COMMENTS
to the
Consumer Financial Protection Bureau
regarding
Proposed Rule Amending Regulation C
Docket No. CFPB -2014-0019
79 FR 51731 (August 29, 2014)
by the
National Consumer Law Center
(on behalf of its low income clients)
October 29, 2014

I. Introduction

Thank you for the opportunity to comment on the proposed rule amending Regulation C of the Home Mortgage Disclosure Act (HMDA). The National Consumer Law Center respectfully files these comments on behalf of its low-income clients.[1]

The Bureau's HMDA rule is under consideration while the housing market and the economy are still struggling. Memories of past abuses are still fresh and the biggest immediate problem seems to be reviving the mortgage market. Many in industry continue to call for a light regulatory hand and the weakening of recently established rules. Yet, the plain fact of the foreclosure crisis—and the failure of regulators and market watchers to see it coming—makes clear that ongoing monitoring of market developments is essential. Moreover, those hardest hit by the crisis are homeowners in communities of color and low-income communities, who have lost the most personal wealth as a result of foreclosures. How these homeowners are able to access the mortgage market, and the nature of their access, is an essential question in building a fair and thriving marketplace and society.

We applaud the Bureau's ambitious attempt to update HMDA for the 21st century, and its effort to go beyond Dodd-Frank's requirements and use sunlight as a check against future abuses. The proposal recognizes that the information provided by HMDA will play a key role in this process. We also commend the Bureau for proposing to collect more information in key, under-regulated segments of the market, such as home equity lines of credit, reverse mortgages and manufactured housing. It is essential that the new reporting and disclosure requirements provide a complete a picture of lending trends.

[1] The National Consumer Law Center, Inc. (NCLC) is a nonprofit Massachusetts corporation, founded in 1969, specializing in low income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of twenty practice treatises and annual supplements on consumer credit laws, including Credit Discrimination (6th ed. 2013 and Supp.); Foreclosures and Mortgage Servicing (5th ed. 2014); Fair Credit Reporting (8th ed. 2013 and Supp.); and Mortgage Lending (2nd ed. 2014.) These comments were written by Jeremiah Battle, Jr., Alys Cohen, Andrew Pizor, Tara Twomey, Chi Chi Wu, and Margot Saunders.

II. Overview

We commend and support the Bureau for these comprehensive proposed changes to Regulation C. We provide details and rationale for this support, and make recommendations for additional changes in Section III. Below is a summary of our comments:

- **HOEPA.** All of the three triggers which make a loan a HOEPA loan (APR, points and fees, and prepayment penalties) should be required to be reported, including whether the loan has prepayment penalties that would cause it to be covered by HOEPA.
- **Credit Score.** There should be no exceptions for reporting of credit scores for purchased loans; the name and version of the scoring model should be required; and the name of the credit reporting agency supplying the data should be included.
- **Purchased-loan Exceptions.** The numerous, scattered exceptions to the reporting requirement for loans purchased by a financial institution should be eliminated. The data subject to the exceptions – including the borrower's credit score, age, income, ethnicity, race, and gender -- is important to achieving HMDA's goals.
- **Denial Reasons.** We support the proposal to limit the use of "other" as a reason for denying loan application.
- **Closing Costs.** Adding a requirement to disclose total points and fees and total discount points, as the Bureau has proposed, would be a positive change. We also recommend that data be collected on total closing costs, in addition to or in lieu of origination charges.
- **Loan Origination Compensation**. We urge the Bureau to correct the glaring omission of loan originator compensation from the reporting requirements.
- **Purpose of Loan.** The options to describe the purpose of the mortgages should be reformulated to more specifically describe the use of the funds and whether significant cash is withdrawn through the mortgage.
- **Pre-discounted Interest Rate.** Including the pre-discounted interest rate, along with the amount of discount points charged in every loan, regardless of whether the points were excluded because they were bona fide, is essential to monitoring the marketplace.
- **Debt-to-Income Information.** Information about borrowers' debt-to-income ratio will be critical to evaluating whether current formulations requiring lenders to determine the ability to repay the loan are sufficient, or whether they need to be tweaked.
- **Non-Amortizing Features.** We support the Bureau's proposal to collect non-amortizing loan features, including balloon payments, interest-only payments, and negative amortization.
- **Property Value Should Always Be Reported.** Adding information about property value will allow HMDA users to estimate loan to value ratios and will assist the regulatory process of re-examining automated valuation model (AVM) standards.
- **Legal Classification of Manufactured Housing.** We strongly support the proposal to require financial institutions to report whether a manufactured home is classified as real or personal property, and whether the land under the home is owned or leased. There are significant differences in the financing and servicing rules and protections applicable to the different classifications.
- **Reverse Mortgages.** We commend the Bureau for its proposed §1003.4(a)(36), which will require financial institutions to report whether a loan or loan application is for a reverse mortgage and if so, whether it is an open or closed–end transaction.

- **Open-End Credit.** Data on open-end mortgage loans should be collected.
    a) As HELOCs are functionally so similar to closed-end credit, we commend the Bureau for requiring lenders to report both forms of credit.
    b) The Bureau is right to include commercial lines of credit in the reporting requirement.
    c) Open-end lines of credit should count toward the reporting threshold.
    d) The definitions for different types of open-end credit should be clarified.
    e) The amount of the first draw should be included in the reported information.
    f) The loan-to-value analysis should be based on the full line of credit, not just the amount initially drawn.
    g) The risk-adjusted, pre-discounted interest rate should be reported for all loans, not just closed end loans.

- **Qualified Mortgage Status.** We applaud the Bureau's proposal to require reporting of data on whether a loan is subject to the Ability to Repay rules and whether a loan meets the Qualified Mortgage standard.

