



STRONGER COMMUNITIES. STRONGER AMERICA.

June 12, 2019

Office of Regulations
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Comments on Regulatory Information Number (RIN) 3170-AA76: Home Mortgage Disclosure Act (Regulation C)

Dear Counsels,

UnidosUS (formerly the National Council of La Raza) files these comments to oppose the Bureau of Consumer Financial Protection's (CFPB) proposed rule to amend Regulation C. The proposed rule would significantly reduce transparency and expose eligible Latinos and other borrowers of color to discrimination in the mortgage market.

UnidosUS is the largest national Hispanic* civil rights and advocacy organization in the United States. For more than 50 years, we have worked to advance opportunities for low-and moderate-income Latino families so they can achieve economic stability and build wealth. In this capacity, UnidosUS, with its network of nearly 300 Affiliates—local, community-based organizations in 35 states, the District of Columbia, and Puerto Rico—provides education, health care, housing counseling, workforce development, and financial coaching programs to millions of citizens and immigrants in the United States annually.

For almost three decades, UnidosUS has conducted research and analysis and has testified before Congress on issues related to improving the financial well-being of Latinos; including strengthening the Community Reinvestment Act and the Home Ownership and Equity Protection Act (HOEPA); supporting strong fair housing and fair lending laws; creating a fair and equitable credit scoring system; increasing access to financial services for low-income families; and promoting homeownership in the Latino community. In addition, the UnidosUS Wealth and Housing Alliance (UWHA) is the nation's largest network of community-based organizations working to empower Latino wealth-building through homeownership. The UWHA develops effective programs that blend research, advocacy, and direct housing and financial counseling. The UWHA is a housing counseling intermediary approved by the Department of Housing and Urban Development (HUD) that trains hundreds of housing counselors emphasizing individual, culturally competent counseling. Established in 1997, the UWHA includes 50 independent community-based organizations, that supports more than 60,000 families a year.

UnidosUS appreciates the opportunity to comment on the three proposals in the proposed rule. We believe the CFPB's proposed rule would severely diminish the statutory impact of the HMDA by reducing transparency in the mortgage market, weakening fair lending laws, and failing to measure the actual costs and benefits of HMDA to consumers.

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

Background

The Home Mortgage Disclosure Act (HMDA) was enacted by Congress in 1975 and first implemented by the Federal Reserve Board through Regulation C. According to the Federal Reserve Board, HMDA grew out of public concern over credit shortages in certain urban neighborhoods.¹ Consequently, one purpose of HMDA is to provide the public with information that will help show whether lenders are serving the housing credit needs of the neighborhoods and communities in which they are located. A second purpose is to aid public officials in targeting public investments from the private sector to areas where they are needed. Finally, the Financial Institutions Reform, Recovery, and Enforcement Act Amendments of 1989 identified a third purpose, to require the collection and disclosure of data about applicant and borrower characteristics to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.²

HMDA is a “sunshine law” that relies upon public scrutiny for its effectiveness. As the late Justice Louis D. Brandeis stated, “Sunlight is said to be the best of disinfectants”³ While it helps measure activity in the mortgage market, HMDA also provides the public and public officials with the ability to identify gaps and disparities in lending among depository and non-depository institutions. HMDA is also a necessary tool for measuring the extent to which lending institutions are complying with federal fair lending laws, including the Equal Credit Opportunity Act of 1974 (ECOA)⁴ and the Community Reinvestment Act (CRA) of 1977.⁵ Unfortunately, one important lesson of the Great Recession was that when limited or no data was available about lending activities in the mortgage market, consumers, especially those from protected classes, were exposed to abuse and discrimination.

In the lead up to the financial crisis, predatory, deceptive and abusive practices were pervasive in the real estate and credit markets.⁶ HMDA was a particularly important tool that measured the extent of these harmful practices. It exposed the reckless lending practices that disproportionately harmed Latino, Black, and low-income borrowers during the Great Recession. For example, HMDA exposed unscrupulous lenders’ practice of steering consumers into toxic, unsustainable loan products that set up eligible borrowers for failure.⁷ As a result, Latino homeowners, and the neighborhoods in which they lived, suffered devastating consequences, including the loss of their homes to foreclosure and home equity.

Reduced Transparency in the Mortgage Market

If implemented, this rule would reduce transparency in the mortgage market and obscure data that helps the public and policymakers determine whether lenders are serving the housing credit needs of the neighborhoods and communities in which they are located by allowing more lending institutions to no longer report their mortgage lending activities. Since the Great Recession information about mortgage lending activities has significantly decreased. For example, in 2017, 7.3 million originations were reported, 3.1 million fewer originations that were reported in 2007 (10.4 million).⁸ The availability of HMDA data increases transparency and aids financial institutions to identify gaps in lending and investment and allows them to correct course to meet the neighborhood and community needs.

Reduced transparency in the home lending market would disproportionately harm Latinos and communities of color. By 2030, Latinos are expected to account for half of new homeowners.⁹ Yet, Latinos and other communities of color continue to face barriers to homeownership including challenges of tight credit and rapidly rising home prices. In 2017, Latinos comprised 13% of households, yet received less than 9% of home purchase loans.¹⁰

Weakened Fair Lending Laws

This rule would also significantly impair HMDA's ability to measure the mortgage market's compliance with two fair lending laws, CRA and the ECOA. This would prevent policymakers from identifying the disparities Latinos and other communities of color face in the home lending market.

