TESTIMONY OF

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On

Regulation C

Implementing the Home Mortgage Disclosure Act of 1975

Before the

FEDERAL RESERVE BOARD

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Introduction

Good morning Governor Duke, Director Braunstein, members of the Consumer Advisory Council, and staff. My name is Steven L. Antonakes and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. The Division of Banks ("Division") is the primary regulator of 230 Massachusetts state-chartered banks and credit unions with total combined assets in excess of $255 billion. The Division is also charged with the licensing and examination of nearly 1,000 non-bank mortgage lenders and brokers, over 4,000 individual non-bank mortgage loan originators, and an additional 3,500 non-bank financial entities, including check cashers, money transmitters, finance companies, and debt collectors.

I commend the Federal Reserve Board ("Board") for periodically reviewing Regulation C which implements the Home Mortgage Disclosure Act ("HMDA") to ensure it continues to remain relevant given changes in the mortgage market. The last set of amendments were made in 2002 and among other changes mandated reporting for non depository mortgage lenders that originate $25 million in mortgage loans annually; expanded required data fields to include pricing information for certain higher priced loans; and attempted to deal with new delivery channels by requiring lenders to seek information about race, ethnicity, and gender in telephone applications.

Nevertheless, the mortgage market has changed dramatically since the 2002 amendments and these hearings begin the process to consider the first substantive changes to HMDA since our economic challenges and foreclosure crisis took hold.

Over the past few years, the mortgage industry has significantly consolidated resulting in a small handful of nationwide money center banks now holding a dominant share of the mortgage market. Prior to this consolidation, a number of developments significantly impacted the mortgage industry. These include the widespread securitization of mortgage loans; the outsourcing of mortgage origination channels resulting in broader access to credit, but weaker controls; new product offerings; and significant improvements in technology which produced new delivery systems, automated underwriting, and risk-based pricing.

However, ongoing documented disparities between the pricing of loans made to white borrowers versus black and Hispanic borrowers clearly demonstrates that more needs to be done. Unfortunately, it will take years for many urban communities to recover from the devastation of the ongoing foreclosure crisis. More so than ever before, access to sustainable homeownership opportunities in low- and moderate-income neighborhoods will be essential. Simply put, we can not allow the events of the past few years to undo the significant gains in homeownership among our nation's black, Hispanic, and Asian communities.

Given today's very different mortgage landscape, the ongoing financial crisis, and near passage of landmark financial reform legislation, it is the appropriate time to consider how HMDA can be further improved to make it more effective in the years ahead.

In my testimony today, I will relate the Massachusetts experience in utilizing HMDA data to conduct Community Reinvestment Act ("CRA") examinations of state-chartered banks, credit unions, and certain non-bank mortgage lenders and provide some thoughts on how Regulation C can be amended to further improve the usefulness of HMDA in identifying discriminatory lending practices.

State Consumer Protection Efforts

The states have long been recognized as laboratories for innovation. Accordingly, many of the nation's key financial consumer protections were first implemented on the state level. For example, Massachusetts had systems for deposit insurance that predated the creation of the Federal Deposit Insurance Corporation. In addition, the federal Truth-In-Lending Act was primarily based on the Truth-In-Lending Act which was enacted in Massachusetts two years earlier. In addition, to date, 35 states, including Massachusetts and the District of Columbia, have enacted subprime and predatory lending laws[1].

State efforts to strengthen and improve the supervision of non-bank mortgage lenders, brokers, and loan originators are another example of state innovation which provided the framework for federal action. The states began developing the Nationwide Mortgage Licensing System (NMLS) in 2003 as a means for identifying and tracking mortgage entities. Congress embraced this effort through the passage in 2008 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act sought to raise minimum standards throughout the United States by giving states until July 31, 2009 to pass laws licensing loan originators and to utilize the NMLS.

Some assert that preserving the rights of the states to promulgate higher consumer protection standards will balkanize consumer protection standards and create excessively burdensome inconsistencies. Advocates of this position argue their businesses will be forced to operate under a "patchwork quilt" of varying state laws. However, the facts

[1] Source: National Conference of State Legislatures, www.ncsl.org.

don't support this assertion. When a high federal standard is established – generally based on laws tested at the state level – the states tend to harmonize to the federal standard.

The SAFE Act is a very recent example of a coordinated state-federal approach that is accomplishing important consumer protection goals in addressing weaknesses in mortgage regulation and doing so in a nationally consistent manner. The states implemented the provisions of the SAFE Act in a rapid and seamless manner. As a result of new federal standards that created a floor and not a ceiling, mortgage regulation and applicable law has never been more consistent.

