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Submitted electronically

October 29, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Proposed Rule Amending Regulation C to Implement Amendments to the Home Mortgage Disclosure Act (HMDA) [Docket No. CFPB-2014-0019]

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on this proposed rule which would amend Regulation C to implement amendments to the Home Mortgage Disclosure Act (HMDA) made by section 1094 of the Dodd-Frank Wall Street Reform and Consumer Protection

[1] The Independent Community Bankers of America® (ICBA), the nation's voice for more than 6,500 community banks of all sizes and charter types, 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.

ICBA members operate 24,000 locations nationwide, employ 300,000 Americans and hold $1.3 trillion in assets, $1 trillion in deposits and $800 billion in loans to consumers, small businesses and the agricultural community. For more information, visit www.icba.org.

Act (Dodd-Frank Act). The CFPB is also proposing to add several new requirements in addition to what is required by statute in the Dodd-Frank Act.

Specifically, the CFPB is proposing:

- Several changes to revise the tests for determining which financial institutions and mortgage loans are covered under HMDA;
- To require financial institutions to report new data points identified in the Dodd-Frank Act as well as additional data points the CFPB believes are necessary to carry out the purposes of HMDA;
- To align the requirements of Regulation C to existing industry standards where possible;
- To allow HMDA reporters to direct members of the public to a publicly available website to review HMDA data instead of providing it to them directly; and
- Additional guidance to existing Regulation C requirements that are considered unclear or confusing.

The CFPB is soliciting public comment on all issues involved with this proposed rule. ICBA has many comments, suggestions, and critiques regarding this proposed HMDA rulemaking that we strongly urge the CFPB to consider as it finalizes the Regulation C requirements.

Background

As Congress established:

> "The purpose of HMDA is to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment."[2]

Regulation C further clarifies the purpose is to provide the public with loan data:

> "(i) To help determine whether financial institutions are serving the housing needs of their communities;
>
> (ii) To assist public officials in distributing public sector investment so as to attract private investment to areas where it is needed; and

[2] 12 U.S.C.S. § 2801.

(iii) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes."[3]

The Dodd-Frank Act amended HMDA: (i) to require the reporting of additional data points; (ii) to direct the CFPB to make determinations about whether certain data elements are appropriate for addition; (iii) to grant the CFPB authority to require additional data elements and information; and (iv) to authorize the CFPB to develop regulations for the purpose of protecting the privacy interests of applicants and borrowers.[4]

The CFPB is implementing these new statutory requirements with this rulemaking. In addition, the CFPB states it views the implementation of the Dodd-Frank Act changes to HMDA as an opportunity to assess other ways to improve upon the data collected, reduce unnecessary burden on financial institutions, and streamline and modernize the manner in which financial institutions collect and report HMDA data. Therefore, the CFPB is proposing several additional changes to HMDA's Regulation C that are not statutory requirements of the Dodd-Frank Act. Overall, the proposed changes include required reporting of 37 new data fields, 20 of which are not statutory requirements but are additional information the CFPB is proposing to collect.

ICBA Position

ICBA understands the purpose behind HMDA reporting and recognizes the significance HMDA data has in showing how financial institutions are serving the housing needs of their communities. However, we do not agree the benefits outweigh the costs with most of the new Regulation C changes being proposed by the CFPB.

Currently, community banks are facing more regulatory challenges as additional requirements and restrictions are being placed on them, particularly with regard to mortgage lending. Bank executives, compliance officers, managers, and bank staff spend a significant number of hours complying with the many new regulatory requirements in order to provide information to regulators, document banking transactions, and deliver correct and timely disclosures to consumers. And while no one regulation by itself is significantly overwhelming, the cumulative effect of all the new consumer regulations, particularly with regard to mortgage lending, has been tremendous, especially for smaller community banks. Not only can too much regulatory change within a short timeframe affect the business of community banks, it can directly impact their customers who rely on these banks as a primary source for financial products and services.

[3] 12 C.F.R. § 1003.1(b)(1).
[4] *See, e.g.*, Dodd-Frank Act, sec. 1094(3), 12 U.S.C. 2803(b)(5)(D) and (J); 1094(3)(B); 12 U.S.C. 2803(h)(1)(E).

ICBA recognizes the intent of the CFPB is to collect as much data as it is able to in order to have a thorough understanding of the mortgage market. However, more detailed regulatory requirements under HMDA combined with the new regulatory requirements community banks are contending with regarding qualified mortgage (QM) underwriting standards, appraisals, escrow requirements, loan officer compensation, and loan servicing -- as well as a comprehensive overhaul of the Truth in Lending Act (TILA) and Real Estate Settlement and Procedures Act (RESPA) forms and timing requirements -- are making the mortgage business too burdensome and costly for many community banks. Regulatory compliance is continuing to deplete the resources of community banks, which directly affects their ability to compete in the marketplace and offer consumer alternatives to the one-size-fits-all products and services provided by big banks.

Regulatory and paperwork requirements impose a disproportionate burden on community banks thus diminishing their ability to attract capital, support the credit needs of their customers, serve their communities, and contribute to their local economies. Large banks have dedicated legal resources and larger compliance staff and can more easily absorb additional regulatory costs. This uneven playing field places community banks at a competitive disadvantage and inhibits their ability to serve consumers and their communities.

Based on a September 2014 ICBA survey of approximately 500 community banks, 78 percent of the respondents stated their number of full time equivalent staff members dedicated to compliance has increased over the last 5 years. Also in this survey, 73 percent of the community bank respondents stated the regulatory burdens imposed by the new mortgage rules are preventing their banks from making more residential mortgage loans.[5]

As further support, a recent George Mason University study on community banks found that compliance costs have increased for more than 90 percent of the community bank survey respondents, and this increased burden has led community banks to reconsider their product and service offerings, such as residential mortgage loans.[6] This was especially the reality for community banks in rural or small metropolitan markets, because they reported significantly higher compliance costs following recent consumer regulations.[7] It is apparent that this massive amount of regulations is what leads to fewer small community banks, more bank mergers, and further concentration in the marketplace, which limits consumer choice.

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[5] This ICBA lending survey distributed to all community banks across the country was conducted in September 2014. More comprehensive results are available upon request.

[6] *Working Paper: How Are Small Banks Faring Under Dodd-Frank?* by Hester Peirce, Ian Robinson, and Thomas Stratmann (Mercatus Center, George Mason University) (February 2014), p. 34.

[7] I*d.* at 11, 52, & 64.

Federal Reserve Governor Elizabeth Duke stated in a 2012 speech that regulators should tailor mortgage requirements to the size of the institution and not impose a one-size-fits-all approach.[8] As the proposed Regulation C changes are currently drafted to apply to almost all financial institutions, there will be many additional hours required for community banks to complete an individual loan application register (LAR) and implement quality controls to ensure all information is correct, which usually accounts for the majority of the compliance time. In fact, even the addition of a few more data points will significantly add to the time and resources that community banks already spend on HMDA compliance, because these changes require major system upgrades to capture, track, and report the additional data.

To address these concerns and recent survey data, we strongly urge the CFPB to finalize the new HMDA requirements with a balanced approach that does not restrict the lending businesses of smaller and less complex banks. In particular, we oppose requiring community banks to collect and report new HMDA data if it is not specifically required by statute. None of the CFPB's proposed data points will add additional value to the data currently collected by the CFPB combined with what is now required by statute. Extraneous data reporting does not provide a better understanding of the lending practices of a bank but will have the unforeseen effect of creating additional data with questionable value.

