

October 17, 2019

ATTORNEY GENERAL RAOUL URGES CFPB TO ABANDON PROPOSED RULES THAT PROMOTE DISCRIMINATION IN MORTGAGE LENDING

Chicago — Attorney General Kwame Raoul, along with a coalition of 12 attorneys general, today submitted a comment letter urging the Consumer Financial Protection Bureau (CFPB) not to adopt new rules that would undermine the ability to enforce fair lending laws and prevent discrimination against communities of color in the mortgage lending market.

“The CFPB’s attempts to eliminate or weaken reporting requirements will result in continued discriminatory mortgage lending practices and result in homeowners of color being denied access to homeownership,” Raoul said. “These actions will also leave the United States vulnerable to another financial crisis. I urge the CFPB to not adopt these new rules that risk the economic security of all residents.

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In the [comment letter](#), Raoul and the coalition challenge a May 2019 CFPB proposal limiting the data financial institutions are required to report to the CFPB under the Home Mortgage Disclosure Act (HMDA), a 1975 law that requires mortgage lenders to make certain mortgage data publicly available to ensure compliance with fair lending laws. Some of this data includes information which lenders already collect to comply with other regulations as well as their own underwriting standards, such as loan-to-value ratio, origination charges, interest rate, debt-to-income ratio, property interest and the reason for denial.

By hiding important data points, the CFPB gives a windfall to financial institutions who will be able to resume predatory lending practices. Regulations that went into effect in 2018 required financial institutions to report more of the data that they already collect so that more information – including the costs of the loan and any predatory attributes – could be easily viewed in the HMDA data. When these new data fields were set in 2015 to help avoid another subprime lending crisis like the one that led to the 2008 economic recession, the CFPB noted that the data reporting requirements struck the proper balance between the burden placed on smaller lenders and the need for data to ensure that mortgage lending is conducted in a non-discriminatory manner.

Now, the CFPB is soliciting comments on which data fields should be eliminated from reporting. The CFPB's attempts to water down the data that financial institutions must report will severely inhibit efforts to prevent another financial crisis brought about by predatory lending.

Raoul and the coalition argue these changes undermine the core function of the HMDA and would impede the public and public officials’ ability to ensure that mortgage lending is being conducted in a non-discriminatory manner in their communities.

Joining Raoul in the comment letter are the attorneys general of California, Connecticut, Delaware, the District of Columbia, Hawaii, Massachusetts, Michigan, Minnesota, New York, Oregon, Pennsylvania, and Rhode Island.



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October 15, 2019

VIA ELECTRONIC SUBMISSION

Kathy Kraninger
Director
Consumer Financial Protection Bureau
1700 G Street N.W.
Washington, D.C. 20552

Re: NYAG's Opposition to Reducing HMDA Reporting Requirements
Docket No. CFPB-2019-0020/RIN 3170-AA97

Dear Director Kraninger:

The New York State Attorney General ("NYAG") submits the following comments on the Consumer Financial Protection Bureau's (the "CFPB") Advance Notice of Proposed Rulemaking on the efficacy of certain data points and coverage of the Home Mortgage Disclosure Act ("HMDA") (Docket No. CFPB-2019-0020/RIN 3170-AA97) ("Advance Notice").

HMDA is an important tool in ending the scourge of mortgage lending discrimination that has long plagued our country. Designed to provide public detailed mortgage lending data, HMDA ensures that the public and state regulators have the means necessary to enforce federal and state fair lending laws and to guarantee that the lending needs of their communities are being met.

In 2010, in the wake of the 2008 financial crisis, Congress amended HMDA to make certain that our economy would never again be brought down by predatory mortgage lending. Congress statutorily added more required data fields and then gave the CFPB the authority to add additional fields to achieve the objective of greater transparency. In 2015, after five years of research, outreach and various notice and comment periods, the CFPB added 14 additional data points and revised certain others ("2015 HMDA Amendments"). The 2015 HMDA Amendments went into effect on January 1, 2018 and the 2018 HMDA data is the first data set that contains these new fields. Most of these new fields request data that mortgage lenders already collect for the purpose of underwriting and for selling these loans to Fannie Mae, Freddie Mac or other investors.