III. Support for Specific Provisions and Recommendations for Improvement

1. §4(a)13 Whether and Why A Loan is Covered By HOEPA

Regulation C currently requires financial institutions to report whether a loan is subject to the Home Ownership and Equity Protection Act (HOEPA), as implemented by Regulation Z. The Bureau has proposed requiring a financial institution to report whether a loan exceeds the HOEPA threshold because of its APR or its points and fees, or both. We support this additional aspect of HOEPA reporting and also suggest that the Bureau add a requirement for reporting whether a loan is covered by HOEPA because of its prepayment penalty, as per the new rules under the Dodd-Frank Act. A covered loan exceeds the HOEPA threshold under this standard where the loan terms permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing, or such fees or penalties exceed, in the aggregate, more than 2% of the amount being prepaid.[2]

HOEPA was designed to protect vulnerable consumers from predatory practices in home mortgages. Since its original passage in 1996, both Congress and the Federal Reserve Board have enhanced HOEPA's protections because of the recognition that this segment of the market still needed additional safeguards from creditor abuses. Congress also bolstered consumer protections in mortgage lending with other requirements such as the Qualified Mortgage (QM) rule and the Ability-to-Repay test included in the Dodd-Frank Act.

HMDA reporting provides the opportunity to monitor the critical intersection of these various provisions. For example, because HOEPA loans can satisfy the requirements to be Qualified Mortgages, it would be useful to know the characteristics of products that fall into both categories (i.e., loans that both trigger HOEPA and satisfy the QM rule).

[2] Reg. Z § 1026.32(a)(1)(iii).

High cost loans have historically been bastions of abusive lending. We recommend that HMDA require the reporting all three triggers for making a loan one covered by HOEPA (APR, points and fees, and prepayment penalties). This information will improve not only the monitoring of these loans, but it will allow us to understand the means by which loans are crossing the HOEPA threshold. Such analysis is even more important with the lowering of the HOEPA APR and points and fees triggers, because more loans potentially may fall within this category.

Supervision, regulation and market incentives can be better tailored to promote sustainable lending with such additional information about the nature and extent of HOEPA coverage. In addition, as the Bureau notes, the availability of HOEPA status in HMDA data has been helpful for monitoring developments in the subprime market and for examining potential fair lending issues that arise in connection with differential pricing between types of borrowers. Thus, the utility of the proposed information is high, while the cost is low. Creditors already must determine whether a loan is covered by HOEPA in order to properly comply with the Truth in Lending Act and Regulation Z. Providing this information in a brief format under HMDA is a *de minimis* addition.

While inclusion of this data in HMDA reporting is important, it is not a substitute for rigorous oversight to ensure that loans which should be reported and treated as high-cost mortgage loans are indeed handled as such. We note that the experience of attorneys representing homeowners in the field has been that creditors often skate along the edge of the HOEPA triggers, seeking to charge close to the triggers without crossing the line into high cost mortgage status. Others, such as hard money lenders and foreclosure rescue scammers, may not report their loans as high-cost loans, notwithstanding HOEPA's applicability.[3]

2. §4(a)(15) Credit Score Disclosures

Proposed § 1003.4(a)(15) implements the credit score disclosure requirement of § 304(b) of HMDA, 12 U.S.C. § 2803(b)(6)(I), as added by the Dodd-Frank Act. Paragraph (i) of proposed § 1003.4(a)(15) would require financial institutions to report the credit score or scores relied on in making the decision to grant or deny credit, and the name and version of the scoring model used to generate each credit score. The proposed requirement would not apply in the case of mortgages purchased by the financial institutions.

The Bureau has solicited feedback on a number of questions regarding this proposal. We address each of these questions in turn.

a) *Whether there should be an exception for mortgages that the financial institution has purchased.*

In the Supplementary Information, the Bureau asks for comment on its proposed exception that a financial institutions need not provide the credit scores for loans that it has purchased. We believe that there should not be such an exception. At a minimum, any exception for purchased loans should be as narrow as possible, limited to only instances where the financial institution does

[3] With the constriction of the credit markets, "hard money" lending (lending by individuals and small lenders working outside traditional mortgage markets) along with its exorbitant interest rates has reemerged. *See* Anya Martin, *"Hard Money Loans Go High-End,"* Wall Street Journal (Sept. 18, 2014*);* AnnaMaria Andriotis, *"Want 18% Returns? Become a Subprime Lender."* Market Watch (Nov. 12, 2013).

not have and cannot reasonably obtain the credit score. Generally the information from the prior lender will be available using the Universal Loan Identifier.

The broad exception proposed by the Bureau will have the negative effect of permitting financial institutions to omit credit scores even when the score is in its possession or could easily obtain it. In many, if not most cases, financial institutions will have information about a borrowers' credit score as part of the information they use to decide whether to purchase the loan. In today's credit marketplace, reviewing the credit score of the borrower is a central determination of the value or risk of the loan. The financial institution would most likely have reviewed the borrower's score or have information about it as part of its purchasing decision. In other cases, the financial institution could easily obtain the information from the original lender or by looking up the loan using the Universal Loan ID number. Thus, any burden would be minimal, and does not justify an exception.

b) *Whether the Bureau should require reporting of the name and version of the scoring model*

In terms of what information is reported about the credit score, the Bureau asks for comment on whether it is appropriate to request the name and version of the scoring model used to generate the borrower's credit score. As an alternative, the Bureau is considering requiring financial institutions to indicate the range of possible scores for the scoring model used.

We believe that it is not only appropriate, but necessary, to request the name and version of the scoring model. The scoring range is simply not enough. The Bureau is right to be concerned that the significance of a particular score may vary for models and versions that have identical ranges.

