October 29, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW.
Washington, DC 20552

Re: Consumer Financial Protection Bureau's Amendments to Regulation C
Docket No. CFPB-2014-0019 and RIN 3170-AA10

Thank you for the opportunity to comment on the proposed changes to Home Mortgage Disclosure Act (HMDA) reporting requirements.

We, the undersigned consumer and civil rights organizations,[1] strongly support the collection and public dissemination of data about mortgage lending. We have used HMDA data to analyze trends in mortgage lending and, in particular, to understand the dynamics of the mortgage market for underserved borrowers and communities. We commend the CFPB for expanding and improving this vital data source. Our comments below emphasize the following:

1) We support many of the specific changes outlined in the proposal. Specifically, the proposed changes to the definitions of covered institutions and transactions as well as the addition of the proposed new fields would improve the usefulness and quality of the HMDA data. This, in turn, would allow for greater variety and higher quality of analyses to be performed on the data.
2) We suggest that the CFPB collect five additional variables and make modifications to the way that other variables are collected. Doing so would enhance the ability of researchers, community groups and regulators to assess access to mortgage credit.
3) HMDA data are a critical public resource and the CFPB should swiftly put in place a process to disseminate as complete a dataset as is prudent to the public. The CFPB should take

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[1] **Center for American Progress** (CAP) is a nonpartisan think tank dedicated to improving the lives of Americans through progressive ideas and action; CAP's Housing Team focuses on access to credit, affordable housing, and foreclosure prevention. **Center for Responsible Lending** (CRL) is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. **Consumer Action** empowers underrepresented consumers nationwide to assert their rights in the marketplace and financially prosper through multilingual financial education materials, community outreach, and issue-focused advocacy. **Consumer Federation of America** (CFA) is a nonprofit association of some 300 national, state, and local pro-consumer organizations created in 1968 to represent the consumer interest through research, advocacy, and education. **Homeownership Preservation Foundation** (HPF) is a national non-profit organization that is dedicated to guiding consumers onto the path of sustainable homeownership and improving their financial health. **National Association of Consumer Advocates** (NACA) is a non-profit association of attorneys and consumer advocates committed to representing consumers' interest. **National Coalition for Asian Pacific American Community Development** (National CAPACD) is a national advocacy organization dedicated to improving the quality of life for low-income Asian Americans and Pacific Islanders by promoting economic vitality, civic and political participation, and racial equity. **National Council of La Raza** (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States—works with a network of nearly 300 Affiliates that provide education, health, housing, workforce development, and other services to millions of Americans and immigrants annually. **National Urban League** (NUL) is a historic civil rights organization dedicated to the economic empowerment of communities of color.

particular care with the proposed postal address and Unified Loan Identifier fields to protect privacy when making data public.

4) We suggest that CFPB also examine how to collect information on loan modifications and housing counseling so that researchers and regulators can analyze fair lending patterns in these areas as well.

I. Background

In 1975, Congress enacted the Home Mortgage Disclosure Act (HMDA) as a legislative response to widespread urban disinvestment and mortgage "redlining," which is the systematic exclusion of neighborhoods of color when marketing and originating loans.[2] Passed in close proximity with both the Community Reinvestment Act (CRA) and the Equal Credit Opportunity Act (ECOA), HMDA requires that mortgage lenders report certain information about their origination activity every year. Importantly, HMDA was designed as a public disclosure law, promoting its objectives not through substantive mandates or the prohibition of specific practices, but through the principle that transparency and publicly available information improve private market behavior.[3]

The purposes of HMDA, as spelled out in Regulation C, are threefold:

1) To help determine whether financial institutions are serving the housing needs of their communities;
2) To assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and
3) To assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

Originally, HMDA's reporting requirements were quite narrow in scope, requiring only that depository institutions disclose a limited set of census-tract level information. Over time, however, its requirements have evolved to reflect the broadening range of lenders originating mortgages and the changing nature of discriminatory practices. Specifically, HMDA's scope has expanded to encompass non-depository institutions, such as mortgage companies, and its data disclosure requirements have increased from the census-level summary data to individual applicant-level data that includes loan approval decisions and limited information on borrower, property and loan characteristics.