The CFPB is now asking whether it should reverse course and reduce the transparency provided by its current HMDA reporting requirements. The answer is a resounding no. Reducing HMDA reporting requirements would undermine the ability of local public officials to investigate unfair and discriminatory mortgage lending practices, such as the predatory practices that led to the housing market crash in 2008. Additionally, the burden of reporting this data – data the lender largely already collects to underwrite the loan – is minimal.

The CFPB is also asking whether it should reverse course on improving the transparency of commercial, multi-family lending. Again, the answer is no. HMDA reporting will help to protect the affordability of rental housing that is relied upon by millions of Americans. The CFPB should wait to see the benefits that will result from the data now being issued for the first time before it considers any changes to these reporting requirements.

In short, the NYAG and the other signatories to this letter oppose any further HMDA rulemaking at this time that would reduce the reporting requirements set forth in the 2015 HMDA Amendments.

I. In The Wake of the 2008 Financial Crisis, New HMDA Data Points Were Added to Avoid Another Subprime Mortgage Crisis

HMDA is a critical tool in combating the United States' long history of discrimination in homeownership and mortgage lending. Starting in the 1930s and at the U.S. government's behest, mortgage lenders discriminated based on race, essentially "redlining" from mortgage lending communities that were non-white.¹ On these lenders' maps, African-American and Latino neighborhoods were shaded in red, indicating that the banks should not lend in these communities.² Without access to mortgage lending, African-American and Latino families were unable to share in the benefit of homeownership afforded to their white compatriots. Unfortunately, the impact of this discrimination has been lasting. Today, 73% of white Americans own their homes but only 40.6% of African-Americans and 46.6% of Latinos do.³ In a society where homeownership equates to wealth, this disparity has only worsened the United States' racial wealth gap.

The Fair Housing Act (FHA), passed in 1968, the Equal Credit Opportunity Act (ECOA), passed in 1974, and HMDA, passed in 1975, all sought to end mortgage lending discrimination and pave the way to more equal homeownership. HMDA, by requiring lenders to publicly disclose certain mortgage data, aimed to give the public and state regulators the ability to determine whether financial institutions were meeting the needs of their communities and to identify possible discriminatory lending patterns.⁴

But even with the passage of these laws, homeownership and mortgage lending were far from equal, as demonstrated by the 2008 financial crisis. Long denied access to mortgage

¹ See, e.g., Kenneth Jackson, *Crabgrass Frontier* (New York: Oxford University Press, 1985).

² *Id.*

³ U.S. Census Bureau, *Quarterly Residential Vacancies and Homeownership, Second Quarter 2019*, Table 7 (July 25, 2019), available at <https://www.census.gov/housing/hvs/files/currenthvspress.pdf>.

⁴ Federal Financial Institutions Examination Council (FFIEC), *Home Mortgage Disclosure Act: Background & Purpose*, available at <https://www.ffiec.gov/hmda/history.htm>.

lending, previously “redlined” communities became feeding grounds for the subprime lending that flourished in the early 2000s, a result of the federal government’s rollback of regulation.⁵ African-American and Latino homeowners were duped into predatory mortgages that were inherently unsustainable.⁶ The required HMDA data fields at the time were insufficient to capture the complexity of these subprime products. By the time the world found out what was happening, the housing market was in a tailspin.

In 2010, Congress passed the Dodd-Frank Wall Street Reform Act (“Dodd-Frank Act”) in an attempt to ensure that the U.S. economy would never again be brought down by discriminatory subprime lending. To be able to prevent the next crisis, the Dodd-Frank Act amended HMDA to statutorily add new data fields⁷ and to give the CFPB the discretion to prescribe more data fields necessary to achieve HMDA’s goals.⁸ In 2015, after five years of research, analysis and deliberation, the CFPB added 14 new data fields and required additional information from already-existing data fields (“2015 HMDA Amendments”). These 14 new fields include: reasons for denial; origination charges; discount points; lender credits; interest rate; debt-to-income ratio; combined loan-to-value ratio; manufactured home secured property type; manufactured home land property interest; multifamily affordable units; automated underwriting system; a reverse mortgage flag; an open-end line of credit flag; and a business or commercial purpose flag. The CFPB also revised the ethnicity and race data fields, adding subcategories for certain races and ethnicities as well as other technical data fields.

