American Bankers Association
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Via electronic delivery to:
www.regulations.gov

Monica Jackson, Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

Re: Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure Act (Regulation C) October Final Rule, Docket No. CFPB-2017-0010, RIN 3170-AA64

Dear Ms. Jackson:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the proposal by the Bureau of Consumer Financial Protection (Bureau) to offer clarifying and technical corrections[2] to the revised Regulation C, the regulation that implements the Home Mortgage Disclosure Act (HMDA). The revisions to Regulation C were issued in October 2015 (the Final Rule).[3]

HMDA is intended to provide the public and public officials with information that can be used to assist in identifying whether financial institutions are serving the housing needs of the communities where they are located, to help public officials distribute public sector investments, and to help identify possible instances of illegal discrimination. Section 1094 of the Dodd–Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added approximately 13 new data points to the data that lenders must collect and report, and the Bureau made extensive use of its discretionary authority, doubling the data points lenders must collect and report. At the same time, when it issued the Final Rule, the Bureau also made alterations to the type of data already being collected as well as how it is collected.

ABA appreciates the Bureau's efforts to help lenders comply with the new requirements. However, despite the Bureau's characterization of the proposed changes as "technical corrections, clarifying amendments or minor changes," many of the changes are substantive in nature. More importantly, the Bureau has not conducted a thorough or comprehensive process to identify industry questions and proposed solutions; instead the Bureau has relied on informal and ad hoc "outreach." Furthermore, the Bureau has only permitted 30 days to provide feedback, an extremely truncated timeframe that discourages comprehensive responses, increasing the risk that the Bureau will make policy decisions based on flawed or incomplete information.

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[1] The American Bankers Association is the voice of the nation's $17 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $13 trillion in deposits and extend more than $9 trillion in loans.
[2] Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure (Regulation C) October 2015 Final Rule, 82 Fed. Reg. 19142 (proposed Apr. 25, 2017) (to be codified at 12 C.F.R. pt. 1003).
[3] Home Mortgage Disclosure (Regulation C), 80 Fed. Reg. 66128 (Oct. 28, 2015) (to be codified at 12 C.F.R. pt. 1003) [hereinafter *Final Rule*] et seq.

When it published the Final Rule, the Bureau acknowledged the challenges that the industry would face in implementing the new HDMA requirements and adopted an effective date of January 1, 2018, for most of the rule.[4] As anticipated, and as the proposed regulatory changes demonstrate, there is still much work to be done, and significant issues need to be resolved to ensure that all lenders can comply with the new reporting regime without limiting the availability of mortgage credit.

Nevertheless, the Bureau believes that there is no need to extend the compliance deadline, which is now only seven months away. ABA disagrees. It will take several months to finalize these changes, whether they are deemed technical or substantive. Then industry will face the task of implementing the changes, which will add to the existing challenges that lenders face with programming loan operating systems (LOS) and integrating those systems with the new HMDA data collection software—*which the Bureau has yet to issue in final form.*[5]

Proceeding via piecemeal "clarifications" and corrections is burdensome to lenders and can negatively affect consumers and the mortgage markets. Moreover, the Bureau has not finalized the data integrity and resubmission standards. Indeed, the Bureau has not even *proposed* rules to address the privacy and data security issues presented by the expanded HMDA data collection. That is comparable to opening streets to traffic without lane markers or traffic signals.

Under the circumstances, we believe that the effective date of the Final Rule, scheduled for January 1, 2018, should be suspended immediately to promote the orderly, coordinated, and thorough consideration and resolution of *all* the interrelated issues presented and to make sure that all of the privacy and security issues are adequately addressed.

During our discussion with lenders, one issue that repeatedly arises is the need to have a simple set of guidelines that lenders can use as reference tools. For many years, lenders have relied on *A Guide to HMDA: Getting it Right* and have found it to be a valuable resource. While the Bureau has issued a Small Entity Compliance Guide, that guide is not as comprehensive nor is it coordinated with reporting requirements in the same way that *A Guide to HMDA* was. Instead of discontinuing *A Guide to HMDA,* ABA recommends that the Bureau give careful thought to updating guidance in *A Guide to HMDA*. This would build on the foundation that lenders are accustomed to using and which they have found a helpful resource.

