

October 15, 2019

Office of Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Home Mortgage Disclosure (Regulation C) Data Points and Coverage; Docket No. CFPB-2019-0020, RIN 3170-AA97.

On behalf of the 2.2 million credit union members we represent, the Heartland Credit Union Association (HCUA) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB or Bureau) Advance Notice of Proposed Rulemaking (ANPR) on the Home Mortgage Disclosure Act (HMDA) Rule's (Regulation C) data points and coverage.

The CFPB issued this ANPR to solicit comments on potential amendments to the HMDA data set expanded by the 2015 HMDA Rule amending Regulation C. The CFPB has also requested comments on the HMDA reporting of certain business or commercial-purpose transactions under Regulation C.

The HMDA Rule, Regulation C, has undergone a substantial expansion over the past few years. In October 2015, the CFPB issued the 2015 HMDA Rule, most of which took effect on January 1, 2018. The 2015 rule implemented the new data points required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and added additional data points pursuant to the Bureau's discretionary authority. The 2015 rule also required reporting of applications for dwelling-secured business or commercial purpose closed-end mortgage loans and open-end lines of credit for home purchase, refinancing, or home improvement.

Include Only Data Points Required by Statute

HCUA has strongly opposed the substantial expansion of the HMDA data set created by the 2015 HMDA Final Rule. The discretionary data points added by the Bureau are of questionable use to the Bureau and needlessly burdensome for credit unions. It is our assessment that a significant number of the expanded data points are overly broad, beyond the Congressional-mandate contained within the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), and do not fit the established purposes of HMDA.

When HMDA was enacted in 1975, two purposes for the law were articulated: 1) To provide the public with information that will help show whether financial institutions are serving the housing credit needs of the neighborhoods and communities in which they are located; and 2) to aid public officials in targeting public investments from the private sector to areas where they are needed. Years later, a third purpose was added by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA): To require the collection and disclosure of data about applicant and borrower characteristics to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.

We understand that the 2015 HMDA Rule was statutorily required in order to implement additional data requirements mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). However, the CFPB's 2015 HMDA Rule went far beyond that mandate and, using its discretionary authority, nearly doubled the number of data points reporting financial institutions are required to submit to the Bureau. HCUA urges the agency restrict the HMDA data set exclusively to data points that are statutorily required, and not require additional data points merely to police other consumer

financial protection rules unrelated to the purposes of HMDA.

HCUA remains concerned about the operational impacts of the HMDA Rule on mortgage-lending credit unions across the country. The additional data reporting expectations have required modifications to loan origination systems, mergers of data from multiple systems, changes in procedures and training for employees involved in mortgage lending, and increased costs that have been passed on to credit unions from their system vendors as the data points are incorporated into software and other applications. These concerns and increased burdens and costs could ultimately result in higher mortgage loan rates and fees, which would harm consumers in the end.

Privacy and Data Security Concerns

At the time of its 2015 rulemaking, the Bureau did not state what, if any, of the expanded data points would not be made available to the public. The Bureau decided to address that issue in a subsequent action. In December 2018, the CFPB issued final policy guidance announcing the HMDA data the Bureau intended to make available to the public, including describing the modifications that would be made to the data to protect consumers' privacy.

Under the public disclosure guidance, the CFPB attempted to balance the public disclosure purposes of HMDA with the legitimate privacy concerns raised by consumers and the industry. In its final policy, the Bureau erred on the side of public disclosure over consumer privacy. In the end, the Bureau's privacy balancing test does little to allay the privacy concerns raised by the substantial scope of the data submitted to the Bureau. While the Bureau's exclusion of the most revealing data from public disclosure is a positive step, the totality of the HMDA data made public – even in modified intervals or ranges – could still result in privacy breaches.