The 2015 HMDA Amendments were a well-thought out response to the 2008 financial crisis and were deliberately designed to prevent the discriminatory and predatory lending that lead to the destruction of our economy.⁹ In preparing the 2015 final rule, the CFPB considered hundreds of comments from lenders, consumer advocates and others.¹⁰ The Bureau drafted a detailed section-by-section analysis to support its new requirements, and to explain how it would balance the needs of transparency with the costs of administration and implementation. The 2015 HMDA Amendments went into effect on January 1, 2018 and, as a result, the 2018 HMDA

⁵ Raymond H. Brescia, *Subprime Communities: Reverse Redlining, the Fair Housing Act and Emerging Issues in Litigation Regarding the Subprime Mortgage Crisis*, 2 Albany Gov’t Law Review 164, 167 note 7, 175-78 (2009).

⁶ U.S. Financial Crisis Inquiry Commission, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States*, p. 109 (2010) (hereinafter “Financial Crisis Report”), available at <https://www.govinfo.gov/content/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf>.

⁷ These data fields include the following: total points and fees, rate spread, prepayment penalty, property value, loan term, existence of certain loan features, origination channel, borrower age and borrower credit score. Pub. L. No. 111-203, §1094, 124 Stat. 1376 (2010), available at <https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf>. See also HMDA, 12 U.S.C. § 2803.

⁸ HMDA, 12 U.S.C. § 2804(a)

⁹ “The Bureau believes that HMDA data must be updated to address the informational shortcomings exposed by the financial crisis and to meet the needs of homeowners, potential homeowners and neighborhood throughout the nation.” *Id.*, 80 Fed. Reg. at 66130, available at <https://www.federalregister.gov/d/2015-26607/p-39>.

¹⁰ Docket folder at regulations.gov lists 419 comments – see <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=CFPB-2014-0019>.

data set is the first data set that contains the 2015 HMDA Amendments data points.¹¹

The CFPB is now soliciting comments on these 14 new data fields and the revised data fields, essentially inquiring whether collecting this data is worth it.¹² But even a preliminary analysis of this data, data which is ordinarily collected during the underwriting process, shows that the minimal burden placed on financial institutions is far outweighed by the efficacy of this new data in achieving HMDA's goals.

II. The NYAG Opposes Any Attempts To Reduce HMDA Data Reporting Requirements

On August 30, 2019, the CFPB released the 2018 national HMDA loan-level data.¹³ A preliminary analysis of the 2018 HMDA data shows disturbing trends that signal potential discriminatory lending and the failure of mortgage lending to appropriately serve certain communities. In other words, the 2018 HMDA data demonstrates that the additional data fields are achieving HMDA's objectives. We highlight certain preliminary analyses below. Because these trends were identified through the new data points, we oppose the CFPB's attempts to reduce or eliminate any of the new and revised reporting requirements, especially since the lending institutions are already collecting this data (*see Part IV, infra*).

A. Troubling Disparities in Manufactured Home Lending

In its Advanced Notice, the CFPB noted that it is receiving comments from industry about the two new data points concerning manufactured homes: (1) manufactured home secured property type and (2) manufactured home land property interest. For both of these data points, the CFPB claims that industry finds the collection of this data burdensome because this type of information was not previously collected.¹⁴

But the 2018 HMDA data shows troubling patterns in manufactured home lending, making the continued collection of this data essential to achieving HMDA's objectives that outweighs the burden of collecting or reporting. First, the interest rate for manufactured homes is significantly higher than for site built housing, with a median interest rate of 5.125% where the homeowner owns both the home and the land ("non-chattel loan") and 8.29% where the homeowner owns only the manufactured home and the land underneath ("chattel loan").¹⁵ The

¹¹ *Id.*, 80 Fed. Reg. at 66128, available at <https://www.federalregister.gov/d/2015-26607/p-4>.

¹² When the CFPB originally issued this Advance Notice, it provided July 8, 2019 as the comment closing date even though it was aware that the 2018 national HMDA data, the first reporting period with these new data points, would not be available for analysis. After pushback from advocates, on June 27, 2019, CFPB relented and extended the comment period to October 15, 2019. <https://www.consumerfinance.gov/about-us/newsroom/bureau-extends-comment-period-anpr-hmda-data-points/>

¹³ Press Release, CFPB, *FFIEC Announces Availability of the 2018 Data on Mortgage Lending* (August 30, 2019), available at <https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-2018-data-mortgage-lending/>.

¹⁴ Advance Notice, 84 Fed. Reg. 20049, 20051 (May 8, 2019), available at <https://www.federalregister.gov/d/2019-08979/p-54>.

