



SINCE 1902

CONFERENCE OF STATE BANK SUPERVISORS

March 14, 2016

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

Re: Request for Information Regarding Home Mortgage Disclosure Act Resubmission
Docket No.: CFPB-2015-0058

Dear Ms. Jackson:

The Conference of State Bank Supervisors (“CSBS” or “state regulators”) appreciate the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “the Bureau”) request for information on Home Mortgage Disclosure Act (HMDA) data resubmission guidelines. State banking departments serve as the chartering agency and primary regulator for over 75% of the 6,191 insured depository institutions currently in operation as of year-end 2015. State regulators are also the primary supervisor for the vast majority of non-depository mortgage lenders that are required to report loan data under HMDA.

All agencies share the responsibility of evaluating HMDA compliance throughout financial institutions; however, there are some inconsistencies that exist across federal regulators with regard to the methods for HMDA data validation and resubmission requirements. The comments below highlight these inconsistencies. With the implementation of the final HMDA rule fast approaching, the Bureau should take this opportunity to promote the consistent application of HMDA’s reporting requirements for all covered entities. State Regulators strongly encourage the Bureau to utilize the FFIEC as a mechanism for collaboration on consistent HMDA resubmission standards.

POTENTIAL IMPACT OF EXPANDED REPORTING REQUIREMENTS ON SMALL REPORTERS

In October 2015, the Bureau finalized proposed amendments to Regulation C that will significantly expand the volume of data that covered institutions will be required to collect, and report under HMDA. Despite changes to the institutional coverage of HMDA that will provide limited relief to depository institutions that report fewer than 25 loans (over the previous two calendar years), state regulators remain concerned that the new reporting requirements, when viewed as a whole, will impose a disproportionate cost burden on small reporters that will still be covered under the proposed amendments, especially community banks and small non-banks.

Given the large increase in data that covered institutions are required to report, the Bureau should carefully consider what changes are necessary to be made to its HMDA data resubmission guidelines,

contained within CFPB Bulletin 2013-11. Current resubmission guidelines differ across regulatory agencies, subjecting FIs to inconsistent exam procedures and supervisory actions.

Many of the newly required HMDA data points present a high risk of error for reporters. For example, within the government monitoring collection fields, an institution may select multiple choices from a list of options. Notwithstanding the assumed benefit from this level of granulated data, reporter errors may actually increase from having an expansive list of options. Institutions have also expressed that required quality edits can be inconsistent. Outside of the new data requirements, we have heard from financial institutions that have been required to re-submit HMDA data due to the reporting of an abbreviated version of the institutions name (despite having previously filed this way without issues).

Representatives of small HMDA reporters have expressed concern that the expanded data-set will leave their institutions increasingly vulnerable to being cited in examinations for reporting errors that they consider minor, but in total exceed their supervisory agencies' tolerances for reporting. The small data-sets submitted by these institutions provide only a limited view into lending trends in their areas of operation. However, the data submitted by these institutions serves as the basis for CRA and fair lending reviews undertaken by federal regulators. Given the importance of the data, the Bureau should update their Resubmission Guidelines to reflect the expanded HMDA data-set, and take steps to clarify how newly reported data will be evaluated, validated, and used in the fair lending examination process.

In addition, the Bureau should bear the burden of proving that errors are material to the intent and purpose of HMDA, which is to provide the public and public officials with information to help determine whether financial institutions are serving the housing needs of the communities in which they are located. Errors that are not material should not require a financial institution to expend additional resources on data correction and resubmission. State regulators are encouraged by the Bureau's work to create a web-based HMDA submission tool, which will include enhanced validation capabilities that will reduce errors and the need for resubmission.

INCONSISTENT HMDA EXAMINATION PROCEDURES

State regulators strongly believe that all HMDA reporters should be subjected to consistent examination standards. Inconsistencies currently exist between: (1) the sampling procedures used by federal regulators; (2) guidance related to the omission of records on the HMDA Loan Application Register; (3) error thresholds requiring resubmission of HMDA data; (4) the definition of key data fields; and (5) enforcement actions that can be taken due to errors in submitted data. Discrepancies also exist within the agencies distinct procedures for small and large reporters. Current agency-specific guidelines are confusing, and covered institutions are subjected to increased uncertainty when faced with conflicting guidance and processes that differ across federal regulators.

HMDA Data Sampling

Sampling is the method by which regulators choose to review loan files for HMDA errors. There is significant variance in how the federal banking agencies sample HMDA data for validation purposes. FDIC sampling procedures for smaller institutions (with 100 applications on the Loan Application

Register or less) require the examiner to “select a judgmental sample for review of no fewer than 10 applications.” If no more than 2 errors are identified in key data fields, no further review is necessary. The FDIC procedures describe “minor or isolated errors” that would not trigger further review.