In addition, ICBA opposes the CFPB or other agencies collecting or utilizing HMDA data for reasons outside of its intended purpose. In particular, as addressed throughout this letter, HMDA data should include information consistent with the purpose of the statute and community banks should not be required to collect and report data that is not used in their mortgage lending business, solely for purposes of HMDA reporting. Right now, the most prudent approach for the CFPB would be to implement the statutory requirements and spend additional time and resources on studying and justifying the need for any future data requirements.

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[8] *Community Bank Mortgage Lending*, Remarks by Elizabeth A. Duke, Member of the Board of Governors of the Federal Reserve System, Community Bankers Symposium in Chicago, Illinois (Nov. 9, 2012) ("Having confirmed these conditions, I am convinced that the best course for policymakers would be to abandon efforts for a one-size-fits-all approach to mortgage lending. Balancing the cost of regulation that is prescriptive with respect to underwriting, loan structure, and operating procedures against the lack of evidence that balance sheet lending by community banks created significant problems, I think an argument can be made that it is appropriate to establish a separate, simpler regulatory structure to cover such lending. Such a regime should still establish appropriate safeguards to protect consumers, but it should do so in a way that recognizes the characteristics of community bank lending, perhaps by focusing on appropriate disclosures and relying on regular on-site supervision to test for appropriate underwriting and loan structuring.").

Furthermore, ICBA supports expanding the exemption threshold for HMDA compliance beyond what is being proposed by the CFPB, and urges the CFPB to carefully consider consumer privacy issues as it moves forward with finalizing additional data submission requirements, because the collection and public disclosure of HMDA data should not be allowed to harm consumers by making them vulnerable to invasions of privacy.

Summary of ICBA Comments

ICBA's comments expressed in this letter can be summarized as follows:

- The CFPB should more carefully consider the comments provided by the Small Entity Representatives (SERs) during the Small Business Regulatory Enforcement Fairness Act (SBREFA) process and use their comments to make policy changes before a proposed rulemaking is published. The CFPB should consider the SER comments as it adopts the final changes to Regulation C.

- The CFPB should increase the proposed threshold for HMDA compliance and exempt financial institutions if they originated fewer than 500 covered loans, excluding open-end lines of credit, in the previous calendar year. At the very minimum, financial institutions that originated fewer than 100 covered loans, excluding open-end lines of credit, in the previous calendar year should be exempt from HMDA compliance.

- The CFPB should exempt business and commercial credit from HMDA reporting because most of the data field requirements are related to consumer lending.

- The CFPB should not require the mandatory reporting of Home Equity Lines of Credit (HELOC) data for community banks, as it is costly and burdensome data to collect and report.

- The CFPB should not expressly require reverse mortgage loan data in HMDA reporting because it would not add greater clarity to the current requirements.

- The CFPB should not require banks to conform their HMDA data to Mortgage Industry Standards Maintenance Organization (MISMO) format, as most community banks currently do not maintain data in this format.

- Loan points and fees should not be a required data point for community banks as it is a complicated disclosure, burdensome to provide, and will provide little additional information to the agencies.

- The reporting of the Loan Origination Identifier should not be required on applications that do not result in originations.

- Community banks should be exempt from disclosing the loan application channel, or the disclosure should be optional reporting for banks.

- The CFPB should allow the disclosure of the borrower's age at the time of application or the borrower age range for purposes of HMDA reporting.

- The CFPB should only require disclosure of the credit score in HMDA reporting it is used in underwriting. The CFPB should not also require the scoring model name and version or the range of possible scores for the scoring model used to be reported.

- The CFPB should not require community banks to disclose the debt-to-income ratio (DTI) 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.

- The CFPB should not require community banks to disclose the combined loan-to-value ratio (CLTV) because it is a difficult data point to capture, track, and report.

- The CFPB should not require community banks to report information regarding recommendations received from automated underwriting systems (AUS) because this data may be misleading and some banks may not use it or only use it for certain loans.

- The CFPB should allow the disclosure and reporting of denial reasons to be optional, and not mandatory.

- The CFPB should not require financial institutions to report whether a loan is a QM as this information is not relevant to the purpose and spirit of HMDA.

- The CFPB should not require community banks to disclose the mortgage loan interest rate as this is a burdensome disclosure for community banks.

- The CFPB should not require community banks to report additional loan interest rate information, as there is little utility with this information, but it would be burdensome for community banks to collect and report.

- The CFPB should not require community banks to report discount points, as this information would not be useful in the HMDA analysis but would be

extremely burdensome and costly for community banks to collect and report.

- The CFPB should not require financial institutions to disclose information regarding the consumer's property interest in land for manufactured homes, as this information is not relevant to the purpose and spirit of HMDA.

- The CFPB should not require the disclosure of the first-draw on a home equity line of credit (HELOC) as this information would not be helpful to advancing the purpose of HMDA.

- The collection of data on ethnicity, race, sex, age, and income should not be required HMDA reporting for purchased loans.

- The CFPB should not require financial institutions to report preapprovals not accepted by the applicant, as this information would not be helpful to advancing the purpose of HMDA.

- The CFPB should allow financial institutions to retain the complete LAR in an electronic format to ease compliance burden.

- The CFPB should include greater tolerances for HMDA reporting errors to help community banks with growing compliance burden.

- The CFPB should carefully consider consumer privacy concerns, especially for community banks that service small rural and underserved communities and not add to the data fields currently included in the modified LAR.

- The CFPB should conduct an extensive and thorough analysis of the potential effects of these proposed HMDA regulations - combined with all of the recently finalized consumer regulations - on community banks in rural areas and on access to credit in those communities.

- Public disclosure of HMDA data should be the responsibility of the Federal Financial Institutions Examinations Council (FFIEC), not individual financial institutions.

- The CFPB should add Regulation C to its new, public eRegulations database to help with community bank compliance.

- The CFPB should not require compliance with final Regulation C amendments to be mandatory before 2017, so community banks have enough time to make the appropriate changes.

The CFPB Should Better Utilize Small Business Review Panel Comments in Its Rulemakings

In February 2014, the CFPB convened a Small Business Review Panel (Panel) with the Chief Counsel for Advocacy of the Small Business Administration (SBA) and the Administrator of the Office of Information and Regulatory Affairs with the Office of Management and Budget (OMB). As part of this process, the CFPB prepared an outline of proposals under consideration and the alternatives considered (Small Business Review Panel Outline), which the CFPB posted on its website for review by the small financial institutions participating in the panel process and the general public.

The Panel conducted a full-day outreach meeting with the SERs in March 2014 in Washington, DC. The Panel gathered information from the SERs and made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. The CFPB states in its proposed rule that it "has carefully considered these findings and recommendations in preparing this proposal."[9] Nevertheless, the proposed rule has changed very little from the outline of proposed changes provided to the Panel for comment. Thus, it appears many of the Panel's comments were given little weight.

ICBA was hopeful the CFPB would have made some substantive changes to the proposed HMDA rulemaking from what was presented in the Panel Outline based on the comments received from the SERs. Instead, the CFPB is primarily seeking comment on proposed changes that received comments or concerns from the SERs, something it would have presumably done even without conducting an extensive Panel discussion.