¹⁵ CFPB, *Introducing New and Revised Data Points in HMDA: Initial Observations from New and Revised Data Points in 2018 HMDA*, p. 62; Table 6.7.1 (August 2019) ("CFPB Data Points Report"), available at https://files.consumerfinance.gov/f/documents/cfpb_new-revised-data-points-in-hmda_report.pdf.

median interest rate for site built housing is 4.75%.¹⁶ Given that manufactured housing is an important affordable housing option, these higher interest rates suggest that manufactured home lending may not be meeting the needs of our communities.

Further, the 2018 HMDA data clearly demonstrates that African-Americans are paying significantly more for their manufactured home mortgages than their white counterparts. For African-American manufactured home homeowners, the majority – 56.3% – lease (rather than own) the land on which the home sits.¹⁷ For white families, only 23.8% do.¹⁸ As a result, the significantly higher interest rate for chattel loans means that African-American homeowners are paying more for their loans. And the 2018 HMDA data shows that these homeowners are no more of a credit risk than those who are provided chattel loans. Chattel loan homeowners had an average credit score of 679, only 19 points lower than non-chattel loan homeowners; the median combined loan-to-value ratio was only 3.4 percentage points lower than non-chattel loans; and the chattel loan homeowners actually had a lower debt-to-income – 35% – compared to non-chattel homeowners – 37.8%.¹⁹

To the extent that lenders justify this racial disparity on the fact that the land is leased, as of June 11, 2019, New York State has placed limits on landlords of manufactured home parks, including that the maximum yearly rent increase is limited to 3% absent extenuating circumstances.²⁰ A spike in rent can no longer serve as a legitimate basis for such a stark difference in interest rates between a chattel loan and a non-chattel loan.

Lenders claim that they usually do not collect data about whether the homeowner owns or leases the land and thus reporting this data point is burdensome.²¹ But given the stark disparity in the interest rate between a chattel loan and a non-chattel loan, it seems preposterous that they do not collect the data. Interestingly, when the CFPB first noticed the addition of manufactured data points in 2014, lenders did not object based upon the burden of collecting data that had not been collected previously.²² Instead, industry’s opposition was that reporting the data would be challenging because of the multiple methods of lien perfection for manufactured homes and that laws differed among the states; the CFPB rejected these more substantive claims.²³ But even if

¹⁶ *Id.* at pp. 66-67 & Table 7.1.1. Note that Veterans Administration (“VA”) loans have a lower interest rate of 4.5%.

¹⁷ *Id.* at p. 62 & Table 6.7.3.

¹⁸ *Id.*

¹⁹ *Id.* at p. 62.

²⁰ New York State, Housing Stability and Tenant Protection Act of 2019, Part O, § 12 (June 11, 2019); *see also* New York State Real Property Law (“RPL”) § 233-b.

²¹ Advance Notice, 84 Fed. Reg. 20049, 20051 (May 8, 2019), *available at* <https://www.federalregister.gov/d/2019-08979/p-54>.

²² 2015 Final Rule, 80 Fed. Reg. at 66226, *available at* <https://www.federalregister.gov/d/2015-26607/p-1093>.

²³ *Id.*

we were to believe that lenders do not collect such a key data point as to whether the underlying land is owned or leased, the benefit we are already seeing from the reporting of this data far outweighs the burden. To eliminate these fields would undermine the HMDA's goals, including the ability of attorneys general to monitor manufactured home lending for compliance with the law.

B. Racial and Ethnic Data

Disaggregating racial and ethnic data into subcategories is essential in determining whether lending institutions are serving the needs of specific communities in today's America. Recognizing this reality, the 2015 HMDA Amendments disaggregated the racial and ethnic data in certain groups. For the racial category of Asian, the 2015 HMDA Amendments added the subcategories of Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese and Other; for Native Hawaiian and Other Pacific Islander, the 2015 HMDA Amendments added the subcategories of Native Hawaiian, Guamanian or Chamorro, Samoan and Other; for the ethnic category of Latino, the 2015 HMDA Amendments added the subcategories of Mexican, Puerto Rican, Cuban and Other.²⁴

The CFPB is now contemplating eliminating these subcategories because of industry's claims that collecting this data prolongs and confuses the application process. But the new data is already pointing to potential disparities in lending, for example within New York City's Asian communities. A preliminary review of the 2018 HMDA data reflects that Filipinos and Asian Indians are not able to obtain mortgages relative to their percentage of the population and both groups appear to pay more in fees as compared to the loan amount. Investigating and addressing these potential disparities is impossible without the additional data provided by the 2015 HMDA Amendments.