For large reporters (with 100 or more LAR applications), FDIC examiners use a HMDA Sampling and Validity Review Matrix¹ to complete the process. The Federal Reserve instructs their examiners to generate a random sample using Microsoft Excel’s “Random Number Generation” tool. Examiners then use a HMDA Sampling Schedule² to determine the number of files needed for the sample. The Federal Reserve Exam Procedures note that an examiner may stop the sampling process after reviewing the initial number of files if the results indicate that a very small number of files had errors in key fields. The procedures also detail when additional file review is needed, but examples³ within the instructions are confusing. The CFPB Supervision and Examination Manual does not address sampling procedures. At a minimum, the Bureau should clarify the procedures used by the agencies’ examiners for HMDA data sampling. State regulators are concerned that inconsistent sampling methods could signal potentially different standards for compliance for institutions subject to the same rule.

Data Omissions

The FDIC Compliance Exam procedures contain detailed information on data omissions and the evaluation of the LAR for completeness. FDIC examiners are instructed to review an institution’s loan trial balance to identify loans that were omitted from the LAR. The procedures detail when omissions are significant enough to require corrective action, including resubmission when appropriate⁴. To the contrary, the CFPB, Federal Reserve and OCC HMDA exam procedures include only one mention of data omissions. CFPB, FRB, and OCC procedures instruct examiners to determine whether the institution performs HMDA-LAR volume analysis from year-to-year to detect increases or decreases in activity for possible omissions of data. State regulators recommend that the Bureau include information regarding data omissions within their guidance. The Bureau should also take steps to encourage standardized correction and resubmission guidance related to file omissions across the banking agencies. Current guidance on the treatment of omissions is confusing and opaque and does not clarify how omissions factor into error calculations.

Error Thresholds

The error thresholds that require covered institutions to correct and resubmit their HMDA data are not consistent across the federal banking agencies. For small reporters, the FDIC requires resubmission of

¹ FDIC Compliance Examination Manual—September 2015. V-9.21.

² Federal Reserve Consumer Compliance Handbook. Reg. C. Appendix B. HMDA Sampling Schedule

³ “If the HMDA universe contains 150 files, a total random sample of 56 files should be taken. The examiner may initially review 29 files. If the review of the initial 29 files identifies 4 files with an error or errors in key fields, the examiner should then review 27 additional files, for a total sample size of 56 files. After completing review of the additional 27 files, the examiner should determine the total number of key-field errors and apply the current Board HMDA resubmission standards to the entire sample.” Federal Reserve Consumer Compliance Handbook. Reg. C. Appendix A—HMDA Sampling Procedures.

⁴ FDIC Compliance Examination Manual—September 2015. V-9.12.

data if key data field errors are found in 20% or more of the files sampled, or if 10% or more of the files sampled include errors in any one key data field.⁵ The Federal Reserve's procedures are different, requiring institutions to correct and resubmit data in certain key fields on the HMDA LAR when at least 5% of the files sampled contain inaccurate data. If 10% of the sampled files contain an error in at least one key field, the entire HMDA LAR must be resubmitted.⁶ The OCC guidelines are similar to the FRB's procedures⁷.

Current CFPB resubmission guidelines (Bulletin 2013-11) specify that institutions reporting fewer than 100,000 loans or applications correct and resubmit data when 10% or more of the LAR sample entries contain errors, or when 5% or more of the HMDA LAR sample entries contain errors in an individual data field. Institutions that report in excess of 100,000 LAR entries are required to correct and resubmit HMDA data when 4% or more of the sample entries contain errors or if the error rate in an individual field is between 2 and 4%. The Bureau's instructions are included within Bulletin 2013-11, but not within the Bureau's exam procedures. To avoid appearing to contradict itself, the Bureau should insert the text within Bulletin 2013-11 directly into their HMDA examination procedures, last updated in 2012. Although the bulletin is intended to replace the guidelines contained within the 2012 exam procedures, moving the text into the official procedures would reduce confusion for covered institutions.

The CFPB should take this opportunity to promote the standardization of error thresholds. To ensure that thresholds are fair and consistent, the Bureau should base them primarily on the number of loans or applications reported on the LAR. To achieve uniformity in this area, the Bureau should consider working through the FFIEC to produce a baseline version of HMDA examination procedures that would be similar to the broader fair lending examination procedures that currently serve as the basis for each agency's respective fair lending exam procedures.

The CFPB should promote examiner latitude and consideration regarding errors or omissions in HMDA data. Pending implementation of the Bureau's data submission tool, the correction of HMDA data should be an interactive process that seeks to improve the understanding of reporting requirements. To ensure that this process does not result in additional inconsistencies, the Bureau should work through the FFIEC to promote common principals that federal regulators can adhere to when considering the materiality of errors or omissions. This process would be more in line with the review of call report data within safety and soundness exams.

Key Data Fields

Another area in which federal bank regulators exam procedures related to HMDA are inconsistent is the definition of "key data fields". HMDA data integrity reviews primarily focus on determining whether errors exist within fields that have been determined to be "key" to HMDA compliance. Exam procedures differ based on the level of error identified within key fields compared to non-key fields. To compound

⁵ FDIC Compliance Examination Manual—September 2015. V-9.14.

⁶ Federal Reserve Consumer Compliance Handbook. Reg. C.

