Association for Neighborhood & Housing Development

October 15, 2019

Docket No. CFPB-2019-0020, Advanced Notice of Proposed Rulemaking on HMDA data

To Whom It May Concern:

The Association for Neighborhood and Housing Development (ANHD) opposes any changes that diminish the new and enhanced Home Mortgage Disclosure Act (HMDA) variables added by the 2015 final rule issued by the Consumer Financial Protection Bureau (CFPB). Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd Frank), the CFPB was required to enhance HMDA data by adding numerous variables regarding loan terms and conditions and borrower demographics. The CFPB was also given discretionary authority to add additional data points such as debt-to-income ratios, CLTV, and characteristics of multifamily and manufactured home lending.

ANHD is a member of the National Community Reinvestment Coalition (NCRC). We signed onto their letter and support its recommendations. We offer this letter as a supplemental perspective from New York City.

ANHD routinely uses HMDA data to analyze lending trends throughout New York City, as well as to analyze individual institutions regarding how well they are serving New Yorkers in their lending, both 1-4 family and multifamily. We have been long awaiting the new Dodd Frank data fields to delve even further into lending trends, disparities, and unmet needs.

The CFPB went through a long, thoughtful process to determine which variables to include in the 2015 rule. The agency analyzed the housing market leading up to the financial crisis and they solicited input from all stakeholders, including bank and non-bank lenders, community organizations, civil rights groups, and government agencies. The CFPB determined that more transparency in the form of publicly available data was needed to identify and prevent the type of widespread predatory and abusive lending that was a driver of the 2008 financial crisis. By providing information on loan terms and conditions, and more details on the borrowers, the data would help regulatory agencies, community groups, and other stakeholders identify increases in abusive lending and who was targeted by such practices, and then take steps to curb predatory and abusive lending before it caused another crisis, and/or caused harm to specific communities.

Further, nearly all the new data points would still need to be collected by the lenders in order to comply with other statutes like the Truth in Lending Act and/or to sell loans to Fannie Mae or Freddie Mac or acquire FHA insurance for loans. Institutions have collected and reported much of this data in some form for many years.

The statutory purposes of HMDA are to assess whether lenders are **meeting the housing needs of local communities**, **inform public sector investment decisions**, and to **assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes**. The new HMDA data is necessary to uphold those purposes.

With the new HMDA data points, the public can assess **whether lenders are responsibly meeting local credit needs, redlining neighborhoods of color, or making predatory or abusive loans**. HMDA now includes a comprehensive set of data on pricing, interest rates, debt-to-income ratios, CLTV, credit scores, reason for denials, and loan characteristics that can make it harder for the borrower to maintain their homeownership, such as interest-only mortgages, balloon payments, and high interest rates, to name a few.

ANHD has already begun analyzing the new data points and has found trends that indicate areas of concern and warrant further research. For example, the average fees charged for home purchase loans by nonbank private mortgage company lenders is higher than that by CRA-regulated banks and affiliates. And in almost all categories, Black and Hispanic borrowers pay more in fees than white and Asian borrowers. For Black borrowers, the average total loan cost was $9,919 at a bank vs $18,742 at a non-bank, both of which are higher than the average fees for white borrowers ($6,433 and $10,136, respectively)[1]. The costs are lower for conventional loans than FHA loans, but the disparities persist. Interestingly, Asian borrowers appear to pay the most for conventional loans. This warrants further study to understand why Asian borrowers are paying more, and for disparities within the disaggregated data. It also raises concerns given that 59% of home purchase loans to Black and 44% to Hispanic borrowers are made by non-banks, and nearly half of loans to Black borrowers and a quarter to Hispanic are FHA loans, both of which cost more. NCRC also found disparities between lender types, reporting that mortgage companies collected over $93 billion more in fees and interest than they would have had they charged consumers the same closing costs and interest rates that banks did.[2]