Contrary to industry's claims, collecting and reporting this data is not difficult. Reporting is via a drop-down, selection menu. Further, as the CFPB noted in its comments to the 2015 HMDA Amendments, for the last 15 years, the Census Bureau has been collecting disaggregated race and ethnic data.²⁵ As a result, people have become accustomed to providing data in this manner. At any rate, the results of the 2018 HMDA data shows that disaggregating race and ethnicity helps achieve HMDA's goals and outweighs the minimal reporting burden placed on lending institutions.

C. Denial Reason is Critical to Uncovering Potential Fair Lending Violations

Prior to 2018, reporting the reason a loan was denied was optional under HMDA. With the 2015 HMDA Amendments, the CFPB determined that the reason for denial was important in ascertaining the challenges certain communities face in access to credit. The 2015 HMDA Amendments provided eight common categories for denial, with a ninth category of "other."²⁶ If

²⁴ 2015 Final Rule, 80 Fed. Reg. at 66188-66190, available at <https://www.federalregister.gov/d/2015-26607/p-737>.

²⁵ 2015 Final Rule, 80 Fed. Reg. at 66188-66190, available at <https://www.federalregister.gov/d/2015-26607/p-737>.

²⁶ CFPB, *Data Point: 2018 Mortgage Market Activity and Trends: A First Look at the 2018 HMDA Data*, pp. 38-47 (August 2019) (hereinafter "CFPB Trend Report"), available at https://files.consumerfinance.gov/f/documents/cfpb_2018-mortgage-market-activity-trends_report.pdf.

a lending institution chooses “other,” then it must write in the reason in a free form text box.²⁷ With the 2015 HMDA Amendments, the CFPB rejected industry comments that maintained that a free form text box would be too burdensome.²⁸

In the Advance Notice, the CFPB is again revisiting the issue as to whether a free form text box is too burdensome.²⁹ But the reasons why the CFPB rejected industry’s proposal to eliminate a free form text box still remain: the benefit of understanding why a loan was denied, even if the reason is not a common one, outweighs the limited burden. In reaching this decision in 2015, the CFPB cited to one commentator who noted that the free form text box serves two important ends: (1) it could signal the need to add another “common” category to the drop down list, and (2) it prevents the misuse of the “other” category when one of the common reasons is the actual reason.³⁰

Nothing has changed since 2015 to justify reevaluating CFPB’s determination keep the free form text box. As a result, we oppose any efforts to remove it.

D. To Achieve HMDA’s Fair Lending Goals, Data Fields Regarding the Pricing of a Loan Are Essential

As demonstrated above, the pricing of a loan – interest rate, origination charges, discount points, lender credits – goes to the heart of a fair lending inquiry: are protected groups unnecessarily paying more for a mortgage. If they are, this makes homeownership more expensive and the accumulation of intergenerational wealth more difficult. Preliminary analysis of the 2018 HMDA data shows that in New York City, African-Americans pay more for their mortgages: loan costs for African-American homeowners from a non-bank lender average \$18,742; for white homeowners, the average loan costs from a non-bank is \$10,136. As a result, we oppose any efforts to eliminate these important bellwethers of fair lending.

E. Debt-to-Income and Combined Loan-to-Value Ratios Are Critical To Prevent Another Financial Crisis

In the lead up to the subprime mortgage crisis, combined loan-to-value (“LTV”) ratios and debt-to-income (“DTI”) ratios rose, increasing the risk of default.³¹ If HMDA required DTI and LTV data back in the early 2000s, the predatory lending practices that lead to the recession would have been more easily detected. As a result, the we oppose any efforts to eliminate DTI and LTV from lenders’ reporting requirements.

²⁷ *Id.*

²⁸ 2015 Final Rule, 80 Fed. Reg. at 66206, available at <https://www.federalregister.gov/d/2015-26607/p-897>.

²⁹ Advance Notice, 84 Fed. Reg. at 20051, available at <https://www.federalregister.gov/d/2019-08979/p-57>.

³⁰ 2015 Final Rule, 80 Fed. Reg. at 66206, available at <https://www.federalregister.gov/d/2015-26607/p-897>.

