Consumer Federation of America

1620 I Street, N.W., Suite 200 * Washington, DC 20006

June 12, 2019

Hon. Kathleen Kraninger

Director, Bureau of Consumer Financial Protection

1700 G St NW

Washington, DC 20552

Re: Docket No. CFPB-2019-0021, RIN 3170-AA76

Dear Director Kraninger:

On behalf of the members of the Consumer Federation of America, I am pleased to offer these comments on the above-referenced Notice of Proposed Rulemaking. Consumer Federation of America (CFA) is a nonprofit association of some 250 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education. We have also joined many other consumer and civil rights groups in a longer and more detailed comment submitted our behalf by the National Community Reinvestment Coalition (NCRC).

The Home Mortgage Disclosure Act (HMDA) has been a critical source of information about mortgage lending since its enactment in 1975. Its major improvements in 1989 and in the Dodd-Frank Act in 2010 increased its coverage and the transparency of the flow of credit in the US. Most importantly, successive expansions of the HMDA data have enabled a clearer view of mortgage credit flows in low- and moderate-income communities and to communities of color. The improvements enacted in Dodd-Frank and codified in the current Bureau regulations were a direct result of gaps in this knowledge that facilitated the emergence of irresponsible loan products, equity stripping through predatory lending practices, and disproportionate harm to LMI consumers and minority communities. The proposed changes will reduce the data's coverage; leave many lenders outside of the reported data; and make the remaining observations less robust and reliable.

The proposed rule's principal changes would increase the threshold for reporting from 25 to 50 closed-end loans and seeks comment on raising it to100 loans, and from 100 to 200 open-end

loans after the expiration of an extended 500 open-end loan threshold in 2022. We strongly oppose the principal provisions of this proposed rulemaking. We do so on several grounds:

- It is premature to make these changes given that the data from 2018, the first year of reporting the expanded data set, has yet to be publicly released.
- The alleged costs of compliance cited as a key reason for the changes are modest and do not justify the data set's diminution.
- The changes will leave important and large gaps in HMDA's coverage, especially in rural areas, leaving regulators, community organizations, state and local governments and researchers with incomplete information on which to make important decisions. It also will leave the lending practices of smaller institutions largely unmonitored, further exacerbating researchers' and others' ability to understand the flow of credit.

Proposed Changes are Premature

The proposed rule's changes would affect future data reporting without any ability to observe the value of the new reportable fields in their first reporting year, 2018. It is very difficult for the Bureau and outside commentators to fully understand the implications of these proposed changes without having a clear reference point in the first year's data.

Without access to the 2018 data, it is not possible to fully assess the proposed changes' impact. Without the ability to see the current credit patterns for lenders that would be exempted from reporting we are left to speculation to understand how the changes would affect the ability to track and understand data reporting in areas dominated by LMI households and people of color.

Moreover, a 30-day comment period for proposals that could have such a meaningful impact is insufficient, especially without the ability to fully understand the proposals' implications for specific lenders and communities.

This is especially important because there is much evidence that HMDA reporting has contributed to an increase in safe and responsible lending to communities that were heretofore overlooked, ignored or discriminated against by regulated creditors. In 1997 following the expanded data mandated in the 1989 legislative amendments, then Comptroller of the Currency Eugene Ludwig observed that "Since 1993, home mortgage loans to low and moderate income census tracts have risen by 33 percent.[1] Mortgage loans to minorities are up almost 38 percent, with African Americans and Hispanics accounting for most of that gain."

