

United States Senate

WASHINGTON, DC 20510

June 12, 2019

The Honorable Kathleen Kraninger
Director
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Dear Director Kraninger:

We write to express our opposition to the Consumer Financial Protection Bureau's (CFPB) proposal to further reduce reporting under the Home Mortgage Disclosure Act (HMDA).

HMDA is a disclosure statute. When the Senate first held hearings on HMDA legislation in 1975, the bill's author, Senator Proxmire, described HMDA as "a disclosure bill that would enable the public to learn the geographical lending patterns of most banks and savings institutions."¹ As the law and regulations have evolved over nearly 45 years, HMDA data has become "the primary source of information for regulators, researchers, economists, industry, and advocates analyzing the mortgage market both for HMDA's purposes and for general market monitoring."²

As Senator Proxmire indicated, and as the CFPB notes in its 2015 rulemaking, HMDA's original, statutory purpose is "to provide the citizens and public officials of the United States with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment."³ This data also helps identify possible discriminatory lending patterns.⁴ To meet the needs of communities and neighborhoods throughout the country, HMDA must collect and disclose information that is useful at the local, community level.

Closed-End Origination Threshold Increases are Contrary to HMDA's Statutory Purposes

Based on the Bureau's proposal to raise the HMDA reporting threshold from 25 closed-end loan originations to 50 or 100 originations, it appears that the CFPB is ignoring the statute's purposes and curtailing access to critical lending data. In its section-by-section analysis, the Bureau defends its proposal to lift the reporting threshold to 50 or 100 closed-end loans by stating that fewer than 300 or 1,100 census tracts, respectively, would lose more than 20 percent of currently reportable data. These figures are misleading and ignore the purposes of HMDA's localized disclosures.

¹ Opening Statement of Senator Proxmire, Hearing on the Home Mortgage Disclosure Act of 1975, Committee on Banking, Housing, and Urban Affairs, May 5, 1975.

² Home Mortgage Disclosure (Regulation C), 80 FR 66128, October 28, 2015, available at <https://www.govinfo.gov/content/pkg/FR-2015-10-28/pdf/2015-26607.pdf>.

³ 12 U.S.C. 2801

⁴ 12 CFR 1003.1

First, the Bureau’s proposal ignores pre-existing exemptions that have already reduced the utility of data in many communities. HMDA regulations finalized in October 2015 exempted 22 percent of depositories that were required to report HMDA data prior to the 2015 rulemaking, which resulted in the loss of significant data in certain census tracts.⁵ The latest proposal would reduce data collection beyond these already reduced levels. This would have a disproportionate impact on communities served by smaller lenders, including rural areas.

Second, the Bureau’s proposal uses the already limited data collection in rural areas to justify further reductions in data collection. In the latest proposal, the Bureau noted that lenders that “primarily serve rural areas are generally not HMDA reporters” today.⁶ The Bureau also cited a study that “suggests that the current asset and geographic coverage criteria already in place disproportionately exempt small lenders operating in rural communities” – and that was prior to the new 2015 exemptions.⁷

Unfortunately, the Bureau ignored the conclusion of the report it cited. That report concluded that this lack of data would “warrant future research” because, while the exempted lenders may not focus their business on mortgage lending, “the fact that they are concentrated in a particular region with an at-risk population (i.e. rural counties) indicates that we need to learn more about them.”⁸ Rather than propose additional data collection to better serve rural areas, the CFPB suggests that the lack of data collected in rural areas justifies further data collection exemptions because additional exemptions won’t do much additional harm to rural areas. This logic defies explanation. Smaller lenders are valuable sources of mortgage credit for their communities, particularly in rural areas. The CFPB should recognize them as such when gathering data to understand local markets.

Finally, the Bureau ignores the statute’s underlying purpose – to serve local communities. Even if the number of communities losing mortgage market data seems small by comparison to the overall number of census tracts, the loss of data has a real and meaningful impact for the residents of those areas. In its 2015 rulemaking, the Bureau stated that it believed “the higher closed-end mortgage loan-volume thresholds suggested by industry commenters would have a material negative impact on the availability of data about patterns and trends at the local level.”⁹ We completely agree.

Open-End Origination Threshold Increase Ignores Post-Crisis Safety and Soundness Concerns

The Bureau also proposes to raise the threshold for reporting open-end lines of credit from 100 originations to 200 originations and to extend the temporary 500-origination threshold through 2022. While we understand the need to provide additional time for lenders who will be first-time reporters to prepare, we do not support the permanent threshold increase.

