October 28, 2014

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

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

Dear Ms. Jackson:

The American Financial Services Association ("AFSA")[1] welcomes the opportunity to comment on the Consumer Financial Protection Bureau's ("CFPB" or "Bureau") proposed rule ("Proposed Rule") amending 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 Act ("Dodd-Frank Act"). The CFPB also proposes to add several new reporting requirements and to clarify several existing requirements.

In the mid-2000s, many of our members originated home mortgages. As the mortgage crisis grew, some of our members stopped originating mortgages and shifted their business to installment loans, automobile lending, and other financial products. As the regulatory burden increased following the passage of the Dodd-Frank Act, more of our members left the mortgage market. As of this time, a small percentage of our members still make mortgage loans, and we fear that that number will continue to dwindle as the regulatory burden increases.

Our typical member originates real estate loans that are of short duration, usually maturing within five years, although some loans may mature between two and ten years. The loans are also smaller in size, typically between $5,000 and $10,000, although some loans may be as high as $50,000 or more. Our members originate loans to customers that depository institutions are not able to service, and fill a niche position in the industry. The loans are made for purchase or refinance, and are secured by primary residences, rental homes, second homes, raw land, and mobile homes. Our members are located throughout the country and service urban and rural communities, sophisticated customers, and those who do not yet have e-mail accounts.

AFSA recognizes the importance of ensuring that all people have equal access to credit. As such, we support the purposes of HMDA reporting about lending practices. Enacted in 1975, HMDA

[1] AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers. Our membership ranges from some of the largest participants in the consumer financial services space to some of the smallest.

sought to determine if potentially discriminatory practices in the area of mortgage lending were occurring. HMDA data is intended to provide information to address fair-lending concerns about loan pricing and to gain a better understanding of the mortgage market.

AFSA believes that requiring substantial additional data to be collected will not only prevent meeting these goals, but on the contrary, will harm consumers. There will be little benefit, significant cost, and serious privacy issues associated with requiring non-depository institutions who make only a very few loans a year to report data and for institutions to report items such as the borrower's debt-to-income ratio and the combined loan-to-value ratio. Thus, we ask that the CFPB increase the proposed threshold for reporting and not add any reporting requirements that are not mandated by the Dodd-Frank Act.

I. Reporting Threshold

Under the Proposed Rule, a non-depository institution would have to report HMDA data if it originated at least 25 closed-end mortgage loans in the prior year and had a home or branch office in an MSA. This is a dramatic change for small non-depository institutions. We recommend *increasing* the reporting threshold to those entities that originate 250 or more closed-end mortgage loans in the prior year.

The cost to collect and report the data would be substantial for small non-depository institutions. Collection and reporting require tremendous time and resources. In order to collect, compile, organize, and clean the data, these institutions would have to train staff, build software and hardware systems, create controls, etc. Institutions must also analyze the data themselves in order to answer any questions.

These institutions, many with no or only one in-house attorney, are already working hard to come into compliance with the new regulations, such as the new Truth in Lending Act / Real Estate Settlement Procedures Act integrated disclosure rule. Mortgage lenders, both small and large, have also spent the last few years working on other new mortgage rules, such as the new mortgage servicing rules, ability to repay and qualified mortgage rule, loan originator compensation rule, and the significant changes to the Home Ownership and Equity Protection Act related rules that took effect in January 2014. Rather than trying to keep up with costs of compliance, small non-depository institutions may decide to exit the mortgage market altogether. In fact, as stated above, many already have.

Many small non-depository institutions operate in small towns where credit options are limited. One lender deciding that it is not able to continue to offer mortgage loans could, therefore, have a large effect on a small community.