Massachusetts Use of HMDA Data

In addition to conducting regular safety and soundness examinations of all state-chartered banks and credit unions, the Division also conducts consumer compliance examinations and CRA and fair lending examinations of all state-chartered banks and credit unions. In Massachusetts, the Division created administrative requirements mandating that state-chartered banks serve their entire communities prior to the passage of the federal Community Reinvestment Act. A specific Massachusetts Community Reinvestment Act was later enacted in 1982.[2] The Massachusetts landmark 2007 foreclosure prevention law also extended Community Reinvestment Act-like requirements to licensed mortgage lenders originating 50 or more mortgage loans a year in the Commonwealth. Thus, Massachusetts became the first state in the nation to extend

[2] See Massachusetts General Laws, Chapter 167 §14 and its implementing regulations at 209 CMR 46.00 *et seq.*

CRA to non depository lenders.[3] Utilization of HMDA data is integral to the Division's CRA and fair lending examinations of state-chartered banks and credit unions and licensed non-bank mortgage lenders.

The Division has found that the error rate for non-bank HMDA filers is high. Since beginning its effort to examine non-bank mortgage lenders for CRA-type requirements, the Division has had to suspend several examinations due to a determination that HMDA data submitted to the federal government had so many errors and omissions that a determination of compliance with applicable fair lending laws and regulations could not be made. In these cases, the Division has entered into public formal enforcement actions with these companies mandating the resubmission of corrected HMDA data to the Board; the establishment, implementation, and maintenance of operating policies and training procedures to ensure that all applicable personnel possess a comprehensive understanding of the HMDA reporting requirements under Regulation C, and the payment of an administrative penalty collected in consideration of the licensee's failure to comply with the statutes, rules and regulations governing the conduct of those engaged in the business of a mortgage lender in Massachusetts.

In March 2010, the Division and 34 additional state mortgage regulators entered into a settlement agreement with CitiFinancial. The agreement between CitiFinancial and the state mortgage regulators was executed after an examination conducted by the Division found that CitiFinancial had failed to include 91,127 HMDA reportable residential mortgage loans as required for the period between 2004 and 2007. The terms of the settlement agreement included requirements for CitiFinancial resubmitting

[3] See Massachusetts General Laws, Chapter 255E §8 and its implementing regulations at 209 CMR 54.00 *et seq*.

corrected and completed HMDA reports to the Board for the years 2004 through 2007; engaging an independent consultant to conduct a thorough fair-lending review to ensure the data from the previously unreported 91,127 mortgage transactions does not in any way demonstrate a pattern or practice of discriminatory lending; reviewing and substantially modifying its internal control procedures to ensure all reportable HMDA transactions are accurately compiled and reported; and remitting a penalty totaling $1.25 million.

In order to ensure fair lending compliance can be effectively measured on an individual basis and appropriately studied on a macro level, increased scrutiny for non-bank lenders and bank subsidiaries and affiliates by all regulators will be required.

Suggestions to Improve Regulation C

In my testimony, I have provided information relative to how Massachusetts utilizes HMDA. In addition, the following is intended to be responsive to questions posed by the Board for possible revisions to Regulation C.

Data Elements

In considering whether Regulation C should be amended to increase the data elements required to be completed for compliance with HMDA, the cost of increased compliance must be measured against the value that any additional data would provide. Given its existing limitations, HMDA serves as a starting ground to determine whether disparate treatment of mortgage applicants exits. A thorough file review and comparison of similarly situated mortgage applicants is then necessary. Accordingly, utilizing HMDA to determine compliance with fair lending laws and regulations is inherently labor intensive. The addition of appropriate data fields will likely provide for better and more accurate screening processes. However, some type of file review will remain necessary.

The Board specifically seeks comments relative to the inclusion of a borrower's credit score; loan-to-value ratio; debt-to-income ratio; and age, as well as the rate spread for all loans and the origination channel.

Certainly there is benefit to collecting sufficient data to accurately assess how credit decisions are made and loan pricing is determined. The inclusion of the credit score relied upon by the mortgage lender as part of the mortgage lender's credit review process would be valuable and better focus examination techniques. This field would significantly assist in isolating factors that contribute to a loan decision and aid in the evaluation of discriminatory patterns. In addition, loan-to-value and debt-to-income ratios remain the two critical ratios relied upon during the underwriting process. The income relied upon by the lender would seem to be the most accurate means of determining a debt-to-income ratio.

Given the aging of our population, the lack of existing metrics to determine age discrimination, and the growing popularity of reverse mortgages, a data field to capture the age of borrowers should be considered. Furthermore, the Board should give consideration to requiring the reporting of all originated reverse mortgage loans by adding a "Type" code for reverse mortgage loan applications. While the Federal Financial Institutions Examination Council (FFIEC) has announced the expansion of call report data for banks to include the number of reverse mortgages originated or outstanding beginning at the end of this year, the collection of reverse application data would greatly enhance the ability of both regulators and the public to monitor this rapidly growing mortgage product.

Data and pricing analysis would be greatly enhanced by the inclusion of loan spread information for all loans and not just higher cost loans as is required now. Finally, consideration should be given for requiring the reason for a credit denial be included in HMDA submissions. Such information remains a voluntary field at this time, although it is mandated by some federal bank regulators.