HMDA has been a crucial tool for researchers, community activists and government officials seeking to shed light on lending disparities, fight for greater investments in underserved communities and enforce fair lending and CRA compliance. However, the data is limited and, from its initial design through each enhancement, policymakers have had to balance the competing interests of community leaders and researchers who favor greater disclosure against those of HMDA opponents, who cite undue regulatory and administrative burdens as well as concerns about borrower privacy.

[2] 12 U.S.C. § 2801 et seq.
[3] http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/mf10-7.pdf (page 8)

II. We support changing the definitions of covered institutions and loans and adding additional fields.

We applaud the CFPB for expanding the HMDA data to include important new data points which will shed light on the mortgage lending market. We have advocated in the past for HMDA to be expanded to include many of the fields outlined in the proposal. In particular, we want to underscore the importance of adding new fields for credit scores, total points and fees charged, debt-to-income ratio, channel and an identifier for Qualified Mortgages (QM). These additions will allow for analysis that previously could not be done and will provide important information about access to credit and credit quality for different types of borrowers. We also support the CFPB's changes to the definitions of covered institutions and covered transactions, which we believe will enhance the HMDA data.

Changing the definition of covered institutions will improve the quality of HMDA data, but CFPB should replace the current definition rather than add to it.

We also support the CFPB's proposal to streamline the definition of covered financial institutions. Requiring all lenders who originate 25 or more covered loans to submit data is an effective means of ensuring that the bulk of mortgage loans and applications will be included in the resulting dataset without placing an undue burden on small lenders. However, we believe that the CFPB should take further steps to improve upon the proposed changes by eliminating the other eligibility requirements for depository and non-depository institutions.

Specifically, as proposed, depository and non-depository institutions are also required to have an office in an MSA. Depository institutions must additionally originate at least one home purchase or refinance loan for a 1-4 family property, have assets over $43 million and use some form of federal insurance.[4] These additional requirements will exclude some lenders from reporting under HMDA even if they originate 25 or more covered loans. We do not see a compelling reason to exempt such institutions from reporting for these reasons and suggest that the CFPB consider simplifying the reporting requirement to one eligibility standard, i.e., requiring reporting for all depositories and non-depositories that originate more than 25 covered loans.

We support the amended definition of covered transactions to include commercial loans, but recommend that these loans be clearly identifiable.

As proposed, the definition of covered loans introduces commercial or business purpose loans secured by residential property into the HMDA dataset. The proposal rightly argues that it is valuable to understand the full range of liens against residential property and that risky practices leading up to the recent housing could not be identified or analyzed using the HMDA dataset. However, we are concerned that adding commercial loans into the dataset without the ability to identify them as commercial loans could introduce complexities for those trying to analyze HMDA data.

[4] Based on our reading of the proposal, CFPB is not proposing to remove any of the existing criteria for depository institutions and is simply adding the 25 covered loan standard to the existing requirements. Although this is our understanding, we found the proposal not entirely clear on this point.

The CFPB should add a specific purpose code that will identify commercial or business purpose loans as distinct from other loans in the dataset. The proposal does not include such a code, but asks for feedback about if one is needed. We believe this addition is critical and without it, the data could be misinterpreted. For example, suppose a lender takes a third lien on the personal home valued at $100,000 of a sole proprietor as one of multiple pieces of collateral securing a $250,000 loan. The combined-loan-to-value reported in HMDA for this loan would exceed 250%. Without a field identifying this loan as a commercial loan, a researcher could mistakenly conclude that the lender made a very risky home loan.

III. We recommend the modification of the structure and reporting requirements of certain data fields, as well as the collection of new information, to improve the quality of collected data.