In the Proposed Rule, the CFPB stated: "[T]he Bureau is seeking ways to reduce burden without impairing the quality of HMDA data." 79 Fed. Reg. 51753 (Aug. 29, 2014). The Bureau stated: "The Bureau believes that eliminating reporting by lower-volume depository institutions may be a way to reduce burden without impacting the ability of HMDA to achieve its purposes. Cumulatively, the loans made by depository institutions that originated fewer than 25 covered loans account for a very small percentage of all loans reported under HMDA. For example, the loans reported by depository institutions that originated fewer than 25 covered loans, excluding open-end lines of credit, *accounted for less than one percent of originations* reported by depository institutions for the 2012 calendar year." *Id*. at 51753-51754, italics added. Increasing the threshold to 250 loans, as shown in the following paragraphs, still covers between 95 and 98 percent of all loan originations, and more than 98 percent of all loans made by non-depository institutions.

In its study of the 2012 HMDA data, the Federal Reserve reported that "56 percent of the depository institutions (banking institutions and credit unions) covered by HMDA had assets under $250 million, and 71 percent of them reported information on fewer than 100 loans."[2]

According to the analysis by the Federal Reserve, of the 9,783,964 loans reported in the HMDA data by 7345 home lenders (Depository and Non-Depository), 2239 reported fewer than 50 loans, 1087 reported between 50 and 99 loan, and 1300 reported between 100 and 249 loans.[3]

If we assume that the home lenders each made the highest number of loans in their cohort [49 loans for the 0-49; 99 for the 50-99; and 249 for the 100-249] then the smallest lenders made 541,024 loans or 5.5% of the total reported.[4] If the midpoint of each cohort were used, then the smallest home lenders made 270,513 of the 9,783,964 reported home loans, or 2.8%. Excluding these smallest lenders still captures at least 94.5-97.2% of all reported home loans.

If we look only at the numbers for Non-Depository Institutions (Mortgage Companies), the results are more dramatic. Here, 104 home lenders reported making less than 50 loans, 45 reported making between 50 and 99 home loans, 88 reported making between 100 and 249 home loans.[5] If we estimate, conservatively, that the home lenders in each cohort made the maximum number of loans (49, 99, 249, 499, and 999), and the home lenders in the largest cohort made 1000 loans each, then the three smallest categories of home lenders made 31,463[6] of the 730,696[7] estimated home loans, or 4.3% of all reported loans. Note that this percentage is an overstatement because all home lenders in each cohort are not at the top, and each of the largest 497 home lenders originated more than 1,000 loan each, some in the tens or hundreds of thousands of loans, or more. If we assume that the 497 largest home lenders originated 2,000 loans each, then the three smallest categories of home lenders made 31,463 of the 1,227,696 estimated home loans, or 2.6% of all reported loans. Furthermore, if we make the not-unreasonable assumption that the 497 largest lenders averaged 3,000 loans each, then the three smallest categories of home lenders made less than 1.8% of all reported loans.[8]

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[2] "Mortgage Market Conditions and Borrower Outcomes: Evidence from the 2012 HMDA Data and Matched HMDA–Credit Record Data," Federal Reserve Bulletin (Vol. 99, No. 4, Nov. 2013) p. 5. See http://www.federalreserve.gov/pubs/bulletin/2013/pdf/2012_hmda.pdf.

[3] As shown in table 2, 956 home lenders reported between 250 and 499 loans, 657 home lenders reported between 500 and 999 loans, and 1106 home lenders reported making more than 1000 loans.

[4] 2239 x 49 (109,711) + 1087 x 99 (107,613) + 1300 x 249 (323,700) = 541,024.

[5] Among mortgage companies, 129 reported making between 250 and 499 home loans, 138 reported making between 500 and 999 home loans, and 497 reported making 1000 or more home loans.

[6] 104 x 49 (5,096) + 45 x 99 (4,455) + 88 x 249 (21,912) = 31,463.

[7] 129 x 499 (64,371) + 138 x 999 (137,862) + 497 x 1,000 (497,000) = 699,233. The total is 730, 696 (31,463 + 699,233

[8] Of course, as the number of loans made by the largest home lenders increases, the percentage of loans made by the three smallest cohorts decreases.

From the above, it is easy to see that an increased reporting threshold will not impact the Bureau's ability to examine data for trends as the vast majority of home loans are included in the data. Furthermore, the reduced burden on smaller originators will permit them to stay in the market and continue to serve their communities. We also note that examining the data produced by smaller home lenders will not provide an accurate "fair lending" picture as the numbers may be too small to be statistically significant.