³¹ Financial Crisis Inquiry Commission Report, *supra note 6*, p. 105; see also Laurie S. Goodman & Jun Zhu, What Fueled the Financial Crisis? An Analysis of the Performance of Purchase and Refinance Loans, p. 17, Urban Institute (April 2018), available at https://www.urban.org/sites/default/files/publication/97746/what_fueled_the_financial_crisis.pdf.

III. Credit Score is Essential in Determining Unfair Lending and Must Be Made Public in Some Form

The 2010 Dodd-Frank Act amended HMDA to require lenders to report an applicant's credit score. Credit score is essential for understanding whether similarly-situated homeowners are treated differently.³² This data field is statutorily required and as a result, is not subject to the current Advance Notice proposing to eliminate certain data fields. However, given credit score's importance in analyzing patterns of discriminatory lending, we recommend that the CFPB find a way to make the credit score data publicly available in some form.

In January 2019, the CFPB issued policy guidance deciding that it would withhold credit scores from the publicly-available HMDA data, determining that the privacy risk was too great.³³ But in the CFPB's own analysis of the 2018 HMDA data, it admits the importance of credit scores: "[c]redit scores are widely used in credit decisions and are among the most significant factors in mortgage underwriting and pricing."³⁴ In fact, its own initial analysis of the 2018 HMDA data shows that even at the same credit score, African-Americans and Latino homeowners are denied mortgages at higher rates than white homeowners.³⁵ The CFPB speculates why this disparity exists, but its reasons are unconvincing and unsupported by a deeper analysis of the data.

HMDA is a disclosure statute, requiring that data be disclosed to the public and local governments so that those entities can fulfill HMDA's objectives such as enforcing fair lending laws in their communities. By completely withholding credit score data – data the CFPB has admitted is significant and which shows a potentially illegal disparity – the CFPB is limiting the ability of local governments and the public to enforce fair lending laws and protect their communities. The NYAG understands the need to protect borrower and applicant's privacy. But we believe that finding a way to meaningfully release the credit scores in some form is necessary to achieve HMDA's goals. Both industry and advocacy groups have provided alternatives to releasing the exact score, such as providing the credit score range or "normalize" the scores before releasing.³⁶

Given what we now see in the CFPB's analysis of the 2018 HMDA data, we recommend that the CFPB re-evaluate its guidance to withhold credit scores and find a way to make those data fields public in some form that still protects individual's privacy.

³² 2015 Final Rule, 80 Fed. Reg. at 66202, available at <https://www.federalregister.gov/d/2015-26607/p-869>.

³³ CFPB, Disclosure of Loan-Level Data, 84 Fed. Reg., 649, 665 (hereinafter "Disclosure Guidance"), available at <https://www.federalregister.gov/d/2018-28404/p-247>

³⁴ CFPB Data Points Report, *supra note* 12, at 52.

³⁵ *Id.* at 53 & Figure 6.4.5.

³⁶ Disclosure Guidance, 84 Fed. Reg. at 665, available at <https://www.federalregister.gov/d/2018-28404/p-247>; see also 2015 Final Rule, 80 Fed. Reg. at 66204, available at <https://www.federalregister.gov/d/2015-26607/p-882>.

IV. HMDA Data is Needed to Ensure that Commercial Mortgage Loans Are Reasonable to Support the Affordable Rental Housing Relied Upon by Millions of New Yorkers

The CFPB is also soliciting comments on potentially eliminating HMDA reporting on business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling.³⁷ Eliminating reporting on commercial goals is inconsistent with HMDA’s goal of ensuring that lenders provide mortgage financing on reasonable and non-discriminatory terms so that the housing needs of *all communities* are being met.³⁸ This goal is not limited to one-to-four family structures. Instead, HMDA recognizes that in many areas, housing needs are fulfilled, not through homeownership, but through affordable rental units in multifamily buildings. Since HMDA’s inception, it has covered closed-end business or commercial-purpose loans made to purchase, refinance or improve a dwelling.³⁹ With the 2015 HMDA Amendments, the CFPB expanded coverage to also include commercial-purpose lines of credit.⁴⁰

Prior to issuing the 2015 HMDA Amendments, the CFPB solicited comments regarding the value of reporting on commercial mortgage lending. After consideration of the extensive comments submitted by industry, consumer advocates and other stakeholders, the CFPB re-affirmed that HMDA’s statutory mandate “has a somewhat broader-based, community-level focus than certain other consumer financial laws:”

Specifically, while HMDA endeavors to ensure that applicants and borrowers are not discriminated against in particular transactions, it also seeks to ensure that financial institutions are meeting the housing needs of their communities and that public-sector funds are distributed to improve private investments in areas where they are needed.⁴¹

Nothing has changed since 2015 to prompt CFPB’s re-evaluation of this issue, or to support its request for comments on whether that data provides any value or if it is better to exclude all business- or commercial-purpose loans made to non-natural persons and secured by a multifamily building.

