

December 16, 2022

The Honorable Jerome H. Powell
Board of Governors of the Federal
Reserve System
20th Street & Constitution Ave, NW
Washington, DC 20551

The Honorable Michael J. Hsu
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, DC 20219

The Honorable Martin J. Gruenberg
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

The Honorable Rohit Chopra
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

The Honorable Todd M. Harper
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Request for Implementation Flexibility Regarding Judicial Decisions Under Home Mortgage Disclosure Act (Regulation C)

Ladies and Gentlemen:

The undersigned trade associations, which represent small, community depository institutions, write in regard to a recent judicial opinion, *National Community Reinvestment Coalition v. Consumer Financial Protection Bureau*,¹ issued by the United States District Court for the District of Columbia. The decision vacates portions of the 2020 Home Mortgage Disclosure Act (HMDA) final rule amending Regulation C. We ask the Federal Financial Institutions Examinations Council (FFIEC) to consider the extraordinary impact of this decision and issue formal guidance that allows small banks and credit unions a reasonable transition period to comply with the sudden changes occasioned by the ruling.

As background, on September 23, 2022, the District Court issued an order vacating (in part) the 2020 HMDA final rule that had increased the loan volume reporting thresholds for closed-end mortgage loans from 25 to 100 in each of the two preceding calendar years. The effect of the court's ruling, therefore, is to abruptly and without notice eliminate final regulations that for three years had expanded the number of small-volume lenders that were exempt from HMDA reporting requirements.

The impact of this decision is severe. Hundreds of community banks and credit unions that relied on the exemption will now be required to collect and report 22 HMDA data points, presumably beginning on January 1, 2023. The tasks required to implement full-scale HMDA reporting programs—including updates to loan origination software, drafting policies and procedures,

¹ [MEMORANDUM OPINION as to plaintiffs' 14 Motion for Summary Judgment and defendant's 18 Cross-Motion for Summary Judgment. Signed by Chief Judge Beryl A. Howell on September 23, 2022. \(lcbah4\) \(justia.com\)](#)

training staff, and in many cases, hiring and conducting vendor due diligence on third parties to assist—are enormous. Our small volume lenders report that they will not have capabilities to accomplish these tasks in the remaining two weeks of the year. In addition, many of these lenders are experiencing significant staff shortages following COVID due to the “great resignation” and retirements. In many cases, new staff have no previous data collection experience, and even existing staff will need to be re-trained after a three-year hiatus from the data collection and reporting requirements.

In addition, depository institutions are concerned about the "pipeline" issue. Specifically, lenders receive applicants in the last quarter of 2022 that may not receive final action until 2023. As we understand the blog, these transactions must be reported on the 2023 Loan Application Register (LAR), yet lenders do not currently have the systems and infrastructure in place to capture all the data fields they will need to report on their 2023 LAR. For applications made in 2022 that result in originations in 2023, lenders may be able to get the information once their systems are up and running in 2023. However, for applications taken in 2022 that do not result in originations, e.g., files closed for incompleteness, it will be impossible for lenders to get the data in 2023 from applicants who did not wish to complete their initial application.

We appreciated the December 6, 2022 blog publication by the Consumer Financial Protection Bureau (CFPB), which recognizes that affected financial institutions need time to implement or adjust policies, procedures, systems, and operations to come into compliance with their reporting obligations. Further, the blog assures affected lenders that the agency does not intend to initiate enforcement or citations for HMDA violations for failures to report closed-end mortgage loan data collected in 2022, 2021, or 2020.

However, more is needed from the CFPB and all of the FFIEC agencies. We note that the Bureau’s statement was in the form of an unofficial blog posted on the agency website; an unofficial blog is a nominal and informal agency opinion that does not provide adequate assurance to our members in the context of a very sudden change in the compliance status of affected institutions. Nor does the blog address the pipeline issue discussed above. For these reasons, a reasonable time period for implementation is necessary.

Our joint associations urge the FFIEC to issue a formal statement published in the *Federal Register*, explicitly stating that with respect to lenders affected by the court’s ruling, calendar year 2023 will be a supervisory transition period during which the agencies will expect “good faith” efforts to comply with the pre-2020 HMDA rule, and that the agencies will not cite HMDA violations or initiate enforcement actions against lenders that act in good faith to develop and implement reporting programs.² This approach would give lenders needed assurances regarding legal and examination risk and allow adequate opportunity for lenders to install or refine HMDA systems and achieve compliance. Without a definitive statement from all examining authorities, legal doubt will linger across all affected institutions.

² In light of the extended publication time frames for *Federal Register* postings, we recommend that agencies immediately publish statements on the agency website. Postings in advance of Federal Register publication will effectively expedite compliance efforts by affected institutions.

This “good faith” approach has been applied successfully in the past. For instance, the Department of Housing and Urban Development (HUD) declared a 120-day restraint in enforcement of new RESPA rules in 2009, if service providers demonstrated “good faith efforts” to implement RESPA's new rules. According to HUD, entities had to show they relied on the new RESPA rule and other written guidance issued by the Department and also show they had made sufficient investment and commitments in technology, training, and quality control designed to comply with the new rule.³ Similarly, in 2018, the FFIEC agencies recognized “significant systems and operational challenges” needed to adjust to revised HMDA regulations, and for HMDA data collected in 2018 and reported in 2019, the agencies did not—(1) require data resubmission unless data errors were material, nor (2) assess penalties with respect to errors in data collected in 2018 and reported in 2019.⁴

In summary, given the unusual and disruptive circumstances brought about by the District Court’s decision, leading to an abrupt reversion to the pre-2020 HMDA rule reporting thresholds, lenders need time to come into compliance with their new reporting obligations. The Associations urge the FFIEC to issue a formal statement, which gives affected institutions adequate opportunity to develop systems after January 1, 2023. We recommend publication of a statement similar to that issued in 2018 and quoted above, and urge the agencies to issue it promptly.

Sincerely,

**American Bankers Association
Credit Union National Association
National Association of Federally-Insured Credit Unions**

³ See HUD General Counsel Letter, dated November 13, 2009. <https://archives.hud.gov/news/2009/pr09-215.cfm>

⁴ OCC: <https://www.occ.treas.gov/news-issuances/bulletins/2017/bulletin-2017-62.html>; FDIC: <https://www.fdic.gov/news/financial-institution-letters/2017/fil17063a.pdf>; CFPB: https://files.consumerfinance.gov/f/documents/cfpb_statement-with-respect-to-hmda-implementation_122017.pdf.