⁵ Home Mortgage Disclosure (Regulation C), 80 FR 66128, October 28, 2015.

⁶ Home Mortgage Disclosure (Regulation C), 84 FR 20972, May 13, 2019, available at <https://www.govinfo.gov/content/pkg/FR-2019-05-13/pdf/2019-08983.pdf>.

⁷ Id.

⁸ “What Are We Missing? HMDA Asset-Excluded Filers,” Housing Assistance Council, 2011, available at <http://ruralhome.org/storage/documents/smallbanklending.pdf>.

⁹ Home Mortgage Disclosure (Regulation C), 80 FR 66128, October 28, 2015.

In its 2015 rulemaking establishing the 100-loan threshold, the Bureau stated that during the run-up to the financial crisis the volume of home equity lines of credit expanded drastically, which contributed to the housing bubble.¹⁰ The Bureau said that collecting additional open-end line of credit data would facilitate market monitoring and could help identify and mitigate future crises.¹¹

Now, more than 10 years after the crisis, data on open-end lines of credit remains limited. As the Bureau noted in its proposed rule, “no single data source exists . . . that can accurately report the number of originations of open-end lines of credit in the entire market and by lender.”¹² To complete its analysis of the impact of the proposal to change the reporting threshold, the Bureau had to consult multiple sources to estimate the impact of its proposed change. In light of the local and national access to credit and safety and soundness concerns cited by the Bureau in establishing the 2015 reporting requirements, it is particularly concerning that the Bureau would prospectively reduce data collection based on limited data.

Reduced Data Collection Minimizes the Value of Consumer Protection and Fair Lending Discrimination in lending remains all too common, and HMDA is a critical tool for evaluating lending patterns,¹³ including discriminatory lending practices, and Community Reinvestment Act (CRA) compliance. Regulators¹⁴ as well as journalists¹⁵ and community advocates¹⁶ have relied on HMDA to root out discriminatory lending practices.

By reducing HMDA data collection, CFPB risks undermining fair lending enforcement and monitoring at the national, local, and institutional level – an outcome contrary to HMDA’s stated purposes. The Bureau acknowledged that reduced data collection “may lead to adverse outcomes for some consumers” and “may affect bank regulators’ and the public’s ability to use HMDA data to evaluate a depository institution’s performance under the CRA.”¹⁷ The CFPB notes that this could also be to lenders’ disadvantage, because without sufficient HMDA data to inform exams, “some lenders with low fair lending risk may be initially misidentified as high risk, potentially increasing their associated compliance burden.”¹⁸

¹⁰ Home Mortgage Disclosure (Regulation C), 80 FR 66128, October 28, 2015.

¹¹ Id.

¹² Home Mortgage Disclosure (Regulation C), 84 FR 20972, May 13, 2019.

¹³ Home Mortgage Disclosure (Regulation C), 80 FR 66128, October 28, 2015.

¹⁴ In testimony before the Senate Banking, Housing, and Urban Affairs Committee, Comptroller of the Currency Joseph Otting noted that “when we start a CRA exam, we . . . review the HMDA data.” See Senate Banking, Housing, and Urban Affairs Committee hearing on “Examining the Efforts, Activities, Objectives, and Plans of the Office of the Comptroller of the Currency with Respect to the Conduct of Supervision, Regulation, and Enforcement of Financial Firms Supervised by the OCC,” June 14, 2018, available at <https://www.govinfo.gov/content/pkg/CHRG-115shrg31583/html/CHRG-115shrg31583.htm>.

¹⁵ “Kept Out,” Aaron Glatz and Emmanuel Martinez, Reveal, February 15, 2018, available at <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>.

¹⁶ “Home lending to LMI borrowers and communities by banks compared to non-banks,” Jason Richardson and Josh Silver, NCRC, April 18, 2019, available at <https://ncrc.org/home-lending-to-lmi-borrowers-and-communities-by-banks-compared-to-non-banks/>.

¹⁷ Home Mortgage Disclosure (Regulation C), 84 FR 20972, May 13, 2019.

¹⁸ Id.