Due to the time, preparation, and effort that SERs dedicate to participating on the panel, and the purpose of the SBREFA process, we urge the CFPB to consider comments made by SERs and make all necessary changes to the proposed rules based on these comments, even if such changes may be large in scope and take time and additional analysis to make. In particular, the CFPB should take adequate time to consider and further investigate SER comments and concerns when their insight is provided on rulemakings that have no immediate effective date, as with the HMDA proposed changes. The SERs should have an influence on proposed rules and not merely be an administrative "check-the-box" process to proposing regulatory changes.

The CFPB Should Expand the Proposed Threshold for HMDA Compliance

[9] *See* 79 Fed. Reg. 168 [51745].

Regulation C requires institutions that meet the definition of "financial institution" to collect and report HMDA data. HMDA and Regulation C establish different coverage criteria for depository institutions (banks, savings associations, and credit unions) than for non-depository institutions (for profit-mortgage-lending institutions). Depository institutions that originate one first-lien home purchase loan or refinancing secured by a one-to-four unit dwelling and that meet other criteria for "financial institution" must collect and report HMDA data, while certain non-depository institutions that originate many more mortgage loans annually do not have to collect and report HMDA data.

The CFPB believes this approach may exclude important data about non-depository institutions' practices and may inappropriately burden depository institutions that originate a small number of mortgage loans. Therefore, the CFPB is proposing to adjust Regulation C's institutional coverage to adopt a uniform loan volume threshold of 25 loans applicable to all financial institutions. Under the proposal, depository and non-depository institutions that meet all of the other criteria for a "financial institution" would be required to report HMDA data if they originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year.

ICBA strongly supports a HMDA coverage test based on loan volume and is pleased the CFPB is considering this exemption. However, the threshold of 25 loans is too low, especially in the current mortgage environment. The CFPB stated in its proposed rule that it believes the proposed 25-loan volume test would eliminate reporting burden for low-volume lenders without impacting the quality of the HMDA data. However, there are fewer lenders in the last few years that originate under 25 mortgage loans per year, therefore few banks would be able to utilize the CFPB's loan volume exemption. Due to the increasing mortgage regulatory requirements over the last couple of years, community banks with low mortgage volume can no longer earn a reasonable return in this line of business because of the growing cost. Economies of scale make mortgage lending more profitable for financial institutions with larger loan volumes. The reality is that lenders with mortgage loan volumes of fewer than 25 mortgage loans per year, or an average of 2 mortgage loans per month, are leaving the mortgage business or have already left.

To better reflect the current lending environment, ICBA strongly urges the CFPB to increase this loan volume threshold to at least 500 covered loans, excluding open-end lines of credit. If the CFPB does not make this change, then, at the very minimum, the CFPB should exempt banks from HMDA reporting if they originated fewer than 100 covered loans, excluding open-end lines of credit, in the previous calendar year. This greater threshold will provide more community banks with regulatory relief while staying true to the purpose and intent of HMDA. We also do not think that lenders originating fewer than 500, or definitely 100, covered loans would have enough data for a meaningful fair lending test, but would still have to invest time, money, and resources into complying with the new

reporting requirements, as addressed by a SER at the CFPB's HMDA SBREFA panel.[10]

The CFPB is also considering what types of loans should count toward the loan threshold exemption, including closed-end home equity loans, home equity lines of credit (HELOCs), and reverse mortgages. ICBA believes the loan threshold that is finalized by the CFPB should only include closed-end mortgage loans and not home equity loans, HELOCs, or reverse mortgage loans.

In addition, ICBA supports HMDA reporting by mortgage brokers and other non-lender loan purchasers and originators that meet the CFPB's proposed threshold criteria. The reporting of these entities would provide a consistent overview of the mortgage market.

Business and Commercial Credit Should Be Exempt from HMDA Reporting

ICBA urges the CFPB to exempt the reporting of business and commercial credit from the 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.

HMDA itself does not expressly mention commercial loans, business loans, multifamily loans, or apartment loans, because the intent of the law was a focus on consumer single-family loans and the underwriting for these loans. This additional reporting provides more regulatory burden for community banks but does not contribute any benefit to the analysis of HMDA data, especially if the proposed additional changes relating to consumer loans are finalized. Therefore, if the loan is not consumer credit for purchasing or refinancing a property securing a consumer dwelling, then data about the loan should not be reportable.

The CFPB Should Not Require the Reporting of Home Equity Lines of Credit in HMDA Data

Currently, neither HMDA nor Regulation C provides a definition for the term "open-end line of credit." Section 1003.4(c)(3) of Regulation C provides that a financial institution may report, but is not required to report, home-equity lines of credit made in whole or in part for the purpose of home improvement or home purchase. Regulation C also does not require reporting for commercial lines of credit secured by a dwelling. The CFPB is proposing to require mandatory reporting of home-equity line of credit data, and reporting of dwelling-secured commercial line of credit data. Thus, an open-end line secured by a dwelling

[10] *Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking*, p. 23 (April 24, 2014).

would be required to be reported regardless of the purpose of the line, and even if the line was not made to a "consumer" but to a business entity.

The CFPB states that HELOCs are more popular mortgage products and financial institutions should be required to report the loans. The CFPB also states that dwelling-secured commercial lines of credit are more prevalent now and should also be reported in HMDA data. In addition, the CFPB believes expanding the scope of Regulation C to include all dwelling-secured lines of credit would be necessary to prevent evasion of HMDA. The CFPB stated it believes some financial institutions would likely attempt to evade the requirements of Regulation C if the reporting requirements were not extended to open-end lines of credit, and that this adjustment is necessary and proper to prevent evasion of HMDA.

ICBA opposes the CFPB's proposed changes and urges it not to require mandatory reporting of HELOCs and dwelling-secured commercial credit for community banks, especially considering this is not a statutory requirement. This regulatory requirement would be very burdensome for smaller creditors such as community banks that do not currently include this data in their reporting. Furthermore, HELOCs are not frequently used for home purchase and it is often not clear what the purpose of the loan is at the time of application, or how it may change throughout the loan term. This data point would not be helpful to supporting the original purpose of HMDA because these loans are used for varying reasons and purposes outside of housing. Because the benefits of what this reporting would show do not outweigh the costs to community banks, we urge the CFPB to keep the reporting of this data optional for community banks.

The CFPB Should Not Expressly Require Reverse Mortgage Loans to Be Reported in HMDA Data

Currently, neither HMDA nor Regulation C expressly addresses reverse mortgages. However, reverse mortgages that are home purchase loans, home improvement loans, or refinancings under the current definitions in § 1003.2 are subject to the data collection and reporting requirements of Regulation C.

The CFPB states that the current applicability of Regulation C to reverse mortgages is a source of confusion and presents a compliance burden. For example, financial institutions are required to report information on a reverse mortgage that is a home purchase loan, home improvement loan, or a refinancing, but if the reverse mortgage is also a home-equity line of credit, the financial institution may report the information, but is not required to do so. The CFPB believes the regulation would be clearer if it required all reverse mortgage loans to be reported, and that including reverse mortgages within the scope of the regulation is a reasonable interpretation of HMDA section 303(2), which defines "mortgage loan" to mean a loan which is secured by residential real property or a home improvement loan.