As noted above, we support the additional data fields outlined by CFPB in the proposed rule. However, we believe there are additional data enhancements that would be of great benefit to researchers and community groups in the efforts to promote fair access to credit, while also helping equip regulatory and enforcement agencies with fair lending compliance. Furthermore, we believe the financial and administrative costs to lenders associated with collecting this data, as well as any privacy threats to borrowers, are minimal.

- **Add Denial Reasons:** Currently, when a loan is denied, lenders have the option to report a reason for the denial or to leave it blank. As a result, the current denial reason field is largely unpopulated. Requiring the reason(s) for denial to be reported, as proposed, and additionally providing more specific denial code options would enhance the usefulness of this data enormously. For example, a generic "credit history" option is the most common reason given in recent reports for denied application.5 We propose adding two options: "no credit history" and "low credit score" in place of this option. This change would provide more information about the reason for denial and would be more useful than the free-form category outlined in the proposal. A free-form text category is more difficult for researchers to work with and, since we anticipate only a small percentage of applications will use the free-form text field, it introduces high analysis costs for a small amount of data.

- **Add Business Purpose as an option in Loan Purpose:** As discussed above, if commercial loans secured by real estate are to be included in HMDA, adding a way to identify such loans will be critical. Adding a "business" option to the current loan purpose field would be the simplest way to identify commercial loans.

- **Disaggregate "Asian/Pacific Islander" Category:** We are concerned that the race category "Asian/Pacific Islander" may mask discriminatory practices that are occurring against specific groups that fall into this category. Consequently, we strongly suggest that HMDA's race variables be expanded to include specific Asian and Pacific Islander ethnic and racial groups. We agree with the National Coalition for Asian Pacific American Community Development that a workable, federal precedent for this exists in Section 4302 of the Affordable Care Act, which

[5] In 2013, 22.9% of purchase loan and 20.3% of refinance denials were for "credit history." See: http://www.federalreserve.gov/pubs/bulletin/2014/pdf/2013_HMDA.pdf (page 32)

calls for data reporting for categories which include Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, and Other Asian.

- **Add field to indicate if race/ethnicity data is based on visual observation or self-reported:** Currently, and as proposed, applicants can choose not to disclose their race and ethnicity. If an applicant does not provide this information, the lender reports based on visual observation and surname. While having this option supplements the self-reported data and results in more complete race/ethnicity information overall, the inferred data is likely to be less accurate, particularly as increasing numbers of people identify as more than one race or ethnicity. It would be helpful to know how frequently the visual inspection option is used so that researchers and regulators could distinguish between self-reported and inferred data. As the race and ethnicity information in HDMA is critical for evaluating fair lending, lenders and the CFPB should also do as much as possible to encourage applicant responses to these questions. We further recommend that the CFPB perform testing to determine if changes to the way these questions are posed could encourage more borrowers to self-report their race and ethnicity.

- **Add First-Time Homeowner Indicator:** Among the statutory purposes of HMDA are (1) to help determine whether financial institutions are serving the housing needs of their communities; and (2) to assist public officials in distributing public-sector investment to attract private investment to areas where it is needed. Including a first-time homeowner indicator would greatly enhance the ability of policymakers, researchers and community leaders to understand the degree to which credit needs of first-time homeowners are being met, what homeownership patterns and trends for different demographic groups look like and what investments might be appropriate to advance policy objectives.

- **Add English as a Second Language Fields:** Non-native English speakers may be more vulnerable to deceptive lending practices. We recommend HMDA include data on languages: (1) primarily spoken by the loan applicant; (2) primarily used during the loan negotiation; and (3) used in the loan documents. As ECOA includes national origin as a protected class, it seems that inclusion of such variables would be extremely helpful for fair lending enforcement.

- **Add Applicant's Current Address**: Where applicants reside when they apply is a critical piece of information for understanding the credit environment in different areas. This information would significantly enhance the usefulness of HMDA data to help understand the geographic dimension of access to credit.

