

October 27, 2014

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20006-4702

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20006-4702

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

Dear Director Cordray:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the proposed rule on *Home Mortgage Disclosure (Regulation C)*¹. Advocacy is concerned that the rule as proposed imposes an undue burden on small businesses, and encourages the Consumer Financial Protection Bureau (CFPB) to consider less burdensome alternatives as suggested by small entities in the home mortgage industry.

Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA,² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial

¹ 79 *Fed. Reg.* 51732, August 29, 2014.

² 5 U.S.C. § 601 et seq.

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

In July 2010, the United States Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Act or Dodd-Frank).⁶ Section 1011 of the Act establishes the CFPB to supervise certain activities of financial institutions. Section 1100G, entitled "Small Business Fairness and Regulatory Transparency," amends 5 U.S.C. § 609(d), to require the CFPB to comply with the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process, making it the third agency with this responsibility, joining EPA and OSHA.

The SBREFA panel process requires the CFPB to conduct special outreach efforts to ensure that small entity views are carefully considered prior to the issuance of a proposed rule, if the rule is expected to have a significant economic impact on a substantial number of small entities. This outreach is accomplished through the work of small business advocacy review panels consisting of a representative or representatives from the rulemaking agency, the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) and the Chief Counsel for the Office of Advocacy. The panel solicits information and advice from small entity representatives (SERs), who are individuals who represent small entities affected by the proposal. SERs help the panel better understand the ramifications of the proposed rule. The product of a SBREFA panel's work is its panel report on the regulatory proposal under review. The CFPB convened a SBREFA panel for this rulemaking.

The Office of Advocacy performs outreach through roundtables, conference calls and other means to develop its position on important issues such as this one. Advocacy held four conference calls with small entities on this issue on October 15, 2014.

The Rulemaking

In 1975, Congress enacted the Home Mortgage Disclosure Act (HMDA) as part of an initiative both to counter redlining and the effects of disinvestment in urban neighborhoods, and to encourage reinvestment in the nation's cities. HMDA requires lenders who meet certain coverage tests to report detailed information to their federal supervisory agencies about mortgage applications and loans at the transaction level. HMDA provides the public with information about how financial institutions are serving the housing needs of their communities. This information helps to promote access to fair credit in the housing market.

Section 1094 of the Dodd-Frank Act amended HMDA to improve the utility of the HMDA data and revise Federal agency rulemaking and enforcement authorities. The CFPB views

⁴ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁵ Id.

⁶ Public Law 111-203.

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.

On August 29, 2014, the CFPB published in the Federal Register a proposed rule amending Regulation C to implement the Dodd-Frank amendments to the Home Mortgage Disclosure Act. The CFPB is proposing several changes to revise the tests for determining which financial institutions and housing-related credit transactions are covered under HMDA. The CFPB also is proposing to require financial institutions to report new data points identified in the Dodd-Frank Act, as well as other data points that the CFPB believes may be necessary to carry out the purposes of HMDA. Further, the CFPB is proposing to better align the requirements of Regulation C to existing industry standards where practicable. The CFPB is proposing that reporting institutions may direct members of the public to a publicly available website to obtain the data. The CFPB is also proposing several changes to clarify and provide additional guidance on existing requirements of Regulation C that financial institutions and other stakeholders have identified as confusing or unclear.⁷

The Proposed Rule Includes Transactions Not Currently Covered By Regulation C

In the proposed rule, the CFPB is proposing to expand the types of transactions subject to Regulation C. Currently, Regulation C requires financial institutions to report home purchase, home improvement, and refinancing loans. Reverse mortgages that are home purchase loans, home improvement loans, or refinancings are reported under Regulation C, but they are not separately identified and many data points do not currently account for the features of reverse mortgages. Home-equity lines of credit may be reported at the financial institutions' option, but are not required to be reported.⁸

Under the proposed rule, financial institutions would be required to report all closed-end loans, open-end lines of credit, and reverse mortgages secured by dwellings. Unsecured home improvement loans would not be reported. Certain types of loans would continue to be excluded from Regulation C requirements, including loans on unimproved land and temporary financing. Reverse mortgages and open-end lines of credit would be identified as such to allow for differentiation from other loan types. The proposal eliminates the requirement to report unsecured home improvement loans.⁹

Advocacy is pleased that the CFPB considered the SERs comments¹⁰ regarding home improvement loans. However, Advocacy is concerned about the additional types of transactions that are in the proposed rule. Including these additional transactions is burdensome to small

⁷ 79 Fed. Reg. 51732.