For one thing, two of the leading scoring models used by lenders have the same scoring ranges. Recently, VantageScore, which is the main competitor to the most widely used score, FICO, began using the same 300 to 850 scoring range as FICO.[4] Thus, if only the scoring range and not the name of the scoring model is provided, the data will not reflect whether a score was a FICO or VantageScore. As the Bureau knows from its own 2012 report, there can be very significant differences between a consumer's score generated by the FICO versus VantageScore scoring models. [5] For about twenty-five percent of consumers, the difference is significant enough that their respective FICO versus VantageScore scores are in entirely different categories or tiers of credit quality.[6]

There are also important differences between versions of the same scoring model. For example, FICO offers several versions of its scoring model, such as Classic FICO 04 versus FICO 08. These models can be significantly different. For example, FICO has announced it will no longer consider paid collection items and will give less weight (up to 25 points less) to unpaid medical debts – but this change only affects FICO 09, not FICO 04. Given that about half of all debt collection items on credit reports involve medical debt, this means there could be a tremendous disparity between FICO 04 and FICO 09 scores.

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[4] VantageScore, VantageScore 3.0: Better Predictive Ability Among Sought-After Borrowers, 2013, *available at* www.vantagescore.com/pdf/VS30-FactSheet.pdf.
[5] Consumer Fin. Prot. Bureau, Analysis of Differences Between Consumer- and Creditor-Purchased Credit Scores (2012), *available at* http://files.consumerfinance.gov/f/201209_Analysis_Differences_Consumer_Credit.pdf.
[6] *Id.* at 17.

c) *Whether the Bureau should require any other related information to assist in interpreting credit score data, such as the date on which the credit score was created.*

The Bureau also asks whether it should require any other related information to assist in interpreting credit score data, such as the date on which the credit score was created. We support the concept of requiring disclosure of the date on which the credit score was created. This information will provide for richer data for purposes of statistical analysis.

We also urge the Bureau to require disclosure of which credit reporting agency's data was used to create the score (i.e., Equifax, Experian or TransUnion). In some cases, the disclosure of the "name and version" of the scoring model will actually indicate which CRA's data is used. In other words, the disclosure will not just indicate that a "FICO" score was used, but that a "Beacon" score (the FICO 04 score based on Equifax data) was used. However in other cases, such as VantageScore, the name of the version will not indicate which credit reporting agency's data was used. In those situations, the Bureau should require disclosure of the credit reporting agency whose data was used to generate the score.

d) *Which definition of "credit score" to use (proposed § 1003.4(a)(15)(ii))*

The Dodd-Frank Act amendments to HMDA do not provide a definition of "credit score." The Bureau has proposed in § 1003.4(a)(15)(ii) to use the definition of "credit score" set forth in the Fair Credit Reporting Act (FCRA) at 15 U.S.C. § 1681g(f)(2)(A). The Bureau solicits feedback as to whether this definition is the best one to use or whether it should use a different definition of "credit score," such as the definition in Regulation B, which implements the Equal Credit Opportunity Act.

The FCRA defines "credit score" to be a "numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default…" 15 U.S.C. § 1681g(f)(2)(A). The definition excludes scores or ratings from automated underwriting systems. We support the proposal to use this definition.

The FCRA definition of "credit score" is familiar to industry, regulators, and other stakeholders. It is the same definition used for the credit score disclosure required for risk-based pricing and adverse action notices under 15 U.S.C. § 1681m(a)(2) and (h)(5)(E), and is the score often used for the mortgage score disclosure. Requiring reporting of the same credit scores used in these notices will provide for a consistency of information between HMDA and FCRA disclosures.

We would be concerned that the alternative proposed by the Bureau – using the Regulation B definition of "credit scoring system" (12 C.F.R. § 1002.2(p)(1)) – would be too narrow. While of course we would advocate that any credit score ***should*** be the result of an "empirically derived, demonstrably and statistically sound, credit scoring system," the definition established by proposed § 1003.4(a)(15)(ii) of Reg. C would not be a prescriptive requirement, but instead would be a definition for data gathering purposes. As such, the broader definition provided by the FCRA would capture more data and would be more beneficial.

As for the Bureau's other alternative, i.e., interpreting credit score to mean the probability of default, we are uncertain about what scores this definition would encompass. We would be concerned that lenders, researchers and others will not be sure as well.

e) *Any minimal privacy concerns raised by disclosure of credit scores is outweighed by the important fair housing interests in obtaining such information*

The Bureau seeks comment on the potential risks to privacy interests raised by disclosure of certain data, such as credit scores. We believe any risks to privacy by disclosure of credit scores are minimal, given that there is no personal identifying information being disclosed and the data is made entirely anonymous. Furthermore, it is important to remember that credit score information will always be historical data, a snapshot at a certain time. Even in the unlikely event that information is re-identified, the only piece of information that it will reveal is that at some point in time in the past the consumer had a certain credit score. The consumer is likely to have a very different credit score by the time any remote possibility of re-identification occurs. These minimal risks are heavily outweighed by the importance and utility of the credit score data for fair lending analysis.

f) *Information about automated underwriting systems (proposed § 1003.4(a)(35)(i))*

Related to the issue of credit scoring, the Bureau has proposed, at § 1003.4(a)(35)(i), to require a financial institution to report the name of the automated underwriting system it used to evaluate the application and the recommendation generated by that automated underwriting system. We strongly support this proposal, and believe it will also greatly assist fair lending analyses. This proposal is especially necessary since the FCRA definition of "credit score" to be used by proposed § 1003.4(a)(15)(ii)) does not include any score or rating from automated underwriting systems.

We also believe, for the same reason as stated in item #2(a) above, that the Bureau should not make an exception for loans purchased from others for this requirement.