Specific Comments on the Proposed "Technical Corrections and Clarifying Amendments"

1. Loans in Process or Loans Originated Before but Purchased After the Effective Date

One issue that the Bureau seeks to address is how lenders should report data for loans in process on the effective date of the Final Rule or loans that had been originated before the Final Rule took effect, but were purchased afterward. Since the Final Rule significantly expands and changes data reporting, much of the data required to be reported will not be available, in some cases because it would have been illegal to collect the information at the time of application.

[4] *Id.* at 66256-66258.

[5] The Bureau committed to providing new web-based software to report the HMDA data as part of the changes to the program. Many banks, but especially community banks, are depending on access to that mechanism and are struggling to update compliance systems in the interim.

The Bureau has suggested a process that is unnecessarily complicated. It has attempted to identify each data point where information might be missing and to suggest a solution for that specific data point. For example, since cash-out refinancings are not tracked under current HMDA requirements, a loan originated prior to 2018 will not have that information. If purchased after January 1, 2018, the proposed technical corrections suggest that a lender would report "not applicable" on that specific data point.

Instead of trying to address each individual data point, which adds unnecessary complication and increases the possibility of error, ABA urges the Bureau to adopt the following simple and comprehensive solution:

> If a loan was originated before January 1, 2018 but purchased after January 1, 2018, or if a loan application was submitted prior to January 1, 2018 but closed after the new requirements take effect, and if the data for the transaction comply with the requirements of the HMDA rule that was in effect at the time, the loan is in compliance and any missing data fields would simply be reported as "not applicable." Lenders would not be required to take steps to do additional research and obtain the missing data, since in some cases, especially with regard to purchased loans, that information may not be readily available. For example, some of the government monitoring information may not be available for a home equity line of credit where the application was taken prior to January 1, 2018. In fact, collecting that information for a non-reported loan would be a violation of Regulation B, ECOA.

It is likely that this will not affect many transactions; therefore, it should not have a substantial impact overall on the HMDA data. However, this approach will significantly alleviate unnecessary burden. In addition, it will avoid confusion and delay of loan transactions if lenders are not compelled to seek to collect the data before closing a loan that is in the pipeline or that was originated before but purchased after the effective date of the Final Rule.

I. New York CEMA[6] Program

A special program in the State of New York permits a lender to advance funds in a preliminary transaction and then roll that first transaction into a second transaction secured by a dwelling which is already subject to a lien. These two-step transactions are structured under New York law to let borrowers limit the amount and payment of recording taxes.

The proposal would create an exception so that the transaction would be covered only to the extent of new debt, and the entire transaction would be treated as a single transaction for HMDA purposes. ABA supports the exception. In making this change, though, the Bureau expressly limits the exception to situations in which both the advance of new funds and the second transaction to wrap that loan into the existing debt occur during the same reporting period. ABA questions whether this restriction is necessary, since our members report that it would be highly unusual for the two transactions not to occur almost simultaneously.

We understand that one of the goals for the New York statute was to permit assumptions where a surviving spouse or the heirs of a decedent seek to assume the existing mortgage. ABA urges the Bureau

[6] Freddie Mac, Consolidation, Extension and Modification Agreement, available at: http://www.freddiemac.com/cim/pdf/nycemaqa.pdf.

to ensure that assumptions are clearly covered by this exception, since these transactions often involve different borrowers from the original debtor.

We also note that the proposal would restrict these transactions to New York State, even though the Bureau acknowledges that other states, for example, Virginia and Florida, have similar programs. ABA recommends that the exception should be available in all states.

II. Multifamily Dwellings

The Final Rule defines a multifamily dwelling as a dwelling that includes five or more individual dwelling units. The initial expectation was that this would apply to instances where all the units were located in one location, such as a housing complex or manufactured home community. However, since the Final Rule was issued the Bureau learned that there may be occasions when a borrower wants to secure debt with units in multiple locations, such as a landlord with multiple properties across the city.

The proposed revision would clarify that the definition of multifamily dwelling would apply even if the properties are not in one location. This is a significant change to current practice. While ABA understands that the change was designed to accommodate certain investors, the general consensus of our members is that this will engender confusion and is not appropriate. For example, what will happen when the various multifamily properties are located in multiple census tracts, counties or even states?

ABA opposes this revision until more careful and thorough analysis and feedback from the industry are obtained. It is not clear that the revision is needed to address HMDA's goals. Instead, the revision seems to accommodate commercial and *investor transactions*, not *housing*. This proposed change, and the compliance challenges it will present, underscores a point that ABA has raised consistently: HMDA was never designed to cover commercial real estate transactions. These efforts to contort the rule to encompass a class of loans for which it was not designed and for which it was never intended will create problems for lenders and borrowers and confuse the data for policymakers.