ICBA opposes this proposed change and urges the CFPB not to require reverse mortgages to be included as reportable data. The regulation currently requires the necessary reverse mortgage loan data to be reported and this proposed CFPB amendment would only add greater regulatory burden to banks instead of the clarity intended. This amendment is not required by statute, and since it would not ease compliance, we urge the CFPB not to finalize it moving forward.

The CFPB Should Not Require Financial Institutions to Conform HMDA Data to the MISMO/ULDD Format

The CFPB states in the proposed rule that it can make HMDA compliance and data submission easier for HMDA reporters by aligning, to the extent practicable, Regulation C requirements with existing industry standards for collecting and transmitting data on mortgage loans and applications. Therefore, the CFPB is proposing to align many of the HMDA data requirements with MISMO data standards for residential mortgages. The CFPB reasons that having consistent data standards for both industry and regulatory use promotes regulatory compliance and improves regulatory clarity, market efficiency, and data utility.

ICBA opposes this proposed change and believes it will only add to the compliance burden for community banks. In a September 2014 survey conducted of approximately 500 community banks, only 22 percent of the respondents answered that they maintain data in the MISMO/Uniform Loan Delivery Dataset (ULDD) compatible format. In fact, many community banks are unfamiliar with these standards. Providing that the additional HMDA data the CFPB is requesting match with this format would greatly burden community banks that do not already maintain their data in this format, because it will require additional staff training, procedural changes, compliance time, and staff resources to make the required adjustments. These changes, like many recent regulatory changes, will put community banks at a market disadvantage because their compliance costs will be disproportionately affected.

ICBA strongly urges the CFPB to consider the costs and benefits of requiring additional data reporting for community banks and to allow the use of MISMO/ULDD standards to be optional and not mandatory. There should be no mandatory requirement that HMDA data align with MISMO/ULDD standards.

The CFPB Should Not Require the Collection and Reporting of Additional HMDA Data Not Mandated By the Dodd-Frank Act

The Dodd-Frank Act requires the collection and reporting of 17 new data fields, which includes total points and fees; rate spread for all loans; “riskier” loan features such as prepayment penalties, teaser rates, and non-amortizing features; unique identifiers for the loan officer and the loan; application channel; property value and property location information; the borrower’s age; and the borrower’s credit score. The CFPB is proposing that financial institutions collect

and report an additional 20 data fields beyond those included in the statute, which would include the consumer's DTI ratio; CLTV ratio; automated underwriting system used and the results; denial reasons; loan QM status; additional rate and points and fees information; additional property information; manufactured housing data; and the unique financial institution identification number.

ICBA strongly urges the CFPB not to require community banks to report additional HMDA data not specifically required by the Dodd-Frank Act. Below are ICBA's specific comments on the additional data fields being proposed.

1. Loan Points and Fees Should Not Be Required Reporting for Community Banks

Section 304(b) of HMDA requires reporting of "the total points and fees payable at origination in connection with the mortgage" as determined by the CFPB. The CFPB proposes to implement this provision by requiring financial institutions to report the total points and fees associated with certain mortgage loans. In general, the term "points and fees" refers to costs associated with the origination of a mortgage loan. The CFPB proposes to define total points and fees by reference to TILA, as implemented by Regulation Z § 1026.32(b)(1) or (2).

Together, the Home Ownership Equity Protection Act (HOEPA) and qualified-mortgage prongs of the proposed points-and-fees provision cover open-end credit plans secured by primary residences and nearly all dwelling-secured, closed-end mortgage loans. The CFPB solicits comment on the benefits and burdens of the definition of points and fees. To facilitate compliance, the CFPB is proposing to exclude covered loans that have been purchased by a financial institution from this reporting requirement because it does not believe that the total points and fees would be evident on the face of the documentation obtained from the seller, but the CFPB solicits feedback on whether to apply the points-and-fees reporting requirement to purchased covered loans.

We agree that purchased covered loans should be excluded from this requirement and all proposed Regulation C requirements, as this is consistent with the intent and purpose of HMDA.[11] Also, this information can be collected from the originating lender.[12]

[11] H. Cong. Rep. 101-222, at 460 (1989) (Noting Congress considered and rejected requiring reporting related to purchased loans in 1989 as part of the most significant expansions of HMDA reporting before the Dodd-Frank Act).

[12] *Id.* ("[T]he conferees chose not to impose such requirements out of concern that they could prove unduly burdensome for secondary market entities, and in recognition of the fact that the information necessary to identify discriminatory secondary market requirements could be collected from the originating lender…").

In addition, we urge the CFPB to exclude community banks from this disclosure requirement as it is too burdensome and not necessary for them to report given their responsible lending history. The CFPB states the purpose for the proposed data point is that excessive points and fees have been associated with originations of subprime loans and loans to vulnerable borrowers. However, community banks did not engage in the irresponsible lending practices that took advantage of borrowers and led to the financial crisis.[13] Therefore, community banks should not be required to report this additional data point.[14]

Furthermore, during the Small Business Review Panel process, the small entity representatives expressed concern over the consistency and clarity of the points-and-fees definition.[15] ICBA echoes the SERs' concerns. There is exceptional complexity in making these calculations, and some community banks only track points and fees as a check for HOEPA compliance so this additional requirement would be especially burdensome. In addition, some banks may not finish the calculation once they determine the amount will not exceed the relevant threshold.

There is also a lot of industry confusion about what constitutes points and fees and what should be included, making compliance mistakes common. The community banking industry is just now getting adjusted to recent regulatory changes to these complicated calculations. Requiring this additional calculation for HMDA purposes will impose additional regulatory burden, especially given the limited tolerance for errors under Regulation C. The costs to community banks outweigh the benefits of this data disclosure.

2. The CFPB Should Not Require Additional Rate-Spread Reporting For Community Banks

Regulation C currently requires financial institutions to report the difference between a loan's annual percentage rate (APR) and the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set, if the difference equals or exceeds 1.5 percentage points for first-lien loans or 3.5 percentage points for subordinate-lien loans.

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[13] *Community Bank Mortgage Lending*, Remarks by Elizabeth A. Duke, Member of the Board of Governors of the Federal Reserve System, Community Bankers Symposium in Chicago, Illinois (Nov. 9, 2012) (stating that over the last several years as mortgage delinquencies reached record levels, the serious delinquency rate of mortgages held by community banks did not go much over 4 percent, far lower than the serious delinquency rates that climbed to almost 22 percent for subprime, fixed-rate loans and more than 46 percent for subprime, variable-rate loans).

[14] *Id.* ("[O]ver the last several years, on average, mortgages held by community banks outperformed even fixed-rate, prime loans, the best performing mortgage category.").

[15] *Final Report of the Small Business Review Panel* at 30-31 (noting concern by SERs that this data point would be too complex to calculate).

Proposed § 1003.4(a)(12) implements HMDA section 304(b)(5)(B) by requiring financial institutions to report the difference between the covered loan's APR and the APOR for a comparable transaction as of the date the interest rate is set. Pursuant to HMDA section 305(a), the CFPB proposal implements section 304(b)(5)(B) as applicable only to loans subject to TILA, as implemented by Regulation Z. By aligning the scope of the rate spread provision to transactions subject to Regulation Z, the CFPB exempts certain types of loans for which rate spread data would be potentially misleading or unduly burdensome to report, such as business-purpose loans. The CFPB also proposes to exempt reporting of rate spread data for purchased loans.