	Home Purchase Loans*				Home Purchase Conventional Loans				All First Lien Loans**		
	Avg Loan Costs	Avg Loan Costs Non-Bank	Avg Loan Costs Bank		Avg Loan Costs	Avg Loan Costs Non-Bank	Avg Loan Costs Bank		Avg Loan Costs	Avg Loan Costs Non-Bank	Avg Loan Costs Bank
All	$8,850	$13,064	$7,178		$7,481	$9,867	$6,804		$9,149	$13,062	$7,217
LMI	$6,527	$9,355	$5,120		$5,701	$7,405	$5,056		$6,987	$9,615	$5,118
White	$7,445	$10,136	$6,433		$7,008	$9,048	$6,332		$7,893	$10,916	$6,632
Asian	$8,783	$13,148	$7,647		$8,135	$11,140	$7,510		$9,030	$13,355	$7,760
Black	$14,986	$18,742	$9,919		$8,333	$11,192	$6,881		$13,292	$16,732	$8,752
Hispanic	$11,209	$15,069	$8,204		$7,600	$10,173	$6,282		$10,952	$14,709	$7,738

* 1-4 family, owner-occupied, first-lien, home purchase closed-end loan
** 1-4 family, owner-occupied, first-lien, any purpose (purchase/refinance/home improvement) closed-end loan

Home Purchase Loans in NYC					
	All	non-bank	% non-bank	FHA	% FHA
All	27738	8057	29%	2534	9.1%
White	11157	3161	28%	346	3.1%
Asian	8290	1735	21%	383	4.6%
Black	2269	1348	59%	1037	46%
Hispanic	2494	1108	44%	593	24%

[1] Total loan cost = total costs + points/fees minus lender credits
[2] https://ncrc.org/the-90-billion-bill-we-pay-each-year-for-non-bank-mortgage-lenders/

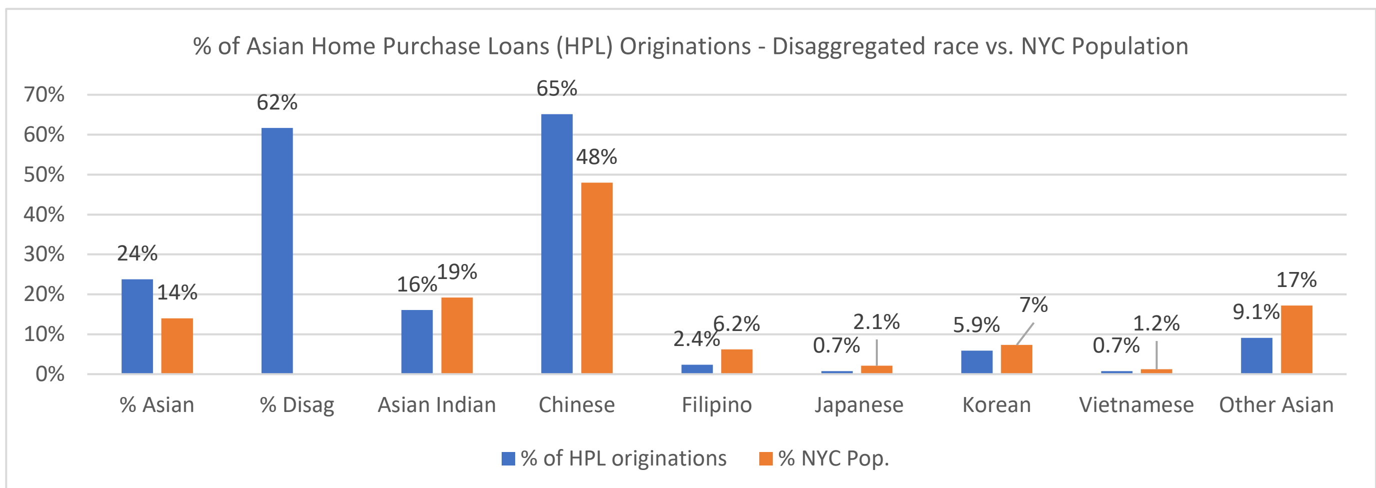
The limited 45-day period prohibited deeper analysis, where we could further analyze cost disparities by lender, by geography, and also correlate with other variables, such as age, disaggregated race/ethnicity, gender, etc.