Finally, we note that the CFPB understands the immense burden some of its regulations impose on smaller home lenders and has taken that into account in its rulemaking. For example, the Bureau provided a small servicer exemption from some of the rules for those servicers who service 5,000 mortgage loans or less. Similarly, the small creditor status under the Ability to Repay and Qualified Mortgage rules applies to small creditors who originate less than 500 loans. The "small" status under these two rules is significantly higher than the 25-loan limit proposed under the amendments to Regulation C. A threshold of 5,000 loans, or even 500 loans, both above the 250-loan limit we are recommending, would help the smaller home lender by avoiding the very significant upfront programming costs, as well as recurring training, collection, and reporting costs, all without impacting the data's efficacy.

II. Increased Data Collection Provides Little Benefit

The Dodd-Frank Act requires lenders to report several new data points including the borrower's age, the borrower's credit score, the property address, and the property value. These new data points will provide a plethora of new information to the CFPB. The additional data points that the CFPB has proposed adding using its discretionary authority are unnecessary.

The price of a mortgage is based on the economic risk involved in making the loan and competition between lenders, not on racial or ethnic considerations. The Equal Credit Opportunity Act ("ECOA") and Regulation B contain the necessary restrictions and enforcement tools to end discrimination. Access to affordable credit will not be enhanced by requiring additional HMDA data, particularly from the smallest originators. To the contrary, increasing HMDA data collection obligations may decrease the credit options available and increase the cost of credit for consumers.

Increasing data collection under HMDA would provide little benefit because there is scant statistical evidence to demonstrate that race or gender plays a role in access to or the cost of credit. Rather, studies suggest credit scores and related risk factors determine access to and the cost of credit. The Federal Reserve conducted a study to determine the relationship between credit scores and actual credit losses and how these relationships vary for groups protected under ECOA.[9] The Board concluded that credit scores accurately predict credit risk for the population as a whole and for all major demographic groups.

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[9] The Federal Reserve Board, "Report to Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit," August 2007. http://www.federalreserve.gov/boarddocs/rptcongress/creditscore/. p. S-1.

The Board also published a report in one of its Bulletins on HMDA and its application in fair lending enforcement. The report explained how, with few exceptions, controlling for borrower-related factors reduces the differences among racial and ethnic groups.[10]

Finally, financial institutions should not be required to collect or obtain information that they do not use in their lending operations, except to the extent the information is truly necessary to accomplish HMDA's purposes. HMDA data should be as helpful as reasonably possible, consistent with protecting the financial privacy of borrowers and loan applicants. Therefore, the CFPB should not add any reporting requirements that are not mandated by the Dodd-Frank Act.

III. Reverse Mortgages

We specifically urge the CFPB not to require lenders to report reverse mortgages pursuant to Regulation C. Reverse mortgages are not home mortgage loans within the purview of HMDA and reporting them is inconsistent with the law's intent. Like home equity lines of credit, reverse mortgage loans are generally used for purposes that are unrelated to housing finance. Moreover, the data collected on these loans will not provide insight into the objectives that HMDA serves because the data points for reverse mortgages fundamentally differ from those of traditional, forward mortgages. An attempt to force reverse mortgage data into current HMDA data sets would only produce a deficient comparison resulting in an inaccurate reflection of what transpires during the reverse mortgage loan origination process. Finally, lenders are exiting the reverse mortgage market due to regulatory demands and uncertainties with these products.

While we understand that the CFPB has been reviewing the reverse mortgage market, we do not believe that requiring reporting for these loans is consistent with HMDA's purpose. We also are particularly concerned about the unintended consequences of coverage for this market and the consumers who may be served by these products. Many smaller lenders report that the constraints and regulatory burdens have driven them from this market, and added data collection burdens and complex reporting regimes will do nothing to reverse the trend; if anything, it will help continue it and lead to a further constriction of the credit market.

