



## Lawyers' Committee for Civil Rights Under Law

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April 20, 2004

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Docket No. 04-05  
Communications Division  
Public Information Room,  
Mailstop 1-5  
Office of the Comptroller of the  
Currency  
250 E St. SW  
Washington 20219  
FAX (202) 874-4448

Docket No. R-1180  
Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal  
Reserve System  
20th Street and Constitution  
Avenue, NW  
Washington DC 20551  
FAX (202) 452-3819

Robert E. Feldman  
Executive Secretary  
Attention: Comments  
Federal Deposit Insurance  
Corporation  
550 17th St NW  
Washington DC 20429  
FAX (202) 898-3838

Regulation Comments, Attention:  
Docket No. 2003-67  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street NW  
Washington DC 20552  
FAX (202) 906-6518

Dear Officials of Federal Bank and Thrift Agencies:

The Lawyers' Committee for Civil Rights Under Law ("the Lawyers' Committee") is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The Lawyers' Committee is committed to improving lending opportunities for minorities and holding lending institutions accountable for discriminatory practices. As such, the Lawyers' Committee is very concerned about discriminatory lending practices, which disproportionately harm minority and low-income communities depriving them of equal credit opportunities and stripping them of wealth.

The Lawyers' Committee is sending this comment in response to the Notice of Regulatory Review as required by the Economic Growth and Regulatory Paperwork Reduction Act ("EGRPRA") of 1996. In response to the second series, "Consumer Protection: Lending - Related Rules," we respectfully request that the federal banking agencies retain their regulations concerning the Fair Housing Act ("FHA"), the Equal Credit Opportunity Act ("ECOA"), Home Mortgage Disclosure Act ("HMDA"), the Truth in Lending Act ("TILA"), and unfair or deceptive acts and practices.

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These acts all have established a clear Congressional intent and purpose to eliminate abusive and discriminatory lending. The Lawyers' Committee believes that expanding data reporting requirements will assist in achieving the goals of these fair lending statutes and substantially benefit consumers with little or no regulatory burden. Under EGRPRA, federal agencies must identify "outdated" regulations. Currently, the incomplete data collection under ECOA and HMDA is outdated and frustrates the purposes of these acts in preventing discrimination. Of course, in addition to increasing data reporting requirements, the agencies must not limit the other consumer protections currently available under the regulations.

By contrast, changes which reduce data reporting requirements under the regulations related to these acts would interfere with the agencies' ability to fulfill their statutory obligations. Particularly in light of the recent decision by the Office of the Comptroller of the Currency to preempt all state anti-predatory lending legislation, these protections have become even more important to consumers. The Lawyers' Committee does not believe these statutes provide enough protection; therefore, any regulatory streamlining would further put consumers at risk.

These statutes – FHA, ECOA, HMDA, TILA – have been instrumental in protecting consumers, increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant, and low- and moderate-income communities. A reduction in consumer protections through a process of streamlining, contrary to the statute, will undermine the progress made in community development and expanding homeownership. Indeed, such a reduction would reduce the ability of the public to hold financial institutions accountable for compliance with consumer protection laws. By contrast, we advise that affirmative actions must be taken to ensure that more complete data disclosure becomes part of the overall effort to make equality in lending a reality.

### **Home Mortgage Disclosure Act**

Enacted by Congress in 1975, HMDA requires banks, savings and loans associations, credit unions, and other financial institutions to publicly report detailed data on their home lending activity. In HMDA, 12 U.S.C. § 2801, Congress found that financial institutions contributed to the decline of certain geographical areas by their failure to provide adequate home financing on reasonable terms and conditions. Accordingly, a major purpose of HMDA was to provide citizens and public officials with sufficient information to determine whether institutions are fulfilling their obligations to serve the housing needs of communities and neighborhoods in which they are located. Banker suggestions to exempt more institutions from data reporting will thwart HMDA's purpose of determining if institutions are serving credit needs.

In HMDA, Congress expressed its will that institutions must provide loans on

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reasonable terms. As a step towards this Congressional objective, regulators need to update HMDA to include pricing information on all loans, critical loan terms (existence of prepayment penalties, for example), and key underwriting variables such as loan-to-value ratios and debt-to-income ratios. HMDA is becoming increasingly "outdated" as the industry adopts automated underwriting and risk-based pricing. At the same time, HMDA lacks key variables that enables the general public to assess if lenders are applying their sophisticated technology to provide credit that is priced fairly and has reasonable terms.