Midpoint loan amount:
Loan amount is a pre-Dodd Frank data element that has been disclosed for decades without any apparent risk or widespread instances of facilitating public re-identification of borrowers, particularly individual, non-corporate borrowers.

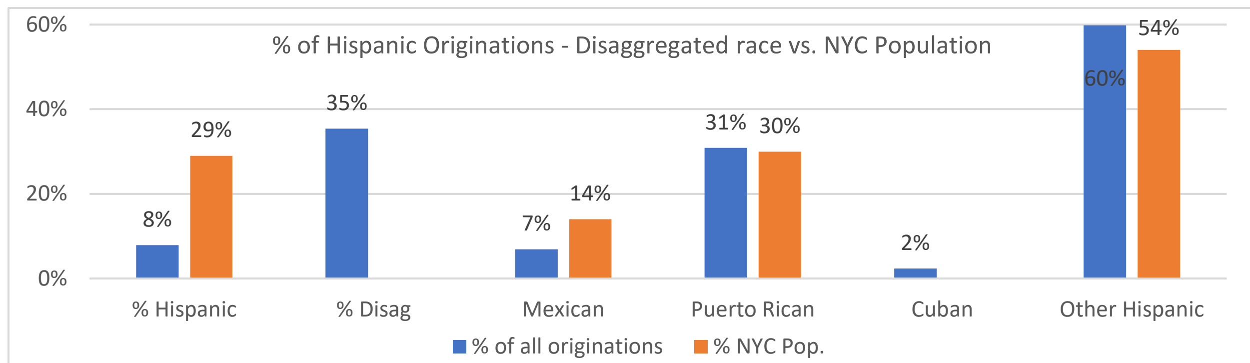
We recommend that the actual loan and property value amount be reported, or at least rounded to the nearest $1,000 as in prior years, to allow for more consistent year-to-year reporting and more accurate analysis. While it may not distort the data too much for larger loans, it most certainly will for smaller dollar loans, such as those more likely to appear in areas with lower housing values, but also could appear in New York City in limited equity coops, and some home improvement loans, and second lien loans. Distortions in the loan value and property value will also impact calculated LTVs. The most accurate data available should be presented.

Disaggregated Race / Ethnicity

One of HMDA's main purposes is to **identify discriminatory lending patterns**: both redlining that denies access to credit for low-income people and people of color and predatory lending whereby these same communities are targeted with expensive and unsustainable loans. Through HMDA, we can see **who is getting access to credit and who isn't**, as well as the **types of loans they are getting, and fees being charged**. And now, with the new disaggregated race and ethnicity data, we can evaluate disparities within the Asian, Pacific Islanders, and Hispanic categories. For example, in NYC, Black and Hispanic borrowers continue to be underrepresented in all categories of lending, particularly home purchase lending, while Asian borrowers are overrepresented compared to their share of the population. But now we can drill deeper, as over 60% of Asian borrowers and a third of Hispanic borrowers provided disaggregated data. From this, we find that Chinese borrowers are getting access to credit at much higher rates than their share of the Asian population (61% of the total loans vs 48% of the Asian population), whereas **Filipinos, Koreans, and "other Asian" borrowers are under-represented;** "other Asians" make up 17% of the Asian population, but received just 9% of home purchase loans.



We also find that Mexicans are very under-represented in total loan originations as compared to their percentage of the Hispanic population (14% of the Hispanic population, but received just 7% of loans). "Other Hispanic" borrowers, however, received over 60% of loans and make up 54% of the Hispanic population. Disparities were similar with home purchase loans. It would be helpful to break down that category even further, given that Dominicans make up 28% of the Hispanic population in New York City, and the remainder includes people from other areas of Central and South America that aren't broken out, but likely have similar disparities to Mexican borrowers.



