October 29, 2014

Via Electronic Delivery to FederalRegisterComments@cfpb.gov

Ms. Monica Jackson
Consumer Financial Protection Bureau
1700 G Street NW
Washington, D.C. 20552

Re: **Docket No. CFPB-2014-0019**; **RIN 3170-AA10**
Home Mortgage Disclosure (Regulation C) Proposed Rule With Request For Public Comment
79 Federal Register 51731 (August 29, 2014)

Dear Ms. Jackson:

The Illinois Bankers Association (the "IBA")[1] is writing on behalf of its members to comment on the proposed rule amending Regulation C to implement the Dodd-Frank amendments to the Home Mortgage Disclosure Act ("HMDA").

We appreciate your agency's efforts to clarify certain areas of Regulation C that have been known to cause inadvertent errors and confusion. We respectfully disagree with the proposed expansion of HMDA reporting to include all business loans secured by a dwelling, and with a number of the thirty-seven proposed new data fields that are inappropriate for HMDA reporting purposes and would cause substantial compliance problems for our members. While not an exhaustive list, some of our concerns are outlined below.

Extending HMDA Reporting to All Business Loans Secured by a Dwelling

The proposal would vastly increase HMDA reporting by requiring lenders to report on all business loans secured by a dwelling. Today, lenders provide HMDA reports on business-related loans only in the comparatively rare instances when a commercial loan is made to purchase, improve or refinance a dwelling. This represents a minuscule percentage of HMDA-reported loans. *See*, *e.g.*, Federal Reserve Bulletin Vol. 99, No. 4 (November 2013) at p. 20 (such loans accounted for only 0.02% of all HMDA-reported loans in 2012). Meanwhile, small business loans routinely rely on a business owner's dwelling as supplemental collateral, required by lenders simply out of an abundance of caution. To appreciate the scale of the proposed expansion of HMDA reporting in this regard, consider that financial institutions held over one-half trillion dollars in small business loans under one million dollars in 2012 alone. *See Small Business Lending in the United States 2012*, Office of Advocacy, U.S. Small Business Administration (July 2013) at pp. 5 - 6.

[1] The Illinois Bankers Association is the largest financial services trade association in Illinois dedicated to creating a positive business climate that benefits the entire banking industry and the communities we serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 20% of IBA members are community banks with less than $50 million in assets, and over 70% of IBA members are community banks with less than $250 million in assets. Collectively, the IBA represents nearly 90 percent of the assets of the Illinois banking industry, which employs more than 100,000 men and women in over 5,000 offices across the state.

194 East Delaware Place • Suite 500 • Chicago, IL 60611 • 312-347-3400
524 South Second Street • Suite 600 • Springfield, IL 62701 • 217-789-9340

The proposed expansion of Regulation C to cover all business loans secured by dwellings would create substantial compliance issues that are in no way justified by the HMDA's three stated purposes, which are to: (1) determine whether financial institutions are meeting their communities' housing needs, (2) assist public officials in determining where to make public sector investments, and (3) identify possible discrimination and enforce anti-discrimination statutes. 12 CFR 1003.1(b). The HMDA explicitly focuses on ascertaining whether lenders are meeting the housing needs of their communities and are not discriminating in residential lending – objectives that have nothing to do with most business lending. The Dodd-Frank Act granted the CFPB authority to collect small business data under the Equal Credit Opportunity Act, but not in the context of the HMDA, and for good reason. Almost all business lending is outside the purview of the HMDA.

The inclusion of business loan data in HMDA reports would obscure the housing data collected and skew it in ways not contemplated by the HMDA. Most of the Loan Application Register ("LAR") fields are inapplicable or illogical for business loans. Businesses have no ethnicity, race, sex, or other personal characteristics, and the HOEPA and Ability-to-Repay ("ATR") rules are not applicable to business lending. Many other data fields are not appropriate because business lending relies on different information and underwriting standards than consumer lending. For example, the debt-to-income ratio data field is inapplicable, since most commercial loan underwriting uses a debt service coverage ratio, not a debt-to-income ratio.