Exempting lending institutions from reporting their mortgage activities would result in a loss of critical loan information and effectively weaken fair lending protections for Latinos and other consumers who belong to protected classes. Without the HMDA data, the public would be unable to identify and report possible discriminatory lending patterns and federal regulators would face significant barriers to enforcing antidiscrimination statutes. For example, without HMDA data, prudential regulators would lack the data needed to evaluate the performance of depository lenders on their CRA exams, especially their mortgage lending activity in low and moderate income census tracts.

Actual Costs and Benefits to Consumers

The CFPB's own analysis suggests that the agency cannot quantify the complete costs of the rule to consumers. According to the analysis included in the notice, "if adopted, would lessen the reporting requirements for eligible financial institutions by either completely relieving them of the obligation to report all data points related to closed-end mortgage loans or open-end lines of credit."¹¹ It can be assumed that if the Bureau is unable to quantify the benefits to consumers, there is no benefit to consumers from the proposed rule. Or, in the alternative, that any benefits to consumers would be passed through financial institutions, as result of the relief and savings that reporting institutions would receive from the rule.¹²

E.O. 12866,¹³ signed into law under President Clinton, stated that as part of a rulemaking process, agencies:

should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

As judged by the Agency, a proposed regulation is will pass the “cost-benefit test” if the sum of its anticipated benefits outweighs, or otherwise justifies, the sum of its future and present costs.

Here the CFPB’s notice fails to include such an assessment of all costs and benefits of available alternatives or examples of quantifiable and qualitative measures of costs and benefits that are difficult to quantify. Further, this notice fails to identify alternative approaches that could maximize the net benefits for consumers.

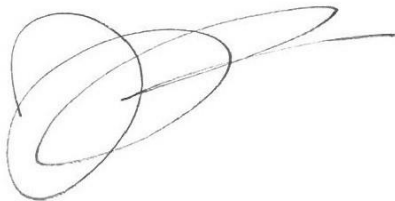
Conclusion

The CFPB must preserve the current reporting thresholds levels to ensure that lenders are serving the credit needs of the communities in which they are located, that public investments are directed where they are needed most, and so that consumers are protected from harm.

In addition, this rule disregards the important lessons learned from the financial crisis. When there is less transparency in the mortgage market, and lenders were not required to collect or report their activities, predatory lending, discrimination and other abuses went unchecked and resulted in harm to consumers. If implemented, this rule would weaken the financial system, expose consumers to discriminatory and harmful lending practices, and potentially fuel another economic recession.

Thank you for your consideration. Please contact Agatha So, Policy Analyst of Economic Policy at UnidosUS (aso@unidosus.org) if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jennifer Brown, Esq.
Associate Director of Economic Policy
UnidosUS

¹ Federal Reserve Board of Governors. “Home Mortgage Disclosure Act Examination Procedures.” Accessed May 23, 2019. https://www.federalreserve.gov/boarddocs/caletters/2009/0910/09-10_attachment.pdf.

² Financial Institutions Reform, Recovery, and Enforcement Act Amendments of 1989, Public Law 101-73, U.S. Statutes at Large 103 (1989): 525-526.

³ Brandeis, Louis D. "Chapter V: What Publicity Can Do." Brandeis School of Law. Accessed May 24, 2019. <https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/other-peoples-money-chapter-v>.

⁴ 15 U.S.C. 1691 (2006).

⁵ 12 U.S.C. 2901 (2006).

⁶ Mian, Atif and Amir Sufi, "The Consequences Of Mortgage Credit Expansion: Evidence from the U.S. Mortgage Default Crisis," *Quarterly Journal of Economics* 124 (4) (2009): 1449–1496. Accessed June 12, 2019.

<https://academic.oup.com/qje/article-abstract/124/4/1449/1917185/The-Consequences-of-Mortgage-Credit-Expansion>; and Knowledge@Wharton, "Victimizing the Borrowers: Predatory Lending's Role in the Subprime Mortgage Crisis." February 20, 2008. Accessed June 11, 2019.

<http://knowledge.wharton.upenn.edu/article/victimizing-the-borrowers-predatory-lendings-role-in-the-subprime-mortgage-crisis/>.

⁷ Sandra Braunstein, Director for the Division of Consumer and Community Affairs, *Subprime and Predatory Lending: New Regulatory Guidance, Current Market Conditions, and Effects on Regulated Financial Institutions*, 110th Congress, 1st sess., 2007. <https://www.federalreserve.gov/newsevents/testimony/braunstein20070327a.htm> (accessed June 11, 2019).

⁸ Avery, Robert B., et al. "The 2007 HMDA Data." 2008. Accessed on May 31, 2019.

<https://www.federalreserve.gov/pubs/bulletin/2008/pdf/hmda07final.pdf>.

⁹ Goodman, Laurie, et al. "Headship and Homeownership: What Does the Future Hold?" 2015. Accessed on May 14, 2019. <https://www.urban.org/research/publication/headship-and-homeownership-what-does-future-hold>.

¹⁰ U.S. Census Bureau. American Community Survey 2017, 1-year estimates. "Demographic Characteristics For Occupied Housing Units." Accessed May 24, 2019.

<https://data.census.gov/cedsci/table?q=Housing&table=S2502&tid=ACSST1Y2017.S2502&t=Housing>. Table S2502.

¹¹ Consumer Financial Protection Bureau. "Home Mortgage Disclosure Act (Regulation C)." May 13, 2019. Accessed May 24, 2019. <https://www.federalregister.gov/documents/2019/05/13/2019-08983/home-mortgage-disclosure-regulation-c>.

¹² Ibid.

¹³ Executive Order 12866. "Regulatory Planning and Review." 58 Fed. Reg. 51735 (Oct. 4, 1993).

<http://www.whitehouse.gov/omb/inforeg/eo12866.pdf>.