Recommendations:

- **Maintain the disaggregated race/ethnicity data**
- **Enhance the Asian data** to include Bangladeshi and Pakistani borrowers. 5.5% of the New York City Asian population is Bangladeshi; 4.5% are Pakistani. Further, Bangladeshis make up 19% of the Asian population in the Bronx and 7.5% in Queens.
- **Enhance the Hispanic data** to include Dominicans, as well as Central and South Americans. Dominicans make up 28% of the Hispanic Population in NYC. It must also be noted that Salvadorans, Cubans, Dominicans and Guatemalans are similarly represented in the United States, yet only Cubans are broken out in HMDA.

Multifamily Lending must be preserved, and should be strengthened

As stated above the purposes of HMDA include assessing if lenders are meeting housing needs and to assist public officials in directing public sector investments in a manner to leverage private lending and capital in disadvantaged communities. A pressing housing need in communities is affordable rental housing. Multifamily data in HMDA fulfills a central purpose of the statute. We would also argue that it is statutorily required. The HMDA statute refers to the recording of "mortgage loans." According to the statute, "the term "mortgage loan" means a loan which is secured by residential real property or a home improvement loan.[3]" Further, "The terms "residential real property"…. mean leaseholds, homes …and, combinations of homes or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures.[4]" This statutory language indicates that the CFPB does not have the authority to exempt multifamily housing owned by non-person entities/corporations from HMDA reporting.

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[3] https://www.law.cornell.edu/uscode/text/12/2802

[4] https://www.law.cornell.edu/uscode/text/12/1464#c_6_

We must have the means to assess how well lenders are responsibly supporting affordable housing through their lending and identify any signs of lending that will fuel displacement and poor conditions. In New York City, **two thirds of New Yorkers rent their homes; 45% of all rental housing falls under rent-regulation and another 12% fall under government affordable housing programs[5].** Rent-stabilized units are typically more affordable and provide more rights and protections for tenants than market rate units, including the right to a lease, the right to renew a lease, the right to organize, and limits on how much the rent can go up each year. **Rent-stabilized tenants are more likely to be Hispanic, less likely to be White or Asian, and less likely to have a college degree than non-regulated tenants. Rent-stabilized tenants are also more likely to be low-income and on some form of public assistance.** We need lenders to lend on this stock of housing, and lend responsibly, to build and preserve affordable rent-stabilized and subsidized housing. New York City has lost thousands of affordable rent-stabilized housing units over the past two decades due to unscrupulous predatory landlords securing financing to buy and renovate buildings. They do this in part by taking out loans from banks and non-bank lenders that are predicated on moving out lower-rent paying tenants[6]. One of the most egregious examples we have seen in recent years was a series of loans made to Raphael Toledano on a set of buildings in the East Village, New York, a rapidly gentrifying neighborhood. The loans could only be paid off if the landlord were to displace rent-stabilized tenants and bring in higher-paying market-rate tenants. Toledano used multiple tactics to harass and displace tenants: aggressive buyout offers, lack of repairs, toxic lead contamination from dangerous construction practices, and more[7]. This is not unique to New York City; similar phenomena of "displacement financing" have happened elsewhere in the country[8].

Meanwhile, the need for deep affordable housing continues, especially in a high-cost city like New York City. The new HMDA data enables us to monitor trends in multifamily housing: who is lending, where they are lending, and if that lending appears potentially unsustainable based on loan characteristics, such as high interest rates, interest-only loans, and high CLTV's. Data on the size of buildings financed and the percentage of units that were affordable to lower income tenants can help assess whether public sector investments were successfully stimulating private sector lending to meet housing needs.

Early analysis lenders in NYC is helping community groups better understand their lending characteristics; revealing which lenders rely more heavily on interest-only loans and balloon payments, high/low CLTVs, and the ranges of interest rates charged. With more time to analyze, we can also evaluate calculated Loan to Value ratios (using loan amount and property values) to see how they compare to the CLTV and if they seem high relative to peers; regulators want banks to remain below 75% LTV. 20 loans by non bank lenders have a calculated LTV over 75% (9% of their loans); 74 loans by bank lenders do (1.9% of their loans). This will be valuable to evaluate lending in general, as well as lending just before and after the new rent laws passed in Albany in June 2019, closing nearly all the loopholes landlords had to raise rents and deregulate rent-stabilized housing. Housing, civil rights, and community groups must be on the lookout now for new incidents of risky underwriting in all types of multifamily housing, and also for signs of redlining and disinvestment in low-income communities of color. HMDA can and should help us do that.