4. Home Improvement Loans

Another proposed change would clarify the definition of home improvement loans in mixed-use properties when part of the property is commercial in nature and part of the property is residential. If the loan is used to improve the entire property, such as a loan to purchase a new heating system, or the improvement primarily affects the residential portion of the property, then the proposed changes would clarify that the loan qualifies as a home improvement loan for HMDA purposes.

The proposal would also restrict this interpretation to mixed-use multifamily properties. A different standard would be used for one-to-four family dwellings. In that case, a loan to improve commercial space, such as a home office in a private home, would be classified as a home improvement loan. In other words, using the Bureau's approach, there are different standards for whether a loan is to improve commercial space depending on the type of property where the changes are made.

ABA is concerned that this proposed interpretation will cause confusion. To promote clarity and compliance, ABA recommends a simpler solution: If the property is subject to HMDA reporting and a loan is made for *any* improvement to that property, then the loan should be considered a home improvement loan. This approach avoids the need to determine the percentage of the loan proceeds

that are applied for a residential purpose, whether the loan is multi-family or one-to-four family, and creates a simple and easily applied standard.

5. Temporary Financing

The Bureau also proposes to change the commentary to section 1003.3(c)(3) to clarify when a loan is considered temporary financing and, therefore, is non-reportable. To qualify, a temporary loan must be designed to be replaced by a permanent loan to the same borrower at a later date and in a separate transaction. The goal is to ensure that loans for construction or bridge loans are excluded from reporting.

The issue of temporary financing is one that has vexed the industry for quite some time. ABA agrees that it is appropriate to capture loans to investors that seek to remodel and sell a property quickly. Even though those loans may be short term, they should not be deemed temporary. However, initial reaction from lenders suggests that the proposed changes do not actually clarify what constitutes temporary financing. Therefore, ABA recommends that the definition be changed.

As noted above, the goal is to exclude loans that will be replaced by more permanent financing. The problem lenders face is that those arrangements can take many different forms. Temporary financing may be structured in different ways, might involve a change in lender when the permanent loan is booked, or might involve a single set of documents where the change is not reflected in documentation but merely by a system entry. As currently phrased, it is not clear that these loans would qualify as temporary financing, even though they are recognized as such.

Therefore, ABA suggests the following definition: temporary financing is any dwelling-secured loan to a consumer, whether for construction or other purposes, where the initial advance of funds will be replaced by permanent financing at a later date.

6. Threshold for Reporting

In the Final Rule, the Bureau adjusted the threshold that defines which institutions are required to report and established uniform loan-volume thresholds for depository and non-depository institutions. By definition, the revised loan-volume thresholds exempt an institution that originated less than 25 closed-end mortgage loans or less than 100 open-end lines of credit in each of the two preceding calendar years from collecting and reporting HMDA data, provided that the institution meets all of the other criteria for institutional coverage.

As the Bureau explained, "[B]y considering two years of lending for coverage, the final rule will provide stability in reporting obligations for institutions. Accordingly, a financial institution that does not meet the loan-volume thresholds established in the final rule and that has an unexpected and unusually high loan-origination volume in one year will not be required to report HMDA data unless it maintains that level of lending for two consecutive years."[7]

The Bureau now contends it must correct a drafting error and proposes to revise the rule to require an institution to report HMDA data if it exceeded the threshold in *either* of the two preceding years.

[7] Final Rule, *supra* note 3, at 66146.

ABA opposes this change. Contrary to what the Bureau now characterizes as a drafting error, the initial language in the final rule reflects the comments made by the industry. During the Small Business Regulatory Enforcement Fairness Act (SBREFA) review[8] and in comments to the proposed rule, the banking industry urged the Bureau to increase the threshold to at least 250 home mortgage financing transactions per year, noting that a higher threshold would not compromise the integrity of the HMDA data. Moreover, we specifically recommended the adoption of a two-year lookback.[9]

The change that the Bureau is proposing is a significant and substantive change to the threshold, and categorizing it as a "drafting error" is misleading. ABA believes that retaining the language as originally adopted so that a lender would have to exceed the threshold for two consecutive years before triggering the threshold is the appropriate standard. In fact, when it issued the Final Rule, the Bureau specifically stated that it was adopting a two-year lookback period "to eliminate uncertainty surrounding reporting responsibilities."[10] Certain lenders report so few mortgage loans that the data on these loans has minimal impact on the overall HMDA data, a point the Bureau acknowledged in the Final Rule.[11] However, requiring these institutions to report if they experience a spike in mortgage originations in one year will force them to make expensive technology upgrades as well as business process and personnel changes for no policy value.

