THE FINANCIAL SERVICES ROUNDTABLE

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May 10, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Docket No. R-1186

Re: Proposed Changes to Public Disclosure Tables Used to Report Data Collected by Lenders under the Home Mortgage Disclosure Act ("HMDA")

Dear Ms. Johnson:

The Financial Services Roundtable[1] (the "Roundtable") appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System's (the "Board") proposed changes to the public disclosure of lending data under the Home Mortgage Disclosure Act ("HMDA").

Background

The Board has requested comment on proposed changes to the public disclosure tables that are to report data collected by lenders under the Home Mortgage Disclosure Act ("HMDA"). HMDA requires that institutions collect, report, and publicly disclose data about applications and purchases of home loans, refinanced loans, and home improvement loans.

Recent revisions to Regulation C require lending institutions to report new data including loan pricing information (the rate spread between the annual percentage rate on the loan and the yield on Treasury securities of comparable maturity); whether the loan is subject to the Home Ownership and Equity Protection Act ("HOEPA"); whether manufactured housing is involved; whether the loan is subject to a first or subordinate lien on the property; and certain information about requests for pre-approval. Regulation C has also been amended to conform to changes in standards for the collection of applicant data on race and ethnicity adopted by the Office of Budget Management ("OMB"). All changes to data requirements will be reflected in the proposed new tables.

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[1] The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Roundtable member companies provide fuel for America's economic engine accounting directly for $18.3 trillion in managed assets, $678 billion in revenue, and 2.1 million jobs.

Roundtable member companies oppose the HMDA data reporting requirements proposed by the Board. We believe that the pricing information collected and disclosed to the public is incomplete and cannot be used to draw conclusions about an institution's lending practices. We recommend that disclaimers be added to the HMDA report indicating that conclusions on predatory lending, or subprime loan categories, may not be made from the data presented. We recommend that the Board consider delaying implementing new reports that include pricing information at least until it has received and analyzed the first year's data.

Finally, we are concerned that presenting incomplete HMDA data will reduce the opportunity to educate consumers on what factors are necessary to obtain a home loan.

<u>HMDA Data Alone is Not an Indicator of Predatory Lending</u>

The Board apparently believes that data collected under HMDA will prove useful in identifying instances in which the industry is not operating consistent with the Fair Lending Law, Equal Credit Opportunity Act ("ECOA") and the Community Reinvestment Act of 1977 ("CRA"). In addition, many consumer groups have referenced studies that use Board reports of HMDA data to support their position that certain institutions are involved in illegal or predatory lending practices.

Roundtable members believe that these assumptions are incorrect. There is no logical connection between data reported to the Board under Regulation C and predatory or discriminatory lending. Additional data is necessary to put the lending decision into context. We recommend providing a statement at the beginning of each table indicating that a loan is not illegal or predatory simply because it is a reportable loan.

We believe that the HMDA data does not tell the entire story. The nature of the data collected does not take into account credit information about borrowers comparable to that which companies consider when arriving at a mortgage score.

Lenders are in business to make loans that provide a return on capital. Over the past decade, the mortgage lending industry has helped make it possible for an historic number of Americans to become homeowners. Because this industry is so competitive, no lender is able to dictate prices to borrowers. Lenders offer rates and terms that are acceptable to the borrowers while at the same time they must underwrite the borrower's credit history to determine if they have the ability to repay the loan under these terms and conditions. Making these determinations requires an understanding of how much risk the consumer represents. A lender will look at the following factors:

- The amount, reliability and predictability of the income of the consumer;
- The consumer's current and potential liabilities;
- The consumer's credit history built up over time as a result of paying or failing to pay debts;

- The value of the property that is securing the loan;
- The amount the consumer wants to borrow;
- The time period to repay the loan;
- The consumer's desired monthly payment;
- The consumer's collateral; and
- Funds available to the lender for the type loan the borrower wants.

The information produced by the HMDA data will not provide answers to these questions. HMDA data focuses on factors that are not part of the lending decision. There are several things that HMDA will <u>not</u> show, including:

- Why a loan was not made;
- Why a loan was made at one rate and not at another. For example, there is nothing that explains why a customer decided not to borrow as much money as originally applied for, or to repay it in a shorter period of time. Those decisions will change the Annual Percentage Rate ("APR") and in some cases will result in a reportable spread even if all other things remain constant;
- Whether any institution or a group of institutions has illegally discriminated by denying credit to any specific borrower or to groups of borrowers;
- How more loans can be made to more consumers, or how loans might be made at lower rates to some consumers;
- Why more HOEPA loans, or more loans at a reportable spread, were made in one geographic area than another, or to one ethnic or racial group than another;
- Whether any particular loan is predatory; and
- Whether any particular loan is subprime.

Attempted use of the Federal Reserve reports on HMDA data to show predatory or discriminatory lending, without supporting additional data, is illogical. HMDA data should not be used to determine whether a lender has violated any law requiring fair and non discriminatory lending. This creates a litigation risk for institutions diligently following the rules.

