Missouri Credit Union Association

January 11, 2016

Consumer Financial Protection Bureau
Attention: PRA Office
1700 G Street, N.W.
Washington, DC 20552

Re: OMB review of Agency Information Collection Activities
Home Mortgage Disclosure (Regulation C) 12 CFR 1003
OMB Control Number 3170-0008
Docket No.: CFPB-2015-0047

To Whom it may concern:

On behalf of the 1.453 million credit union members we represent, the Missouri Credit Union Association (MCUA) appreciates the opportunity to comment regarding the Office of Management and Budget (OMB) review of the Agency Information Collection Activities concerning the Home Mortgage Disclosure Act (Regulation C) (HMDA).

MCUA feels that the HMDA cannot establish discrimination. While it may provide trends that may warrant further investigation by the public or a regulator, HMDA data is only "outcome" data and does not contain pertinent and critical information on how those outcomes were determined. It does not contain credit history (although it does now contain the credit score), employment history, the applicant's assets, nor does it consider other key elements of pricing including market factors, supply and demand, and other items. With credit unions specifically, it does not contain individual field of membership restrictions that can affect a lending decision. It is precisely these limitations on the data which illuminate why the data collection is thus overbroad and not reasonably tailored to allowing the CFPB to accomplish its oversight function. Since the data cannot establish discrimination, the CFPB has clearly overstepped the boundaries of what is necessary for it to accomplish its oversight function and protect the public.
More specifically, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) outlined only 17 data points that Congress intended for the CFPB to collect as part of its HMDA collection. While Congress did authorize the CFPB to collect "such other information as the Bureau may require", it is unlikely this grant is an unbridled delegation to the CFPB to more than double the amount of express data points that Congress had indicated for the Bureau to collect. Although Congress did provide for the CFPB to collect other information, the CFPB went far beyond the Dodd-Frank specifically itemized data points. Many of the additional items are not related to those specifically itemized in the Dodd-Frank grant of authority (i.e. Automated Underwriting System, Introductory Rate Period, Manufactured Home Type and Interest, etc.). Therefore, it appears that the CFPB far exceeded what Congress intended for it to collect.

Dodd-Frank in HMDA sections 304(h)(1)(E) and 304(h)(3)(B) requires CFPB to issue standards for requiring modification of information that would be made available to the public for the purpose of protecting the privacy interests of mortgage applicants and borrowers for any data that is or will be available to the public. This section of Dodd-Frank also explicitly directed CFPB to develop regulations, in consultation with other banking regulatory agencies, to determine which data points will be public. In the HMDA rulemaking, the CFPB fell well short of this mandate and only adopted a "balancing test" to balance the importance of releasing the data to accomplish HMDA's public disclosure purposes against

the potential harm to an applicant or borrower's privacy interest that may result from the release of the data without modification.7

While the balancing test may be useful by the agency as a step in determining what should be made public, it does not inform the industry of what data points will actually be made public or in what format the data will be public. This is not simply a technical oversight. For purposes of being able to adequately assess the impact of the rule, it is a key component to know what information will be made public. The CFPB dismisses any notion that a financial institution could be held liable under with Gramm-Leach Bliley Act (GLBA) or the Right to Financial Privacy Act (RFPA).

The OMB requests comments on the following areas:

1. *Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;*

   The collection of information is not necessary for the CFPB to carry out the functions of the Bureau. The CFPB went well beyond the statutory framework for the amount of data necessary for it to conduct its oversight function. It does not need the 48 data points for determining whether it needs to investigate an entity for potential violations of HMDA, ECOA, or FHA. Since the data it is collecting cannot establish discrimination on its own, the CFPB can really utilize far less data for purposes of identifying trends that might warrant further investigation. In order for it to bring an administrative action for a violation, it will need to conduct further investigation. Thus, the practical utility of the overbroad collection is minimal.

2. *The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used;*

   The Bureau failed to consider key elements of the rule in evaluating its impact. In particular, it failed to consider potential litigation that might arise from the release of HMDA data to the public. It further failed to consider the privacy ramifications of the release of individual consumer mortgage data. Even worse, it failed to comply with the statute and did not identify the data that will be made available to the public. As such, there is no way to evaluate the full effect of the rulemaking. The CFPB should be required to start the rulemaking process again and complete its statutory duty.
   Specifically for credit unions, the bureau chose to include HELOCs as part of the mandatory reporting. Previously, for credit unions this reporting was voluntary. There was little or no discussion in the rulemaking as to the financial impact on credit unions for this new requirement. Many credit unions process HELOCs on separate systems from regular mortgages and the financial impact for having to modify systems, reporting, and other checks and balances was not considered in the financial impact. This will disproportionately impact small credit unions at a much greater level than large credit unions. Therefore, the CFPB's estimate of the impact has been greatly understated.

3. *Ways to enhance the quality, utility, and clarity of the information collected; and*
   The quality and utility of the data collected could be greatly enhanced by returning to only the Dodd-Frank required data points for collection.

4. *Ways to minimize the burden of the collection of information on respondents.*
   The burden could be greatly minimized by returning to the Dodd-Frank required data points. These are the only points necessary for the CFPB to perform its oversight function. Also, in a letter from 19 Representatives to the CFPB concerning the HMDA rule, dated December 15, 2015, the Representatives requested an analysis of increasing the thresholds for required

reporting for open-end and closed-end mortgages to higher levels. We strongly agree and believe an increase to 500 covered closed-end loans and 1000 covered open-end loans is warranted and would provide much needed relief to smaller credit unions.

Furthermore, as has been the experience with the recent implementation of the TILA/RESPA Integrated Disclosures rule, the regulatory burden on credit unions has been tremendous. By the CFPB's own statements, they acknowledge that such complex changes require the involvement of many parties and a substantial effort on behalf of financial institutions to implement such change. For the TILA/RESPA rule, the CFPB directed regulatory restraint for good faith efforts to comply with the rule. The CFPB should provide a similar safe-harbor for the implementation of the HMDA rule. Particularly for credit unions where HELOCs are often processed on different systems than mortgages, it will require substantial effort and costs to revise operating systems to track the increased data collections required by the rule. To that end, an extended compliance period to January 1, 2018 with reporting commencing January 1, 2019 is certainly warranted. TILA/RESPA Integrated Disclosures provided a 22 month implementation period. For HMDA, it is really only 12 months since data will need to be collected January 1, 2017 for reporting January 1, 2018. Systems must be in place in order to collect the data. Having already been sidled with a substantial overhaul by the CFPB with TRID, Ability-to-Repay, QM, etc..., financial institutions are now being faced with yet another task to revise their systems. This is an untenable situation which requires relief.

Credit unions have not been engaged in the practices to which the HMDA law seeks to remedy. They have never been subject to CRA and the CFPB acknowledges credit unions' stellar underwriting history. As such, an exemption for credit unions (which is clearly within the statutory authority of the CFPB as provided by Dodd-Frank), is worthy of serious consideration.

As always, we appreciate the opportunity to review this issue. We will be happy to respond to any questions regarding these comments.

Sincerely,

Don Cohenour

Don Cohenour
President