3. §4(a)(15)(i) The purchased-loan exceptions should be narrowly limited

The proposed rule includes numerous, scattered exceptions to the reporting requirement for loans purchased by a financial institution.[7] Most of the data subject to the exceptions is very important to achieving HMDA's goals. Some of the data includes the borrower's credit score, age, income, ethnicity, race, and gender.[8] Institutions purchasing covered loans will not be required to report this information, regardless of whether the originating institution is subject to HMDA and regardless of whether the purchaser actually has the data. These exceptions are problematic because they will create significant gaps in the data provided by most of the secondary market--a tremendous and important component of the housing market as a whole. While it may be possible to close those gaps by using the proposed universal loan number to match purchased loans with the data

[7] See, e.g., Proposed § 1003.4(a)(15)(i) ("Except for purchased covered loans, the credit score or scores relied on in making the credit decision and the name and version of the scoring model used to generate each credit score.") (emphasis added). This example is discussed in greater detail in §4(a)(15) of these comments. *See also* Proposed §§ 1003.4(a)(1)(ii) (date of application) and 1003.4(b)(2) (ethnicity, race, sex, age, and income data).
[8] *Id.*

reported by the original creditor, doing so will be time consuming.[9] And doing so will be impossible if the original creditor was not subject to HMDA.

We recommend that the Bureau limit this exception to instances when the purchasing lender cannot reasonably obtain the relevant data from the original creditor. Reporting a few additional items of data would require minimal effort from the purchaser and would save users of the data a significant effort. In conjunction with this requirement, the official interpretation of the rule should specify that the Bureau considers it reasonable for any institution purchasing covered loans to negotiate a contractual agreement requiring the seller to provide all data required by HMDA.

4. §4(a)(16) Denial Reasons - Including Providing Specifics Where "Other" Is Selected

Regulation C currently permits optional reporting of denial reasons for a loan application, although the OCC and the FDIC require such reporting. We support the Bureau's proposal to require all financial institutions subject to HMDA to report reasons for loan application denial. As noted in the proposal, optional reporting has little statistical value. Denial reasons are essential information for understanding how credit decisions are made and to monitor for fair lending violations.

We strongly support the Bureau's instruction to institutions to include up to three "principal" reasons for loan application denial. We also support the addition of a free-form text field for further details on applications denied for "other" reasons. That is, when the lender indicates "other" as a reason for denial, the lender should be required to explain the reason for denial in the free-form text box. We believe that this additional explanation will improve reporting accuracy in two ways. First, it will prevent the misuse of the "other" category. In HMDA and other contexts, the "other" category has been used to classify loans that may more appropriately fall into other defined categories. Without further explanation of the "other" designation, it has been impossible to tell if the lender categorized the loans properly. Second, the free form text box will provide key information on denial reasons that are not listed. The data can be used to monitor other denial reasons or to add common, but previously unlisted, denial reasons to the list.

Finally, we agree that it is a good step forward for institutions to enter "not applicable" for files that were closed due to incomplete or withdrawn applications. By providing this information, instead of leaving the category blank, the Bureau can better monitor institutions for significant trends, such as discouraging applicants from completing applications. Without such a requirement, it is not clear whether a blank field is inapplicable or simply sloppy reporting.

Denials of credit were a significant problem, especially in communities of color, in the early days of HMDA reporting. In the lead-up to the recent foreclosure crisis, many homeowners who might have been denied in the past instead were provided with expensive loans with abusive features – often loans much more expensive than any risk analysis mandated. In the wake of the foreclosure crisis, credit has been tightened and access to credit is again a concern in communities of color and low-income communities. Maximum transparency about denial reasons will better equip regulators and the public to understand challenges with access to credit.

[9] Alternatively, the Bureau could commit to using its resources to do this matching.

5. §4(a)(17), (18) & (19): Closing Costs: Total Points and Fees, Total Origination Charges and Total Discount Points

a) *Total Points and Fees*

We support the reporting of total points and fees and total discount points. *We recommend that the Bureau collect data on total closing costs, in addition to or in lieu of origination charges*. Each of these data points is important for proper monitoring of market developments and fair lending and consumer protection enforcement. We note that the fields of total origination charges, total closing costs, and total discount points are not required by Dodd-Frank, and we commend the Bureau for proposing collection of this crucial information.

As the Bureau observes, total points and fees is an essential element of loan pricing. Loans with high points and fees have been associated with abuses in the subprime market, hence the inclusion of a HOEPA points and fees coverage trigger. With new, lower coverage triggers for HOEPA, market watchers must be able to determine the effect of this change and the extent to which loans are not only exceeding the triggers but also skating just below them. As noted above (in section 1 on HOEPA loans), many loans that fall just below the trigger threshold may in fact rise above the HOEPA trigger upon closer analysis. The number of points and fees on a loan also is a key analytical element for determining whether a loan is a Qualified Mortgage under the Dodd-Frank Ability-to-Repay (ATR) rules, where similar concerns apply. History also tells us that certain populations, such as women and borrowers of color, have not always been treated fairly when it comes to points and fees charged for mortgage loans.[10] Reports from consumer advocates suggest that the same may be true with respect to loans with smaller principal balances, such as manufactured housing loans. Closer monitoring of industry practices in this area will lead to better understanding of industry trends and clarify any need for further regulation.

Under the proposed regulation, the disclosure of points and fees is required for all loans or applications "subject to" HOEPA and loans or applications "subject to" the ATR rule. The language of the proposed regulation is ambiguous to the extent that some creditors may interpret the reporting requirement to apply only when a loan triggers HOEPA's additional protections or when the Ability-to-Repay rule applies. The Bureau's comments indicate that coverage is appropriately much broader than the language may indicate. Specifically the Bureau states that:

> The Bureau intends for loans "subject to" HOEPA to apply to consumer loans secured by the borrower's principal dwelling, except for transactions specifically excluded under § 1026.32(a)(2), such as reverse mortgages, construction loans, loans originated and financed by a State housing finance agency, and loans originated and financed through the USDA's direct loan program. Similarly, loans "subject to" the Bureau's 2013 ATR Final Rule include all consumer loans secured by a dwelling, including any real property attached to a dwelling, as defined in § 1026.2(a)(19), other than transactions exempt under § 1026.43(a), such as home- equity lines of credit, reverse mortgages, and temporary or bridge loans with terms of 12 months or less. Together, the HOEPA and qualified-mortgage prongs of the proposed points-and-fees provision cover open-end credit plans secured by primary residences and nearly

[10] *See* Kimberly Blanton, "Minorities hit with higher fees, AG says," Boston Globe (June 4, 2008); Kenneth R. Harney, "Your Mortgage: U.S. Probes Higher Fees for Women, Minorities," L.A. Times (Sept. 24, 1995).

all dwelling- secured, closed-end mortgage loans.[11]

The scope of the reporting requirement is well described by this language. While we do not believe that the regulatory language needs to be changed, we do ask that the Bureau consider incorporating the above language into the Instructions or Official Interpretations, to resolve any possible ambiguities.

We further recommend that this reporting requirement be extended to HELOCs and reverse mortgages even though neither type of loan is subject to HOEPA or the ATR rule. These types of loans, like traditional closed-end mortgages, have been subject to fee abuses. There is no reason to omit these loan products from the points and fees HMDA disclosures, and the important data gained from the information about these loans will be valuable to the Bureau as it examines how HELOCs and reverse mortgages can be better regulated.

We also support the alignment of the Regulation C and Regulation Z definitions of points and fees. The Regulation Z definition should not be altered to exclude any elements; doing so would undermine the uniformity of definitions across statutes and the utility of using such information for enforcement and regulatory purposes. Moreover, all entities, including small lenders, must calculate points and fees for purposes of regulatory compliance. Even when they choose not to do so because their total loans are not near a threshold, such a calculation can be computerized and dispensed with quickly. Thus, all institutions should be required to report it.

b) Total Origination Charges

We applaud the Bureau's proposal to go beyond the legislative mandates of Dodd-Frank and require reporting of total origination charges – the total of all itemized amounts that are designated borrower-paid at or before closing. However, assuming that points and fees will be disclosed pursuant to 4(a)(17), we believe that total closing costs as reflected on Line J of the Closing Disclosure is a more important data point. While the number representing the total closing costs is not equivalent to the total cost of credit, it does capture amounts that the borrower pays in order to be able to borrow the funds provided in the loan. While origination charges are also an important data point, in some cases the origination charges may be only a small portion of the total closing costs. For example, on the CFPB's model complete Closing Disclosure,[12] origination costs are $1,802, less than 20% of the total closing costs of $9,712. The Bureau notes that creditors exert the most control over origination costs. However, the reality is that due to affiliated business arrangements and the fact that creditors and third parties are repeat market participants, creditors often have significant influence in selecting third-party providers for inspection fees, title insurance, tax service providers, etc. Therefore, capturing all of these charges by reporting the total closing costs will provide a better picture of what borrowers must actually pay in order to close on a home loan. Therefore, we recommend that the Bureau require the disclosure of total closing costs, in addition to or in lieu of origination charges.

c) Total Discount Points

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[11] Proposed Rule, p. 205.
[12] *See* H-25(b) Mortgage Loan Transaction Closing Disclosure – Fixed Rate Loan Sample, http://files.consumerfinance.gov/f/201403_cfpb_closing-disclosure_cover-H25B.pdf.

We also commend the Bureau for proposing disclosure of total discount points. This figure, as with others proposed by the Bureau, is included in the Closing Disclosure and thus is readily available for reporting. Combined with the pre-discounted and actual interest rates and points and fees, this figure would provide regulators, researchers and the public with a fuller understanding of loan pricing and a better window into potential differential pricing among populations.

For decades, it has been a common practice for certain creditors, particularly in the subprime market, to charge discount points without providing such a discount. The prevalence of unearned discount fees prompted Congress to use the term "bona fide discount points" in Dodd-Frank, and to define that term as "loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage."[13] Thus, bona fide discount points must result in a meaningful reduction in the loan's interest rate.

However, to date, the Bureau has declined to specify any particular relationship between discount points and resulting interest rate reduction, leaving that determination to industry standards. As a result, the reporting of total discount points along with the pre-discounted interest rate and actual interest rate (as discussed below in section 15(g)) will be critical in establishing the industry standard as well as facilitating the monitoring of trends in the uses of discount points generally. Reporting this data will also assist in identifying discriminatory uses of discount points among different classes of borrowers.

6. Loan Originator Compensation Should Be Reported.

It is critical that the Bureau require lenders to report loan originator compensation. While we applaud the Bureau's proposal to require reporting of various loan price elements, the glaring omission of loan originator (LO) compensation must be reconsidered. The Bureau has included points and fees because they are key to compliance with HOEPA and the QM rule and also provide important information about potential disparate pricing problems. LO compensation also must be calculated by the creditor, is essential to compliance with the compensation rules under Dodd-Frank, and is, at its core, a driving factor in disparate pricing. It is LO compensation that is least related to risk-based pricing.

The history of abusive lending, including but not limited to the recent foreclosure crisis, is rife with examples of LO compensation driving predatory behavior. Moreover, with a universal ID, HMDA data on compensation could be linked to loan performance. A revamped HMDA for the 21st Century without proper data on LO compensation is a missed opportunity that may impede regulatory oversight and provide cover to would-be violators and industry players who use compensation to incentivize abusive or discriminatory conduct. This concern is heightened by the fact that the existing regulation on LO compensation contains several exceptions to the ban on receiving compensation based on loan terms.[14] Only by collection of compensation data can the effect of these exceptions be properly monitored.

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[13] 15 U.S.C. § 1639(b)(2)(C)(iii); 12 C.F.R. 1026.32(b)(1)(i)(E).

[14] Comments to the Consumer Financial Protection Bureau by NCLC et al. regarding Docket No. 2012-0037, at 4 (October 16, 2012), *available at* http://www.nclc.org/images/pdf/arbitration/comments-comp-and-arbitration2012.pdf.

7. Disclosures Related to the Purpose of Loan

The Bureau proposes four options for the loan purpose: home purchase, refinance, home improvement, and "other." Besides "home purchase," however, these designations are subjective and vague. "Home improvement" is unreliable unless the lender verifies that the funds will actually be used for a home improvement. It may also conceal multipurpose transactions. "Refinance," as proposed, is similarly flawed. A refinance may or may not include cashing-out equity in the home. And that equity could be used for any number of purposes including home improvement, education, or commercial purposes.

Instead the Bureau should revise the options and supplement them with additional data. The options should be: home purchase, refinance, cash-out without refinance, and other:

- A "refinance" should be defined as any transaction in which the borrower uses new, dwelling-secured credit to satisfy an existing mortgage secured by the same, previously-owned dwelling (regardless of whether the borrower obtained cash and what that cash would be used for).
- A "cash-out without refinance" transaction should be defined as an extension of credit secured by a previously-owned dwelling that does not satisfy an existing mortgage secured by the same dwelling. This option would typically apply to borrowers obtaining a subordinate mortgage on property having significant equity, or borrowers mortgaging unencumbered property. If the Bureau does not adopt this new option, these loans would disappear into the "other" category.

The loan-purpose options should be supplemented with two additional data points:

- Home improvement (yes/no): for anything other than a home purchase, the lender should report whether the borrower states that the primary purpose is for a home improvement; and
- Amount of cash received: for all loans, the lender should report the amount of cash the borrower obtains from loan, if any.

These additional data points would reduce the ambiguity of the loan purpose selection. The amount of cash obtained is particularly important for evaluating whether any transaction other than a purchase is beneficial to a borrower. During the run-up to the recent mortgage crisis, "churning" was a common problem. As property values increased, borrowers would be encouraged to refinance. But predatory lenders would often steal the borrower's equity by imposing large fees at closing. Other times, borrowers with unaffordable loans would only be able to stave off foreclosure by refinancing (in effect, reamortizing their loan over a new 30-year term to reduce the monthly payments).

Policy makers and communities could have better detected these trends if HMDA data had shown borrowers refinancing without receiving a significant amount of cash from the transaction. "Cash-out" data could also help evaluate loans designated as "cash-out without refinance." Such loans could indicate borrowers making productive use of a valuable asset (their home) or senior citizens using alternatives to reverse mortgages. But the data could also reveal predatory lending where the amount of cash received is small in comparison to the size of the loan or to the points and fees. This information would not be captured by the Bureau's proposed options.

8. §4(a)(20) & (21): Pre-Discounted Interest Rate and Actual Interest Rate Charged

While the APR is the best measure of the cost of credit for purposes of comparison shopping and for combining the interest rate with origination fees, the addition of both the pre-discounted rate and the actual interest rate charged would be very helpful in determining the value of the discount points. As noted above, discount points have too often not resulted in any meaningful change to the base interest rate. The Bureau has previously noted that "the value of a rate reduction in a particular mortgage transaction is based on many complex factors, which interact in a variety of complex ways."[15] Reporting of these interest rates, along with the total discount points, would (1) ensure the creditor actually performs the calculations necessary to determine the appropriate interest rate reduction, and (2) minimize the chance the creditor will charge unearned discount points. As noted above, these disclosures combined with the reporting of the total discount points will also serve as a useful tool for fair lending enforcement because they will show the effect of differential pricing adjustments.

The Bureau asks whether to restrict the reporting requirement to covered loans for which institutions have chosen to exclude bona fide discount points from total points and fees for purposes of HOEPA coverage or QM status. We urge the Bureau to reject this proposed restriction. Whether or not they are excluded, however, a homeowner's loan price may be affected by the charging of these points (especially if the bargain obtained does not match that provided to others), and the reporting should not be limited to cases where the bona fide discount points are excluded from total points and fees. There may be cases where fewer than three points and fees are charged and thus bona fide discount points were excluded; these cases provide important data on whether discounts were indeed provided, whether or not it speaks to the QM carveout.

9. §4(a)(23) Debt-to-Income Ratio.

We strongly support the Bureau's proposal to collect debt-to-income ("DTI") information. One of the key reforms of Dodd-Frank is the Ability to Repay requirement, characterized most clearly by a debt-to-income requirement for most loans. Recent experience in loss mitigation demonstrates that DTI is a baseline determinant of loan affordability for many borrowers. Collection of such information is crucial to identify how various borrower groups are affected by lending trends and to determine whether DTI is a barrier to credit access and for whom. Data on DTI could be linked to loan performance to provide a better understanding of how DTI affects long-term ability to repay. This information may further be used to help determine whether a residual income analysis would be helpful as a supplement to or alternative to a DTI threshold, as well as to determine whether compensating factors are important to the future of the Qualified Mortgage standard.

Data from the Federal Housing Finance Agency cited by the Bureau in connection with the rulemaking underscore the importance of DTI information.[16] Until 2005, for the years surveyed, roughly half of all mortgages were made at DTIs below 32%. Between 2005 and 2008, however, lenders pushed DTIs up above historical levels,[17] even though the historical evidence was always

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[15] CFPB, TILA Ability to Pay, 78 Fed. Reg. 6407, 6441 (Jan. 30, 2013) Section by section analysis, § 32(b)(3)(i).

[16] See Consumer Fin. Prot. Bureau, Notice of Reopening of the Comment Period, 77 Fed. Reg. 33,120 (June 5, 2012).

[17] *Id.* at 33,122-33,123.

clear that higher DTIs led to higher default rates. Lenders also did this even though delinquencies, beginning with the 2004 vintage,[18] were exploding on all loans with DTIs above previously accepted industry standards. DTI information is a central factor in sustainable lending and thus an essential data point for collection.

10. §(4)(a)(27) Non-Amortizing Features.

We support the Bureau's proposal to collect information on non-amortizing loan features, including balloon payments, interest-only payments, and negative amortization. These characteristics were essential elements of loans that drove the foreclosure crisis and future trends in this area are important to monitor. Further, monitoring of these features will help understand the effect of Dodd-Frank's provisions on loans with these terms. For example, it would be useful to know who receives Qualified Mortgages subject to the narrow balloon note exception, and to know how those loans perform over time. While the next implosion may be triggered by different types of overreaching, it is incumbent upon regulators to monitor the types of products likely to result in overstretched consumers and a less stable housing market.

11. §4(a)(28) Property Value Should Always Be Reported

We support the Bureau's proposal to require reporting of the value of the property that secures or will secure the loan. As noted in the proposal, loan amount is already reported, but adding information about property value will allow HMDA users to estimate loan to value ratios. This information will aid in better understanding of how much equity borrowers have upon origination as well as in identifying disparities in how property values affect loan terms.

Accurate appraisals are key to quality mortgage lending, and appraisal fraud has far-reaching consequences. Borrowers stuck in "underwater" homes find it difficult to relocate for new jobs because of their limited ability to sell the property. Downsizing or upsizing to meet changing family needs or financial circumstances becomes nearly impossible. Unfortunately, the financial incentives of those involved in the mortgage loan process work against honest appraisals.[19] Origination fees for lenders and loan brokers are commonly based on the amount of the mortgage loan. This can make lenders and brokers complicit in, or simply indifferent to, appraisal fraud because higher loan volume and higher loan amounts lead to greater profits.

The reporting of property values will help monitor changes in actual values and in how values are appraised. It will also serve as a window into how different borrowers and neighborhoods are appraised and help identify disparities in a given creditor's appraisals. It may also explain otherwise questionable disparities.

Moreover, automated valuation systems are on the rise, and serious concerns have been raised about their accuracy. Even though automated valuation models (AVMs) are based on public data, they are not updated or calibrated for location-specific situations. That is, for example, the AVMs look for comparable sales within a certain distance from the subject property, but do not necessarily take into account unique geographic features of the area. A common example is a low-

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[18] *Id* at 33,123.

[19] *See* David Callahan, *Home Insecurity: How Widespread Appraisal Fraud Puts Homeowners at Risk* (Mar. 2005), *available at* http://www.demos.org/sites/default/files/publications/home_insecurity_v3.pdf.

income neighborhood with lower property values separated by a waterway from a higher income, high property value neighborhood. In this example, AVMs too often overvalue the property in the low-income neighborhood by relying on the values of properties from the higher income neighborhood that are not truly comparable. The regulatory process of re-examining AVM standards also will benefit from property value information in HMDA reporting.

The Bureau proposes to require the property value reported to be the one relied upon in the credit decision. We support this, but we do not support allowing creditors to report "NA" where a valuation was done but was not relied upon in the credit decision. This provides too much flexibility. Loan amount is inevitably tied to valuation and excusing some reporters from providing this information will lead to less reliable information overall and create a danger of too many empty fields.

12. §4(a)(29) The Legal Classification of Manufactured Housing

The Bureau has proposed §1003.4(a)(29) to require financial institutions to report whether a manufactured home is legally classified as real or personal property under state law. The classification of a manufactured home creates significant implications for consumers.[20] The classification is often determinative for issues such as perfection of a security interest, property and sales taxes, exemptions, and disclosure requirements.[21] Moreover, a manufactured home classification dictates the type of financing available to the borrower. Manufactured homes classified as personal property are not financed with conventional mortgage loans, but rather, very expensive chattel lending. These homes are also titled and appraised differently than a site-built home or manufactured home classified as real property.

A home's classification can also affect alternatives for struggling homeowners. If the homeowner defaults, the home's classification may determine whether loss mitigation opportunities are available. For example, the Making Home Affordable program, under which "HAMP" loan modifications are offered, is an important tool for struggling homeowners to remain in their homes. Unfortunately, this useful tool is unavailable to many, if not most, owners of manufactured homes. The program handbook that sets out the HAMP eligibility criteria expressly includes first lien mortgage loans in the manufactured housing context in §1.1.1, but it says that "the first lien mortgage must be secured by the manufactured home and the land, both of which must be classified as real property under applicable state law."

Currently, a dearth of data exists regarding manufactured housing compared with data currently available on site–built housing. Although HMDA requires the collection of data for dwelling secured loans, as the Bureau knows from its 2014 report, it not possible to clearly delineate the difference between chattel and mortgage loans in the current data.[22] The Bureau's proposal will further the purpose of HMDA by providing the public and public officials with the information necessary to determine whether manufactured home borrowers have access to financing at fair terms. This proposal should be adopted.

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[20] National Consumer Law Center, *Foreclosures and Mortgage Servicing* § 13.2.2 (5th ed. 2014).
[21] *Id.*
[22] Consumer Fin. Prot. Bureau, Manufactured – Housing Consumer Finance in the United States at 30 (2014), *available at* http://www.consumerfinance.gov/reports/manufactured-housing-consumer-finance-in-the-u-s/.