IV. The CFPB should take particular care with the proposed postal address and Unified Loan Identifier fields to protect privacy when making data public

The proposal outlines a "balancing test" that the CFPB will used to assess which parts of the HMDA data will be included in the public Loan Application Register (LAR).6 The proposal also states that the CFPB will undertake a separate process to accept comments about this balancing test on an unspecified timeline.

[6] See pages 37-39 of the Proposal

As outlined above, HMDA is primarily a public disclosure law. The CFPB should take seriously their responsibility both to collect appropriate data and to release that data to the public. The privacy of applicants and borrowers must also be protected. Fortunately, HMDA data has been and can continue to be released publically while protecting the privacy of individual mortgage applicants and borrowers.

To protect the privacy of applicants and borrowers, the LAR should not contain personally identifiable information. The CFPB should rightly consider the privacy implications of the proposed postal address and the Unique Loan Identifier fields in particular. However, we believe that simple steps can be taken to protect privacy and to make meaningful data publically available.

- **Postal addresses** should be collected and analyzed by the CFPB, but public data should only include census tract. We agree with the CFPB's recommendation to collect the property's postal address (including street address, city and zip code) in lieu of the parcel number. Because there is no universal parcel number system and parcel enumerations are usually handled by local governments, standardization efforts could be cumbersome and costly. In addition, the reporting of postal addresses to the CFPB will facilitate longitudinal analyses of HMDA data, since metropolitan and census tract boundary definitions change frequently. The LAR can include just the census tract, as is currently done, to provide the public with sufficient data while also protecting privacy.

- **The Unique Loan Identifier** facilitates analysis that links together origination data from HMDA to other datasets. Such analysis could identify and analyze critical linkages between loan terms and outcomes and help to ensure that borrowers and communities are served in a responsible and non-discriminatory manner. We strongly support the inclusion of this field into the HMDA data. However, the Unique Loan Identifier also introduces privacy concerns as it allows information in HMDA to be matched to other data sources. To minimize this risk, the Unique Loan Identifier should not appear on public documents that contain personally identifiable information. For example, this identifier should not appear both in the LAR and also in public court filing documents.

We also recommend the development of procedures to provide access to sensitive data elements to certified researchers who meet appropriate criteria. Examples of such procedures are currently in place at the U.S. Census Bureau, which requires researchers to sign confidentiality agreements in order to access individual level data at designated Research Data Centers.

We believe, with these simple protections in place, that the remaining fields identified in the proposal could be released publicly while protecting the privacy of applicants and borrowers. More than four years have passed since the passage of the Dodd-Frank Act, which mandated many of the reporting changes outlined in this proposal. We urge the CFPB to act quickly to undertake their proposed balancing test process so another four years do not pass before the public has access to comprehensive data.

V. We recommend that CFPB consider how to enhance HMDA data by including loan-modification and housing counseling data.

As currently reported, HMDA data do not provide any information on borrower loan modifications because they are technically not originations. However, in many ways they are extremely similar to modifications, represent an increasingly critical piece of the overall mortgage market picture, and pose similar risks of discrimination to the origination process. We therefore recommend CFPB consider how to collect HMDA data for loan modifications. The HMDA data could also be enhanced by including information about the housing counseling that some borrowers receive. Information such as if the applicant received counseling, what type (phone, online, in person) and from which organization would aid regulators and the public in understanding how housing counseling can help borrowers attain homeownership on responsible terms.

Conclusion

We commend the CFPB for expanding the data included in HMDA as outlined in the Bureau's proposal. Since its creation in 1975, HMDA has served as the best, and often the only, data available to the public for analyzing trends in the nationally important mortgage origination market. On the whole, we believe that the changes proposed by CFPB will enhance HMDA data and facilitate the development of a richer and wider understanding of access to mortgage credit and the mortgage market in general. We appreciate the opportunity to provide input about these important changes.

Sincerely,

Center for American Progress
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Homeownership Preservation Foundation
National Association of Consumer Advocates
National Association of Neighborhoods
National Coalition for Asian Pacific American Community Development
National Council of La Raza
National Urban League