In addition, in the past, the Government Accountability Office (GAO) raised concerns in 2014 regarding the privacy and security procedures for data collection by the CFPB, and made numerous recommendations to improve the protection and security of consumer financial data. The risk of a breach of sensitive consumer information is always going to be a question. HCUA believes the best approach for the Bureau to take on securing the substantial HMDA data set is to avoid collecting data it isn't required to collect. Until that time, the expanded data set collected by the Bureau places credit union members at greater risk of loss of privacy and needless exposure to possible misuse of their sensitive and personal financial information

Eliminate Data Points that are Redundant

As previously stated, HCUA believes the Bureau went too far in expanding the HMDA data set well beyond the statutory requirements contained in the Dodd-Frank Act. If the Bureau chooses not to eliminate all discretionary data points, then the Bureau should at a minimum eliminate all the discretionary data points that do not further the purposes of HMDA. In this review, the Bureau should also evaluate whether the data point is already reflected within the data provided in other data points. For example, the Total Loan Cost or Total Points and Fees and Rate Spread for All Loans is required reporting by the Dodd-Frank Act. However, the CFPB used its discretionary authority to add Origination Charges, Discount Points, and Lender Credits to the data set – data points that are redundant as they are already reflected in information provided by Dodd-Frank mandated data points.

In addition, as the Bureau conducts its review of how to amend the data set going forward, HCUA recommends that for each data point, the Bureau consider the purposes of HMDA and give careful analysis and consideration as to whether a particular data point furthers one of the three purposes of HMDA articulated above. To the extent that a discretionary data point does not further the purposes of HMDA, HCUA urges the Bureau to eliminate those data points collection requirement from mandatory reporting.

While HCUA takes issue with all discretionary data points, we would like to highlight the following data points:

- **Denial Reasons:** The inclusion of Denial Reasons as a reportable data points appears redundant given the existence of separate fair lending regulations that police a substantial similar area of consumer protection (Regulation B). In addition, the CFPB's listing of denial reason codes do not align with business and commercial loan applications.
- **Origination Charges, Discount Points, Lender Credits:** These data points do not provide material data to the CFPB for furthering the purposes of HMDA. Credit unions often originate different types of loans and fees can vary between product types – this variance is not accurately reflected in the data collected. In addition, these fields often require manual review since staff must determine the latest fees based on a revised Closing Disclosure.
- **Interest Rate:** As stated above, the Interest Rate data point is already part of other statutorily required data points. In addition, staff are required to update the reported interest rate in loan systems as rates may change during the term of the loan – a complexity that adds cost/time to HMDA compliance.
- **Manufactured Home Secured Property Type and Manufactured Home Land Property Interest:** Some credit unions, based on their field of membership, originate significant numbers of manufactured home loans. These credit unions are then required to undertake additional efforts to collect and report these two additional data points despite Construction Method already being part of the HMDA data set.

Exclude Business and Commercial Transactions

HMDA is a consumer law designed to protect communities from the harm of redlining. As the CFPB conducts this review of the HMDA data set, HCUA strongly recommends the reporting of business and commercial transactions should be excluded from HMDA's requirements. In the business lending context, discretionary and informational HMDA data such as race or ethnicity is not usually gathered as part of the process for originating a business loan. That class of borrower-specific information is not seen as pertinent to the lending decision. The extension of HMDA reporting to businesses and commercial transactions would substantially increase the burden on credit unions and doesn't provide information that is valuable to the lending process or decision.

In addition, the costs of providing business and commercial data to the CFPB outweighs the potential benefits to the collected HMDA data. The underwriting processes used to make business lending decisions is materially different from those used for consumer lending, including alternative and unquantifiable data. For example, business lending underwriting may include information such as the nature of the relationship the member has with the credit union as well as the credit union's intimate knowledge of the community's business environment. If the CFPB were to require HMDA data reporting for such loans it is unlikely the data would fully appreciate the member and community-specific context of business lending decisions.

Permit a Reporting Grace Period

The compliance and operational burdens of the Bureau's HMDA Rule are, at best, overwhelming for credit unions required to report data. With any significant change to the rule – even changes for the better – systems must be reprogrammed, staff members must be trained or retrained, and existing application forms must be amended. In addition to the operational costs, affected credit unions may need to consult and negotiate with technology vendors, renegotiate service provider contracts, and schedule these same providers to install and configure data processing systems and software to accommodate and comply with relevant reporting requirements.

Considering these challenges, HCUA recommends that the Bureau provide a meaningful grace period while transitioning between changes to the HMDA data set so impacted credit unions have an opportunity to adjust processes and systems without any risk of negative examination findings. For example, the Bureau could establish a “good-faith efforts” period for HMDA data reporting and compliance, as it has done so previously with other regulatory changes, and encourage other regulators, especially the NCUA, to do the same.

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

Sincerely,

A handwritten signature in black ink that reads "Bradley D. Douglas". The signature is written in a cursive style with a large, stylized initial 'B'.

Brad Douglas
President/CEO