CSBS SINCE 1902
CONFERENCE OF STATE BANK SUPERVISORS

October 29, 2014

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

Re: Proposed Amendments to Home Mortgage Disclosure (Regulation C)
Docket No. CFPB-2014-0019
RIN 3170-AA10

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 "Bureau") proposed amendments to the *Home Mortgage Disclosure Act (Regulation C)* (RIN 3170-AA10). State regulators recognize the statutory intent of HMDA, which is to provide the public and public officials with information to help determine whether financial institutions (FIs) are serving the housing needs of the communities in which they are located. With respect to the aspects of the proposal that are tied directly to the statutory language of the Dodd-Frank Act, state regulators generally believe that the Bureau has proposed appropriate measures to implement these requirements. In addition, state regulators endorse the steps taken by the Bureau to reduce burden on small financial institutions. However, state regulators are concerned that new reporting requirements, when viewed as a whole, would impose a disproportionate cost burden on those small reporters that will still be covered under the proposed amendments, especially community banks.

Entities under state supervision account for the vast majority of HMDA reporters. State banking departments serve as the chartering agencies and primary regulators for over 75% of the 6,665 depository financial institutions currently in operation as of second quarter 2014. In addition, state regulators supervise non-depository mortgage lenders and brokers that are currently required to report loan data under HMDA. The CSBS[1] Multi-State Mortgage Committee[2] ("MMC"), in March of 2010,

[1] The Conference of State Bank Supervisors (CSBS) is the nationwide organization comprised of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. State banking regulators supervise nearly 5,200 state-chartered financial institutions. Further, most state banking departments also regulate a variety of non-bank financial services providers, including mortgage lenders. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities and to develop regulatory policy. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the Federal financial regulatory agencies.

announced a 35-state enforcement action and settlement with a mortgage lender that involved failures to report loans as required by HMDA. The action, stemming from an examination led by the Massachusetts Division of Banking, was significant because it was the first joint action taken by state banking departments against a state regulated mortgage lender related to HMDA violations.

HMDA & FAIR LENDING

HMDA is a significant source of information for enforcement of the Fair Housing Act and Equal Credit Opportunity Act (as it relates to housing finance). As such, the process of HMDA data collection must be transparent, and the data used appropriately in the fair lending examination process. If collected and utilized properly, HMDA data should promote more effective fair lending analysis.

As a means of increasing transparency and data utility, CSBS notes that the collection of reasons for denial on a loan application, application channel data, and the risk-adjusted, pre-discounted interest rate will be particularly effective for fair lending analysis.

To make the HMDA and fair lending nexus clearer, the Bureau should release its model for analyzing HMDA data and encourage other federal agencies to do the same. The Bureau established a valuable precedent by recently releasing the model and code used to analyze fair lending compliance of indirect auto lenders. Adding this level of transparency can only serve to enhance the understanding of these laws, and improve adherence to regulatory and supervisory expectations.

REPORTING DETERMINATION

State regulators support the Bureau's proposal to remove the confusing, purpose-based test that FI's have relied upon to determine which loans need to be reported. To accomplish this, the Bureau has proposed to require reporting on any closed-end mortgage loan. While the elimination of the purpose-based test simplifies reporting requirements, state regulators strongly urge the Bureau to exempt the reporting of dwelling-secured loans that are used for business purposes.

HMDA's expansion into commercial lending is outside of the scope of HMDA and its intent to protect consumers. Collecting HMDA information on dwelling-secured loans used for business purposes will impose significant burden on FI's and it will not provide insight into whether covered entities are fulfilling their obligations to serve community housing needs. It is the responsibility of state and federal regulators to determine if a FI is structuring loans in a manner that may enable it to avoid HMDA reporting and possibly circumvent other disclosure requirements. This level of assessment can be accomplished through risk scoping and adequate exam procedures.

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[2] The Multi-State Mortgage Committee (MMC) was created by state financial regulators—through the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR)—to coordinate examination and supervision of those mortgage lenders and brokers operating in more than one state. The MMC was formed in 2008 as a result of the states' desire to improve the coordination, sophistication and efficiency of state regulatory mortgage examinations. The committee is made up of 10 members elected by the Boards of CSBS and AARMR. The MMC reports to both boards.

INSTITUTIONAL SCOPE OF PROPOSED AMENDMENTS AND COSTS FOR SMALL REPORTERS

The Bureau has proposed to change the list of criteria that defines "Financial Institution" for HMDA reporting purposes. Specifically, the Bureau has proposed to adjust the standard for institutional coverage in Regulation C to adopt a uniform loan volume threshold of 25 originated covered loans, which will be applicable to all financial institutions. Currently, depository institutions originating one loan or more are required to report if they satisfy the additional criteria under the definition of "financial institution." For purposes of the Paperwork Reduction Act analysis on the proposed amendments, the Bureau estimates that 1,600 fewer depository institutions will be required to report HMDA data based on the proposed 25-loan threshold. The public deserves more detail on how the CFPB came to this conclusion.