⁸ 79 Fed. Reg. at 51733.

⁹ Id.

¹⁰ The SERs stated that stated that home improvement loans are burdensome to report. SERs stated that the amounts of these loans are small and that compliance costs can make the transaction unprofitable. *See, Final Report of the Small Business Review Panel on the CFPB's Proposals Under Consideration for the Home Mortgage Disclosure Act (HMDA) Rulemaking*, April 24, 2014 at page 29.

entities. Further, the additional loan types may put entities over the proposed loan volume threshold that would be under the proposed threshold with the current rules. It is not clear that the CFPB considered this possibility in stating that threshold reduced the burden on small entities. Advocacy encourages the CFPB not to include the additional loan types in the rule.

Loan Volume Threshold

The proposed rule imposes a loan volume threshold of 25 loans, excluding open end lines of credit. Currently, there is no loan volume threshold for depository institutions and a 100 loan threshold for non-depository institutions. The CFPB cites the threshold as a step that it has taken to reduce the economic burden on small entities. Advocacy asserts that the 25 loan volume threshold is too low.

As noted in the panel report, the SERs recommended raising the loan volume threshold 25 originated loans to some higher number. The recommended thresholds ranged from 100 to 500 loans.¹¹ The small entities that participated in Advocacy's conference calls reasserted that the 25 loan volume threshold was too low. They reiterated the thresholds that were recommended at the SERs meeting. Some suggested aligning the HMDA requirements with other small entity thresholds like the one found in the qualified mortgage (QM) rule.¹²

The CFPB's Consideration of Alternatives to the Loan Volume Threshold

Section 603 of the RFA requires agencies to analyze all significant alternatives that accomplish the stated objectives of the applicable statutes and minimize any significant economic impact of the proposed rule on small entities.¹³ In preparing the IRFA, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.¹⁴ Advocacy is concerned about the CFPB's consideration of alternatives.

In this particular rulemaking, the SERs provided the CFPB with alternatives to the 25 loan volume threshold. They were clear that a loan volume threshold of 25 was too low for depository institutions. At the 25 loan volume threshold, the exclusion of depository institutions would result in only 70,000 fewer loan reports being filed, out of the 18,723,000 filed in 2012.¹⁵ In other words, it reduces the number of reports filed by approximately one third of a percent.

For the nondepository institutions, the lower threshold increases the economic burden. This increase in economic burden is particularly troublesome because the additional information garnered may not be statistically significant for HMDA. Indeed, the CFPB states that the inclusion of the additional nondepository institutions would add 30,000 additional records. Those

¹¹ Panel report, page 23.

¹² The QM rule is found in Regulation Z. It exempts financial institutions with assets below \$2 billion (to be adjusted annually for inflation by the Bureau) at the end of the last calendar and the financial institution and its affiliates originated no more than 500 first-lien, closed-end residential mortgages. *See*, 12 CFR §1026.

¹³ 5 USC § 603.

¹⁴ 5 USC § 607.

¹⁵ 79 Fed. Reg. at 51830-51831.

additional records are minuscule considering the 2012 HMDA data. Again, this burdensome change amounts to less than a two tenths of a percent of additional information garnered. Advocacy questions whether an additional two tenths of a percent is statistically significant to the point that it warrants the decrease in the loan volume threshold for the nondepository institutions.

A number of small entities are subject to this burdensome rule. The exemption applies to a reduced number of 1150 entities (1,600 decrease of depository entities-450 increase of nondepository entities). It should be noted that the information provided in the preamble to the proposed rule does not indicate whether all the institutions that are exempt would qualify as small. Assuming all of the exempted entities are small, only 21 percent of the small entities are exempt. The threshold exempts 15 percent of all reporting entities.

It is time-consuming and expensive for a small entity to participate in the SBREFA panel process. Depending on where the small entity's business is located, the representative may need to leave his/her office for 1-3 to travel to Washington, DC and incur travel costs (airfare, lodging, meals, etc.). The SERs must review the materials and perform research to provide the SBREFA panel with data and other forms of meaningful input. After the meeting is over, many of the SERs took the time to submit thoughtful comments and suggest alternatives. Instead of providing a full economic analysis of the possible thresholds (100, 200, 300, etc.) that the SERs suggested, the CFPB merely states:

The uniform standard promotes simplicity and clarity, an objective of the proposal, and was generally favored by the small entity representatives. Many small entity representatives suggested a higher coverage threshold, with recommendations ranging from 100 to 500 loans. The Bureau understands that some burden reduction may result from a threshold higher than 25 loans. However, the Bureau was concerned that a higher threshold would result in the elimination of data that are important in fulfilling the purposes of HMDA. Therefore, the Bureau is proposing a threshold of 25 loans.¹⁶

One of the purposes of the RFA is for agencies to analyze less burdensome alternatives and provide the public with the results of that analysis. Advocacy strongly recommends that the CFPB provide an analysis of the different suggested thresholds and determine at what point the additional information garnered is statistically significant for HMDA purposes. Hopefully, the result will be a higher threshold that is not unduly burdensome to small entities. By providing the information to the public, the CFPB's threshold will not appear to be arbitrary.

Additional Data Fields

Dodd-Frank amended HMDA to require the collection and reporting of several new data points. It also authorizes the CFPB to collect and report other information that the CFPB may require. Advocacy understands that the CFPB must implement the statutorily mandated changes. However, Advocacy is concerned about the additional data fields that are not required by Dodd-Frank.

¹⁶ 79 Fed. Reg. at 51853.

Some have questioned whether the information garnered from the discretionary items will yield information that is relevant to HMDA. As noted in the panel report, most SERs expressed concerns about costs associated with the CFPB's proposals to require reporting of additional data points. Some SERs stated that additional data points would require more employee resources and that smaller financial institutions, particularly those in less populated areas, already struggle to find qualified compliance personnel. A number of SERs stated that the more information that they have to collect, the less time they have to help their customers. In addition, many SERs were concerned about the potential impact on fair lending examinations, asserting that any additional data points would increase the potential for reporting errors that exceed established violation tolerances and for related penalties. To control costs, SERs urged the CFPB to limit the new data points to those expressly required by the Dodd-Frank Act, and to provide clarity and guidance to assure consistency in interpretations among both regulatory agencies responsible for collecting and auditing the data and their examination staff.¹⁷

The conference call participants reiterated those concerns. In addition, they asserted that the additional data collection poised privacy concerns, especially in rural, less populated areas where a few extra fields may provide enough information to identify customers who may not wish to be identified.

As noted above, Advocacy understands that the CFPB must implement the changes that are required by Dodd-Frank. However, the discretionary items are not required. Small entities will incur additional expense to train personnel and make the necessary changes to comply with the additional data collection requirements. Moreover, more data collection increases the chance of error, especially with small entities that enter the data manually, and the possibility of increased compliance issues. Advocacy encourages the CFPB to consider exempting small entities, as defined by the SBA size standards, from the discretionary data collection until the CFPB has had an opportunity to determine whether the additional information furthers the goals of HMDA.

Modified Loan Requests

The CFPB is also seeking comment on whether it should eliminate the requirement that the modified loan application register be made available to the public by smaller institutions. During the SBREFA panel process, the SERs stated that they rarely, if ever, receive requests for their modified loan application registers.¹⁸ The conference call participants reiterated the fact that they do not receive requests for their modified loan application registers.

Advocacy asserts that it is unduly burdensome to require small entities to maintain modified loan application registers when small institutions are not receiving requests for the information. Advocacy encourages the CFPB to eliminate this requirement for small entities.

Conclusion

Over the past few years, small entities in this industry have undergone numerous changes. In this particular rulemaking, Advocacy encourages the CFPB to consider less burdensome alternatives.

¹⁷ Panel report page 25.

¹⁸ 79 Fed. Reg. 51853.

A higher loan volume threshold may exempt more small entities while still providing the agency with sufficient information to meet the statutory goals of HMDA.

Advocacy recognizes that some of the changes are statutorily mandated. However, those changes are costly and time consuming for small entities. The small entities will need to upgrade their systems, train personnel and possibly hire additional personnel. Placing them in a rushed situation may lead to errors and compliance issues. Advocacy encourages the CFPB to provide small entities with sufficient time to make the necessary changes. For the discretionary changes, Advocacy encourages the CFPB to exempt small entities until the CFPB has had an opportunity to review the data and determine if the additional data is necessary to meet the intent of HMDA.

Advocacy encourages the CFPB to give full consideration to the concerns raised by small entities and their trade associations regarding the proposed rule in order to develop a solution that reaches the agency's goals without being unduly burdensome on small entities. Advocacy is available to assist the CFPB in this task.

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy

/s/

Jennifer A. Smith
Assistant Chief Counsel
For Economic Regulation & Banking

Cc: The Honorable Howard Shelanski, OIRA/OMB