³⁷ Advance Notice, 84 Fed. Reg. at 20052, available at <https://www.federalregister.gov/d/2019-08979/p-76>.

³⁸ See 12 U.S.C. § 2801 (Congressional findings and declaration of purpose).

³⁹ 2015 Final Rule, 80 Fed. Reg. at 66169, available at <https://www.federalregister.gov/d/2015-26607/p-545>. However, the 2018 HMDA data is the first year that the NYAG is able to analyze multifamily lending in New York State. Because of the unique nature of New York’s multifamily mortgage market, where refinances are often done by a Consolidation Extension Modification Agreement (“CEMA”), and the fact that New York CEMAs were not covered until the 2015 HMDA Amendments, the NYAG has not been able to use this data before.

⁴⁰ 2015 Final Rule, 80 Fed. Reg. at 66172, available at <https://www.federalregister.gov/d/2015-26607/p-580>.

⁴¹ *Id.*, available at <https://www.federalregister.gov/d/2015-26607/p-588>.

For New York State, where only 53% of residents are homeowners,⁴² understanding lending patterns to multifamily buildings is of particular importance. In a place like New York City, where 62% of all housing is in a multifamily building,⁴³ it is vital. And in today's world, an increasing number of multifamily buildings are owned by non-natural persons, such as Limited Liability Companies (LLCs).⁴⁴ As a result, excluding this category from HMDA reporting would mean that virtually all multifamily mortgage lending would largely occur beyond the watchful eye of federal and state regulators.

In New York, unreasonable commercial mortgage lending has financed overleveraged “predatory equity” deals that put the rights of existing tenants at risk.⁴⁵ In New York City especially, the NYAG has investigated landlords who have bought rent-stabilized properties at speculative prices, taking out excessive mortgage loans that cannot be satisfied by the existing rent rolls of the building. This type of overleverage results in landlords using illegal means to evict rent-regulated tenants and moving the rent-regulated unit to market rent; only by doing that will the landlord be able to make its mortgage payments.

For example, the NYAG recently settled claims of fraudulent and deceptive business practices (including tenant harassment) with the landlord Raphael Toledano for his misconduct in this type of scheme. *See People of the State of New York v. Raphael Toledano, et al.*, Index No. 450919/2019 (Sup. Ct. N.Y. Cnty. Filed June 19, 2019). As detailed in that Complaint, Toledano used a series of shell companies to take out exorbitant mortgage loans to purchase a portfolio of rent-stabilized properties in Manhattan, where the existing rent rolls were insufficient to cover the monthly mortgage payments.⁴⁶ Toledano then began an unlawful campaign to harass and evict existing tenants, hoping to flip the apartments to market rate units in order to meet his mortgage obligations.

The NYAG opened its investigation of Toledano following complaints from a group of organized tenants.⁴⁷ But many vulnerable tenants lack the resources to organize and file such complaints. HMDA data regarding multifamily dwellings provides law enforcement with necessary tools to analyze patterns of lending to multifamily homes even in the absence of tenant complaints.

⁴² U.S. Census Bureau, 2017 American Community Survey, *available at* <https://data.census.gov/cedsci/profile?g=0400000US36&q=>.

⁴³ New York City Rent Guidelines Board, *2018 Housing Supply Report*, p. 3 (May 24, 2018), *available at* <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/18HSR.pdf>.

⁴⁴ *See, e.g.*, Will Parker, “The Rise of the Anonymous LLC,” *The Real Deal* (Sept. 1, 2018), *available at* https://therealdeal.com/issues_articles/the-rise-of-the-anonymous-llc/.

⁴⁵ *See, e.g.*, Stabilizing NYC, *The Predatory Equity Story* (2017), *available at* https://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_SNYCPredatoryEquity_20171214_0.pdf.

