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BANKING DEPARTMENT
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RICHARD H. NEIMAN
Superintendent of Banks

August 6, 2010

Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. OP-1388

Dear Ms. Johnson:

The New York State Banking Department (NYSBD) appreciates this opportunity to comment on potential revisions to the Federal Reserve Board's (the Board) Regulation C which implements the Home Mortgage Disclosure Act (HMDA). HMDA data serves an important role in evaluating the Community Reinvestment Act (CRA) performance of depository financial institutions in meeting the housing credit needs of the communities in which they are chartered. In addition, HMDA data helps ensure compliance with fair lending laws by identifying possible discriminatory lending patterns by financial institutions subject to HMDA reporting requirements. Although the current data required to be reported is rich and relevant for both these purposes, the NYSBD believes that some revisions of Regulation C are needed to further bolster the utility of HMDA data.

DATA ELEMENTS

Should the Board add, modify, or delete any data elements required to be reported by HMDA?

The NYSBD recommends that the Board alter the data elements required to be reported by HMDA. HMDA was originally enacted to increase transparency in mortgage lending as a way to combat redlining and other discriminatory lending practices. It also was

hoped that such increased transparency would help private investors and government officials better identify areas in need of investment while revealing whether depository institutions were serving the credit needs of their communities. However, the current level of data reporting mandated by HMDA could be improved to better meet these purposes.

HMDA data is especially weak as a tool for identifying unlawful discrimination because so many factors relevant to a lender's decision-making in approving or denying a loan request, as well as in setting the terms and conditions of a loan, are not required to be reported. Although regulators are able to obtain this information from the entities they supervise, the general public is not privy to this data. Thus, HMDA is currently failing to achieve its underlying purpose of transparency. Consequently, the NYSBD recommends that additional data elements be required by HMDA to be reported for all loans.

The following data elements are material factors considered by lenders when making loans. Because of the role these elements play in the decision-making and pricing processes, the NYSBD believes that all of these elements are necessary for conducting a meaningful assessment of an institution's lending activities:

- Interest Rate – Lenders should be required to indicate whether the rate given is fixed or adjustable. Where the rate is adjustable, the rate of the first adjustment also should be provided. In addition, the lender should indicate whether the period for the initial interest rate is less than five years.
- Loan Term – It is difficult to compare loans without knowing whether the loan terms are similar. The pricing of a 30-year loan will differ from the pricing of a 15-year loan even where all other factors are equal. Thus, loan terms should be reported for all loans.
- Loan to value (LTV) and Debt to Income (DTI) –Few factors can be considered as important as LTV and DTI in determining whether applicants are being treated fairly. Moreover, disclosing the LTV provides insight on whether the borrower has made a down payment. It is often because LTV and DTI are not reported that a lender may appear to be illegally discriminating when it is not, or vice versa.

We specifically recommend that for junior liens, the lender should report the combined LTV. The absence of this data distorts the true level of a consumer's indebtedness and may lead to improper conclusions through the comparison of dissimilar consumers. Regarding DTI, the lender should provide data on the back-end ratio, i.e., the ratio between all monthly fixed expenses and monthly gross income, for all loans.

- FICO Score – Although the NYSBD recognizes that reporting FICO scores increases privacy concerns, the identity of the borrower/applicant and co-borrower/co-applicant can be protected if FICO scores are identified solely by a range within which the FICO score falls. Reporting the range in which an applicant's/co-applicant's FICO score falls will provide sufficient information for comparing applicants while protecting the identification of any specific individual.
- Age of the borrower(s)/co-borrower(s) – Without this information it is difficult to determine whether a lender is illegally discriminating on the basis of an applicant's/co-applicant's age. Like the FICO score, the NYSBD recommends that the age of the applicant/co-applicant be reported as falling within a range of ages, established by the Board, to protect the identity(ies) of the borrower/applicant or co-borrower/co-applicant.
- Annual Percentage Rate (APR) – As the Truth in Lending Act makes clear, it is important for lenders to disclose APR values because only then is the true cost of a loan revealed. Thus, HMDA should require the reporting of APR for all loans. The NYSBD also recommends that the rate spread on ALL loans be provided rather than the current procedure of providing rate spreads only on high cost loans. The current limitation creates a negative impression that there is no concern about discrimination for loans below the high cost threshold. Moreover, reporting rate spreads on all loans aids in the interpretation of APR data by providing controls for differences in the prevailing interest rates.
- Channel of Distribution – Because lenders often maintain different policies for loans originated directly by the lender than for loans originated by third-parties, it is important to require that lenders identify the channel of distribution for the loans reported in HMDA data. The Board should establish standard channels and descriptions, such as walk-in, branch-based, retail sales force, telephone, internet, third-party broker, third-party correspondent, and corporate benefit programs (such as relocation).

In addition, the unique broker identifier code established by the National Mortgage Licensing System and Registry should be reported on all brokered loans listed by the originating lender.

COVERAGE

Should the Board make changes to the rules regarding which type of institutions are required to report HMDA data?