State regulators commend the Bureau for their attempt to reduce burden for FI's that originate less than 25 loans. However, it seems this number was chosen primarily based on the desire to shed more light on the lending practices of non-depository entities. Under the current Regulation C requirements, a non-depository institution originating more than 99 loans is required to report HMDA data.

The proposed attempt to create a one-size-fits-all threshold fails to take into account the relationship (portfolio) lending business model of small depository lenders. State regulators encourage the Bureau, under its delegated authority,[3] to consider the necessity and benefit of a lower threshold against the backdrop of ever increasing regulatory burden for the smallest financial services providers.

Therefore, state regulators propose the Bureau institute a threshold of at least 100 covered loans for depository and non-depository institutions. In addition, by establishing a tiered approach to institutions covered under HMDA, it would reduce the burden on smaller institutions and provide value to large bank evaluations. For example, the tiered approach could consist of a first tier which would be for those institutions originating less than 100 loans; those institutions would be considered exempt from HMDA reporting. The second tier would apply to institutions with originations of 100-300 loans; these institutions would adhere to the original HMDA data points. The final tier would impact institutions exceeding 300 loan originations; those institutions would comply with the additional HMDA data points outlined in the CFPB's proposal.

Institutions originating less than 100 loans annually are likely not operating in a regional or national capacity. These entities are likely to be small brokers, with limited sophistication in both systems and personnel. State regulators believe that 25 loans is too small of a sample and would not provide substantial value and/or weight towards a meaningful fair lending analysis.

To minimize confusion around the proposed reporting threshold, the Bureau should emphasize and explicitly list the other applicable criteria for a "financial institution" within the summary of the rule text. The full criteria are listed later in the proposal[4], but to ensure understanding, it would be helpful to list the criteria in the section where changes to institutional coverage are first discussed. The current

[3] See *12 USC 5512 (b)(3)(A) & (B).*
[4] Section 1003.2(g)—Page 460 of proposed rule text.

wording and placement of this description could lead financial institutions to unnecessarily believe that they have to report.

To achieve additional burden reduction for community banks, the Bureau should revisit the reporting criterion that considers the geographic location of a depository institution's home or branch office. Currently, a bank satisfies this criterion if it has a home or branch office in a metropolitan statistical area or metropolitan division on the preceding December 31. Many community banks that operate in depopulating rural areas are still considered to be within a metropolitan statistical area. State regulators encourage the Bureau to exercise its broad exemption authority to make a determination that the area in which these banks operate be considered rural for purposes of HMDA reporting.

While real costs of implementation are expected to be significantly higher for large reporters, state regulators are concerned about the proportional costs that will be imposed on smaller reporters. Many small banks that make less than 100 loans have only limited staff required to participate in HMDA reporting processes. At meetings with bankers associations and industry groups, participants have noted that the perception of reporting (for call reports or HMDA data) as a completely automated process is inaccurate. Many small business HMDA reporters rely on FFIEC tools and do not use a dedicated HMDA management system (HMS). It is likely that small reporters will have to hire additional compliance staff to implement the new reporting requirements. A 2013 study from the Minneapolis Federal Reserve Bank found that for banks with between $50 million and $100 million in assets, each new employee would reduce return-on-assets by approximately 11 basis points[5].

In preparation for the second annual Community Bank Research Conference (held in conjunction with the St. Louis Federal Reserve Bank), CSBS performed a national survey of community bankers. Of the 1,008 respondents, 674 indicated that they were HMDA reporters. The survey found that nearly one-third of community banks are cutting their mortgage holdings compared to last year. Of those who anticipate reductions in the dollar volume of their mortgage holdings, most respondents pointed to increased regulation and compliance costs as the reason for this decline[6]. The Bureau should carefully consider whether the increased compliance burden resulting from the proposed reporting requirements could lead to a restriction of credit for consumers who are served by community banks.

DEFINITIONS

In multiple areas, the Bureau has proposed definitions under HMDA that do not align with those in other CFPB regulations such as RESPA and TILA. The definition of "application" in Regulation C will be confusing to FIs given that it does not align with either the definition in the Bureau's 2013 TILA-RESPA final rule or the NMLS Mortgage Call Report. In addition, "refinancing" is not defined in HMDA, but is defined in Regulation Z. Other definitions that remain unclear include the definition of "dwelling", and

[5] Feldman, R., Heinecke, K., and Schmidt, J. "Quantifying the Costs of Additional Regulation on Community Banks: Economic Policy Paper 13-3." Federal Reserve Bank of Minneapolis, May 2013, pp. 7-11. Available at: http://www.minneapolisfed.org/pubs/eppapers/13-3/epp_13-3_community_banks.pdf
[6] CSBS White Paper: "Community Banking in the 21st Century: Opportunities, Challenges and Perspectives." September 2014. Available at: http://www.csbs.org/news/presentations/Documents/CBRC%202014pub-final.pdf

"affiliate." State regulators urge the Bureau to align definitions with existing regulations, including the SAFE act, wherever possible.

