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

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America’s credit unions and their 115 million members. On behalf of our members, we are writing in response to 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.

We appreciate that the Bureau is issuing this ANPR to solicit comments on whether to make changes to the data points that its October 2015 final rule implementing HMDA added to Regulation C or revised to require additional information. The CFPB is also requesting comment on the HMDA reporting of certain business or commercial-purpose transactions under Regulation C.

While CUNA understands and supports the purpose of HMDA, we believe any benefits obtained from the data points added by the 2015 HMDA rule pursuant to the CFPB’s discretionary authority will not outweigh the cost and burden to credit unions. We therefore urge the CFPB to eliminate the data points added in Regulation C pursuant to the CFPB’s discretionary authority.

**CFPB Amendments to Regulation C Should Relieve Regulatory Burden**

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

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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. Prior to the 2015 rule, Regulation C covered closed-end, business or commercial-purpose loans that were intended to purchase, refinance, or improve a dwelling.

Before the 2015 rule's implementation, HMDA reporting requirements were amended several times due to both regulatory and legislative developments. In September 2017, the Bureau issued a final rule revising Regulation C to address technical errors and mitigate the reporting of certain data requirements. On May 24, 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act was signed into law, amending HMDA by adding a partial exemption for certain transactions of financial institutions such as credit unions.

The CFPB has a responsibility under the law to promulgate rules that are appropriately tailored and provide clear compliance expectations. While credit unions strongly support the Bureau conducting regular reviews of its rules, the Bureau should issue regulations that are proportional to the size and complexity of the regulated entity and recognize the impact that frequent regulatory changes have on regulated entities and the consumers that use their services.

We are concerned with the Bureau’s piecemeal approach to regulation characterized by annual changes and numerous rule revisions; multiple regulatory changes are particularly expensive for smaller entities, like credit unions, and rob consumers of efficient and affordable financial services options. Instead of updating regulations in a piecemeal manner that requires regulated entities to adjust to repeated one-off changes to their systems and procedures, the Bureau should slow the pace of regulatory change by updating rules less frequently, only when critically necessary to ensure preservation of consumer protection, and in the interest of minimizing additional regulatory burden, so credit unions may update systems and procedures and return to serving their members. We encourage the CFPB to use this ANPR and the subsequent rulemaking as an opportunity to correct the issues caused by prior Regulation C changes.

CUNA Recommends the Bureau Revise the HMDA Data Set to Include Only Data Points Expressly Required by Statute

When HMDA was enacted in 1975, Congress articulated two purposes for the law: (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

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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 anti-discrimination statutes.⁷

CUNA understands that the 2015 HMDA Rule was statutorily required in order to implement additional data requirements mandated by the Dodd-Frank Act. However, the CFPB’s 2015 HMDA Rule went far beyond that mandate and, using its discretionary authority, the Bureau nearly doubled the number of data points reporting financial institutions are required to submit to the Bureau. At the time, CUNA strongly objected to this unwarranted expansion of the overall data set as unnecessary to achieve the purposes of HMDA as articulated above and adding significant costs onto HMDA-reporting credit unions.

Since the 2015 rulemaking, credit unions have raised concerns to the CFPB about the ballooning costs associated with HMDA compliance due to increased expenditure on staff, training, vendor management, and—in many cases—system reprogramming. Therefore, we renew our call on the Bureau to restrict the HMDA data set exclusively to data points that are statutorily required.

**Unless the HMDA Data Set is Reduced to Mandated Data Points, HMDA Reporting Will Disrupt Credit Union Operations and Impose Significant Costs**

CUNA 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 cost that has been passed on to credit unions from their system vendors as the data points are incorporated into software and other applications. These increased burdens can adversely impact mortgage loan interest rates and fees, ultimately harming consumers.

**The Expanded HMDA Data Set Presents Privacy and Data Security Concerns**

During the CFPB’s 2015 rulemaking, the Bureau did not specify which of the expanded data points would include information 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 that would be available to the public and described the modifications it would make 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 decided that the public disclosure of HMDA data was more important—a decision we strongly questioned. Ultimately, the

⁷ See 12 C.F.R. § 1003.1(b).
Bureau’s privacy balancing test does little to alleviate the privacy concerns raised by credit unions due to 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 decision, the totality of the HMDA data made public—even in modified intervals or ranges—could result in privacy breaches. The public data may conceivably allow a sophisticated individual or advanced data analysis programming to piece together the financial picture of a borrower, their place of residence, their income, and their livelihood, thereby significantly intruding on credit union members’ privacy.