It also is important to recognize that some financial institutions, particularly community banks operating in rural areas, may endeavor to limit mortgage lending to stay below a threshold in order to control costs. However, to stay below a regulatory threshold, credit may be less available to less creditworthy customers.

7. Counteroffers

The Final Rule requires a lender to report the action taken on covered loans and applications. The proposed changes to section 4(a)(8) would clarify how an institution should report counteroffers, and it is consistent with informal guidance the Bureau has already offered. As proposed, when a lender makes a counteroffer and the applicant agrees to proceed with the counteroffer, but the counteroffer fails to result in an originated loan, the counteroffer would be considered as having replaced the original application and the lender would report data set forth in the counteroffer.

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[8] Under the Dodd-Frank Act, the Bureau must work with the Small Business Administration and the Office of Information and Regulatory Affairs to consider the potential impact a proposed rule might have on small businesses, based on commentary from a panel of small business representatives.

[9] In a joint comment letter to the Bureau filed on October 29, 2014, ABA and a coalition of trade associations representing the mortgage lending industry stated that, "We also support the recommendation made during the SBREFA process that the Bureau adopt a two-year look back period when determining whether a lender must report under a threshold. This approach has been effective in the CRA context as prudential regulators categorize institutions by asset size looking at two years of their assets. By using a two-year period, the CFPB will get a more consistent pool of reporters and alleviate the reporting burden for lenders that simply had a spike in lending in the previous year. Accordingly, we ask that the Bureau establish that institutions must report only if they met the loan threshold in both of the two preceding years. *See* Joint Comment Letter from Am. Bankers Ass'n, Consumer Bankers Ass'n, Fin. Serv. Roundtable, Hous. Policy Council, & Mort. Bankers Ass'n to Monica Jackson, Bureau of Consumer Fin. Prot. (Oct. 29, 2014) (on file with author) available at: http://www.aba.com/Advocacy/commentletters/Documents/JointTradesHMDAExpansion.pdf.

[10] Final Rule, *supra* note 3, at 66150.

[11] *Id.* at 66146-66150.

There are benefits and drawbacks to the proposed change, not the least of which is an inherent conflict that the proposal will create with Regulation B, section 1002.9, and the treatment of counter-offers under that rule.

On the one hand, when a counter-offer is made and a prospective borrower indicates a willingness to proceed with the counteroffer, loan operating system records may be updated to reflect the counter-offer. In that case, it would be simpler to collect and report the updated information. However, our members have questions about regulatory expectations for verifying or documenting that the borrower is willing to proceed with the counteroffer. Moreover, under Regulation B, when a counteroffer is extended but there is no movement on the counteroffer, it is treated as a denial of the initial application.

ABA recommends the following approach: maintain existing practices that conform to Regulation B, but provide that if an applicant agrees to proceed with a counter-offer, *and if the loan operating system has been updated in accordance with the applicant's instructions,* the counteroffer is deemed to replace the original application and data may be reported as reflected in the loan operating system at the option of the lender. If, however, nothing has been done to update the loan operating system or the bank's records, and no affirmative verification has been received from the applicant to demonstrate a willingness to proceed with the counteroffer, then the initial application stands as the terms for the loan and the failure to accept the counteroffer is reported as a denial.

This clarification will be important in the context of multifamily dwellings and commercial transactions. During commercial real estate negotiations for multifamily dwellings, it is not unusual to have a series of offers and counteroffers over a period of time. Presumably, the lender only would report the final counteroffer in the process, but that is not clear since the proposal only contemplates a single counteroffer. Again, this underscores the fact that commercial real estate transactions are ill-suited for HMDA reporting.

8. Income

Section 4(a)(10) requires lenders to report the income level of an applicant or borrower, using the *gross annual income* that the lender relied on when making the credit decision. During underwriting, however, a lender may rely on additional factors to qualify an applicant. The revisions would "clarify" that gross annual income does *not* include income from a *possible* annuity or potential depletion of assets. In contrast, gross annual income would include income from an existing annuity or a 401(k) that is already being distributed.