The CFPB solicits feedback on the general utility of the revised rate spread data and on the costs associated with collecting and reporting the data. In particular, the CFPB solicits feedback on the scope of the rate spread reporting requirement, including whether the requirement should be expanded to cover purchased loans.

ICBA does not agree with this data requirement and thinks it should be optional for community banks. It is unclear what the utility would be with this disclosure that cannot already be gleaned from the current required HMDA data. We agree that this requirement should not be expanded to cover purchased loans or business-purpose loans. However, we urge the CFPB to use its regulatory authority to exempt community bank mortgage loans from this statutory reporting requirement. [16]

3. <u>The Disclosure of Loan Origination Identifier Should Not Be Required on Applications that Do Not Result in Originations</u>

Regulation C does not require financial institutions to report information regarding a loan originator identifier. HMDA section 304(b)(6)(F) requires the reporting of, "as the CFPB may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the [Secure and Fair Enforcement for] Mortgage Licensing Act of 2008" (S.A.F.E. Act). Proposed § 1003.4(a)(34) implements this requirement by requiring financial institutions to report, for a covered loan or application, the unique identifier assigned by NMLSR for the mortgage loan originator, as defined in Regulation G § 1007.102 or Regulation H § 1008.23, as applicable.

The CFPB believes that implementing the Dodd-Frank Act requirement for a mortgage loan originator unique identifier will improve HMDA data and assist in identifying and addressing potential issues, such as training deficiencies with specific loan originators, as well as strengthen the transparency of the residential mortgage market.

[16] 12 USC 2804.

The CFPB specifically solicits comment on whether the mortgage loan originator unique identifier should be required for all entries on the LAR, including applications that do not result in originations, or only for loan originations and purchases. ICBA urges the CFPB not to require this data point for all entries on the LAR, such as applications that do not result in originations. This additional data will not provide any greater clarity to the already required HMDA data and will be burdensome for community banks to implement.

4. Application Channel Should Not Be Required Reporting

Regulation C does not require financial institutions to report information concerning the application channel of covered loans and applications. HMDA section 304(b)(6)(E) requires financial institutions to disclose "the channel through which application was made, including retail, broker, and other relevant categories," for each covered loan and application. Proposed § 1003.4(a)(33) implements this requirement by requiring financial institutions to record certain information related to the application channel of each reported origination and application.

ICBA opposes this requirement and urges the CFPB to use its exemption authority to exempt community banks from providing this disclosure, or alternatively, allow this disclosure to be optional for community banks.[17] It is possible that not all transactions would fall under one channel, and this disclosure could be potentially difficult for many banks to comply with due to this confusion.

To facilitate compliance, the CFPB proposes to exempt purchased covered loans from this requirement and solicits feedback on whether this exception is appropriate. ICBA agrees with the exemption of purchased covered loans from this requirement, if the data point becomes a mandatory.

5. The CFPB Should Allow the Disclosure of Age at the Time of Application or Age Range in HMDA Reporting

Section 1094(3)(A)(i) of the Dodd-Frank Act amended HMDA section 304(b)(4) to require financial institutions to report an applicant's or borrower's age. The CFPB is proposing to implement the requirement to collect and report age by adding this characteristic to the information listed in proposed § 1003.4(a)(10)(i).

The MISMO/ULDD data standards for age include both the date of birth (YYYY-MM-DD format) and the age of the borrower in years at the time of application. Because of potential applicant and borrower privacy concerns related to reporting date of birth, the CFPB proposes that financial institutions enter the age of the applicant or borrower, as of the date of application, in number of years as derived

[17] 12 USC 2804.

from the date of birth as shown on the application form. The proposed requirement would align with the MISMO/ULDD data standard for age as well as with the definition of age under Regulation B (Equal Credit Opportunity Act). The CFPB solicits feedback regarding whether the collection of the age of the applicant or borrower, as of the date of application, in number of years as derived from the date of birth as shown on the application form, is an appropriate manner of collecting such demographic information. The CFPB specifically solicits feedback regarding whether there is a less burdensome way for financial institutions to collect such information for purposes of HMDA.

ICBA agrees that the age of the applicant or borrower should be determined as of the date of application. Furthermore, we urge the CFPB to allow the option of reporting a consumer's age at the time of application, or the age range using ranges such as 20-29, 30-39, etc. Not disclosing the date of birth would help alleviate privacy concerns especially in small, rural communities with fewer consumers where it would be easier to identify an individual consumer based on the HMDA data. Allowing the age at the time of application or the age range would work better than disclosing the date of birth.

6. The CFPB Should Not Require Additional Credit Scoring Information

Section 1094(3)(A)(iv) of the Dodd-Frank Act amended section 304(b) of HMDA to require financial institutions to report "the credit score of mortgage applicants and mortgagors, in such form as the CFPB may prescribe." The CFPB is proposing to add new § 1003.4(a)(15) to implement this requirement.

Except for purchased covered loans, proposed § 1003.4(a)(15)(i) requires financial institutions to report the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score. The CFPB states this interpretation of HMDA section 304(b)(6)(I) is reasonable because the name and version of the scoring model are necessary to understand any credit scores that would be reported, as different models are associated with different scoring ranges and some models may even have different ranges depending on the version used.

However, to facilitate compliance pursuant to HMDA section 305(a), the CFPB has excluded purchased covered loans from the requirements of proposed § 1003.4(a)(15)(i) because the CFPB anticipates it could be burdensome for financial institutions that purchase loans to identify the credit score or scores relied on in making the underlying credit decision and the name and version of the scoring model used to generate each credit score. The CFPB solicits feedback on whether this exception is appropriate. ICBA agrees with the CFPB that purchased loans should be excluded from this reporting requirement.

In addition, as an alternative to requiring the scoring model name and version, the CFPB is considering requiring financial institutions to indicate the range of

possible scores for the scoring model used. However, the CFPB is concerned the significance of a particular score may vary depending on the model or version used even for models and versions that have identical ranges. The CFPB is asking for comment on whether it is appropriate to request the name and version of the scoring model and whether it should require any other related information to assist in interpreting credit score data, such as the date on which the credit score was created.

ICBA strongly urges the CFPB to only require the credit score be disclosed by financial institutions that use this score in their underwriting, but not the scoring model name and version or the range of possible scores for the scoring model used. The date of the credit score is also superfluous information unnecessary for HMDA reporting purposes and should not be required. Overall, this additional credit score information is complicated to disclose and would be burdensome for community banks. Furthermore, ICBA is not sure how it would make a difference to the data being reported to include this additional information. It would be easier to analyze and disclose the credit score by itself and that should be the only requirement.

Proposed comment 4(a)(15)-4 clarifies the financial institution complies with § 1003.4(a)(15) by reporting "not applicable" if a file was closed for incompleteness or the application was withdrawn before a credit decision was made. It also clarifies that a financial institution complies with § 1003.4(a)(15) by reporting "not applicable" if it makes a credit decision without relying on a credit score for the applicant or borrower. If banks do not use the credit score in their underwriting, then they should not be required to disclose this for HMDA purposes. Therefore, ICBA agrees with this proposed comment.