With the new data, we can now see which banks are financing buildings with subsidized affordable housing. We found that among a few of the largest multifamily lenders in New York City, two made no

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[5] https://www1.nyc.gov/assets/hpd/downloads/pdf/about/2017-hvs-initial-findings.pdf
[6] https://anhd.org/report/predatory-equity-evolution-crisis
[7] https://anhd.org/blog/bad-boy-carveout
[8] http://calreinvest.org/wp-content/uploads/2018/07/Disrupting-Displacement-Financing.pdf

loans to buildings with subsidized affordable housing. We understand that many of their buildings are rent-stabilized and affordable to LMI families. This is an extremely valuable housing stock for lower-income families, but it is not income-restricted and offers no guarantee that the units will remain affordable in perpetuity, even with the new restrictions at the state level, which will greatly limit how much the rents can increase each year. Under the CRA, banks have a responsibility to support deep affordable housing with their lending. Without the exact unit count, it's impossible to compare units financed to the percentage of affordable units in the City.

The chart below shows some trends worth noting and exploring further, both for 2018 and in years to come. Among HMDA reporters, banks finance a higher volume of loans than non-banks (226 vs 3,803). Interest rates at banks have been hovering around 3 – 6% for the past few years, with a high of 8%, depending on any number of factors[9]. We see that on average, banks charge lower interest rates than non-banks and have a smaller percentage of their loans with higher interest rates. The average CLTV was also slightly lower at banks than non-banks, while the maximum was the same. Non-banks appear to finance more affordable housing than banks when looking at percentage of affordable units, but we also see that a higher percentage of buildings with any affordable housing is higher at banks than non-banks, indicating they are financing mixed income housing. This is valuable, but we would like to see banks financing buildings with higher percentages of affordable units, and for all banks to finance deeply affordable housing for the most vulnerable New Yorkers.

Preliminary Multifamily Data 2018 – New York City Subset of new 2018 HMDA Data			
	Non-bank	**Bank**	**Credit Union**
Total non-exempt loans	226	3803	45
Average interest rate	4.7%	4.2%	4.5%
Maximum interest rate	10.9%	9.0%	5.6%
# Loans with > 5% interest rate	39	168	5
% non-exempt loans	17%	4.4%	11%
# Loans with > 8% interest rate	12	5	0
% non-exempt loans	5.3%	0.1%	0.0%
Average CLTV	51	44	45
Maximum CLTV	80	80	75
Average Percentage of affordable units across all buildings	26%	12%	25%
Average Percentage of affordable units in buildings that have any affordable units	93%	61%	64%
# buildings with any Affordable Housing	11	393	7
% non-exempt loans	4.9%	10.3%	3.1%
# buildings with >=50% Affordable Housing	10	227	4
% non-exempt loans	4.4%	6.0%	1.8%

The CFPB went through a lengthy, thoughtful process in 2013 and 2015 to determine which additional and expanded fields would be included in HMDA, which would be disclosed, and how they would be disclosed, including numerous fields relevant to multifamily housing. We believe that the existing fields

[9] https://www.business.org/finance/loans/commercial-loan-rates/

must be retained, and we maintain that we must disclose more granular details in some cases to allow for more comprehensive analysis.

Multifamily lending has been woefully underreported in HMDA in prior years, particularly in states like New York where borrowers and lenders rely heavily upon CEMA/MECA loans that were not previously HMDA-reportable. Starting in 2018, NY CEMA loans are finally HMDA reportable and more accurately captures this segment of the NYC lending market. It's critical that we have this full data moving forward to accurately compare lending trends year-to-year. The regulators have long had to deal with this challenge on CRA exams as they use HMDA to rank and compare banks to the aggregate data, but have not been able to do so through HMDA until now[10].

