB raises the threshold to 50 loans.[26] The per institution savings and the total savings are not impressive and pale in comparison to the losses incurred to the general public in deleting their HMDA data reporting.

The CFPB calculates that raising the reporting threshold to 100 loans would exempt 1,720 lenders from HMDA reporting and result in annual savings of $8.1 million. Again, the savings is modest on a per institution level since the great majority of these lenders would save just over $2,000 as Tier 3 lenders.[27]

Likewise the cost estimates for raising the threshold for open end reporting are modest and based on guesses more than rigorous analysis. The CFPB seems to accept what it calls as "anecdotes" from the industry that the costs of reporting open end loans are about three times higher than it originally estimated.[28] The CFPB notes that of the 401 institutions that would be exempt from reporting open-end loans if the permanent threshold was raised from 100 to 200 loans, 390 of them would encounter "Tier 3" or relatively low costs.[29] Aggregate savings would be just $2.1 million per year for these 401 exempt institutions.[30] For each of the 401 institutions, the savings would average about $5,236. This modest amount of savings is not compelling considering the damage done by the abusive open-end lending in the years preceding the financial crisis and the resulting widespread foreclosures. It would seem that most fair minded members of the public would rather institutions incur an extra $5,000 in costs annually, even if this translated into modestly higher loan fees for consumers, than run the risk of these institutions hiding abusive and harmful lending practices because they no longer have to report HMDA data.

Affiliates and Subsidiaries of Banks Must be Data Reporters

The CFPB is correct in adding commentary clarifying that non-bank affiliates or subsidiaries of depository institutions or credit unions do not qualify for the partial exemption.[31] The partial exemption allows a depository institution or credit union to opt against reporting the new Dodd

[25] CFPB Proposed Rule, p. 122.
[26] CFPB Proposed Rule, pp. 122-123.
[27] CFPB, Proposed Rule, pp. 123-124.
[28] CFPB, Proposed Rule, p. 33.
[29] CFPB, Proposed Rule, p. 37.
[30] CFPB, Proposed Rule, p. 135.
[31] CFPB, Proposed Rule, p. 58.

Frank variables including loan terms and conditions if they issued fewer than 500 loans. EGRRCPA applied the partial exemptions to only banks and credit unions, not non-banks. In the years leading up to the financial crisis, non-banks were more likely to engage in abusive and high-cost lending than banks.[32] Moreover, public and regulatory scrutiny of non-bank affiliates and subsidiaries of banks is usually less than for banks since banks have the option to include or exclude non-bank affiliates on their CRA exams. Thus, retaining the new Dodd Frank variables for non-banks, including affiliates and subsidiaries of banks and credit unions, is vital for monitoring against abusive practices.

The threshold calculations for determining whether an institution reports HMDA data should be applied at the holding company level. In other words, if a bank and non-bank are owned by the same parent, their data should be combined to determine if the holding company reports HMDA data. There is often a symbiotic relationship between the affiliates and/or subsidiaries that needs to be captured by data disclosure.

The undersigned organizations agree with the CFPB that data points the Federal Reserve Board added to HMDA before Congress passed Dodd Frank are not affected by the EGRRCPA partial exemption.[33] These include lien status and whether the loan is covered by the Home Ownership and Equity Protection Act. Applying the partial exemption would be contrary to the plain meaning of the EGRRCPA and would delete valuable data for fair lending enforcement and for assessing whether various credit needs are met.

HMDA is the Sunshine that Eliminates Unfair, Unsafe, and Destructive Lending

As former Supreme Court Justice Louis Brandeis stated in reference to data disclosure, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[34] Sunlight prevents abuses while darkness and the absence of publicly available data breeds predatory and wealth stripping behavior.

Congress passed HMDA in 1975. Lenders, including small volume lenders, have been reporting data for decades. Relief from reporting is thus only a minor gain for lenders while it would be a large loss for communities. Even smaller volume lenders can be significant lenders in smaller towns and rural areas. They need to be held accountable and their data is necessary for a complete and accurate picture of whether credit needs are being met.

Thank you for the opportunity to comment on this important matter. If you have any questions, please contact Josh Silver, Senior Advisor, NCRC on jsilver@ncrc.org.

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[32] Robert Avery, Kenneth Brevoort, and Glenn B. Canner, *Higher Priced Home Lending and the 2005 HMDA Data*, Federal Reserve Bulletin, September 2006, and Elizabeth Laderman and Carolina Reid, Federal Reserve Bank of San Francisco, *CRA Lending during the Subprime Meltdown* in Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, a Joint Publication of the Federal Reserve Banks of Boston and San Francisco, February 2009, http://www.frbsf.org/publications/community/cra/cra_lending_during_subprime_meltdown.pdf
[33] CFPB Proposed Rule, pp. 62-63.
[34] Louis D. Brandeis Quotes, https://www.brandeis.edu/legacyfund/bio.html

Sincerely,

National

Americans for Financial Reform Education Fund
Center for Responsible Lending
Consumer Action
Consumer Federation of America
NAACP
National Association of American Veterans, Inc.
National Community Reinvestment Coalition
National Consumer Law Center (on behalf of our low-income clients)
National Fair Housing Alliance
Prosperity Now
Public Citizen
The Leadership Conference on Civil and Human Rights
U.S. PIRG

Alabama
Building Alabama Reinvestment
Community Action Association of Alabama

Alaska
Alaska Public Interest Research Group (AKPIRG)

Arizona
Chicanos Por La Causa
Local First Arizona

California
Asian Inc.
California Capital Financial Development Corporation
California Coalition for Rural Housing
California Reinvestment Coalition
CAARMA Consumer Advocates Against Reverse Mortgage Abuse
Cash Community Development Organization
EAH Housing
Fresno Minority Business Development Center
The Central Valley Urban Institute
Reinvent South Stockton Coalition
Richmond Neighborhood Housing Services,Inc.
Self-Help Enterprises
The Greenlining Institute
Vermont Slauson EDC

Colorado
Habitat for Humanity of Metro Denver
Urban Land Conservancy

Connecticut
Bridgeport Neighborhood Trust, Inc.
Hartford Community Loan Fund

Delaware
Cornerstone West CDC
Edgemoor Revitalization Cooperative, Inc.
New Castle Prevention Coalition
The Ministry of Caring Inc.

District of Columbia
Coalition for Nonprofit Housing & Economic Development

Florida
Affordable Homeownership Foundation/Squirrels Nest
St. Petersburg Neighborhood Housing Services, Inc. dba Neighborhood Home Solutions
We Help Communities To Develop Corporation

Georgia
Georgia Advancing Communities Together, Inc.
National Housing Counseling Agency
The Greater Piney Grove Community Development, Inc.

Hawaii
Hawai'i Alliance for Community-Based Economic Development

Illinois
Housing Action Illinois
Illinois People's Action
Institute of Cultural Affairs
Neighborhood Housing Services of Chicago
Universal Housing Solutions CDC
Woodstock Institute

Indiana
Continuum of Care Network NWI, Inc..
Hope Initiative of NWI
Northwest Indiana Community Action
Northwest Indiana Reinvestment Alliance

Iowa
River Cities Development Services

Kentucky
LHOME
Louisville Affordable Housing Trust Fund
Metropolitan Housing Coalition
REBOUND, Inc.
River City Housing

Louisiana
Foundation for Louisiana
GNOHA
Greater New Orleans Housing Alliance (GNOHA)
Guste Homes
HousingNOLA
Multi-Cultural Development Center
PosiGen Solar

Massachusetts
Community Service Network Inc.
Massachusetts Communities Action Network

Maryland
Colossus Enterprise Llc
Community Development Network of Maryland
Coppin Heights CDC
Greater Baltimore Community Housing Resource Board
Housing Options & Planning Enterprises, Inc.
Maryland Consumer Rights Coalition
NHS of Baltimore
Poppleton Now! Community Association
PFC Coalition
St. Ambrose Housing Aid Center

Michigan
Fair Housing Center of Metropolitan Detroit
Southwest Economic Solutions

Minnesota
Bii Gii Wiin Community Development Loan Fund
Jewish Community Action
Metropolitan Consortium of Community Developers
Village Financial Cooperative

Mississippi
Covenant Faith Outreach Min. Inc. /dba/ Covenant Community Development
Housing Education and Economic Development, Inc.

Missouri
Metropolitan St. Louis Equal Housing and Opportunity Council

New Jersey
Fair Housing Council of Northern New Jersey
New Jersey Citizen Action

New Mexico
Southwest Neighborhood Housing Services

New York
Association for Neighborhood and Housing Development
Buffalo Urban League
Center for NYC Neighborhoods
DE Squared
Empire Justice Center
Fair Finance Watch
Greater Rochester Community Reinvestment Coalition
Long Island Housing Services, Inc.
New Economy Project
PathStone Enterprise Center
Partnership for the Public Good
Wyandanch Community Development Corporation

North Carolina
Community Link
Henderson and Company
Reinvestment Partners

Ohio
City of Toledo
Fair Housing Center for Rights & Research
Fair Housing Resource Center, Inc.
Friends Of the African Union Chamber of Commerce
Hamilton County Community Reinvestment Group
Isaacs Inc
Mustard Seed Development Center
Ohio Fair Lending
The Pride Through Empowerment Foundation, Inc

Oregon
CASA of Oregon
Community Action Team, Inc.
Community Housing Fund
Housing Development Center
Housing Oregon
Proud Ground

Pennsylvania
Bloomfield Development Corporation
Bloomfield-Garfield Corporation
Ceiba
Community Action Committee of the Lehigh Valley
Consulting & Support Services for CBO's
Habitat for Humanity of Greater Pittsburgh
Housing Alliance of Pennsylvania
Larimer Consensus Group
Liberty Resources, Inc.
MWCDC
Mount Washington Community Development Corporation
NeighborWorks Western Pennsylvania
PHDA, ONC
Pittsburgh Community Reinvestment Group
Southwest CDC

Rhode Island
HousingWorks RI
RI Housing Resources Commission

Tennessee
Chattanooga Organized for Action

Texas
Brazos Valley Affordable Housing Corporation
Frameworks Community Development Corporation
Harlingen CDC
Home Sweet Home Community Redevelopment
LiftFund
Neighborhood Recovery Community Development Corporation
Our Casas Resident Council Inc.
South Dallas Fair Park Innercity Community Corporation
Texas NAACP

Wisconsin
Disability Justice
Forward Community Investments
Havenwoods EDC
Metropolitan Milwaukee Fair Housing Council
Urban Economic Development Association of Wisconsin (UEDA)
Wisconsin Partnership for Housing Development