Another ill-fitting example is the property value data field. As noted above, small business loans typically include a business owner's dwelling as supplemental collateral; the lender is not required to and usually does not obtain an appraisal or valuation of the dwelling. Many SBA loans require the dwellings of business owners to be secured as supplemental collateral, with no appraisal or valuation, as well. Not only would it be impracticable to collect property value data for these business loans, requiring the reporting of such data would reduce credit availability for the small and start-up businesses that need it most. Reporting a business loan on a HMDA LAR makes the loan ineligible for credit under the Community Reinvestment Act (unless it is secured by a multifamily dwelling), which applied on a large scale would severely disincentivize lending to small and start-up businesses.

Burdensome Data Fields

Several of the proposed LAR fields would create new and unnecessary compliance costs by requiring financial institutions to perform complex analyses and tests that are outside the scope of Regulation C. Two examples are the qualified mortgage ("QM") identifier and the points and fees data fields. These data fields would require financial institutions to perform complex QM analyses and points and fees calculations for every loan that is covered by the ATR rules, even though the ATR rules themselves do not require these analyses and calculations.

Many financial institutions do not need to perform a QM analysis or points and fees calculation for innumerable loans, but the proposal would force them to perform these analyses and calculations simply for purposes of completing their HMDA LARs. For example, some financial institutions choose to rely on the ATR analysis without taking the additional time and expense to perform a QM analysis, which consists of five separate QM tests. Similarly, the points and fees calculation is not required if an institution chooses to make non-QM loans under the ATR analysis. Also, a financial institution need not perform the points and fees calculation if a loan is covered by HOEPA under the interest rate or prepayment penalty tests, making the points and fees test irrelevant.

Requiring the QM analysis and points and fees calculations would fundamentally alter the ATR and HOEPA rules, which do not require these steps in the situations described above. As recognized in the *Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule*, "there are several ways to satisfy the Ability-to-Repay Rule, including making responsibly underwritten loans that are not Qualified Mortgages." A requirement to report the QM status of every loan subject to the ATR rule would discourage lenders from making non-QM loans, which provide credit to many worthy borrowers with nontraditional income sources or less than pristine credit.

The significant costs of performing these analyses and the risk of impeding non-QM lending are not justified by the HMDA's goals.

Unworkable Data Fields

Several of the proposed data fields are unworkable, as they involve concepts and terms that do not have uniform industry definitions and could result in misleading or confusing data added to the HMDA data pool. Examples of these data fields are the cash-out refinancing indicator, the debt-to-income ("DTI") ratio, the rate spread, and the first draw for open-end loans. As noted in the Federal Register notice for this proposal, each of these terms can be defined differently — whether by various financial institutions, different departments of the same institutions, secondary market investors, loan processing software companies, and others. Data drawn from a hodgepodge of definitions would be manifestly unusable for any purpose.

Alternatively, if Regulation C were to uniformly define these terms for HMDA reporting purposes, industry participants would be forced to adopt the new definitions. Beyond associated costs like updating software, training employees and monitoring for compliance, uniform definitions of these terms would require industry participants to abandon their own definitions with unintended consequences. For example, many secondary market investors impose stricter DTI requirements than those imposed by regulation, due to lower risk appetites. Enforcing a uniform definition of this term would ignore their specialized needs and hamper their market participation.

In addition, adopting uniform definitions of these data fields would lead to faulty assumptions. In the case of the cash-out refinancing indicator, for example, it would be problematic to try and impose a definition that distinguishes high-risk cash-out refinancings from low-risk cash-out refinancings. A low-risk cash-out refinancing can provide access to lower interest rates for needy borrowers by covering the closing costs that otherwise might make refinancing unfeasible. Any definition that draws a line at a certain dollar amount or percentage of the loan would fail to distinguish this appropriate use of cash-out refinancing from high-risk uses, discouraging lenders from providing a valuable source of financial assistance.

