[**YOUR LETTERHEAD**]

<**DATE**>

Comment letter on Docket No. CFPB-2019-0021 or RIN 3170-AA76

Notice of Proposed Rulemaking on HMDA data

To Whom it May Concern:

[**ORGANIZATION**] opposes the proposal of the Consumer Financial Protection Bureau (CFPB) to exempt thousands of lending institutions from reporting mortgage data pursuant to the Home Mortgage Disclosure Act (HMDA). In order to ensure that lenders are meeting housing and credit needs in a non-discriminatory manner per the statutory purposes of HMDA, the reporting thresholds for determining which institutions submit publicly reported data must not be changed.

[**ORGANIZATION** description, can say you’re a member of ANHD.  And add your own words as to why HMDA is important]

At the outset, we maintain that this rulemaking is not being conducted consistent with the intent and purpose of the Administrative Procedure Act (APA). The APA requires that agencies provide meaningful opportunities for public comments on proposed regulations so that the agencies can receive fully informed comments that help agencies make final decisions on their regulatory proposals. **The CFPB is proposing changes to HMDA before the first year of new HMDA data has been released.**This data, mandated by the Dodd Frank Wall Street Reform and Consumer Protection Act, would enable the public to more precisely comment on the data lost by the proposed exemption of hundreds or thousands of lenders.

The public visibility of HMDA data motivates banks to increase their lending to people of color, low- and moderate-income borrowers, and women.  Public agencies at all levels use HMDA data per its statutory purposes of anti-discrimination enforcement and to determine where public sector investment can further increase private sector lending. Because it is a public database, private citizens can also use this data to reveal lending trends. These are just a few examples of how HMDA has been used to identify trends and disparities:

* A 2017 [Reveal Study](https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/) last year uncovered racial discrimination in lending in major cities in the US, highlighted the number of CRA mortgages going to upper income borrowers in low- and moderate-income (LMI) neighborhoods, and ultimately prompted a major banking institution to open new branches in LMI neighborhoods. Using the same methodology, New Economy Project found [similar trends in NYC](https://www.neweconomynyc.org/2018/02/8137/).
* A 2018 [ANHD white paper](https://anhd.org/report/black-and-latino-borrowers-locked-out-homeownership-new-york-city-new-data-and-analysis-shows) used HMDA data to demonstrate the lack of loans to black and Hispanic borrowers in New York City.
* The NY Attorney General [settled with Evans Bank](https://ag.ny.gov/press-release/ag-schneiderman-secures-agreement-evans-bank-ending-discriminatory-mortgage-redlining) for incidents of redlining:. And [the use of HMDA data](http://www.ag.ny.gov/pdfs/Evans%20Bank%20Complaint%20as%20filed.pdf) is explicit in the complaint, where they uncovered that less than 1% of mortgage applications came from people of color and that their record was far behind that of other banks in the area regarding mortgage applications and originations.

Currently, the threshold for reporting data is 25 closed-end loans. In other words, if a lending institution makes fewer than 25 mortgage loans, it is not required to report HMDA data. In 2015, the CFPB decided against a higher threshold exempting more lenders stating that, “The Bureau concluded that, if it were to set the closed-end coverage threshold higher than 25, the resulting loss of data at the local level would substantially impede the public’s and public officials’ ability to understand access to credit in their communities.” ***Inexplicably, however, the CFPB is now reversing itself*** and is proposing to raise the threshold to 50 or 100 loans (it is inviting comments on even higher thresholds of 250 or 500 loans), which would exempt 67% and 81% of depository institutions, respectively, from reporting HMDA data. This doesn’t include the lenders we lost that made under 25 loans per the Dodd Frank threshold and the multifamily lenders that did not originate any 1-4 family loans and have never reported to HMDA for that reason.  And, as outlined below, it doesn’t take into account high-volume lenders who had to exclude loans from HMDA because they were made via a NY CEMA transaction that were not previously HMDA reportable.

The CFPB states that it is seeking to balance the purposes of HMDA against the burden and cost of reporting the data. However, the CFPB cost estimates for HMDA reporting are just $2 million for all newly exempt lenders if the threshold is raised to 50 loans.  The modest cost savings pales in comparison with the loss in the ability to monitor lender compliance with fair lending laws. If the threshold is raised to 50 or 100 loans, the public will no longer be able to identify smaller volume lenders that are making few loans or have high denial rates to underserved populations. Moreover, **federal agency fair lending and CRA exams will become more burdensome for federal agencies and the HMDA exempt lenders since the agencies will now have to ask for internal data from the lenders instead of being able to use the HMDA dat**a. In fact, the new dataset could result in cost savings for NY State banks who, prior to 2018, had to separately report CEMA loans to be included in CRA exams.