7. Debt-to-Income (DTI) Ratio Should Not Be Required Reporting

Currently, neither HMDA nor Regulation C contains requirements regarding an applicant's or borrower's debt-to-income ratio (DTI). Section 304(b) of HMDA permits the disclosure of such other information as the CFPB may require. The CFPB is proposing to require financial institutions to report information related to the applicant's or borrower's DTI.

Financial institutions often consider the ratio of an applicant's total monthly debt to total monthly income as part of the underwriting process. The CFPB has received feedback suggesting that requiring the collection of DTI ratio would improve the usefulness of the HMDA data.

Many community banks do not solely rely on DTI or do not weight it high in the underwriting process. The calculation of DTI may include many different consumer factors that may not be consistent among financial institutions across the country. Thus, this is not reliable data for purposes of HMDA reporting. The

calculation is also relied on more for loan approval or denial and not necessarily pricing.

In addition, this information is sensitive personal information that most consumers would expect to remain private. This information should not be subject to public disclosure, particularly in small or rural communities where it is easy to identify individuals based on HMDA data.

If the CFPB finalizes this disclosure requirement, we urge it to allow this reporting to be optional and not mandatory for community banks, especially since it is not a statutory requirement. In addition, the CFPB should not require this information to be included in the public LAR to protect consumer privacy.

8. Combined Loan-to-Value Ratio (CLTV) Should Not Be Required Reporting

Currently, neither HMDA nor Regulation C contains requirements regarding loan-to-value ratio. Section 304(b) of HMDA permits the disclosure of such other information as the CFPB may require. The CFPB is proposing to require financial institutions to report the ratio of the total amount of debt secured by the property to the value of the property.

ICBA strongly urges the CFPB not to require this data to be submitted and disclosed. As the CFPB itself recognizes, a potential CLTV reporting requirement may pose some challenges. We are particularly concerned that CLTV ratios may not be entirely accurate and quite difficult for community banks to capture, track, and report.

While the CFPB states this information would align to the MISMO data standards, many community banks do not use these standards so this alignment would not be helpful to them. The costs clearly outweigh the benefits, and this data point should not be required reporting for community banks, especially since it is not a statutory requirement.

9. The Reporting of Information Regarding Recommendations from Automated Underwriting Systems (AUS) Should Not Be Required

Currently, Regulation C does not require financial institutions to report information regarding recommendations received from automated underwriting systems, and HMDA does not expressly require this itemization. The CFPB believes it may be appropriate to require financial institutions to report information related to the automated underwriting system used to evaluate the application and the recommendation generated by that system.

ICBA opposes this additional data point requirement and urges the CFPB not to include this as a requirement or to allow it to be optional for community banks.

The automated underwriting systems used by financial institutions to evaluate applications may vary among institutions, as may the recommendations generated by these systems. Some community banks may not use an AUS or may only use it for loans sold in the secondary market. In addition, as the CFPB stated in its proposed rulemaking, community banks may have different policies and procedures for how they use automated underwriting systems and recommendations in the credit decision, and these factors may all be weighted differently. This data point could be misleading because it may not reflect the entire decision-making process and may show false positives of fair lending violations.[18] Therefore, it is unclear what value can be gained by collecting this data.

Since this proposed data requirement is not statutory and the value of collecting this data is unclear, we urge the CFPB not to require it to be included in HMDA reporting.

10. The Reporting of the Denial Reasons Should Be Optional

Section 1003.4(c)(1) currently permits optional reporting of the reasons for denial of a loan application. However, certain financial institutions supervised by the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are required by those agencies to report denial reasons on their HMDA LARs.

ICBA strongly urges the CFPB not to require this data point to be reported by community banks. This is a cumbersome data point to report and will greatly add to community banks' compliance burden. Community banks may have many reasons for denying a loan, which may all be difficult to report. Furthermore, there may be reasons for the denial of a consumer loan which may not be reflected in the HMDA data, therefore rendering the data incomplete. There may also be serious privacy concerns with this information being available to the public. We do not think there is a lot of further analysis to be gained by including this requirement and urge the CFPB to allow reporting of denial reasons to be optional.

11. Whether or Not a Loan is a QM is Not Relevant for Purposes of HMDA Reporting

Currently, neither HMDA nor Regulation C contains requirements related to whether a loan would be considered a QM under Regulation Z. Section 304(b) of

[18] False positives could trigger agency citations or referrals to the Department of Justice for alleged fair lending violations or at least the initial stages of a legal claim under a disparate-impact approach. Additionally, although fair lending violation claims may prove to be unwarranted, such a process increases substantially the community banks' costs to defend their practices.

HMDA permits the disclosure of such other information as the CFPB may require. The CFPB believes it may be appropriate to require financial institutions to report a covered loan's QM status under Regulation Z and solicits feedback regarding whether this proposed requirement is appropriate, whether this proposed requirement would result in more useful data, and whether this proposed requirement would impose additional burdens or result in additional challenges that the CFPB has not considered.

ICBA strongly disagrees with this proposed data requirement. First, we are unsure how this data would help further the purpose of HMDA. Whether a loan is a QM or not is not relevant information in determining whether housing needs are met or discrimination is occurring. "Small creditor" loans have different standards for receiving QM legal status, so not all QM loans are the same. This data point would not reflect this nuance so it is unclear how helpful it would be to the agencies.

In addition, the federal banking agencies stated in their "Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule" that a bank's decision to provide QM or non-QM loans is a business decision and does not have fair lending implications.[19] The federal banking agencies further recognized in their statement it is possible some creditors may offer all or only QM loans based on their business practices, and there would be no ECOA or Regulation B concerns with this lending practice.[20] Therefore, it is unclear how this additional data would be helpful for policy purposes.

Furthermore, if a bank incorrectly discloses a loan as a QM when this status was inadvertently incorrect, the bank may be required to resubmit information or may be subject to enforcement actions. Since the QM rule is new and financial institutions are beginning to adjust to the new requirements, the CFPB should not impose more burdens by requiring additional HMDA reporting on these loans. Because this is not a statutory requirement and the costs outweigh the benefits of the disclosure, we urge the CFPB not to require the QM status of a loan to be included in the required HMDA data.

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[19] *Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule*, October 22, 2013 (Issued by the CFPB, OCC, Board of Governors of the Federal Reserve System, FDIC, & National Credit Union Administration (NCUA)) ("the Agencies do not anticipate that a creditor's decision to offer only Qualified Mortgages would … elevate a supervised institution's fair lending risk.").

[20] *Id.* (stating as an example that, "Some creditors … decided not to offer 'higher-priced mortgage loans' after July 2008, following the adoption of various rules regulating these loans or previously decided not to offer [HOEPA] loans after regulations to implement that statute were first adopted in 1995").

12. The Mortgage Loan Interest Rate Should Not Be Required Reporting

Neither HMDA nor Regulation C currently requires financial institutions to report the interest rate associated with a mortgage loan. Section 304(b) of HMDA permits the disclosure of such other information as the CFPB may require. The CFPB is proposing to require reporting of the interest rate that is or would be applicable to the covered loan at closing or account opening.

The CFPB has received feedback that data on the interest rate enables more effective comparison of pricing across borrowers. The CFPB states that although the proposal may entail some burden, the burden will be reduced by the fact that financial institutions will already know the interest rate applicable to most loans.