Despite this acknowledgement, the CFPB has deliberately chosen to ignore these real, negative outcomes for consumers, in part because it finds it too difficult to quantify the negative outcomes for consumers.¹⁹ Instead, the Bureau is simply accepting that consumers will have to bear these costs in order to address “recent concerns expressed by industry stakeholders regarding the considerable burden associated with reporting the new data points required by the 2015 HMDA Rule.”²⁰

The Bureau quantifies the likely savings for newly exempted institutions, which would be \$2.2 million and \$8.1 million per year for the 50 closed-end loan and 100 closed-end loan thresholds, respectively, spread across hundreds or thousands of lenders.²¹ Given the small per-lender benefit, the Bureau states that it “does not anticipate any material effect on credit access in the long or short term if financial institutions pass on these cost savings to consumers.” In short, consumers lose protections and could potentially lose access to credit but will receive no financial benefit.

We are extremely concerned that the Consumer Financial Protection Bureau has once again put the interests the financial industry above those of the consumers it is charged to protect. We urge you to immediately rescind all proposed changes in reporting thresholds for closed-end and open-end mortgage loans.

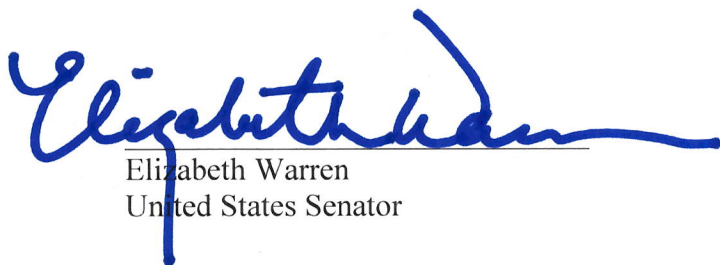
Sincerely,



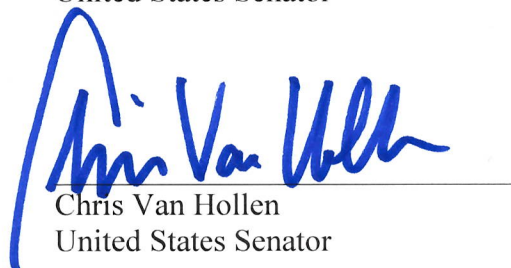
Sherrod Brown
United States Senator



Robert Menendez
United States Senator



Elizabeth Warren
United States Senator



Chris Van Hollen
United States Senator

¹⁹ In its proposed rule, the CFPB states that “[b]ecause quantifying and monetizing benefits of HMDA to consumers would require identifying all possible uses of HMDA data, establishing causal links to the resulting public benefits, and then quantifying the magnitude of these benefits, the Bureau mostly presented qualitative analyses regarding HMDA benefits in the 2015 HMDA Rule . . . Similarly for the impact analyses of this proposed rule, the Bureau is unable to readily quantify the loss of some of the HMDA benefits to consumers with precision, both because the Bureau does not have the data to quantify all HMDA benefits and because the Bureau is not able to assess completely how this proposed rule will reduce those benefits.” Home Mortgage Disclosure (Regulation C), 84 FR 20972, May 13, 2019.

²⁰ Id.

²¹ Id.



Catherine Cortez Masto
United States Senator



Tina Smith
United States Senator



Tammy Duckworth
United States Senator



Kamala D. Harris
United States Senator



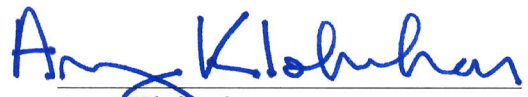
Edward J. Markey
United States Senator



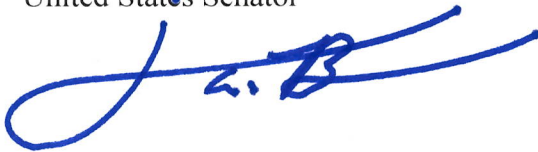
Richard Blumenthal
United States Senator



Tammy Baldwin
United States Senator



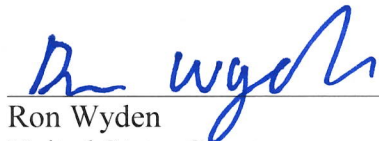
Amy Klobuchar
United States Senator



Cory A. Booker
United States Senator



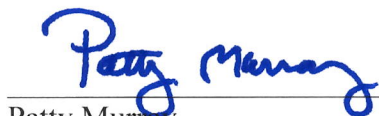
Richard J. Durbin
United States Senator



Ron Wyden
United States Senator



Kirsten Gillibrand
United States Senator



Patty Murray
United States Senator



Mazie K. Hirono
United States Senator



Brian Schatz
United States Senator