In addition, the Government Accountability Office (GAO) raised concerns in 2014 regarding the privacy and security procedures for data collection by the CFPB and provided numerous recommendations to improve the protection and security of consumer financial data. While the CFPB addressed GAO’s recommendations at that time, data security issues are constantly evolving, and new risks and vulnerabilities are a daily reality. CUNA believes the best approach for the Bureau is to narrow the scope of the data it collects to what is required by statute. Until that time, the expanded data set collected by the Bureau places credit union members at a greater risk of loss of privacy and exposure to possible misuse of their sensitive and personal financial information.

**In the Alternative, the HMDA Data Set Should Be Reconsidered and Data Points That Are Redundant or Do Not Further the Purposes of HMDA Should Be Eliminated**

If the Bureau does not eliminate all discretionary data points in Regulation C, then it should, at a minimum, eliminate all the discretionary data points that do not further the purposes of HMDA. In this review, the Bureau should evaluate which required data points are superfluous or unnecessary. 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 require additional time and resources to collect and report, but that are redundant as they are already reflected in information provided by Dodd–Frank Act mandated data points.

In addition, as the Bureau conducts its Regulation C review, CUNA urges it to analyze and consider whether each data point furthers one of the three HMDA purposes articulated in this letter. If a discretionary data point does not further the purposes of HMDA, then mortgage lenders should not be required to report it. The Bureau should articulate its analysis and decision-making process if it decides a discretionary data point is among the required HMDA reporting for credit unions.

CUNA is particularly concerned with the mandatory reporting of the following data points:

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• Denial Reasons: The inclusion of Denial Reasons as a reportable data point is redundant due to the existence of separate fair lending regulations (Regulation B). In addition, the CFPB’s listing of denial reason codes does 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 originate various types of loans, and fees can vary among product types. This variance is not accurately reflected in the data collected. In addition, these fields often require manual review since lending 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 and 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 a significant volume 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.

The CFPB Should Exclude Business and Commercial Transactions from HMDA Reporting

HMDA is a consumer protection law designed to protect communities from the harm of redlining. As the CFPB conducts its review of the HMDA data set, CUNA strongly recommends that the reporting of business and commercial transactions be excluded from HMDA’s requirements.

The costs of providing business and commercial data to the CFPB outweighs the potential benefits of the collected HMDA data. The underwriting processes used to make business lending decisions are materially different from those used for consumer lending and include 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 knowledge of the community’s business environment. If the CFPB were to require HMDA reporting for such loans, it is unlikely the data would fully reflect the member and community-specific context of the credit union’s business lending decisions.

The Bureau Should Recognize that Regulatory Compliance Is Not a Simple Flip-of-the-Switch and Permit a Reporting Grace Period for Affected HMDA Reporters

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, employees must be trained or retrained, and existing application forms must be amended. In addition to the operational costs, affected credit unions must 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, CUNA 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 previously with other regulatory requirements, and encourage other regulators, such as the National Credit Union Administration (NCUA), to do the same.

**Conclusion**

While the collection and reporting of quality mortgage data for consumers and the public is necessary to protect consumers and ensure bank redlining does not occur in the future, credit unions provide quality mortgage products and services to credit worthy members and did not engaged in the practice of redlining that created the need for HMDA in the first place. We urge the Bureau to be mindful of this fact as it considers how to proceed with amending HMDA’s Regulation C requirements.

The 2015 HMDA Rule required systems, software, and operational changes within credit union mortgage lending departments, and these changes have created significant costs. Whether handled by a third-party vendor or internally, CUNA believes these costs will continue to significantly increase the cost of originating mortgage loans, and ultimately, consumers will see increased costs in either interest rate or fee adjustments. Imposing superfluous data reporting requirements on credit unions is both inconsistent with Congress’ intent and contrary to the public interest.

We look forward to continuing to work with the CFPB on our shared goal of consumer protection and for the availability of safe and affordable financial products and services. On behalf of America’s credit unions and their 115 million members, thank you for your consideration.

Sincerely,

Alexander Monterrubio
Senior Director of Advocacy & Counsel