In addition, community organizations and lawyers will have a more difficult time taking lower volume lenders such as Emigrant Savings Bank to court over violations of anti-discrimination and consumer protection laws ([a federal jury verdict found](https://lsnyc.secure.nonprofitsoapbox.com/news-and-events/press-room/1033-jury-finds-emigrant-bank-liable-for-discrimination-in-first-reverse-redlining-case-to-be-tried-in-federal-court) that Emigrant violated the Fair Housing Act, Equal Credit Opportunity Act, and New York City Human Rights Law). Without the data for lenders that fall below the thresholds, it will be more difficult to document a pattern of targeting communities of color with high cost and abusive loans. In addition, regulatory agency fair lending and CRA exams will become more burdensome for the agencies and the HMDA-exempt lenders since the agencies will now have to ask for internal data from the lenders instead of using the HMDA data.

NY Consolidation Extension Modification Agreement (CEMA) loans pose additional challenges when evaluating thresholds.  NY CEMA loans are now HMDA reportable, which means that banks that routinely use this mortgage instrument are no longer forced to underreport their lending.  This was particularly pronounced in multifamily lending where they are used most often, but not exclusively.  Using a two-year look-back system means that some lenders’ large volume of lending may not be reflected in the HMDA data in prior years.

* For example, Signature Bank reported 64 loans to HMDA in 2017 and 575 in 2018 (538 multifamily). But their volume of lending reported to ANHD and to CRA regulators each year more closely reflected the higher volumes.
* Similarly, Dime Bank reported just 33 loans to HMDA in 2017 (29 were multifamily) and then 82 in 2018 (62 were multifamily loans in 2018), yet they reported higher volumes to ANHD and CRA regulators in 2017 because of their CEMA lending.
* Emigrant Bank makes loans under two entities, Emigrant Mortgage Company and Emigrant Funding Corporation.  Emigrant Mortgage Company made over 100 loans in 2017 and 2018, but Emigrant Funding Corporation made fewer than 100 loans in 2017 (86) and over in 2018 (103), likely partly due to CEMA lending.

As this demonstrates, using a two-year look-back to determine the threshold could inadvertently exclude lenders that in fact make a high volume of loans that were not previously captured in HMDA but represent a significant portion of the mortgage market in our area. And, regardless, the volume of multifamily lending is lower than 1-4 family lending, but that lending impacts many more people.  Any lender that makes 25 multifamily loans likely represents a significant portion of any market, even in New York City, but more so in smaller cities.

Raising the thresholds would also imperil HMDA’s statutory purpose of accurately assessing whether housing and credit needs are being met. If, for example, the threshold is raised to 100 loans, the number of HMDA reported loans will fall by 20% or more in 2,200 low- and moderate-income tracts and in a similar number of rural tracts.

Members of the public, academics, and local agencies will not be able to accurately assess whether credit and housing needs are being met in the wake of this significant loss of data. **It’s preposterous that we are being asked to analyze a change to the thresholds when we have no way to assess the impact of the new thresholds and reporting structures just implemented.  As mentioned above, the full dataset hasn’t even been released and won’t be until after the comment period closes.**

The CFPB is also proposing to increase the threshold for reporting open end lines of credit often called Home Equity Lines of Credit (HELOCs). In the years before the financial crisis, HELOC lending was riddled with abuses that resulted in distress and/or foreclosure for large numbers of homeowners. Under the CFPB’s proposal to permanently increase the threshold to 200 open end lines of credit, 401 lenders making 69,000 open end lines of credit would be exempt from reporting HMDA data. This is too many lenders and loans escaping the scrutiny of public review.

Congress passed HMDA in 1975. Lenders, including small volume lenders, have been reporting data for decades. Relief from reporting is thus only a minor gain for the lenders while it is a large loss for communities. Even smaller volume lenders can be significant lenders in smaller towns and rural areas. They need to be held accountable and their data is necessary for a complete and accurate picture of whether credit needs are being met. If CFPB makes thousands of lenders exempt from HMDA reporting, abusive and predatory lending will increase and remain undetected.

Thank you for the opportunity to comment on this important matter.

Sincerely,

**[Name]**