IV. Protecting Consumer Privacy

The safety and privacy of our members' customers' financial information is of paramount importance to us. The Proposed Rule discusses the implications of disclosing additional HMDA data for applicant and borrower privacy. We agree with the need to protect the privacy of loan applicants and borrowers. However, technology has advanced since HMDA was enacted, so that new privacy risks now exist. Increasing the scope of HMDA reporting would increase the potential privacy risks.

The Proposed Rule would for now retain the existing requirement under § 1003.5(c) to release only certain data points on the modified loan application register; however, consideration is being given to privacy risks and benefits of publicly disclosing all data points on a publicly

[10] Avery, Robert B., Glenn B. Canner, and Robert E. Cook, "New Information Reported Under HMDA and Its Application in Fair Lending Enforcement." Federal Reserve Bulletin, Summer 2005. http://www.federalreserve.gov/pubs/bulletin/2005/summer05_hmda.pdf

available website. The expansive new data elements include information that would allow anyone to work backwards and discover the identity of our member's customers along with a detailed picture of their financial state, thereby resulting in an unjustifiable intrusion into our customer's privacy.

For example, a Federal Reserve Bulletin stated, "More than 90 percent of the loan records in a given year's HMDA data are unique—that is, an individual lender reported only one loan in a given census tract for a specific loan amount. These unique records can be matched with other publicly available information, such as property deed records, to determine the identities of individual borrowers."[11] The Bulletin adds, "With such a match, any data item in the HMDA database, such as loan pricing, becomes publicly known."[12]

Additionally, George Washington University Professor Anthony M. Yezer testified before Congress about how easy it is to identify a borrower using the information from the HMDA[13] reports.

> "Given that HMDA reports the year, census tract, mortgage amount, and mortgagee and that local property report the transaction year, property address, price, mortgagee, and name of the owner, it is possible to identify the precise individual whose mortgage appears in HMDA data unless a lender is very active in a particular census tract. I have done this matching in my own research and found that I can identify up to 60% of mortgagors. Put another way, there is no privacy protection in HMDA data for those whose mortgagee was a very active lender in the area!
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> Second, someone should consider the privacy issues inherent in HMDA data, particularly when the sample is extended to cover smaller lenders. I suspect that members of Congress and the general public would not be happy to learn that it is possible to match their individual names with the information revealed in HMDA records!"[14]

AFSA is concerned about the improper use of this personal information by some groups to unscrupulously market to or identify those consumers for improper purposes. Also, it is likely that consumers will object to detailed personal information being made public, even with controls in place, and see this as a violation of their privacy. Because of these privacy concerns, we strongly urge the CFPB to not make the new data proposed to be collected publicly available.

V. Increased Costs to Consumers

The costs to collect, compile, organize, and clean the HMDA data will inevitably be passed along, at least in part, to consumers. Based on the Federal Reserve's credit score study, we would expect the data to reveal that consumers in some protected categories may, on average, pay more

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[11] *Ibid.,* p. 367
[12] *Ibid.,* p. 367
[13] 12 U.S.C § 2801.
[14] Yezer, Anthony M. "Subprime Lending: Defining the Market and its Customers," testimony, March 30, 2004, before the U.S. House, Committee on Financial Services, Subcommittee on Housing and Community Opportunity and Subcommittee on Financial Institutions and Consumer Credit.
http://democrats financialservices house.gov/media/pdf/033004ay.pdf

for credit, but the reasons for this will not be based on anything other than the risk-based decisioning systems. Thus, there may be little additional information gained for the increased costs to both lenders and consumers.

VI. Conclusion

For the foregoing reasons, AFSA believes that the proposed changes will cause more harm to consumers than any benefit that may be derived. Lowering the threshold will only increase burdens on smaller mortgage lenders, without significant effect on the goal of HMDA. Additionally, the increased data collection has no real benefit and only increases the risk of violations of privacy.

We look forward to working with the CFPB on this Proposed Rule. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

Bill Himpler

Bill Himpler
Executive Vice President
American Financial Services Association