⁷ OCC Comptrollers Handbook. Home Mortgage Disclosure. February 2010

the confusion for examiners and covered institutions, different procedures apply for the validation of key field data when regression analyses are performed⁸.

The FDIC, OCC, and FRB exam procedures contain lists of HMDA data fields defined as key fields. The agency lists are similar, but not identical. The Bureau has not identified key fields in their exam procedures or resubmission guidelines. To promote consistency in HMDA data integrity reviews, the CFPB should implement a standardized definition of “key data fields” that aligns with the FDIC’s list. The list should be updated to reflect newly required data points. The Bureau should publish a list of key fields as soon as possible to ensure that institutions have ample time to prepare compliance management systems and reporting processes for the new reporting requirements.

Enforcement Related to Data Errors

CFPB Bulletin 2013-11 notes that the Bureau uses HMDA data extensively in discharging the enforcement responsibilities conferred upon it by the Dodd-Frank Act. In addition to requiring correction and resubmission, the CFPB may also take public enforcement action related to errors in HMDA data. The CFPB bulletin notes that when considering enforcement actions, the agency will take into account the size of the institutions LAR and observed error rate, the self-identification of errors outside of the context of an active exam, independent corrective action, and errors in previous exams⁹. FDIC procedures state that “an error in compiling or recording loan data is not a violation of the act or the regulation if it was unintentional and occurred despite the maintenance of procedures reasonably adopted to avoid such errors.”¹⁰ Language within the Federal Reserve and OCC HMDA documentation is similar. The FDIC also notes that “line error and key data field error percentages developed in the accuracy review, together with the omission error rates, also may be used in evaluating the advisability of an enforcement action.”¹¹ More clarity is needed around the use of HMDA data and error rates in enforcement actions. Without coordinated action among the federal regulators, FIs will continue to experience significant uncertainty regarding the use of their HMDA data for fair lending exam purposes.

TRANSITION TO CFPB HMDA DATA COLLECTION SYSTEM

State regulators, through the State Liaison Committee, have been active participants in FFIEC discussions regarding the transition of HMDA data collection responsibilities from the Federal Reserve to the CFPB. CSBS appreciates that the Bureau has kept staff informed on the build-out of a web-based HMDA data submission tool. State regulators are supportive of the Bureau’s efforts to modernize the HMDA data submission process to collect information more efficiently. The Bureau should ensure that the new data collection tool provides institutions with the means to validate or self-test submitted HMDA data to identify errors and ensure data validity. Providing reporters with the ability to validate their data against

⁸ “When the regression program is used during an examination, each of the key fields except “state,” “county,” “census tract,” “applicant sex,” and “co-applicant sex” must have an error rate of less than 5% before the step 1 regression program is run.” Federal Reserve Consumer Compliance Handbook. Reg. C. Appendix C. HMDA Resubmission Standards

⁹ CFPB Bulletin 2013-11

¹⁰ FDIC Compliance Examination Manual—September 2015. V-9.5

¹¹ Ibid

the CFPB's exam procedures will reduce error rates and compliance costs for smaller institutions, who dedicate a significant number of hours to regulatory reporting. Based on demo's held for CSBS staff, it appears that the Bureau is making a significant effort to reduce the need for resubmission by allowing for validation on the front-end. This will reduce costs associated with data resubmission for the Bureau as well as supervised entities. As the Bureau progresses towards the release of the data submission tool, state regulators strongly suggest that staff engage with CSBS and the State Regulatory Registry to determine how the Bureau could utilize NMLS Mortgage Call Report Data to assist with validation processes for non-depository mortgage lenders.

In addition, the Bureau should release all models used by the agency for analyzing HMDA data, and encourage other federal agencies to do the same. In 2013, the Bureau established a precedent by releasing the model and code used to analyze fair lending compliance of indirect auto lenders. Releasing models used for HMDA analysis, coupled with the provision of tools for self-analysis would enhance understanding of the use of HMDA data, and improve adherence to regulatory and supervisory expectations.

CONCLUSION

State regulators agree that the Bureau must update their HMDA data resubmission guidelines to reflect the expanded data set required by the 2015 HMDA rule. Given that HMDA data is the main window into financial institution compliance with federal fair lending laws, the use of HMDA data by federal regulators needs to be as transparent and straight-forward as possible. The Bureau should take action to standardize HMDA data validity requirements across federal regulators through the FFIEC. Inconsistencies that currently persist within HMDA validation guidance subject reporters to various levels of analysis from different regulatory agencies. Inconsistent and confusing exam guidance perpetuates communication and coordination difficulties between federal regulators, state regulators, and covered institutions during fair lending exams.

State regulators are willing to collaborate with the Bureau as changes to the resubmission guidelines are conceptualized and debated. The states look forward to providing input on a future proposal in which the Bureau describes the changes they intend to make to the resubmission guidelines. If appropriate steps are taken to adjust the guidance, and HMDA validity procedures are standardized across the federal banking agencies, reporters will benefit from reduced ambiguity and the consistent application of HMDA's complex reporting requirements.

Thank you for the opportunity to respond to this request for information.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Ryan". The signature is fluid and cursive, written in a professional style.

John W. Ryan
President & CEO