

**Testimony of Garry Seligson**  
**JPMorgan Chase**  
**Federal Reserve Hearing on Potential Revisions to Regulation C –**  
**Implementing the Home Mortgage Disclosure Act (“HMDA”)**

My name is Garry Seligson and I am a Senior Vice President and Associate General Counsel for Chase Home Lending. Chase Home Lending is one of the largest originators of residential mortgage loans in the United States, and made approximately 270,000 mortgage loans in 2009.

Chase appreciates the opportunity to testify today concerning the Federal Reserve Board’s review of its Regulation C, which implements the Home Mortgage Disclosure Act (“HMDA”) requirements. Chase also appreciates the fact that the Board is soliciting the views of industry members, advocacy groups and other interest groups prior to issuing any proposed rule.

Chase has long supported the original purposes of the HMDA and welcomes the opportunity to address each of the items for which the Board has requested comments. The focus of today’s hearing is to discuss whether the Board should:

- add, modify or delete any data elements;
- require reporting by additional types of institutions, such as mortgage brokers;
- require lenders to report on all home-secured loans in addition to home purchases, home improvement and refinancing loans;
- require clarification of any provisions of Regulation C; and
- consider any other changes to Regulation C.

**Summary**

As described in greater detail, while we believe that there may be some benefits to additional HMDA reporting requirements, we have serious concerns about consumer financial privacy that some of the proposals raise. Importantly, the recently enacted Dodd-Frank Act more than doubles the number of reportable data elements previously required by HMDA and we believe the industry should be given the opportunity to make the operational changes necessary to capture and report the newly-required Dodd-Frank Act data elements before adding any additional data elements. In addition, reporting institutions should be given sufficient time to revise their forms, train their staff, make the necessary system and programming changes and do whatever else is required in order to comply with the new reporting requirements in Dodd-Frank. Our experience has been that

a change of this magnitude requires an implementation time frame of at least 18 months. Providing an extended time frame for implementation would be consistent with the approach that was taken with the 2004 amendments to Regulation C which were far less extensive than the amendments in Dodd-Frank. Moreover, mortgage originators will be implementing the new data elements at the same time that they are implementing numerous other regulatory changes that will flow from Dodd-Frank. A number of the changes contemplated by Dodd-Frank or that may be considered by the Board additionally may require extensive industry coordination (e.g., establishment of a universal loan identifier), and implementation should be delayed sufficiently to enable that coordination. In addition, we note that some of the new data elements, such as income, are in fact difficult to determine for many consumers due to variable hours, part-time jobs, non-traditional sources of repayment and bonus, commission and overtime hours. We also believe it is important for the Board to create reasonable tolerances in HMDA data reporting since errors with the capture and reporting of this kind of data are inevitable.

### **Data Elements**

The Dodd-Frank financial reform legislation added a significant number of reportable data elements to HMDA including:

- age;
- FICO;
- total points and fees payable at origination;
- difference between the annual percentage rate associated with the loan and a benchmark rate;
- term in months of any prepayment penalty;
- value of the property pledged as collateral;
- months for which introductory interest rate remains in effect;
- presence of contract terms allowing payments other than fully amortizing;
- loan term in months;
- origination channel (retail, wholesale);
- unique SAFE identifier of loan originator;
- universal loan identifier;
- parcel number of security property; and
- credit score of mortgage applicant and mortgagors

While we believe these will be useful in conducting fair lending analyses, they will be challenging to implement. We believe that the Board should not ask for any additional data elements at this time, but instead should focus its efforts on the issues posed by the newly-added data elements. Dodd-Frank requires numerous changes to the loan underwriting and origination process, and will require significant additional monitoring to ensure compliance with the new requirements. We expect the mortgage market to undergo significant changes as a result of both the new panoply of legal requirements as well as other financial market changes. In light of these many developments, it makes sense to give lenders the time they need to make all of these changes, understand what questions HMDA data users are trying to answer, and then evaluate the need for additional data elements.

- Protecting Consumer Privacy – A significant amount of information about mortgage applicants will be made available as a result of the new data elements. Even without name and social security number, the presence of elements such as loan amount and census tract can enable the curious or unscrupulous to search public records and identify individuals. Moreover, the changes to the SEC’s Regulation AB will cause substantial loan level information to be provided to investors. The availability of age, credit score and income (or even potentially other data that consumers consider private) means that a financial picture of a given individual can be put together fairly readily. We believe that many consumers will be rightly concerned that extensive information about them is accessible. The risk of identity theft will also be increased.