Alleged Costs of the New Data Reporting are Unpersuasive

The rule cites complaints from lenders that the new data reporting requirements are overly costly and burdensome. The proposed rule's reasoning is unpersuasive. First, lenders collect all the data that is required under the current rule already as part of the mortgage application and approval process. For example, Adam Levitin, professor of law at Georgetown University, states that loan costs and fees are required to be reported to borrowers under the Truth in Lending Act and Real Estate Settlements Procedures Act. Data points such as debt-to-income ratio are required for compliance with the Qualified Mortgage rule while other data points such as

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1 Remarks of Eugene A. Ludwig Comptroller of the Currency before the National Urban League, August 5, 1997, OCC, https://www.occ.treas.gov/news-issuances/news-releases/1997/nr-occ-1997-78.html

combined loan to value ratio are collected as part of securitization data.[2] Second, lenders have had years to prepare for reporting the data and will have done so for the most part for 2018. Finally, the Bureau's proposed rule cites an aggregate savings of $2.2 million for the 740 institutions that would be covered by the proposed increase in the reporting threshold from 25 to 50 closed-end loans, amounting to about $2,200 per institution in aggregate costs.[3] This is an insignificant sum in an industry that is reporting record profits.

The Bureau did not find such calculations persuasive when issuing the current rule, noting at the time 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."[4]

Raising the threshold could eliminate HMDA reporting for hundreds or thousands of institutions. If the threshold is raised to 50 loans, about 36 percent of depository institutions (banks and credit unions) will not be reporting HMDA loans (estimates based on 2013 HMDA data).[5] Based on 2017 data, the CFPB estimates that 760 institutions issuing 37,000 loans would be exempt from reporting if the threshold was raised to 50 loans.[6] If the threshold is raised to 100, 53 percent of the depository institutions will not report HMDA data (based on 2013 data).[7] Overall, 1,720 institutions that made 147,000 loans in 2017 would be exempt from reporting HMDA data under a 100 loan threshold.[8] Although the CFPB is not proposing to raise the threshold to 250 loans, it asks for comments on such a higher threshold. The CFPB estimates that moving the threshold to 250 loans would exempt 67 percent of depository institutions or 2,850 institutions from HMDA reporting.[9]

These are extensive public costs in the sense that they will increase the researchers' and others' burdens in understanding and accurately mapping the flow of credit. The benefits of leaving the thresholds at their current levels far outweigh the minor costs cited in the proposed rule.

Discriminatory Lending Requires Vigilance and Good Data

African-American, Hispanic-American and Asian-American borrowers continue to experience lower rates of homeownership than White Americans. This trend reversed years of improvements driven in part by HMDA data and pressure on primary market lenders through enforcement of the Community Reinvestment Act (CRA) and housing goals established and enforced for Fannie Mae and Freddie Mac. These household groups were disproportionately

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2 Adam Levitin, New HMDA Regs Require Banks to Collect Lots of Data...That They Already Have, in Credit Slips, June 23017, https://www.creditslips.org/creditslips/2017/06/new-hmda-regs-require-banks-to-collect-data-they-already-have.html

3 Proposed rule, Part Vi.E.3, *Federal Register Vol. 84 No. 92 p. 21006.*

4 CFPB, Proposed Rule, Docket No. CFPB-2019-0021, pp. 17-18, https://files.consumerfinance.gov/f/documents/cfpb_nprm-hmda-regulation-c.pdf

5 CFPB, Final Rule, Docket No. CFPB-2014-0019, Federal Register / Vol. 80, No. 208 / Wednesday, October 28, 2015 / Rules and Regulations, p. 66279, https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-26607.pdf

6 CFPB Proposed Rule, p. 118.

7 CFPB Final Rule, 2015, p. 66279.

8 CFPB Proposed Rule, p. 119.

9 CFPB Proposed Rule, p. 24.

affected by the run up to the financial crisis, targeted by lenders with equity stripping refinances on unfavorable and unsustainable terms, and have not regained the ground lost through this theft of household wealth. Decades of *de facto* and *de jure* discrimination have robbed these communities of the opportunity to enjoy the benefits of homeownership, including wealth building over time. Had the new HMDA data fields been available in 2000, regulators, researchers and advocates would have seen the patterns of discriminatory and predatory behavior as they were building during the next five years and could have taken earlier steps to shut it down. Having learned this lesson in the very hardest way, the Bureau should resist industry complaints and hold firm in the thresholds it adopted in the current rule.

Thank you for the opportunity to comment on this important regulatory proposal. We look forward to working with you to continue to protect American consumers from discriminatory lending behaviors.

Respectfully submitted,

Barry Zigas

Director of Housing Policy