Even with this expansion, however, HMDA will continue to miss data for multifamily depository lenders that do not originate any 1-4 family ("single family") loans, as the reporting thresholds depend upon lenders originating at least one single family home purchase or refinance loan. We worry that this could potentially exclude some of the largest multifamily bank lenders that have announced their exit from single family lending, including BankUnited, New York Community Bank, and Capital One. (Note: they all reported in 2018, and we hope they will continue to do so). New York Commercial Bank, a former affiliate of New York Community Bancorp, was never a HMDA reporter, despite making over 100 multifamily loans each year, as their 1-4 family loans were made through the New York Community Bank affiliate (the two merged in 2018).

In order to report HMDA data, *non-depository* lending institutions must receive applications for, originate, or purchase at least five home purchase loans, home improvement loans, or refinancings for property within a metropolitan statistical area (MSA). They must also originate 25 or more loans, which is a high threshold for multifamily lenders that could potentially impact hundreds or thousands of people with just a few loans. In New York City, the average number of units in each multifamily building is 32; 3,370 buildings have 100 or more units, and of those, 300 buildings have over 500 units.

The Urban Institute used pre-2018 HMDA data to document the greater impact of multifamily lending as compared to single family lending in terms of the number of families housed[11]. They also emphasized the importance of releasing the full set of data, particularly the actual number of units, in order to truly understand the scale of affordable housing being financed. Those reports were written using older HMDA data sets that, as mentioned above, vastly under-reported multifamily lending in New York. With more reliable data in HMDA for New York, including New York City, that argument is even stronger as we now have a better picture of the totality of multifamily lending.

Among HMDA reporters in New York City during 2018, over 92% of closed-end loans are 1-4 family and 7.4% are multifamily loans. **However, those 1-4 family homes total 68,743 units, whereas the multifamily housing houses tens of thousands more families, with a minimum of 105,479 units and a maximum of well over 260,000 units**.

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[10] https://www5.fdic.gov/CRAPES/2019/57053_190401.PDF One example appears in this 2019 CRA exam "Signature ranked eighteenth out of this group of lenders, with a market share of 1.2 percent. The ten most prominent multifamily home mortgage lenders accounted for 60.4 percent of total market share. However, examiners noted that many lenders, Signature included, extend a large volume of multifamily loans on a MECA basis, which are not HMDA-reportable and are not accounted for in the available market share reports from the aggregate data. As a result, banks such as Signature actually originate a much larger volume of multifamily mortgage loans than is reported in the aggregate data"

[11] Urban Institute, *Concentration in Multifamily Lending Argues for Full Public Release of More HMDA Data*, April 2019, https://www.urban.org/urban-wire/concentration-multifamily-lending-argues-full-public-release-more-hmda-data https://www.urban.org/urban-wire/while-less-plentiful-multifamily-loans-pack-bigger-cra-punch-single-family-loans

In this context, we believe it is critical that the CFPB retain and expand upon all the multifamily data, in order to better capture and evaluate the multifamily lending market.

We recommend the following, which matches the collective recommendations in the NCRC letter:

- **Affordable Units.** Banks are critical to financing affordable housing and encouraged to do so through the Community Reinvestment Act (CRA). This data provides valuable insight into who is financing this source of affordable housing. However, the reporting for the number of units needs to change to better understand the impact of that affordable housing. The depth of affordability would also be helpful to understand who the housing is affordable to.

- **Number of units**. The new HMDA data now reports exact unit counts in 1-4 family loans, which is a huge improvement, but only reports multifamily units in ranges, or bins (5-24, 25-49, 100-149, 149+). While the data is better than in prior years, when it simply reported 1-4 units vs 5+ units, it would be better if the data gave the precise count of units. The public would then have more accurate data on how many units were financed. Also, the public could better estimate if supply was rising to accommodate demand for rental units. In addition, the bin reporting does not allow the general public to evaluate the number of units that are affordable. Only crude estimates are possible such as using the median value in a bin or expressing the range from low to high. Additionally, the bin >149 units could be 150 units or 1000 or more, which renders this bin essentially useless for unit counts.

  Furthermore, we do not see how bin reporting protects individual privacy since the vast majority of HMDA multifamily loans are made by corporations. Bin reporting of units violates a statutory purpose of HMDA without any justification.