To minimize the privacy risk, the Board should consider limiting the number of data elements that are made available to the public. Doing so would enable the Board and other federal regulators to analyze the data without making it available to potentially unscrupulous individuals. Care should be taken, however, in determining which data elements to make public to avoid distortion of information. For example, publication of race and rate spread without important factors such as FICO and LTV would likely result in a distorted picture.

- Reporting of Data Elements – Required data elements should be clearly defined in a manner that is consistent with underwriting criteria and Agency standards. It is critical that only elements that a creditor actually relies on in making a credit decision should be reported. Example: If a creditor obtains a tri-merge credit report for a borrower and co-borrower and relies on the lower of the two middle FICO scores, only those scores should be reported. In the case of a streamline refinance where income is not a factor, it should not be required to be reported. If a borrower is declined for credit reasons before an appraisal is performed, LTV should not be required to be reported. If DTI is added as a data element, there should be considerable guidance regarding its calculation, because lenders may employ a variety of methodologies in their calculation of DTI (e.g., whether

calculated at the front end or back end, and which items to include in the debt and income calculation). Lenders have to deal with the myriad ways in which applicants make their livings, including overtime pay, non-traditional sources of income, bonuses, commission pay, part time jobs, and the like. It is operationally difficult to quantify their income, and it is important that the Board provide clear and definitive guidance as to how such income should be calculated for the purposes of this reporting.

- Reporting of Rate Spreads - Chase supports using Average Prime Offer Rate ("APOR") as the benchmark against which APR should be compared because it puts pricing information in the appropriate market context. Comparing mortgage rates to Treasury securities, for example, does not accurately reflect liquidity, quality and risk issues.
- Purchased Loans - Clarification is needed on reportable data elements for purchased loans. Many of the newly required data elements are not readily available for purchased loans. The information provided by seller to buyers will need to be expanded significantly. If a decision is made to require the collection of data elements for purchased loans, we recommend that this be delayed until there has been a sufficient opportunity to implement the changes contemplated by the Dodd-Frank Act and the Board's Regulation C for loan originators.
- Total Income - The purpose of HMDA is to capture the data elements that accurately reflect the loans applied for, offered and accepted. The current reporting of income relied upon is consistent with this purpose. In contrast, the Board's suggestion of reporting of total income - including income not relied upon - will result in the reporting of information that does not accurately reflect the underwriting decision that was made and, therefore, is misleading. In addition, the reporting of total income would require the lender to undertake the burden of requesting and potentially verifying information that is not relevant to its credit decision, which would impose a burden without any associated benefit. For this reason, Chase cannot support the reporting of total income.

### **Scope and Coverage**

- Small Institutions - Exempting small institutions from HMDA reporting could result in national data that is not truly representative of the entire mortgage market. Analysts would be unable to detect possible patterns of discrimination that, in the aggregate, could affect a significant number of consumers and that (if they exist) should be brought to the attention of the public.

- Mortgage Brokers – Except in those few instances in which a mortgage broker makes the credit decision, we do not believe that mortgage brokers should be required to report HMDA data. Since brokers do not make credit decisions, they have incomplete access to reportable data and their information would be of minimal utility.
- Modifications that are the Equivalent of Refinances – Mortgage extensions and consolidations that are the functional equivalent of loan refinancings and are structured as such in states such as New York or Texas, should be viewed more functionally and reported as refinancings. Doing so would more accurately depict mortgage lending behavior and mortgage “flows”. Modifications made for other reasons, such as to correct an error or in settlement of a dispute, should not be reported.
- Pre-approvals – Pre-approvals are sought by borrowers and real estate agents because they provide a confidence level and facilitate real estate transactions. Few lenders offer them, however, in part because of the reporting burden. We believe the Board should eliminate the reporting of preapprovals. Doing so would have a positive impact on the real estate market. We do not believe it would have a negative impact on data about lending activity since there is so much opportunity for information and loan terms to change between the time of preapproval and the actual loan closing.
- Home Equity Lines of Credit (“HELOCs”) – To date, reporting on HELOCs has been optional and very few lenders have chosen to provide this reporting. The Board has requested comment on whether reporting on all HELOCs should be required, including those that are not used for home improvements. HELOCs are significantly different than the closed-end purchase, refinance and home improvement loans that historically have been reported under HMDA and Regulation C. HELOCs are obtained by borrowers for a variety of purposes, including the ability to draw funds for unexpected needs or on a “rainy day”. A large percentage of HELOCs are never drawn upon at all, while others are drawn upon irregularly or episodically. Moreover, HELOCs are often paid down to \$0, and then not drawn upon again for long periods of time. Under these circumstances, reporting on HELOCs will provide information that does not necessarily reflect the credit obtained or used and is unlikely to be useful in measuring fair lending performance. While there may be some benefit obtained from reporting HELOCs, the uncertainty of the loan amount reported and the burden associated with capturing the required data points, outweighs the small amount of benefit that might be anticipated.