⁴⁶ *Id.*, pp. 50-62.

⁴⁷ Press Release, NYAG, *Notorious Landlord, Raphael Toledano, To Pay \$3 Million, Other Penalties for Harassing NY Tenants* (June 20, 2019), *available at* <https://ag.ny.gov/press-release/notorious-landlord-raphael-toledano-pay-3-million-other-penalties-harassing-ny-tenants>

HMDA data can also help policymakers identify trends in affordable housing development. The 2015 HMDA Amendments added a new data point to identify the number of affordable housing units in a multifamily dwelling.⁴⁸ This data will help policymakers to identify who is financing affordable housing and who is not.

This is why data on multifamily mortgage lending to non-persons is essential to achieving HMDA's goal that the housing needs of all Americans – even low-income and senior citizen tenants – are met. And this is why, in its 2015 HMDA Amendments, the CFPB, after long consideration, rejected this exact proposal – to exclude all business or commercial loans made to non-persons and secured by a multifamily building.⁴⁹ In its assessment in 2015, the CFPB determined that requiring HMDA reporting for a wider swath of multifamily mortgages was essential to furthering HMDA's purposes since “this is a segment of the mortgage market for which the public and public officials lack significant data.”⁵⁰ This calculus has not changed. If anything, as New York's affordable renting crisis has worsened over the last four years, this data is even more necessary.

V. Mortgage Lenders Already Collect Much of the New Data

The CFPB issued the Advanced Notice because lending institutions informed CFPB that collecting and reporting the data for many of the new and revised data points proved too burdensome. But the CFPB already rejected these claims in 2015, when it first sought to add the new data points and revise others.⁵¹ In its own balancing of the burden placed on smaller lenders with the goals of HMDA to serve as a tool in eradicating discriminatory mortgage lending, the CFPB determined that the data obtained through the new and revised data points outweighed the reporting burden on lenders.⁵²

Further, most of these institutions are required to collect these new data points under the Truth-in-Lending Act (“TILA”) and the Real Estate Settlement Procedures Act (“RESPA”) Integrated Disclosures rules, for other regulators and also in accordance with customary underwriting standards.⁵³ It is unclear why *reporting* data that is already collected is too costly. Or why any associated costs outweigh the benefit of HMDA's goal of ensuring that the public and public officials have the tools necessary to enforce fair mortgage lending in their communities

⁴⁸ CFPB Data Points Report, *supra note* 12, at 65.

⁴⁹ 2015 Final Rule, 80 Fed. Reg. at 66171, available at <https://www.federalregister.gov/d/2015-26607/p-577>.

⁵⁰ 2015 Final Rule, 80 Fed. Reg. at 66172, available at <https://www.federalregister.gov/d/2015-26607/p-580>.

⁵¹ 2015 Final Rule, 80 Fed. Reg. at 66128-66340, available at <https://www.federalregister.gov/d/2015-26607/p-1>.

⁵² *Id.*

⁵³ Adam Levitan, *New HMDA Regs Require Banks to Collect Lots of Data. . . That They Already Have*, CREDIT SLIPS, (June 15, 2017), available at <https://www.creditslips.org/creditslips/2017/06/new-hmda-regs-require-banks-to-collect-data-they-already-have.html>; see also 2015 Final Rule, 80 Fed. Reg. at 66204, available at <https://www.federalregister.gov/d/2015-26607/p-885> (noting that the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”) require the lenders that they regulate to provide a denial reason).

VI. Conclusion

In its Advance Notice, the CFPB is revisiting the 2015 HMDA Amendments, by again requesting public comment on the costs and efficacy of HMDA data collection. The CFPB should not reverse course so quickly. The increased transparency in mortgage lending promised by the Amendments is needed to deter discriminatory and unsafe lending practices. Moreover, the CFPB has not offered any evidence to support this quick turnabout.

But more importantly, HMDA's new and revised data fields are already proving useful for efforts by the NYAG and other law enforcement agencies to prevent discriminatory and unsafe lending. Any attempts to weaken these new reporting requirements will guarantee that discriminatory mortgage lending persists and that homeowners of color are denied access to homeownership, much as they have for centuries. Further, without sufficient data about mortgage lending, the United States will again be vulnerable to another financial crisis. For the economic security of all who live in America, we oppose any attempts to dilute the current HMDA reporting requirements.

Respectfully submitted,



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