Whereas many lenders have outsourced their origination channels, the Board seeks comment as to whether this information should, in some way, be captured by HMDA. Rather than require additional data, a preferred method may be to require a mortgage lender to demonstrate the controls they have over third party origination networks to ensure that all fair lending laws and regulations are consistently adhered to. These controls could be reviewed and tested during the CRA examination process.

The addition of several new fields of reporting data will increase compliance and recordkeeping costs. Community banks and credit unions generally bear a disproportionately higher regulatory burden because they lack the resources that the large banks devote to compliance. The resulting regulatory burden will likely be somewhat mitigated by substantial improvements in technology and the automated programs utilized by many larger mortgage lenders. However, community banks and credit unions should not be subject to the same requirements as larger financial institutions unless there is a clear benefit from such a mandate. Accordingly, the Board should consider appropriately risk scoping data collection requirements by only mandating the reporting of credit score, loan-to-value and debt-to-income ratios, borrower's age, rate spread, and reason for denial for the nation's largest mortgage lenders. Either an asset cap or dollar volume of mortgage loans originated annually could be initially utilized to determine which institutions should report expanded HMDA data. After a two year period, the Board should then review the cost of reporting and the corresponding value of these additional data fields before determining whether all mortgage providers should collect and report these data.

Coverage and Scope

The Board also seeks specific comment on whether HMDA reporting requirements should be extended to mortgage brokers, whether certain types of institutions should be exempt from reporting and whether additional mortgage loans should be reported or whether certain types of mortgage loans should be excluded from reporting.

The Division recognizes the value of potentially pinpointing disparate treatment among select third party mortgage brokers or even individual loan originators. However, given the Division's experience supervising licensed mortgage brokers, mandating that mortgage brokers complete HMDA Loan Application Registers may not be the best means of achieving this goal. The regulatory burden for these often single person shops would be significant. Moreover, absent rigorous review of the data submitted, HMDA integrity issues would likely be significant.

A far more effective solution would be to move in the direction of the proposed Dodd-Frank Wall Street Reform and Consumer Protection Act and require all mortgage lenders to include the NMLS assigned unique identifier of any mortgage broker, licensed non-bank loan originator, or registered loan originator associated with all HMDA reportable loans.

The tremendous opportunity here is for the Board to build off the success and foresight of the states in designing the NMLS to protect consumers against harmful business practices. By registering every loan originator with a unique identifier and requiring that identifier to be incorporated with loan origination documents and HMDA reporting, the ability to associate the loan documents and business practices with the company and individual that negotiated the transaction will be greatly improved. This will provide a powerful means by which bad actors will not be able to hide from their past bad actions.

Moreover, by requiring this information to be included by mortgage lenders rather than mortgage brokers, it reinforces the core principle that any mortgage lender remains ultimately responsible for the actions of the third parties they do business with. The inclusion of such information will also provide an effective means for mortgage lenders to better police and supervise their outsourced origination channels.

The Board should also know that the NMLS intends to implement a call report requirement for all licensed mortgage lenders and mortgage brokers beginning in March 2011 for calendar year 2010[4]. The NMLS mortgage call report is intended to fulfill requirements of the SAFE Act as well as build on state regulator efforts to create uniform financial and activity reporting requirements across state lines.

The proposed NMLS mortgage call report is comprised of two parts: financial information about the licensee and information about the licensee's mortgage loan

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[4] See http://mortgage.nationwidelicensingsystem.org/news/ProposalsForComment/Public%20Comment%20Request%20for%20NMLS%20Call%20Report.pdf.

activity. The development of the NMLS mortgage call report draws from the FFIEC call reports required of depository institutions and seeks to replace and standardize individual financial and activity reports currently required by state regulators. The NMLS mortgage call reports will also allow State regulators to risk scope examinations of licensed mortgage lenders and mortgage brokers based on the number of loans originated and type of mortgage products offered.

Conclusion

I commend the Board for taking the time to consider how Regulation C can be improved and more reflective of the current mortgage market. We have witnessed significant changes since the Board's 2002 amendments. Given these changes, I believe now is the right time to modernize the law by expanding the data fields for our nation's largest mortgage lenders. This can provide the necessary test case to determine the costs and benefits of further expansion. In addition, the expansion of the data fields to include the NMLS provided unique identifier for mortgage brokers and loan originators will is a superior means of focusing internal controls and regulatory scrutiny than require mortgage brokers to additionally complete a Loan Application Register. Finally, given the aging of our population and the tremendous growth in the popularity of reverse mortgages, Regulation C should be expanded to require data on the age of borrower's and specially mandate the reporting of reverse mortgage loans. Hopefully all of my other comments herein will aid the Board in its deliberations. Thank you for the opportunity to testify today. I look forward to answering any questions you may have.