

October 15, 2019

Via regulations.gov

Docket No. CFPB-2019-0021 or RIN 3170-AA76 Home Mortgage Disclosure (Regulation C)

Texas Appleseed (Appleseed) is a non-partisan, non-profit, 501(c)(3) organization and part of a national network of public interest law centers. Our mission is to promote justice for all Texans by leveraging the volunteered skills and resources of lawyers and other professionals to identify practical solutions that create systemic change on broad-based issues of social equity, including fair financial services and fair housing. Our goal is to ensure that all families have the opportunity to live in safe, decent neighborhoods with equal access to educational and economic opportunity.

Texas Appleseed opposes the Consumer Financial Protection Bureau's (CFPB) proposal to exempt thousands of lending institutions from reporting Home Mortgage Disclosure Act (HMDA) data. The statutory purposes of HMDA are to assess whether lenders are meeting the housing needs of local communities, inform public sector investment decisions, and to detect and prevent discrimination. The proposed changes to reporting thresholds are unnecessary and contradict not only the HMDA statute, but Constitutional and statutory protections against discrimination.

Currently, the threshold for reporting data is 25 closed-end loans. In 2015, the CFPB decided against a higher threshold exempting more lenders stating that, "The Bureau concluded that, if it were to set the closed-end coverage threshold higher than 25, the resulting loss of data at the local level would substantially impede the public's and public officials' ability to understand access to credit in their communities." Inexplicably, the CFPB is now reversing itself and is proposing to raise the threshold to 50 or 100 loans. The CFPB is inviting comments on even higher thresholds of 250 or 500 loans, which would exempt 67 percent and 81 percent of banks, respectively, from reporting HMDA data. These proposals are not regulatory changes; they are attempts to gut the HMDA statute without legislative change or approval.

The CFPB cost estimates for HMDA reporting are modest of about \$2,000 for the typical lender if the threshold is raised to 50 loans. Last year, Congress passed a law exempting lenders making less than 500 loans from reporting the new Dodd Frank data. Thus, most of the lenders that the CFPB proposes to exempt from reporting any HMDA data would not be reporting the more complex HMDA data. Instead, they would be reporting the data they have been submitting for decades. The modest cost estimates are therefore likely to be over-estimates. The agency's attempts to justify the proposed changes by alleging that the costs of HMDA compliance are a burden for lenders, therefore, is clearly pretextual.

We also note that any HMDA-exempt lenders will have to provide this information, and potentially other internal data, for fair lending and CRA exams; there will be no reduced burden on those lenders, but an increased burden for regulatory agencies.

Lending institutions receive public subsidies and guarantees worth billions of dollars annually, from Federal Deposit Insurance Corporation (FDIC) depositor insurance to Freddie Mac and Fannie Mae secondary mortgage markets, and benefit disproportionately from the home mortgage interest tax deduction. The cost of HMDA and other compliance, even if it were as burdensome as certain lenders claim, is a fraction of the benefit these same lenders receive from public funds. Denying the public information with which to hold lenders accountable for their actions, including illegal discrimination, would gut the HMDA and contravene the purpose for which it was enacted by Congress.

HMDA data are a crucial tool for identifying potentially discriminatory and abusive lending patterns, and along with other data and information, form the basis for holding lenders accountable for their fair lending performance. Without these data, community organizations and others, including jurisdictions like the City of Miami and the City of Baltimore will have a more difficult time holding lower volume lenders accountable for violations of anti-discrimination and consumer protection laws, and their far-reaching negative effects. One need merely look at the list of Housing and Urban Development Department's (HUD) fair lending cases between July 2015 and October 2019 to see the prevalence of discriminatory lending.¹ Banks that have been the subject of litigation or administrative enforcement in that time period include:²

- Bank of America
- Wells Fargo
- CIT Bank d/b/a One West Bank
- Associated Bank
- First Merchants' Bank
- Pacific Mercantile Bank
- Klein Bank
- J.P. Morgan Chase
- Union Savings Bank
- Guardian Savings Bank
- Charter Bank
- Banc Corp South
- Evolve Bank and Trust

¹ <https://www.justice.gov/crt/recent-accomplishments-housing-and-civil-enforcement-section>

² We suggest that the CFPB regard comments from these and other banks with fair lending violations with

² We suggest that the CFPB regard comments from these and other banks with fair lending violations with an appropriate level of concern.

- Sage Bank
- Hudson City Savings Bank
- Eagle Bank and Trust
- Fifth Third Bank

The CFPB is also proposing to increase the threshold for reporting open-end lines of credit often called Home Equity Lines of Credit (HELOCs). In the years before the financial crisis, HELOC lending was riddled with abuses that resulted in distress and/or foreclosure for large numbers of homeowners. Under the CFPB's proposal to permanently increase the threshold to 200 open-end lines of credit, 401 lenders making 69,000 open end lines of credit would be exempt from reporting HMDA data. This is too many lenders and loans escaping the scrutiny of public review.

Discriminatory lending was also a major driver of the financial crisis of 2008 and subsequent wealth loss for families of color.

If the CFPB makes thousands of lenders exempt from HMDA reporting, abusive lending will increase in traditionally underserved neighborhoods while some HMDA-exempt banks will retreat from these neighborhoods because they will no longer face public accountability for serving communities equitably.

The issue is not solely accountability for lenders, it is the Federal government's own responsibility for correcting decades of government-imposed lending discrimination, from the 1934 HOLC maps that declared neighborhoods "high-risk" based solely on the race and ethnicity of the families who lived there, to refusing to back mortgages for developers who would not deed-restrict the new suburbs as "white only" in the wake of World War II. Government at all levels has continued to discriminate against communities of color and low-income communities, and therefore the ability of those communities to access credit and home loans, but zoning heavy industrial uses and environmental hazards into those communities, deliberately not investing in infrastructure and public services in those communities, and failing to enforce civil rights laws that prevent discrimination. The government has an obligation to prevent discrimination, to correct for its past discrimination, and to ensure that public funds are not being used in a discriminatory manner. CFPB must withdraw this proposal.

Thank you for the opportunity to comment on this important matter.