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Federal Reserve Hearing on potential revisions to Regulation C –
Implementing the Home Mortgage Disclosure Act
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My name is Tom Noto and on behalf of Bank of America, I appreciate the opportunity to participate in this discussion on improving the efficacy of the Home Mortgage Disclosure Act ("HMDA") data. The use of HMDA data has expanded well beyond its original purpose of evaluating whether depository institutions are fulfilling their mortgage lending obligations in the communities and neighborhoods in which they are located. Now HMDA is used by both regulators and the general public to evaluate mortgage lenders on the location, attributes and pricing of the credit made available to borrowers. It also provides insight into where and why borrowers are denied credit. This information when matched with the corresponding racial and ethnicity data has helped paint a picture of mortgage lending in this country. Granted it has not always been a favorable picture but it is one that has triggered dialogue and spurred the development of initiatives to meet the housing credit needs of many Americans who previously had not had access.

As the Board has often noted, analysis based on publicly available HMDA data is limited at best. Safeguarding the privacy of borrowers has made lenders reluctant to provide data that would enable individual borrowers to be identified and their personal credit information made public. The Board previously weighed the potential benefit, burden and danger to individual privacy protection that would result from the reporting of additional data. Release of such data could also expose proprietary lender information and permit third parties to engage in identity theft or other fraudulent activity more easily.

The Board has recognized that any modification of existing data elements requires significant systems and procedures adjustments. HMDA continues to evolve, however, outside the regulatory framework. Recent amendments to HMDA from the Dodd-Frank Wall Street Reform and Consumer Protection Act will require the addition of a number of new data fields, including the value of the property, the borrower's credit score and potentially the parcel number that corresponds to the property. Many of these new requirements will test the ability of regulators to design, and lenders to implement, a reporting process that cannot be reverse engineered to reveal the identity of specific borrowers.

For the past several years, the larger depository institutions have been required to provide substantially enhanced HMDA data to federal regulators. This parallel and annually evolving data reporting is a heavy financial and resource burden on subject banks. We understand, however, that no matter how robust the HMDA reporting, sound fair lending analyses can only be done based on lender-specific data gathering including employee interviews, file reviews and all of the other tools utilized by the regulators to examine lenders.

Regulators and lenders know that even with the availability of robust data and the use of elaborate models, the predictive value of the statistical analysis is by itself highly inconclusive. The reality is that the proof is not merely in the data. If it was, managing fair lending would be much easier for both lenders and their regulators. Analysis of the publicly released HMDA data encourages the assertion of unsubstantiated conclusions. Such conclusions, however, can only be contested through the rigor of a regulatory examination.

The piecemeal adding of new fields currently contemplated by the Board will not enhance the public's ability to engage in more robust analysis. This is especially true in terms of providing more information to compare the performance of one lender to another. The lack of consistency in field definitions between lenders (e.g., debt-to-income or loan-to-value) will make such comparisons tenuous at best. In addition, lenders are already anticipating the numerous and costly systems and procedural changes needed to incorporate the requirements of the Dodd-Frank legislation. For example, we know that HMDA will soon require the disclosure of credit score information. Determining which score to release (bureau scores versus internally developed scores) and still safeguarding individual consumer's privacy, however, will make this a difficult regulatory task. Ensuring that the public availability of this information will provide a meaningful way to compare lenders will likely require the disclosure of other proprietary information in order to normalize the fields. This will be a significant undertaking for the mortgage lending industry. These and a myriad of other technical issues (e.g., what to disclose when there is no score or a nullified score due to identity theft or divorce) will make public release of credit score information difficult to implement.

We believe that as the Dodd-Frank requirements are prescribed, regulators must be mindful of changes to existing fields that could help minimize the risk of identifying individual borrowers. For example, less specific geographic information or less specific loan amount information may be necessary to address privacy concerns. We believe, however, that all of these changes should be made at one time.

For the reasons stated, we strongly encourage the Board to delay implementation of any new HMDA requirements until the impact of the new Dodd-Frank requirements can be analyzed and thoughtfully set forth. If the Board decides it must undertake changes to Regulation C during this time of enormous regulatory flux, such changes should be limited to only those that would reduce burden and public confusion. For example, we encourage the Board to consider eliminating the requirement to report on "preapproval" programs. The definitions for such programs remain confusing and the usefulness of reporting such data is questionable.

If the Board determines, however, that it is necessary and appropriate to add additional data fields at this time, we encourage the Board to consider limiting the availability of the additional fields to federal regulators only. Standardizing and mandating the data reporting requirements already imposed on large financial institutions for all lenders but limiting its availability to regulators only will significantly add to the regulators analysis arsenal without creating undue privacy risk for consumers.

Again, I appreciate the opportunity to participate and the Board's efforts to broaden the dialogue on these issues.