- Default-Related Modifications – Some have suggested that there should also be HMDA reporting of information relating to loan modifications. Chase disagrees. Definitionally, there are a number of types of transactions that may be considered modifications but are not readily comparable to one another, such as forbearance, principal forgiveness, rate reduction and term extension. Modifications also do not take into account the same credit criteria as mortgage loans; the least credit worthy borrower may sometimes get the best deal. Further, most modification requests are informal (e.g., payment deferrals for borrowers who have lost a job or suffered an illness) and, routinely provided and it would be unduly burdensome to report these under HMDA. Moreover, if reporting were required for all loan modifications this may discourage many lenders from providing these kinds of informal and routine modifications. Requiring reporting could have the unintended effect of placing additional operational obstacles and paperwork requirements between a distressed consumer and a loan modification. In addition, Section 1483 of the Dodd-Frank Act requires the Secretary of the Treasury to revise the HAMP guidelines so that the extensive data collected from participating servicers and lenders will be reported to the public. This reporting includes both the aggregate data regarding the number of loan modification requests received, processed, approved and denied as well as reporting at the individual loan level. The extensive reporting of data to Freddie Mac already required by HAMP, when combined with the public availability of the information that has been mandated by Congress in the Dodd-Frank Act, is more than sufficient, and any additional reporting requirements under HMDA and Regulation C will be duplicative and unnecessarily burdensome for HAMP servicers with little if any corresponding public benefit.

## **Compliance**

- Tolerance Levels – HMDA and Regulation C do not address data quality, but regulators have created a number of tests and related tolerances that can affect whether a financial institution must correct or refile its HMDA LAR. These criteria need to be re-examined and rationalized in light of the increased data requirements. For example, loan amount is considered a critical field and is counted as an error if it is off by as little as \$1,000. An error of a few thousand dollars is not significant in a typical conforming loan and the tolerance should be expanded to perhaps \$10,000. Similarly, disposition date is considered a critical error if wrong by even one day – a mistake which has little relevance (unless it affects the reporting year). Calculations of income are subject to substantial uncertainty in terms of crediting commission, bonus and overtime, and different lenders will be taking different approaches to such a calculation. Similar consideration should be given to new data elements such as FICO – it is significant for underwriting purposes

if FICO is above or below 620 (or other standards that may be set by the Agencies from time to time), but not significant if it is 642 vs. 643. In addition, there are many different scoring systems and it is critical that lenders not be forced to obtain certain scores in order to populate a HMDA loan application register. Given the challenges that loan originators will face in reporting all these new Dodd-Frank data elements, it would be appropriate to allow a 10% error tolerance for these elements for at least the first few years following implementation.

- Standards of Accountability – HMDA was meant to help federal, state and local agencies understand housing capital flows and identify fair lending issues, not to create an insurmountable paperwork burden for mortgage originators. In evaluating the accuracy of HMDA submissions, accuracy and the related tolerances should be determined by the relevance of any discrepancies for the purposes of HMDA. It is important that the requirements include appropriate flexibility and have sufficient guidance so institutions can comply. In this way, reporting institutions can be held accountable if inaccurate information adversely impacts the ability of regulators or the public to determine whether the institutions have complied with their fair lending responsibilities.

Once again, thank you for this opportunity to share Chase's views with the Board.