

**Statement of Eric Halperin, Special Counsel for Fair Lending, Civil Rights Division,  
Department of Justice**

Good afternoon, Governor Duke, and members of the presiding panel. Thank you for the opportunity to appear before you to discuss the Department of Justice's views on revisions to Regulation C which implements the Home Mortgage Disclosure Act (HMDA). I commend the Board for considering much needed revisions to the information disclosed under HMDA.

The foreclosure crisis has devastated communities in every state, from coast to coast. But one fact is clear; while the foreclosure crisis has touched so many communities across America, communities of color have been hit particularly hard. The lack of timely and effective fair lending enforcement is among the long list of factors that contributed to our current crisis and changes to HMDA are an important component in improving public and private fair lending enforcement.

The information collected under HMDA is an essential, but currently limited, tool for the Department of Justice's fair lending enforcement program. The inclusion of more information on the creditworthiness of the borrower and the terms of the loan will significantly enhance HMDA's value for fair lending enforcement. These improvements will not only enhance our ability to enforce the law, but will also better position regulators, lenders, and the public to detect and prevent lending discrimination.

The Department of Justice uses HMDA data to identify possible targets for investigation. However, the loan data currently available through HMDA is only a starting point to identify the presence of disparities— it cannot tell us whether any particular mortgage lender is discriminating. Where disparities are present, we conduct further analyses using publicly available data to determine whether there may be non-discriminatory explanations for the disparities. In deciding whether to initiate an investigation of a particular lender, the Division evaluates all available information, including any relevant data from the Federal Reserve studies and its own analysis of the HMDA data.

During investigations of alleged discrimination in loan pricing, we generally obtain detailed additional information from the lender that is not available through HMDA. In order to determine whether minority borrowers are being charged more than similarly-situated white borrowers, we need to analyze other factors that lenders can legitimately consider in setting interest rates. For example, the HMDA data currently does not include information such as a borrower's credit score, loan-to-value ratios, and debt-to-income ratios. In most cases, each of these factors has a direct impact on a borrower's mortgage interest rate. Conducting statistical and econometric analyses of these additional data enables us to assess whether such factors explain the pricing differences identified in the HMDA data. We also seek information from the lender about its lending policies and practices and the characteristics of its various loan products,

in order to evaluate the loan data and the results of our analysis in the context of that lender's business practices.

The Department of Justice also relies on researchers and non-profit organizations to alert us to potential problems in the lending market. Furthermore, actions filed by private attorneys general are crucial to enforcement of the Equal Credit Opportunity Act and the Fair Housing Act. HMDA is also an essential tool for these non-governmental actors. To the greatest extent possible, and in a form that is consistent with the need to protect the privacy of individuals, the Board should make additional information on creditworthiness and loan terms available to the public.

The Dodd-Frank Wall Street Reform and Consumer Protection Act mandates the addition of several new fields to HMDA. We encourage the Board to prioritize the implementation of the new fields added by the Act with a few important additions.

As I noted earlier, a standard part of any fair lending investigation is to request that lenders provide the information that they relied on in approving, denying or pricing loans. The inclusion in HMDA of the creditworthiness factors set forth in Dodd-Frank, such as credit score and loan-to-value ratio, as well as information on the terms of the loan, such as annual percentage rate and points and fees, will allow us to more effectively target our enforcement resources. While we have devised screens that use the current HMDA data to identify potentially problematic lenders, there are occasions where the disparities in HMDA can be explained by legitimate non-discriminatory reasons. The addition of creditworthiness and other data will, in many circumstances, allow us to reach that conclusion without burdening the lender with a request for information. In addition, the new data elements will increase the efficiency of our investigations by giving us ready access to much of the information that currently we must request from the lender.

In addition to the fields added by Dodd-Frank, we recommend that the Board also include debt-to-income ratio and combined loan-to-value ratio. These two elements are often relied upon by lenders in underwriting and pricing loans and excluding them from the data will undermine the goal of providing regulators, enforcement agencies and the public with a clearer understanding of the possible non-discriminatory reasons for a lender's decision.

We would also encourage the Board to consider changing the exclusion for lenders without a branch in a metropolitan statistical area. The exclusion hampers the ability of enforcement agencies to police discrimination in rural lending both by making it harder to evaluate whether HMDA-reporting lenders are engaged in discriminatory conduct and to identify discrimination by non-reporters. The development of a redlining lawsuit requires extensive analysis of the bank's lending data and a comparison of the bank's residential lending patterns to the lending patterns of other banks and home mortgage lenders in that geographic area. Under the Census Bureau's definition of what constitutes a rural area, a full 21% of the country's population falls

in that category and the current HMDA exclusion runs the risk of missing loans made to many of them.

In addition, we also recommend expanding coverage to loans secured by a dwelling, or for the purpose of improving a dwelling, with limited exceptions for certain types of short-term financing. Finally, the Board should also revisit the criteria for reporting by non-bank lenders and replace the current system with a more straightforward requirement that lenders that make more than a certain number of loans must report.

We understand that given the substantial changes required by Dodd-Frank it is unlikely that the Board will consider expanding reporting to loans not secured by a residence in this review. However, fair lending issues are also present in non-mortgage lending, such as auto lending, small business lending, and unsecured consumer lending. In the future, policymakers should consider expanding reporting to these areas.

Thank you for the opportunity to speak with you today. Again, I appreciate the Board's willingness to revisit and improve the data available under HMDA, and I look forward to answering any questions that you may have.