

April 13, 2004

Public Information Room
Office of the Comptroller of the Currency
250 E Street, S.W.
Mailstop 1-5
Washington, D.C. 20219
Docket Number 04-05

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Docket No. R-1180

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments, Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
Docket Number 2003-67

Attention: Comment regarding the Economic Growth and Regulatory Paperwork
Reduction Act of 1996

To Whom It May Concern:

The National Community Reinvestment Coalition, the nation's economic justice trade association of more than 600 community organizations, 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 Fair Housing, Equal Credit Opportunity Act (ECOA), Home Mortgage Disclosure Act (HMDA), Truth in Lending Act (TILA) and Unfair or Deceptive Acts or Practices.

NCRC favors expanding data reporting requirements that will assist in achieving the goals of these fair lending statutes and substantially benefit consumers with little regulatory burden. Under EGRPRA, the federal agencies must identify "outdated"

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regulations. The incomplete data collection under HMDA and ECOA is outdated and frustrates the purpose of these statutes to prevent discrimination. While increasing data reporting requirements, the federal agencies must not limit the consumer protections currently available under these regulations. Any streamlining of these protections would interfere with the agencies' ability to fulfill their statutory obligations.

A series of federal statutes including the Fair Housing Act, the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, and the Truth-in-Lending Act have established a solemn Congressional intent and purpose of eliminating abusive and discriminatory lending. 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. NCRC does not believe these statutes provide enough protection, therefore any regulatory streamlining would further put consumers at risk.

Home Mortgage Disclosure Act

Enacted by Congress in 1975, the Home Mortgage Disclosure Act (HMDA) requires banks, savings and loans associations, credit unions, and other financial institutions to publicly report detailed data on their home lending activity. In the HMDA statute (12 USC Section 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 the HMDA statute, Congress expressed its will that institutions must provide loans on 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 enable 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

The Equal Credit Opportunity Act and Regulation B prohibits discrimination against an applicant because of the applicant's race, color, sex, religion, national origin, marital status, age or receipt of public assistance. Currently, the Federal Reserve's 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 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. NCRC believes that just like improvements to HMDA, enhancements to ECOA that allows lenders to collect demographic data will expand lending to traditionally underserved communities and borrowers.

In Conclusion

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.

Likewise, the agencies must not weaken HMDA, ECOA, TILA, or protections in regulations implementing the Fair Housing and Unfair and Deceptive Practices Acts. Data disclosure under these laws must become more comprehensive in order to identify and uproot discrimination.

Please feel free to contact myself or Josh Silver, Vice President of Research and Policy, on (202) 628-8866 if you have any questions. Thank you for your attention to this critical matter.

Sincerely,

John Taylor
President and CEO