Requiring this and other additional rate disclosures not mandated by statute can be extremely burdensome to smaller lenders such as community banks that have to change policies and procedures and add additional quality control measures to ensure data is properly disclosed and reported. ICBA opposes this additional data disclosure, which was not mandated by Congress, but is another disclosure added by regulation for agency usage that would not contribute a lot of insight to the HMDA data already collected and analyzed. If the disclosure is required, the requirements should be consistent with the interest rate requirements in Regulation Z.

13. The CFPB Should Not Require Reporting of Additional Interest Rate Disclosures

Neither HMDA nor Regulation C currently requires financial institutions to report the pre-discounted, risk-adjusted interest rate associated with a covered loan. Section 304(b) of HMDA permits the disclosure of such other information as the CFPB may require. The CFPB is proposing to require the reporting of - for covered loans subject to the disclosure requirements in Regulation Z § 1026.19(f) other than purchased covered loans - the interest rate that the borrower would receive if the borrower paid no bona fide discount points, as calculated pursuant to Regulation Z § 1026.32.

The CFPB has received feedback suggesting that reporting the risk-adjusted, pre-discounted interest rate may be useful for fair lending purposes. To facilitate compliance, the CFPB is proposing to exclude covered loans that have been purchased by a financial institution from this reporting requirement because it does not believe that the risk-adjusted, pre-discounted interest rate would be evident on the face of the documentation obtained from the seller. The CFPB solicits feedback regarding the general utility of the revised data and on the costs associated with collecting and reporting the data.

ICBA urges the CFPB not to require this additional data point for community banks. This would be a very costly disclosure requirement for community banks

and it is unclear what fair lending conclusions would be found with this additional information that cannot be found by the data currently required under HMDA. Also, due to the technical requirements with these disclosures, it would be easy for banks to make minor compliance errors putting them at greater compliance risk. Because the costs outweigh the benefits and because this is not a statutory requirement, it should not be included in the Regulation C amendments.

14. The CFPB Should Not Require the Reporting of Discount Points

Currently, neither HMDA nor Regulation C requires financial institutions to report information regarding total discount points. Section 304(b) of HMDA permits the disclosure of such other information as the CFPB may require. The CFPB is proposing to require, the points designated as paid to the creditor to reduce the interest rate, expressed in dollars, as described in § 1026.37(f)(1)(i).

The CFPB has received feedback suggesting that separate disclosure of discount points provides information useful for identifying potentially discriminatory lending patterns. ICBA understands the CFPB's intent, but does not believe the benefits outweigh the costs in requiring this disclosure. This reporting of discount points should not be included in the HMDA LAR because the benefit of including this data is unclear and it is not a statutory requirement. This data would provide little additional value to what is already required by HMDA, but would add extensive cost and compliance burden for community banks.

15. The CFPB Should Not Require Reporting of Property Interest in Land for Manufactured Homes

Neither HMDA nor Regulation C requires financial institutions to report information about what property interest applicants or borrowers have in the land on which their manufactured homes are located. Section 304(b) of HMDA permits disclosure of such other information as the CFPB may require. The CFPB believes it may be appropriate to require financial institutions to collect and report whether the applicant or borrower owns the land on which the manufactured home is or will be located through a direct or indirect ownership interest or leases the land through a paid or unpaid leasehold interest.

ICBA urges the CFPB not to require this information be submitted and disclosed, because it may be difficult to obtain particularly for loans that are withdrawn or denied. Furthermore, it is unclear how the addition of this data contributes to the purpose of HMDA, since it is not directly related to the loan for the manufactured home. This disclosure is also not required by statute and would not provide any greater insight given the data already required by HMDA.

16. The Disclosure of First Draw on HELOC or Open-End Reverse Mortgage Is Not Relevant for Purposes of HMDA Reporting

Currently, neither HMDA nor Regulation C requires a financial institution to report the amount of first draw on a home-equity line of credit or an open-end reverse mortgage. The CFPB is proposing to require financial institutions to report, for a HELOC and an open-end reverse mortgage, the amount of the draw on the covered loan, if any, made at account opening. The CFPB states that requiring financial institutions to report the amount of the initial draw would permit greater insight into the operation of the markets for these important products and that such information would also help to ensure that public officials and public interest organizations can monitor risks to their communities and neighborhoods.

The CFPB seeks comment regarding the general utility of the data and on the costs associated with collecting and reporting the data. Although the CFPB believes information about the initial draw is most useful for HELOCs, it is soliciting feedback regarding whether this data would be useful for all open-end lines of credit, including dwelling-secured commercial lines of credit.

ICBA strongly opposes this additional requirement for consumer and commercial lines of credit. We do not see the value in requiring this additional disclosure and how this will provide further clarity on what is currently required by HMDA and Regulation C. The borrower's decision as to how much of their line of credit to use initially has no bearing on fair lending or other HMDA purposes. This disclosure would also present privacy concerns for the consumer. In addition, the cost of providing this data will be extensive for community banks that do not currently store the information in a format readily available for HMDA purposes, as it would require more training and implementation costs. Furthermore, how would community banks collect this information with a rescission period? This adds to the complexity of reporting the amount of the first draw.

This proposed data point is merely a superfluous disclosure and should not be required for HMDA reporting.

17. Collection of Data on Ethnicity, Race, Sex, Age, and Income Should Not Be Required for Purchased Loans

The Dodd-Frank Act amended HMDA section 304(b)(4) to require financial institutions to report an applicant's or borrower's age. The CFPB is proposing to implement the requirement to collect and report age by adding this characteristic to the information listed in § 1003.4(a)(10)(i).

In addition, the CFPB is proposing to amend § 1003.4(b)(1) by requiring a financial institution to collect data about the ethnicity, race, sex, and age of the applicant or borrower as prescribed in appendices A and B since both

appendices contain instructions for the collection of an applicant's or borrower's demographic information.

Section 1003.4(b)(2) provides that ethnicity, race, sex, and income data may but need not be collected for loans purchased by a financial institution. Instruction I.D.1.a of appendix A provides that a financial institution need not collect or report this applicant and borrower information for loans purchased and if an institution chooses not to report this information, it should use the codes for "not applicable."

While the proposed reporting requirements do not require reporting of ethnicity, race, sex, age, and income for loans purchased by a financial institution, the CFPB solicits feedback on whether this exclusion is appropriate. ICBA agrees that reporting this data should not be required for purchased loans, as it would not add greater clarity to the HMDA data but would be an enormous regulatory burden for community banks to collect and report. This data should only be optional reporting.

18. Preapprovals Not Accepted by the Applicant Should Not Be Required Reporting

Section 1003.4(c)(2) provides that institutions may report requests for preapprovals that are approved by the institution but not accepted by the applicant, but they are not required to do so. The CFPB is proposing to make reporting of requests for preapprovals approved by the financial institution but not accepted by the applicant mandatory instead of optional reporting.

The CFPB believes this change will not represent any additional burden for institutions that currently choose to report such preapprovals, and that the burden may not be great for institutions that currently do not choose to report such preapprovals because of information that such institutions currently collect about all of their preapproval requests before the outcome of the request is known.

ICBA does not understand how this additional requirement would strengthen the HMDA data already required and strongly disagrees that the benefits of this information, in addition to what is already required for HMDA reporting, would outweigh the costs and burdens associated with collecting and reporting it. We strongly recommend the CFPB continue to allow this to be an optional reporting requirement as it currently is, and not mandatory.