Other proposed fields also are susceptible to misinterpretation and confusion, including the rate spread and the first draw amount for open-end loans. The rate spread data field ostensibly would be used as a fair lending risk indicator, but rate spreads are misleading if viewed out of context. Some loans may have higher rate spreads but in return offer special features, such as lower down payment requirements or the waiver of an institution's private mortgage insurance requirements. Similarly, the first draw amount likely would be used as a fair lending risk indicator, but this data could be misleading because borrowers use a first draw for many different purposes. Often a first draw simply covers closing costs, but first draws also are used to qualify for a promotional interest rate, in which case the funds are drawn and then repaid the following day.

Instead of requiring banks to report data on concepts that are subject to multiple, specialized definitions, Regulation C should focus on data fields that provide consistent and reliable information, without forcing uniform definitions on a nonuniform industry.

Fair and Reasonable Error Thresholds

Given the greatly expanded proposed scope of Regulation C, we respectfully urge the CFPB to adopt fair and reasonable error thresholds to ease the concomitant compliance burdens. Several of the new data fields greatly increase the risk of minor technical errors, but those errors would not degrade the quality of the HMDA data collected. Examples include the borrower's age, which has to be calculated using the borrower's birthday as of the date of application, the property address, and the precise loan amount (instead a rounded loan amount). All of these data fields are readily susceptible to minor calculation or transposition errors in data entry. Adding to this likelihood are the proposal's inconsistent and complicated rounding standards. For example, the rate spread data field requires rounding to the nearest thousandth, the DTI data field requires rounding up to the next hundredth, the loan term field requires rounding down to the nearest month, and the combined loan-to-value ratio data field requires truncation after two decimal places.

We understand that maintaining the high quality of HMDA data is necessary to achieve the HMDA's goals. However, given the huge increase in the types of loans to be reported and the number and complexity of the proposed data fields in the proposal, error thresholds must be fair and reasonable. Currently, most regulators impose a 5% error threshold within each field identified as a "key" data field, meaning that a data resubmission is triggered if 5% or more of the entries in a particular key field contain errors. A 10% error threshold applies across all loan files, meaning that a data resubmission is triggered if 10% or more of the loan files have errors in any combination of the key fields. With the addition of thirty-seven new data fields, the margin for error would shrink demonstrably, particularly for data points identified as key fields. We urge the CFPB to adopt a definition of "error" that excludes minor inaccuracies and establishes uniform error thresholds that recognize and accommodate the amount and complexity of the HMDA data to be reported under the final rule.

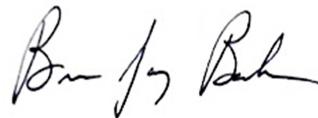
Conclusion

We respectfully urge the CFPB to review the proposed new data fields in light of the concerns that we and other commentators have identified and to exercise its discretion to minimize the burdens of added HMDA reporting. The CFPB has considerable flexibility, even while Dodd-Frank mandates the inclusion of certain data in the proposal. Some of the proposed data fields fall squarely within the CFPB's discretion, and others are not mandated by Dodd-Frank — nor is the expansion of HMDA reporting to include all business loans secured by a dwelling.

Many of the new requirements in this proposal would cause financial institutions in Illinois to reconsider residential lending altogether, particularly following the new and complex mortgage servicing requirements and the complete overhaul of loan disclosures, not to mention the outpouring of new rules ranging from new flood insurance requirements to the new customer due diligence requirements proposed by FinCEN. The way to help Illinois' financial institutions meet the HMDA goal of providing more housing credit to their communities is by providing relief from unnecessary regulatory burdens wherever possible, not by increasing those burdens.

Thank you for your consideration of our comments, and please let us know if you have any questions.

Very truly yours,



Bruce Jay Baker
Executive Vice President
and General Counsel