COMMENTS ON INDIVIDUAL DATA POINTS

Unique Identifiers

Unique Loan Identifier (ULI)—The Bureau has the authority to require the reporting of a unique loan identifier for each loan. State regulators recognize that the Dodd-Frank Act required the collection of this data point, as the Bureau determines to be appropriate. The ULI would allow the Bureau and state regulators to track a loan as it moves from one FI to another.

All HMDA reporters are required by state or federal law to be licensed or registered through NMLS. State regulators believe that the ULI format required by CFPB should be based on the NMLS Unique Identifier (NMLS ID) assigned to all licensees and registrants[7]. Additionally, Fannie Mae, Freddie Mac and Federal Housing Administration (FHA) require the NMLS Unique Identifier number to be reported on all loan applications submitted to them[8], further underscoring the value of a ULI based on the NMLS ID.

CSBS is interested in working with the CFPB in developing the ULI based on our experience with issuing and maintaining over one million unique identifiers through NMLS. One example of how the ULI could be developed is through a simple combination of the company's NMLS ID, the mortgage loan originator's NMLS ID and a sequential digit starting with "1" once the ULI is established. This simple number will bind the loan with the company and mortgage loan originator. As an example, the 53rd loan reported to HMDA for Sally Smith (NMLS ID 1010) working at No Name Mortgage (NMLS ID 1009) would have a ULI of 1009-1010-53.

State regulators believe it is critical that this number be listed on all loan documents. It would not be sufficient to report this number for HMDA purposes if it did not apply to all loan documents required under TILA-RESPA.

Mortgage Loan Originator (MLO) Identifier— The CFPB is proposing to require the reporting of a "unique identifier that identifies the loan originator as set forth in section 1503 of the SAFE Act." Under the proposal, HMDA reporters will be required to report the unique identifier assigned by Nationwide Multi-state Licensing System and Registry (NMLS) for the MLO. As the operating entity of the NMLS,

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[7]The NMLS Unique Identifier (NMLS ID) is the number permanently assigned by the Nationwide Multi-State Licensing System & Registry (NMLS) for each company, branch, and individual that maintains a single account on NMLS. The NMLS ID improves supervision and transparency in the financial services markets by providing regulators, the industry and the public with a tool that tracks companies and individuals across state lines and over time.

[8]https://www.fanniemae.com/content/faq/mortgage-loan-delivery-requirements-faqs.pdf
http://www.freddiemac.com/singlefamily/sell/loan_level_faq.html
http://portal.hud.gov/hudportal/documents/huddoc?id=11-04ml.pdf

CSBS and state regulators agree that this will strengthen the transparency of the residential mortgage market. This data will be provided on the TILA-RESPA integrated disclosure form starting in August, 2015, and therefore, it should be readily accessible by reporters. This number will remain constant, and this is one area, among others, where the Bureau could take steps to streamline and automate the reporting of this information between loan documents required by Regulation Z and HMDA.

Legal Entity Identifier (LEI)—The Bureau is proposing to require FIs to provide a globally accepted Legal Entity Identifier to replace the HMDA Reporters Identification Number (HMDA RID). The Bureau's proposal specifies that the LEI must be issued by (i) a utility endorsed by the LEI's Regulatory Oversight Committee (ROC), or (ii) a utility endorsed or governed by the Global LEI foundation. Through the use of a LEI, HMDA users will gain the ability to link data to its corporate family. State regulators are supportive of efforts to implement a global LEI framework.

However, state regulators do not believe that it is appropriate to require FI's to purchase an LEI for HMDA reporting purposes due to the fact that all depository and non-depository institutions that report HMDA data possess a NMLS ID[9]. The NMLS ID would be a better alternative to the LEI for HMDA reporting because it is credentialed by state licensing and federal registration, reviewed annually and linked to information about the company in NMLS and on NMLS Consumer Access. The use of the NMLS ID as the LEI would relieve industry, especially small companies that will be captured under the proposed reduced reporting threshold, from any additional cost or burden in obtaining or maintaining a LEI.

Property Location Reporting—The proposal notes that the Bureau is considering the creation of a system where a FI would report only the postal address and the Bureau would provide the FI with the census tract, county and MSA information. Given the high potential for reporting errors in geocoded fields, state regulators recommend that the Bureau consider waiting to implement the Dodd-Frank requirement to report parcel number until these operational changes are made. Waiting to implement this requirement will also allow the Bureau time to evaluate potential privacy concerns associated with the collection and disclosure of this data.