Retention of Complete Loan Application Register in Electronic Format

Section 1003.5(a)(1) requires that a financial institution shall retain a copy of its complete LAR for three years, but Regulation C is silent concerning the formats in which the complete LAR may be retained. The CFPB states that during the Small Business Review Panel process, it learned that some financial institutions

have interpreted § 1003.5(a)(1) to require that complete LARs must be retained in paper format, and that this can be burdensome depending on the size of the complete LAR. Proposed comment 5(a)-4 states retention of the LAR in electronic format is sufficient to satisfy the requirements of § 1003.5(a)(1). The CFPB seeks comment on whether this proposal is appropriate.

ICBA agrees with this regulatory change and believes it will reduce burden for community banks that have been maintaining paper records when there were more practical storage methods available for them to utilize.

Regulation C Should Include Increased Tolerances for Reporting Errors

The CFPB states that during the Small Business Review Panel process some SERs raised concerns regarding reporting errors. Small entity representatives expressed concern that adoption of any new data points would make financial institutions more vulnerable to being cited in examinations for reporting errors that they consider minor but in total exceed their supervisory agencies' tolerances for reporting accurate HMDA information. Some SERs suggested that tolerances for errors be increased if additional data points were added to Regulation C.[21]

ICBA strongly agrees with the SERs and urges the CFPB to provide a tolerance percentage for LAR validation tests in the final HMDA rulemaking, given the changes and additional data point requirements. Community banks undertake tortuous second and third level review to check for reporting errors because of the outsized consequences for those errors. The current time and resources already spent on this intense review will be exponentially increased due to the new data the CFPB is proposing to require to be collected and reported. Increased tolerances for reporting errors will eliminate some regulatory burden for community banks and provide greater uniformity to the examination process.

Privacy Concerns Should Be Considered When Requiring Additional HMDA Data

The CFPB is asking that more data be collected even than what is required by statute. While greater transparency can be helpful in formulating policy, it can also be dangerous for consumers and their financial health. ICBA urges the CFPB to consider that additional data could make it too easy to discern the identity of individual borrowers, especially borrowers located in rural and less populated areas. For these loans, it would not be difficult for someone to compare and cross-reference public records with the LAR to determine the individual borrower, especially in markets where the number of loans or homes sold each year is relatively small. Furthermore, advances in technology now allow businesses that request public modified LARs to integrate the data with

[21] *Final Report of the Small Business Review Panel* at 21.

other publicly available data to make determinations about individual consumers. Therefore, the disclosure of additional personal financial information can be easily used for identity theft. This, of all times, is not the time to make consumers more vulnerable to privacy breaches and identity theft.

ICBA urges the CFPB to carefully examine the potential privacy issues that exist with requiring additional HMDA data to be disclosed, both in the HMDA report and in the public modified LAR, and to not add to the HMDA data that is already included in the public modified LAR. Special consideration about privacy should be given to community banks that serve customers in rural and underserved areas.

The Proposal Will Affect Community Banks in Rural Areas

Based on a September 2014 ICBA survey, over 76 percent of the community bank respondents stated they lend in rural communities. The CFPB states that its proposed HMDA provisions will not directly impact consumers in rural areas. However, as with all consumers, consumers in rural areas will bear some indirect costs of the proposal. This would occur for HMDA reporters serving rural areas that pass on some or all of the cost increase to consumers.

Many community banks located in rural areas are currently not HMDA reporters, however there are still many that are required to report HMDA data. While it is unknown what the exact costs will be on the new HMDA regulations and how this will trickle down to the consumers in rural communities, ICBA is certain that new HMDA regulatory requirements combined with the current QM and other mortgage requirements will have a tremendous effect on consumer lending in rural communities. ICBA urges the CFPB to provide a thorough analysis and study on the potential effect of the proposed HMDA changes combined with all of the recent mortgage changes on community banks that primarily lend to rural and underserved communities. This study should be conducted before the CFPB moves forward with any new mortgage requirements for these financial institutions.

Public Disclosure of HMDA Data Should Be the Responsibility of the Federal Financial Institutions Examination Council (FFIEC)

The CFPB also is proposing to allow HMDA reporters to make their disclosure statements available by referring members of the public that request a disclosure statement to a publicly-available website. Currently, a financial institution is required to make its disclosure statement available to the public in its home offices and, in addition, to either make it available in certain branch offices or to post notice of its availability and provide it in response to a written request. The CFPB believes its proposal will facilitate public access to HMDA data while minimizing burdens to financial institutions.

ICBA members have stated they rarely receive requests by the public for modified LAR information. The SER bankers also stated to the CFPB that they never receive these requests.[22] While we agree with this proposed change to the regulation, we urge the CFPB to completely transfer this responsibility of the bank to the regulatory agencies, and instead make the modified public LAR a required disclosure available on the Federal Financial Institutions Examination Council's (FFIEC's) website. This is a more practical and efficient way to access this information and will eliminate financial institutions' responsibility regarding the disclosure.

Regulation C Should Be Added to the CFPB's eRegulations Tool

Considering all of the proposed amendments to Regulation C, it should be added to the regulations on the CFPB's eRegulations tool. The CFPB's eRegulations is a useful tool to help bankers navigate through the complex and frequently changing regulations. The tool only includes Regulations Z and E, and Regulation C is not currently accessible through the tool. Because of the massive changes being proposed to Regulation C, we strongly urge the CFPB to add this regulation to the tool. ICBA has previously commented to the CFPB that the tool should include all consumer financial services regulations, however we emphasize the particular importance of including Regulation C to the tool in the near future to assist community banks in understanding the HMDA changes and properly complying with the new requirements.

Final HMDA Regulatory Requirements Should Not Be Mandatory Until 2017

Given the increasing amount of mortgage rules required in the last couple of years -- which have included changes and new requirements for loan underwriting, appraisals, servicing rules, escrow accounts, loan officer compensation, and new, comprehensive changes to the timing and disclosures requirements under TILA and RESPA -- community banks are having a challenging time with compliance, making it increasingly difficult for them to provide mortgage products and services to their customers in a timely manner. Changes to HMDA requirements will only add to the already complicated regulatory environment.

The reality remains that community banks do not have the extensive compliance resources of larger financial institutions or the loan volume to economically justify increasing these resources. So that consumers can continue to utilize the mortgage products and services of community banks, ICBA urges the CFPB to allow ample compliance time for new changes to HMDA's Regulation C. Compliance should not be mandatory for community banks until 2017, at the earliest, to ensure community banks can properly understand the amendments, make systems adjustments, train staff, and perform effective quality control.

[22] *Final Report of the Small Business Review Panel* at 35.

Conclusion

ICBA thanks you for the opportunity to comment on these proposed changes to HMDA's Regulation C. As you are aware, community banks are common sense lenders that offer mortgage products on fair terms as a means of effectively serving their customers. In finalizing the Regulation C requirements, please keep in mind that community banks and their special business model are critical to the U.S. mortgage industry, and these banks should not be forced out of the marketplace by overwhelming regulatory burden. We understand the CFPB's important job in implementing the Dodd-Frank Act additional HMDA requirements, but again, we urge it not to provide any additional regulatory requirements for community banks that are not mandated by statute.

If you have questions or would like to discuss our comments further, please feel free to contact me by telephone at 202-821-4469 or by email at Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel