CBA | CONSUMER BANKERS ASSOCIATION
The Voice of the Retail Banking Industry

FSR HPC HOUSING POLICY COUNCIL

May 25, 2017

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

Via electronic submission

Re: Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure Act (Regulation C) October 2015 Final Rule; Docket No. CFPB-2017-0010

Dear Ms. Jackson,

The Consumer Bankers Association ("CBA")[1] and the Housing Policy Council of the Financial Services Roundtable[2] (collectively, "the Associations") appreciate the opportunity to respond to the Consumer Financial Protection Bureau's ("Bureau" or "CFPB") regarding the proposed Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure Act ("HMDA"). As the Bureau notes, "The Bureau does not deem most of the proposed amendments as substantive changes… The amendments are largely clarifications and technical corrections that do not change the compliance requirements of the Final Rule, but should reduce the burden by avoiding confusion." Nevertheless, the Associations consider these technical corrections to be significant and have devoted our attention to ensuring our members have had a chance to review and share their views.

Time is short until the January 1, 2018 compliance deadline. Major technical changes, systems changes, training and testing must be done by every HMDA reporter in the few short months remaining. One theme that runs throughout our comments is that some changes may be particularly difficult to make at such a late hour. Therefore, the benefits if any of the changes need to be balanced against a higher cost.

[1] The Consumer Bankers Association is the only national trade focused exclusively on retail banking. Established in 1919, the association is now a leading voice in the banking industry and Washington, representing members who employ nearly two million Americans, extend roughly $3 trillion in consumer loans, and provide $270 billion in small business loans.

[2] The Housing Policy Council of The Financial Services Roundtable is a trade association representing thirty-two of the leading national mortgage finance companies. Housing Policy Council member companies originate, service, and insure mortgages for consumers across the nation. The Housing Policy Council's mission is to represent the mortgage and housing marketplace policy views of its member companies in legislative, regulatory, and judicial forums in support of public policies that enable consumers to receive access to responsible and affordable mortgage credit.

Additionally, we want to stress the importance of the Bureau moving quickly with the privacy proposal to clarify what will be made public and in what form. This is an issue of paramount importance to financial institutions and consumers alike, and we want to ensure there is sufficient time to give it the attention it deserves.

Similarly, as we have noted previously, the data integrity and resubmission standards are unrealistic and lack a reasonable relationship with the purposes of HMDA while creating excessive burden and cost. We wish to reinforce the need for the Bureau to update them, particularly in light of the significant increase in data fields to be reported. We urge you to move forward expeditiously with the proposed changes to the resubmission guidelines. In particular, as we have noted before, we encourage you to consider the following changes:

- Eliminate the current File Error Rate percentage metric;
- Identify Key and Non-Key fields and assign reasonable Field Error Rate percentage thresholds that reflect their importance to the identification of possible discriminatory lending patterns and distribution of public sector investments;
- Institute reasonable tolerances and rounding guidelines; and
- Require examiners to assess and articulate whether the error rates identified and the nature of the errors would have material impacts on HMDA analysis before requiring resubmission.

It is vital that the Bureau coordinate with the prudential regulators to establish a consistent standard across examinations. Neglecting to do so would create confusion in the marketplace, lead to inconsistent analysis, create disparate burdens, and undermine the ultimate integrity of the HMDA data. As HMDA data are used by prudential regulators to evaluate the Community Reinvestment Act (CRA) performance of banks, it is also critical that the Bureau work with the prudential regulators to ensure consistent and transparent application of the new Regulation C reporting requirements to CRA.

Our comments on the proposed technical corrections and clarifying amendments follows:

Multifamily dwellings – Sec. 2(f)

A number of data points are excluded from reporting if the loan is secured by a multi-family dwelling because they would not easily available or even relevant (debt-to-income ratios, for example). Other provisions have clarified that housing complexes and manufactured home communities are dwellings for definitional purposes. The proposed rule goes further and defines loans that are secured by five or more residential dwellings are multifamily dwellings whether or not they are contiguous.

While that provides a certain kind of clarity, it does raise questions such as what address to give the loan, how should it be geocoded, etc. It would be useful if the Bureau could expound further on those ancillary issues that are generated by this new definition.

CEMAs – Sec. 2(d) and 3(c)(13)

NY CEMAs --The calendar year exception is potentially confusing and problematic, and creates more problems than it solves. We urge the Bureau to reconsider.

From our point of view, it seems arbitrary that the Bureau would want institutions to treat two nearly identical transactions inconsistently just because on has a final action in the same calendar year as the preliminary transaction and one does not. In fact, it could create problems for lenders if the preliminary transaction occurs near year end, and the end of the calendar year may fall between the preliminary transaction and the consolidation. That would call for different treatment at different times of the year—which would be difficult and costly to implement.

It does not appear necessary to create the rule in the first place. If the new funds are extended with the intention of a CEMA consolidation (as the regulatory preamble puts it, "any transaction providing, or in the case of an application, proposing to provide new funds in advance of a consolidation"), it would seem that they would be extended within a relatively short time of the consolidation—if not at the same time. In other words, the preliminary transaction is not an event that will occur many months earlier. Therefore, we question the need for a special provision to deal with extended time periods running from year to year. It may simply be easier to require that the new money transaction exclusion be limited to situations where the consumer is applying for the new money and the modification at the same time.

In regard to the general treatment of CEMAs, please clarify that if a New York consumer submits an application for and obtains a new loan earlier in the calendar year and then later in the same year submits a separate application for a refinancing that would include that loan (and potentially be structured as a CEMA), the original application for a new loan need not be treated as a preliminary transaction and may be reported separately.

Without this clarification a number of difficult compliance issues arise: Do institutions have to build a mechanism for suppressing loans that they have originated on the chance that the consumer may subsequently apply for a refinancing that could possibly be structured as a CEMA? If the subsequent refinance application is denied, withdrawn, closed for incompleteness, or approved but not accepted, what if the institution had not determined as of the date of final action whether the transaction could have been structured as a CEMA? If the refinancing could have been structured as a CEMA but the CEMA was not consummated, what should the institution report for the loan made earlier? If the institution is a quarterly reporter and the institution reports the final action on the application for a new loan in one quarter and the application for the refinancing/CEMA has its final action in a subsequent quarter, what happens to the previously reported application for a new loan?

Non-NY CEMAs – The requirement to report only the new money transaction for CEMAs outside of NY raises many questions about how to complete individual fields on these transactions.

- ULI - What if CEMA consolidates a new money transaction with an existing loan that already has a ULI. Is the new money transaction assigned a separate ULI or should it use the ULI of the existing loan? If a new ULI is assigned to just the new money transaction, what ULI would a purchaser of the CEMA report?
- Loan Type – Would the new money transaction always have a loan type of "conventional" even if the CEMA would be FHA, VA or RHS/FSA?
- Loan Purpose – Is loan purpose determined solely by how new money will be used or is the CEMA considered?
- Rate Spread - What if the new money transaction has no APR separate from the CEMA and its APOR is different because the new money is fixed and the CEMA is adjustable or vice versa, or the term or period to the first adjustment is different, or the rates are different?
- HOEPA Status - If the new money is used for business/commercial purposes but the CEMA as whole is for consumer purposes, is the new money transaction outside of the scope of HOEPA?
- Lien Status - The new money transaction could be considered subordinate to the existing loan until it is consolidated in the CEMA transaction. Would that be correct?
- Fields From Closing Disclosure - The Total Loan Costs, Origination Charges, Discount Points and Lender Credits may reflect the entire amount of the CEMA or just the new money depending upon how the Closing Disclosure was prepared. How should this be treated?
- Interest Rate, Loan Term, Introductory Rate Period, and Non-Amortizing Features - The note for the new money transaction may have different values for these fields than the CEMA, but the CEMA will reflect the actual terms received by the consumer.
- Business or Commercial Purpose – Is this field determined solely by how the new money will be used or is the CEMA considered?

Home Improvement Loan -- Sec. 2(i)

We understand why the Bureau would propose to treat improvement of commercial space in a single family residence as a home improvement loan, however it does create inconsistency in treatment that can become a source of concern. Additionally, it is not clear how to treat the improvement of a home office in one of five properties. For that reason, we recommend considering applying the same treatment to similar loans in all mixed use dwellings.

Transitional Rules/Purchased Loans

- Fields that Should be Not Applicable for Purchased Covered Loans

    - Loan Purpose – Sec. 4(a)(3) --We agree that Loan Purpose should be reported as not applicable for loans originated before 1/1/18
    - NMLSR – Sec. 4(a)(34) --We appreciate that NMLSR may be reported as not applicable for loans originated before 1/10/14. However, for loans originated on or after 1/1/18 a purchaser should be able to report the NMLSR is not applicable if it does not appear on the loan documents that it is required to appear on by Regulation Z's Loan Originator Rule. It is a considerable burden for institutions reporting originations to report the NMLSR in cases where the Loan Originator Rule does not apply, but the burden on a purchaser to obtain this information is out of proportion to any benefit derived from reporting it. As a practical matter, if the originator assigned a ULI then the Bureau could use the ULI to obtain the NMLSR from the reported origination, without imposing an unnecessary burden on the purchaser.

- Other Fields that May Be Difficult for a Purchaser to Report on Pre-1/1/18 Loans
    - Occupancy – Reporting would be complicated because of the revisions to the coding of this field from the current rule.
    - HOEPA Status – Where a loan is not a HOEPA loans, the purchaser should be able to report that it is not a HOEPA loan rather than that it is outside the scope of HOEPA. Before 1/1/18, originators of loans generally only cared that the loan was not a HOEPA loan and would have had no reason to document whether it was not a HOEPA loan because it was outside of the scope of HOEPA. As noted below, it may be very difficult for a loan purchaser to determine if a loan was primarily for consumer purposes or for business/consumer purposes at the time of origination.
    - Business/Commercial Purpose - In many cases the 1003 application and loan file will contain insufficient information for a loan purchaser to determine whether a loan is primarily for a business or consumer purposes. For example, if funds are used to purchase or repair a property other than the property securing the loan, the loan file may not indicate whether that property is rental property, whether the consumer intends to occupy it for 15 days or more during the coming year, or how many units it has. If the consumer refinanced and existing loan, the file is not likely to indicate whether that existing loan was for a consumer purpose or business purpose of both. If the consumer is receiving cash back, the file may not show how that cash was used.
    - Impact on Sellers Who Are Not HMDA Reporters – The proposal assumes that a purchaser of a loan that is originated on or after 1/1/18 will be able to get the fields of information from the seller. If the seller is subject to HMDA reporting, that may not be difficult. But if the seller is not subject to HMDA reporting, such as if it is below the low volume threshold, this forces the seller to undergo most of the burdens of HMDA reporting, unless it is sure that it will not sell loans to HMDA reporters.

Rate Spread – Sec. 4(a)(12)

<u>HELOCs</u>

Originated – We agree that rate spread will be more useful if calculated based on the account-specific APR in the account opening disclosures rather than the older, and not account specific, APR that appears on the application disclosure. However, the account opening disclosure may disclose more than one APR and the rule should clearly indicate which APR to use in that circumstance. Should the HMDA rate spread be calculated for HELOCs in the same manner as it is calculated for HOEPA?

Approved Not Accepted – We suggest that the rate spread should not be reportable on an approved but not accepted HELOC. Because the APR on the application stage disclosure is generic and may be more than a year old at the time of final action, the rate spread derived from that APR would not be very useful. Calculating an account-specific APR on a HELOC that fails to close would be very burdensome because Regulation Z does not require it.

<u>Approved But Not Accepted Preapprovals</u>

Comment 4(a)(12)-8 assumes that a Loan Estimate will have been provided on an approved but not accepted preapproval. However, an approved but not accepted preapproval would not have required a Loan Estimate because a property may never have been identified and submitted. Without the submission of a property, there is no application under TRID that triggers the requirement to provide a Loan Estimate. A rate spread should not be reportable on an approved but not accepted preapproval where no Loan Estimate was provided.

Credit Scores – Sec. 4(a)(15)

While 4(a)-15 provides clarity around reporting of the applicant's and the co-applicant's credit score fields, the approaches to the treatment of multiple applicants or composite scores may not be the ones all lenders have begun to program into their systems. Given the limited time left before January 1, 2018, this is a good example of a clarification that may create problems for some lenders, due to the inadequate time for programming and training. We therefore encourage you instead to allow some flexibility in treatment of these issues until the Bureau can propose subsequent amendments to the Regulation C Commentary with adequate time for implementation.

Automated underwriting systems -- Sec. 4(a)(35)

The Bureau has clarified the situations in which the financial institution is in compliance in reporting the name of an automated underwriting system, and those situations in which using the phrase "not applicable" is correct. That is useful modification of the rule.

One problem with the proposal is that the original rule indicated that an AUS of a securitizer would be reportable. In the original rule it appeared that “securitizer” was in the present tense, and therefore if an institution was once a securitizer but was not currently a securitizer, its AUS would not be reportable. The proposal’s provision that a securitizer includes a person that ever securitized a loan is not a clarification, but a substantive change that should have resulted in an additional implementation period.

Bona fide errors – census tracts -- Sec. 6(b)(2)

It will be helpful to have a tool which if used will provide a bona fide error defense for the identification of a census tract -- a full safe harbor. We thank the Bureau for providing that useful tool. It would be useful if the Bureau made it clear that explicitly stating the defense applicability in this situation does not detract from the availability of a similar defense when other Bureau tools are used, notwithstanding the lack of explicit reference to a defense.

Reporting race and ethnicity -- Appendix B to Part 1003

The Bureau provides a substantial amount of guidance on collecting race and ethnicity information. For example, a consumer can select a subcategory but not an aggregate category if it wishes, and the institution must not report an aggregate in that situation. The Bureau should make it clear that if, in a face-to-face application, the consumer chooses not to report either an aggregate or a subcategory, the institution still must populate an *aggregate* line; and that this modification does not change the present rule.

There is some possible confusion presented, however by the permission for the consumer to choose as many categories and aggregates as he or she wishes, but a limitation on the institution on the number of categories and aggregates it can report. In other words, the consumer may choose a dozen subcategories or aggregates, but the institution may not report more than five of those selected by the consumer. It would be helpful for the Bureau to clarify that the institution may choose to eliminate any of the subcategories to ensure compliance.

Additional Regulation B and C Reconciliation Issues

While the Bureau should be commended for the modifications in the proposal, we would urge it go considerably further to clarify additional rules not covered in the proposal, which relate to the Regulation B proposal (82 FR 16307) and ECOA. <u>Some of these may be best addressed in the concurrent Regulation B proposal.</u> Here are some examples of places where reconciling these two regulations would be helpful.

1. <u>Use of Regulation C Data Collection Model Form should be permitted for transactions excluded from HMDA reporting as Business/commercial, Other Purposes transactions.</u>

The Regulation B proposal allows collection of information using the Regulation C Data Collection Form for "a loan that would otherwise be a covered loan under Regulation C 12 CFR 1003.2(e)." The definition of "covered loan" does not include transactions excluded under section 1003.3(c) of Regulation C. Generally those excluded transactions would be easy to identify and most would not require the collection of any monitoring information. However Regulation C section 1003.3(c)(10) excludes transactions that are primarily for business/commercial purpose if not used for the purpose of purchase, refinance or home improvement. It may not be known at the time of application that the transaction would be primarily for a business/commercial purpose or for a reportable purpose. An institution should not be considered to have violated ECOA by using the Regulation C data collection model form from a transaction excluded under this provision.

2. Use of Regulation C Data Collection Model Form should be permitted for more than the first two listed applicants.

Section 1002.13 of Regulation B requires the collection of government monitoring information for all the applicants.[3] Regulation C requires reporting of monitoring information for only the first two applicants listed on the application form. The new 2016 Uniform Residential Loan Application (URLA) uses a data collection form substantially similar to the Regulation C data collection model form for all applicants, including applicants listed third or higher. The final rule amending Regulation B should clarify that the use of the Regulation C data collection model form for applicants listed third or higher on the application form does not violate ECOA.

3. Use of Regulation C Data Collection Model Form/selection of more than one aggregate category

Proposed Section 1002.13(b) of Regulation B refers to the restrictions on the collection of ethnicity or race on the basis of visual observation or surname set forth in appendix B to Regulation C. Similarly proposed comment 13(b)-1 states that the applicant must be offered the option to select more than one ethnicity designation and more than one racial designation. However Regulation C also has restrictions on the collection of sex information on the basis of visual observation and surname, and the 2018 Filing Instruction Guide indicates that the applicant and/or co-applicant may select both male and female. In combination these raise important questions the Bureau should address:

- Clarify that the Regulation C Appendix B restrictions apply to the collection of sex information - Proposed section 1002.13(b) of Regulation B should also include references to the restrictions in Regulation C Appendix B for the collection of sex information. Appendix B should state that an applicant may select both male and female rather than stating that only in the Filing Instruction Guide.

[3] "A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s): …"

- Clarify whether the creditor may or may not select more than one aggregate category – Although Regulation C clearly states that only the applicant may select ethnicity and race subcategories, neither Regulation C nor Regulation B clearly states that when the creditor provides ethnicity, race, and/or sex information based on visual observation or surname that the creditor may or may not select more than one aggregate category.

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Thank you for the opportunity to share our comments on the proposal. Feel free to contact us if you have any further questions.

Sincerely,

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