Several bankers have raised concerns about the potential impact this may have on their HMDA data. It is not unusual to rely on more than simple income to qualify an applicant for a loan, and lenders report that they often take other assets into account. Adopting the proposed exclusion may skew the data and incorrectly raise fair lending red flags. ABA believes that this change demands more careful analysis, and we urge the Bureau not to adopt the change until its impact has been studied.

9. APR

Section 4(a)(12) will require lenders to report the annual percentage rate (APR). The Bureau believes that the most accurate information about the APR for open-end lines of credit would be the APR at the time of account opening instead of the APR calculated for disclosure at the time of application. The

Bureau proposes to amend the commentary to explain that the APR that should be collected and reported is the APR at account opening.

From the time that initial disclosures are provided, an APR can change, something that the Bureau acknowledges in the discussion of this proposed revision. ABA recommends a simple approach for reporting the APR: the APR reported for HMDA is the APR at closing (for closed-end loans) or at account opening (for open-end loans). Where the loan does not close, then the lender would report the last APR disclosed to the borrower.

10. *Rate Spread*

Since there is only value to the information about the rate spread between the loan as closed or originated and the Average Prime Offer Rate (APOR), ABA recommends that the Bureau clarify that this data point is only required *if* the loan is originated or closed. It should not be required for applications that do not result in a loan.

11. *Rate Set Date*

Another proposed clarification would help identify the appropriate *rate set date*. If the rate is reset after a lock-in agreement has been executed, the relevant date is the date the lender sets the rate for the final time. However, if there is a change in the loan program, and the borrower switches from one loan program to another after the lock-in agreement has been executed, the rate set date is the date of the program change. If, though, the lender lets the borrower have the rate that would have been available under the new program on the date the original lock-in agreement was executed, it would report the lock-in date.

The approach is lightly different from loans acquired through a mortgage broker. In that case, the proposed clarification would explain that the lender should report the date that the rate was set with the broker instead of the date the broker sets the rate with the borrower or applicant.

Fundamentally, ABA agrees that the rate set date should be the date when the lender last set the rate for the transaction and we suggest that the Bureau establish that as the guiding principle for lenders, auditors and examiners when identifying the rate set date reported for HMDA purposes.

12. *Reporting When there Are no Closing Disclosures*

If a preapproval or application is approved but not accepted, the Bureau proposes to amend the commentary in 4(a)(12) to clarify that, when the loan does not close and there are no final disclosures, a lender would report the APR provided in the early disclosure. Again, what the Bureau is trying to clarify is that a lender will report the last information that is disclosed to the applicant or borrower. ABA agrees that this is the appropriate approach.

13. *Corrected Disclosures*

There also may be occasions when a lender must provide the borrower or applicant with a corrected APR disclosure. If the corrected APR is given to the customer before the end of the reporting period in which final action is taken, the Bureau would clarify that the lender should use the corrected APR for reporting. The same interpretation would apply when a lender corrects the total points and fees, total

loan costs, borrower-paid origination charges, discount points, lender credits, or interest rate. In each case, if the corrected disclosures were provided to the applicant or borrower before the reporting period in which final action was taken, the lender would report the corrected amount and would report the date as the date the corrected disclosures were provided.

ABA does not disagree with this change. However, we believe that it could be expressed more simply. Fundamentally, if a lender corrects a disclosure for any reason and provides that corrected disclosure to the borrower, then it is the corrected information that should be reported on the lenders' loan application register (LAR). The Bureau's approach would restrict the corrected data to the calendar period covered by the report. However, since accuracy of data is important, ABA recommends that a lender be permitted to correct the information up until the time the LAR is actually submitted. After the LAR has been submitted, a lender would correct the entry only if it is required to resubmit the LAR for other reasons.

14. *Corrected Disclosures – Quarterly Reporting*

For loans that are reported quarterly, the revisions would explain that where corrected disclosures are provided to a borrower, the lender would correct the data on its LAR only if the corrected disclosures were given to the applicant or borrower before the end of the quarter covering those data. If the disclosure was provided after the end of the quarter, the lender would wait until its annual report to correct the data. ABA agrees with the change but recommends that, in the interest of accuracy and to simplify a lender's operations, that the update to the LAR for corrected disclosures be permitted up until the time the LAR is submitted.