- **Debt to Income Ratio** is not reported for multifamily loans, but we urge the CFPB to reconsider similar indicators for multifamily housing, such as the Debt Service Coverage Ratio (DSCR), or the Net Operating Income that would allow us to calculate the DSCR and other indicators of potential overleveraging with existing fields, such as **loan amount** and **property value**. ANHD finds that loans with a DSCR below 1.2X, particularly on affordable rent-regulated housing, can provide significant incentives to harass and displace tenants – or neglect needed repairs – as the borrower must raise rents and/or reduce expenses in order to pay off the mortgage. For enforcement purposes, it is important to know which lenders are complicit in this behavior, as it can have disastrous effects. In the Raphael Toledano mentioned above, the DSCR was well under 1.0X.

- **Capturing More Multifamily Lenders, Banks and Nonbanks.** This is not a new field, per se, but it must be noted that HMDA is valuable in distinguishing banks from non-bank lenders. The newly expanded data with CEMA loans will help us get a better handle on who is lending on multifamily housing – CRA-regulated banks vs private companies that are not regulated by the CRA. Trends in bank and non-bank lending will give stakeholders more insights into CRA and fair lending consequences and/or the need to adjust CRA and fair lending enforcement. We recommend eliminating the requirement that a depository institution must originate at least one *single family loan* before evaluating thresholds for reporting to HMDA data as discussed above. Also, the 25-loan threshold for lenders is too high, particularly for multifamily lenders

that often have lower lending volumes than 1-4 family lenders, but impact many more families with their lending. As we emphasized in our letter on the thresholds, we cannot afford to lose any more HMDA lenders on top of the 25-loan threshold already in place, and depository multifamily lenders that do not make 1-4 family loans.

If the CFPB now reverses its prior work on updating HMDA data, it will ultimately impede the ability of HMDA to achieve its statutory purposes in this rapidly changing housing and lending market. Indeed, the CFPB will be abdicating its responsibility to protect consumers and will invite a new round of abuses by shrouding lending in a veil of secrecy to the detriment of not only consumers but the economy as a whole. Even worse, this proposed rulemaking comes on the heels of a Notice of Proposed Rulemaking that seeks to raise the threshold of who reports to HMDA, thus hiding all lending data entirely for thousands of lenders. We cannot afford to lose any data if HMDA is to achieve its intended purpose.

The CFPB asks about costs and benefits of the new data without providing the public with baseline research about costs and benefits. We see this as an invitation for some stakeholders to exaggerate costs and minimize benefits. Based on the information included in the rulemaking on whether to exempt more lenders from HMDA reporting, we believe that the costs are modest while the benefits include an early warning system that can prevent another financial crisis and/or lending that harms vulnerable populations. Further, banks have already invested the upfront costs to report the new data, and the public is investing the time to understand and utilize it. Multiple years of data are necessary to understand new trends and patterns year to year. Any new changes to the data will increase the cost of compliance and potentially reduce the effectiveness of the data, especially regarding accurate year to year analysis.

Lastly, we believe that this Advance Notice of Proposed Rulemaking (ANPR) is not being conducted in a manner consistent with the Administrative Procedures Act (APA) which requires meaningful opportunity for the public to comment on proposed rule changes. The CFPB is asking the public to comment on the utility and value of the Dodd Frank additions to HMDA data in about 45 days after the data first became available at the end of August. This is a huge amount of data for even the most sophisticated user to go through; 45 days is nowhere near enough time to fully analyze and evaluate this rich dataset. In addition, the agency removed website tools that facilitated the use of data by members of the public that are not researchers. The agency will not receive fully informed comments from a wide swath of the public under these circumstances.

Thank you for the opportunity to comment on this important matter. Please preserve the Dodd Frank updates to HMDA data since they are integral to HMDA's statutory purposes. Please contact me if you have further questions: Jaime.w@anhd.org, 212-747-1117 x23

Sincerely,

Jaime Weisberg, Senior Campaign Analyst
Association for Neighborhood and Housing Development