<u>Dangers of Distorting the Data</u>

The perceptions of what HMDA data illustrates is far from the realities that exist in the mortgage lending industry. One of the main concerns with HMDA reporting is that the data presented does not present a full image of institutions' lending practices. Information, such as race, ethnicity and property location, does not reveal legitimate reasons for disparities in acceptance rates and lending patterns, including creditworthiness, debt-to-income ratio, loan-to-value ratio, and the consumer's choice of loan product. The following examples illustrate some of the misconceived perceptions and how this data can be distorted.

- *Perception: Reportable rate spreads are evidence of predatory or discriminatory loans*. This is not always the case. For example, a borrower might choose to take a higher rate loan, finance points and fees because of tax reasons or choose a shorter period to repay the loan. These choices may increasing the APR and make the spread reportable, but the circumstances are not indicative of an abusive or predatory loan practice.

- *Perception: HOEPA loans are predatory loans because they are priced at high rates*. The borrower may have a poor repayment record that creates risk to the lender, or the reliability or predictability of the borrower's income may be questionable because of the borrower's employment. This increased risk must be compensated for by offering higher rates, and those rates do not imply that the lending is predatory.

- *Perception: HMDA data illustrates that a higher percentage of reportable spread loans are found in certain geographical areas or among certain racial or ethnic groups*. The misguided conclusion is that these borrowers are being discriminated against. There is no simple connection that can be made between race or ethnicity or location of the property and predatory lending. When analyzing whether or not to grant a loan to a consumer, lenders do not take into account the race or ethnic background of the consumer or where the consumer lives. These factors are irrelevant to a lender. The lender wants to know if the loan will be repaid under the terms and conditions outlined.

Reviewing HMDA data alone may lead someone to conclude that an institution is engaging in discriminatory lending when in fact they are not. This could present some dangerous consequences that will affect consumers and the industry in general.

If consumers believe they are being discriminated against because of their ethnicity or geographic location, there may be less incentive for them to apply for loans which they need and for which they may well be qualified. In addition, the false perception of HMDA data impedes efforts to encourage potential borrowers to become more financially literate. The distortion of HMDA takes the focus off the factors which all consumers should be looking at when building their credit history. Without this knowledge, potential borrowers may not seek to address negative credit reports or understand how to build a good credit history. This could lead to a decline in home ownership if there are less qualified borrowers in the marketplace. Therefore, great care must be exercised in determining how data collected under HMDA data reporting requirements is reported to the public.

<u>Regulation C Data Should Not Be Used to Define Prime or Nonprime Loan Categories</u>

We recommend that the Board include a statement with HMDA data indicating that data reported under Regulation C is not designed to define prime or nonprime categories of loans.

Regulatory agencies have defined subprime lending as extending credit to borrowers who exhibit characteristics indicating a significantly higher risk of default than traditional bank lending customers. Characteristics of high risk borrowers include repayment problems, regular mismanagement of finances and reduced repayment capacities. Regulators point to bankruptcies, repossessions or foreclosures, and debt service to income ratios of 50% or greater as evidence of poor credit risk.

These factors do not apply to all of the reportable loans made by lenders. Many customers who are charged a rate above the rate spread do not exhibit any of these characteristics. For example, consumers may have an excellent payment history, but they may not have predictable income or may not have or want to provide the necessary documentation. Broadly classifying all loans that exceed the spread as subprime loans would overlook the detailed analysis conducted by regulators, examiners and banks who consider a variety of factors when making a determination of what constitutes a subprime loan.

There is a significant difference if loans are considered subprime. An entirely different set of examination and supervision guidelines would apply. These guidelines would place a burden on institutions to comply with these guidelines. Institutions would be faced with additional costs that could be passed on to the customer. For these reasons, it is important for the Board to note that the HMDA data do not define these categories.

<u>Conclusion</u>

Roundtable member companies support reporting loan data and the transparency of loan transactions. However, we believe that under current HMDA reporting requirements the data disclosed to the public does not provide an accurate gauge of an institution's lending procedures. Therefore, we disagree with the assertion that this data illustrates whether or not institutions are engaging in predatory lending or that it may be used to define prime or nonprime lending categories.

The Roundtable recommends a disclaimer be provided with the HMDA data stating that the reported data alone is not an indication of predatory lending and that this data should not be used to define prime or nonprime loan categories. We urge the Board to consider delaying the implementation of the new HMDA reports at least until there has been a chance to review and analyze the first year's data.

Finally, we believe that reporting the HMDA data currently required under the Board's rule without the disclaimer referred to will impede efforts to educate consumers about the information that is important in the lending process and what it takes to obtain a home loan. This diminished financial literacy on the part of the consumer could lead to a decline in mortgage lending as individuals will not seek loans, or be unable to qualify for them because they have not focused on the important parts of becoming eligible for credit.

If you have any further questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting
Executive Director and General Counsel