15. *Unique Loan Identifier*

Section 4(a)(34) requires information on a Unique Loan Identifier (ULI) that identifies the loan originator. However, lenders may purchase loans that were originated before the requirement went into effect. The proposal would adopt a transitional rule for loans originated before January 10, 2014, to permit a lender to report "not applicable." ABA does not object to this change, although we suggest it might be simpler to provide this exception to any loans originated before the January 1, 2018, effective date.

A number of additional clarifications would be added to explain how a lender reports the ULI. For a loan purchased by a quarterly reporter, the purchaser would report the ULI assigned by the originator of the loan even though the originator has not yet submitted its annual report. This seems appropriate.

If a ULI has been assigned and during the same calendar year the applicant asks the institution to reinstate a counteroffer that was previously not accepted or that had been denied, withdrawn, or closed for incompleteness, the lender would use the same ULI as for the original application. However, if the request comes in a subsequent calendar year, the lender would assign a new ULI. ABA believes this is appropriate and generally reflects the systems and operations of most lenders, but we encourage the Bureau to monitor this issue to ensure that it does not create unintended consequences.

16. *Use of the Bureau's Geocoding Tool*

Currently, the rule provides that *bona fide* errors are not violations. The proposal would clarify that if a lender uses a geocoding tool provided by the Bureau and the lender enters an accurate property address to obtain census tract data, the geocoding data submitted will not be deemed an error.

Although the Bureau has not yet provided the geocoding tool, it will consider use of that tool a "reasonable procedure" designed to avoid errors.

We support this clarification, but note that our members have asked how to document reliance. ABA recommends the following additional clarification: if there is an error in geocoding and if bank procedures direct lenders to use the Bureau's geocoding tool, then the geocoding error automatically would be deemed *bona fide*.

17. *Ethnicity & Race*

The Final Rule permits an applicant or borrower to provide "disaggregated" race and ethnicity information. For example, a borrower might report Korean instead of Asian. The Bureau proposes new instructions for reporting the disaggregated information that permit an applicant or borrower to select a subcategory without selecting the main category. The lender must report the information as provided by the applicant or borrower. Similarly, the Bureau proposes to permit a borrower or applicant to provide a subcategory without selecting "other." A lender is not to report a main category of "other" if it was not selected by the applicant or borrower.

A lender may report up to five subcategories, as selected by an applicant or borrower. The instructions would be amended to clarify how to report. As proposed, a lender would report all the aggregate categories selected by the applicant or borrower, up to five.

ABA members find these changes to be among the most confusing, and attempts at clarity only seem to engender more confusion. This is particularly the case when an applicant or borrower reports a sub-category without reporting a main category for gender. In some cases, systems are likely to trigger automatically the main category when only a sub-category has been identified. To streamline the process, and to reflect lender operations, ABA suggests that if an applicant or borrower only reports a sub-category, then the lender record that information but also report using the main category to which that sub-category belongs. For example, if an applicant self-identified as Korean but not Asian, the lender would report Korean but would also report Asian. This change will be important for both lender operations and systems but also to conduct analysis of the loan data.

ABA also has concerns about how these disaggregated data will align with Community Reinvestment Act (CRA) requirements, and fair lending analysis. Clearly, further thought and discussion is needed on the ethnicity and gender data, and that discussion must include the prudential regulators who are responsible for examining for CRA compliance.

Similarly, there are questions on reporting gender. As proposed, an applicant could report both genders and the lender would have to submit that information as reported. ABA urges the Bureau to address this anomaly and, if both genders can be reported, ensure that examiners understand that this is accepted practice under the new rule.

Conclusion

ABA appreciates the additional guidance that the Bureau proposes. The discussion above underscores the complexity of the expanded HMDA data collection regime. We encourage the Bureau to be mindful of how last minute changes can disrupt implementation efforts. As noted above, while changes are

pending and questions remain unanswered, we recommend that the Bureau suspend the effective date of the changes.

ABA believes that a more comprehensive and formal effort to identify problems and offer guidance would be far more productive. Piecemeal correction based on informal and anecdotal evidence only adds to regulatory burden, which adds costs to borrowers and reduces access to mortgage credit.

Finally, ABA urges the Bureau to finalize the pending guidance on error resolution as soon as possible, to finalize the software needed for reporters as expeditiously as possible, and to propose regulations on privacy and data security with the utmost speed.

Sincerely,

Robert G. Rowe, III
Vice President & Associate Chief Counsel, Regulatory Compliance