The regulators should also end the exemptions of certain lenders from HMDA and improve the existing data. Currently, small lenders (with assets under \$33 million) and lenders with offices in non-metropolitan areas are exempt from HMDA data reporting requirements. Data for rural areas is also incomplete, particularly information on the census tract location of loans. If banks and thrifts have assets under \$250 million dollars (or are part of holding companies under \$1 billion dollars), they do not have to report the census tract location for loans in metropolitan areas in which they do not have any branch offices nor do they have to report the census tract location for loans rural, non-metropolitan areas. In addition, demographic information on the race, income level, and gender of borrowers is missing from loans that lenders purchase.

Technology has improved to such an extent that even small lenders would be confronted with minimal burden in collecting HMDA data. Also, all lenders would be able to readily collect additional data items. Overall, the benefits of expanded HMDA data requirements would greatly outweigh the burdens and would be true to HMDA's statutory purpose of assessing the extent to which credit needs are met.

### **Equal Credit Opportunity Act**

ECOA and the Federal Reserve's Regulation B prohibit discrimination against an applicant because of the applicant's race, color, sex, religion, national origin, marital status, age or receipt of public assistance. Currently, Regulation B prohibits lenders from collecting demographic data including race and gender of business owners seeking small business loans, except for limited self-assessment purposes. The Federal Reserve has asserted that their regulation guarantees that the loan process remains colorblind for all applicants. In reality, however, this regulation has become a shield behind which some banks hide their lack of serving women and minority-owned businesses. The publicly available data provided by HMDA has been instrumental in increasing access to home loans for formerly neglected borrowers. Likewise, the federal agencies would achieve ECOA's statutory purpose of combating discrimination if they allowed banks to voluntarily collect and report information on the demographics of their small business borrowers.

The total number of small business loans increased 24 percent from 2001 to 2002. However, despite the overall increase, the number of small business loans made to businesses with revenue under \$1 million continues to plummet. Lenders issued about 31 percent of

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their loans to businesses with revenues under \$1 million in 2002. This is a substantial decrease from 40 percent in 2001 and 60 percent in 1999. Similarly, lending to businesses in low- and moderate- income census tracts remains stagnant as the percent of loans made to businesses in these communities either decreased or remained the same over the last few years. The Lawyers' Committee believes that just like improvements to HMDA, enhancements to ECOA that allows lenders to collect demographic data will expand lending to traditionally underserved (and disproportionately minority) communities and borrowers.

**Truth in Lending Act**

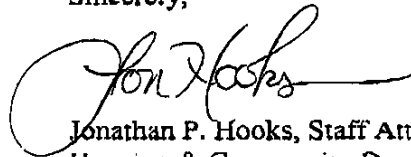
Finally, in 2001, the Federal Reserve Board made valuable improvements to their regulation implementing the Home Ownership and Equity Protection Act ("HOEPA"), which amended TILA. Among other benefits, the changes applied HOEPA's protections to more subprime loans, including most loans with single premium credit insurance. Since abusive lending continues to increase, the federal agencies must preserve the changes to HOEPA. The regulatory agencies must also preserve the critical right of rescission under TILA. This right empowers borrowers at the closing table, enabling them to bargain with lenders and eliminate onerous terms and conditions in their loans. The right of rescission provides vital protection in the event that a borrower desires to cancel an abusive loan up to three days after closing.

**In Conclusion**

To reiterate, the agencies must not weaken protections embodied in the regulations implementing HMDA, ECOA, TILA, FHA and other statutes addressing unfair and deceptive practices. Rather, data disclosure requirements under these laws must become more comprehensive in order to identify and uproot discrimination. Both of these goals can be reached while meeting the requirements of the EGRPRA.

Thank you for your attention to this critical matter. If you have questions regarding our comments, please do not hesitate to contact me directly at (202) 662-8326.

Sincerely,



Jonathan P. Hooks, Staff Attorney  
Housing & Community Development Project

cc: National Community Reinvestment Coalition