The NYSBD recommends that Regulation C be made applicable to all depository institutions, mortgage bankers and mortgage brokers. Currently, a depository institution is required to report HMDA data only where the entity's asset size reaches a certain

threshold level, which is adjusted annually by the Board. Similarly, mortgage bankers are required to report HMDA data only where an entity's asset size and the extent of its business in a metropolitan statistical area (MSA) reaches a certain level. Mortgage brokers have no obligation to report HMDA data no matter the volume of loans that are originated through a particular broker.

Requiring only those depository institutions that reach a certain size to report HMDA data is at odds with the Community Reinvestment Act. If one purpose of collecting HMDA data is to aid in the evaluation of how well a depository financial institution is meeting the credit needs of the communities in which it is chartered, then why allow any depository institution subject to CRA to be exempt from HMDA reporting? HMDA data is a valuable assessment tool for CRA performance. Thus, all depository institutions subject to CRA, regardless of asset size, should be required to be HMDA reporters.

In addition, to exclude all mortgage brokers and arbitrarily exclude many mortgage bankers from HMDA reporting is to ignore that the lending landscape has changed dramatically since HMDA was first enacted in 1975. Given the dominance of both entities in the mortgage market, all mortgage bankers and brokers should be mandatory HMDA reporters. As one of the few regulatory agencies that conducts fair lending examinations of mortgage bankers and brokers, the NYSBD has experienced first-hand the difficulty in identifying discriminatory lending patterns by these entities because of the lack of data HMDA reporting provides. Such an expansion of HMDA reporting will aid regulators in their fair lending examination of these entities, as well as provide the public with needed transparency for mortgage transactions involving mortgage bankers and brokers. The reporting threshold should be based solely on the number of loans originated or brokered in a year. Thus, whenever a mortgage banker originates at least one loan, and a mortgage broker originates, as a third-party, at least five loans, that entity should be required to report HMDA data. A limited exemption for certain private mortgages (e.g., among family members, or when a seller assigns a mortgage to a buyer), should be created to protect lenders who are not active participants in the marketplace.

Further, a new action code field, (e.g., "loan facilitated"), should be created for HMDA reporting to indicate that a loan involved a mortgage broker. Such coding would prevent loans from being double-counted; once by the lender and once by the broker. Loans reported twice could be sorted easily in the same way that the current double reporting of loans by an originating lender and a purchaser/investor are sorted. A field for reporting the amount of a broker's fee also should be added to ensure that the total costs of a loan are captured for comparison.

SCOPE

Should the Board require lenders to report on home-secured loans, (e.g., reverse mortgages, home equity lines of credit), in addition to home purchase, home improvement, and refinancing loans?

HMDA data should be reported on all home-secured loans, including reverse mortgages, home-equity loans (whether closed or revolving), and MECAs. Although reverse mortgages can be reported as refinance or HELOC loans *at the option of the institution*, a separate category for these loans is needed. Reverse mortgages are no longer a niche product. Given the increased longevity of seniors, the volume of reverse mortgages is expected to increase. Yet, unlike other types of refinances or HELOCs, reverse mortgages constitute a product geared toward a specific protected class, the elderly. Thus, reporting them, (assuming an institution chooses to report them at all), as refinance or HELOC loans may mask discriminatory or abusive practices that are occurring to harm the elderly.

Similarly, although some home-secured loans may be used for purposes other than home improvement or home purchases, the opportunity for discrimination is not diminished by the type of home-secured loan involved. Reporting on all home-secured loans would provide a more complete picture of an institution's lending practices. For depository institutions, mandating the reporting of all home-secured loans would aid in evaluating their CRA performance. Communities need and seek loans other than those currently reported under HMDA. Without mandating that data on these other types of loans be provided, it is difficult to evaluate whether a community's needs are being met by a particular institution. Thus, HMDA data should include all home-secured loans.

COMPLIANCE AND TECHNICAL ISSUES

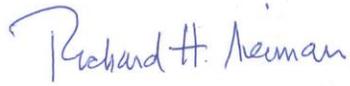
What are the most common compliance and technical issues that institutions face under HMDA and Regulation C?

From a regulator's viewpoint, accuracy of HMDA data is the most common issue that arises regarding compliance with HMDA and Regulation C. Errors in HMDA data are a persistent problem, and appear to result from an institution's staff having little to no training in HMDA reporting matters. A process is needed that would allow staff to become certified in HMDA reporting requirements, with annual recertification and training opportunities made available. This would dramatically reduce the number of resubmissions that are regularly ordered by regulators examining an institution, and reduce the time needed to complete an examination.

Again, thank you for giving us this opportunity to comment on potential modifications to Regulation C. If we may be of further assistance, please do not hesitate to contact Dianne

Dixon, Deputy Superintendent of Banks, Consumer Services Division at (212) 709-3591
or Dianne.Dixon@banking.state.ny.us.

Regards,

A handwritten signature in blue ink that reads "Richard H. Neiman". The signature is written in a cursive style with a large initial 'R'.

Richard Neiman
Superintendent of Banks
New York Banking Department