Credit Scores—Dodd-Frank amended HMDA to allow for the Bureau to collect information on credit scores in such form as the Bureau prescribes. The Bureau should clarify expectations for this reporting requirement. Specifically, clarity would be appreciated on what an FI should report when there is no credit score present or when the FI utilizes alternative credit scores.

Debt to Income Ratio (DTI) and Loan to Value (LTV) Ratio—Without a fixed definition for the calculation of both ratios, it will be impossible to compare data in these fields. State regulators ask the Bureau to provide a specific CFPB sanctioned calculation for both ratios, such as those included in Appendix Q of the Ability to Repay rule.

[9] 12 CFR 1007.101(c)(2). *De Minimis exception.*(i) This part and the requirements of 12 U.S.C. 5103 (a)(1)(A) and (2) of the S.A.F.E Act do not apply to any employee of a national bank, member bank, insured state nonmember bank, savings association, Farm Credit System institution, or credit union who has never been registered or licensed through the [NMLS] Registry as a mortgage loan originator if during the past 12 months the employee acted as a mortgage loan originator for 5 or fewer residential mortgages.

When calculating LTV—if a HELOC is involved—the entire amount of the line of credit (maximum approved) should be used instead of only the outstanding amount. The full approval amount for the HELOC must be taken into account in the LTV calculation regardless of whether or not the loan has been drawn upon.

More Clarity Needed on Error Tolerance and Enforcement

CFPB Bulletin 2013-11 provided guidance on how HMDA reporters should structure compliance management systems. The Bulletin also discussed factors that the CFPB may consider when evaluating whether to pursue a public HMDA enforcement action. In addition, the Bureau released guidelines and schedules for the resubmission of HMDA data for instances in which the number of errors in a sample exceeds a certain threshold. The guidelines provide clear thresholds for institutions that report in excess of 100,000 entries on their Loan Application Register (LAR). However, smaller FIs continue to experience confusion around resubmission thresholds and the CFPB's tolerance for HMDA reporting errors.

Many of the new data points, including those that involve geocoding, present a high risk of error for reporters. Small entity representatives have expressed concern that the adoption of new data points would make their FIs 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. State regulators ask the Bureau to clarify compliance expectations and address operational challenges stemming from the reporting of the new data points. A more precise definition of what constitutes an error would be helpful, especially for smaller reporters.

State Efforts in Mortgage Reporting

The SAFE Act required NMLS to develop a quarterly mortgage call report (MCR) for submission by all licensed entities on the NMLS system. The first MCR forms were modeled on portions of HMDA. The main goal of the NMLS MCR is to provide timely, comprehensive, and uniform information concerning the financial condition of licensed mortgage companies, their mortgage loan activities, and the production information of their mortgage loan originators. The MCR was implemented through NMLS in May 2011, and the report was modified in 2012 based on initial input from industry and state regulators. Additional public comments were invited in April and October 2013. Access to quarterly mortgage data through the MCR has allowed state regulators to more effectively supervise licensees, determine examination schedules, and monitor compliance with state and federal laws.

State regulators, through CSBS, have actively engaged with the Bureau regarding proposed changes to the MCR. With the goal of achieving standard reporting and common terminology, the states have held off of on proposing changes to multiple areas of the report to allow for the Bureau to propose and clarify reporting requirements under HMDA. However, it is important to note that the Bureau's proposed definition of "application" will not provide state regulators with the information they need to effectively monitor their supervised entities. The different definitions of "application" within Regulation X and Regulation C may present challenges when collecting loan origination information and comparing the different reporting requirements and interpretations of what constitutes an "application" for state, federal, and MCR purposes. To avoid imposing duplicative reporting requirements on FIs, state regulators ask that the Bureau continue to coordinate with them as changes to both HMDA and the MCR move forward.

In conclusion, state regulators encourage the Bureau to reconsider the necessity and benefit of their proposed loan threshold against the backdrop of ever increasing regulatory burden for the smallest financial institutions. The benefit of having added transaction types and additional new data fields may not be justifiable when considering the increased expense, personnel, time, and resources incurred by smaller institutions. Due to these reasons, as referenced above, state regulators are recommending a higher reporting threshold and also a tiered approach.

Given the magnitude of the proposed changes to HMDA, state regulators ask the Bureau to provide at least a full calendar year to allow for HMDA compliance systems to be adjusted before the rule takes effect. State regulators appreciate the opportunity to comment on these proposed amendments and look forward to continued collaboration on mortgage reporting initiatives.

Sincerely,

John W. Ryan
President & CEO