13. §4(a)(30) Whether Land Under Manufactured Homes is Leased or Owned

The Bureau has proposed § 1003.4(a)(30), which would require financial institutions to report whether the borrower owns or leases the land upon which a manufactured home is sited. Whether a homeowner leases or owns the land underneath the manufactured home is an important determinant of access to credit, the cost of credit, and opportunities to cure defaults.

The Bureau has noted in its 2014 report that approximately 48 percent of households that live in manufactured homes own both the home and the land where it is sited, about 30 percent rent the land but own the home, and about 18 percent rent both the site and land. The Bureau's 2014 report also notes that the vast majority of manufactured homes are titled as chattel (personal property) and as a result, only eligible for chattel financing.[23]

Chattel loans are characterized by shorter loan terms, higher interest rates, and a more limited pool of lenders. These factors reduce a borrower's opportunity to shop for competitive loans and affects home resale values. Most states permit the conversion of manufactured homes from personal property to real property if the land and the home have common ownership, but many do not allow homes on leased land to be converted.[24] Some laws only allow conversion on leased land in conjunction with particular financing programs or require extended leases for the home to be converted to real property. In some cases, the community owner's permission is required. Each of these policies deters homeowners from converting their homes and enjoying the many benefits of real property classification.

Current HMDA reporting requirements do not clearly identify whether a loan for a manufactured home is secured by the home, or by the home and land.[25] Current data fields also make it impossible to determine where resident-owned communities are located, or whether borrowers in these communities receive better or worse loan terms than borrowers who site their homes on family-owned land. A 2012 study by the Community Loan Fund found that manufactured home owners and buyers who had access to real property financing built stronger asset value in their homes.[26]

The Bureau's proposals will provide data necessary to determine whether all manufactured home owners and buyers have access to fair, fixed rate financing. We commend the Bureau for recognizing the growing importance of resident-owned communities. The proposal will establish a comprehensive approach by which to capture information on resident-owned communities.

14. §4(a)(36) Reverse Mortgages

We commend the Bureau for its proposed §1003.4(a)(36), which will require financial institutions to report whether a loan or loan application is for a reverse mortgage and if so, whether it is an open or closed–end transaction. Current HMDA rules do not require the reporting of reverse

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[23] *Id.* at 24.

[24] Corporation for Enterprise Development (CFED) & National Consumer Law Center, *Financing Homes in Communities* (2008), available at a http://www.nclc.org/images/pdf/manufactured_housing/cfed-conventional_financing.pdf.

[25] Consumer Fin. Prot. Bureau, Manufactured – Housing Consumer Finance in the United States at 30 (2014), available at http://www.consumerfinance.gov/reports/manufactured-housing-consumer-finance-in-the-u-s/.

[26] http://www.communityloanfund.org/blog/home-loans-matter.

mortgages as a separate category. Closed-end reverse mortgages are currently reported, but included among all other mortgages – making it impossible to glean any information about reverse mortgages from the data. While HUD provides monthly reports describing basic loan and borrower characteristics for FHA-insured reverse mortgages, comparable information is not available for non-FHA reverse mortgages (otherwise known as proprietary reverse mortgages).

Further, pursuant to Regulation C, reverse mortgages are subject to the general rule that lenders must report applications or loans that meet the definition of either a home purchase loan, home improvement loan, or a refinancing. However, the definition of refinancing is limited to "a new obligation that satisfies and replaces an existing obligation by the same borrower."[27] Consequently, lenders are not required to report reverse mortgage transactions in the common situation where borrowers' homes are owned lien-free prior to the transaction. Additionally, reporting is optional if the reverse mortgage includes a line of credit for home improvement or home purchase.[28] These two exceptions eliminate required reporting of most reverse mortgages. Even in cases where reverse mortgages are required to be reported, HMDA does not provide a way to distinguish them from traditional forward mortgages, making it impossible to extract and analyze reverse mortgage data.

The Bureau's proposal would make the reverse mortgage market safer for low-income borrowers by providing the public and public officials with access to data needed to determine whether the housing needs of seniors are being met. The proposal would also protect the reverse mortgage market from becoming a reprise of the recent subprime crisis and guard against potential fair lending potential abuses. Due to the limited amount of publicly available data on reverse mortgage originations and reverse mortgage borrowers, we urge the bureau to adopt this proposal.

15. § 4(a)(37) Dwelling-Secured Open-End Lines of Credit.

a) *Dwelling-secured open-end lines of credit are widely used and important.*

As the Bureau correctly observes, dwelling-secured open-end lines of credit are much more widely used today than when HMDA was originally enacted. They are an important source of financing flexibility for many homeowners and are a vital source of credit for small-business owners, particularly in minority communities. There is also a sufficient volume of HELOCs to have a systemic importance to the economy.

From the borrower's perspective, there is little functional difference between a dwelling-secured open-end line of credit (hereinafter a "HELOC"[29]) and a cash-out refinancing--particularly when the HELOC is fully drawn at closing. For a borrower, the two most relevant features of either form of credit are that both provide funds to do something the borrower deems important, and both put the borrower's house on the line. The negative consequences of discrimination (either denial of credit or overcharging) are also the same as with closed-end credit. When it comes to redlining or reverse redlining (predatory lending), it does not matter whether the loans are open-end or closed-end.

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[27] 12 C.F.R.§ 1003.2.
[28] 12 C.F.R.§ 1003.4(c).
[29] As explained later in this section, the proposed amendments and the Federal Register notice are unclear as to whether the term "home equity line of credit" will be officially defined and used in Regulation C. Nevertheless, we use "HELOC" in these comments for stylistic reasons and in the sense traditionally used in the mortgage industry.

Because HELOCs are functionally so similar to closed-end credit, lenders should be required to report both forms of credit pursuant to HMDA. The lack of publicly available data on HELOCs currently interferes with achieving HMDA's goals. The Bureau's proposal will remedy that.

b) *The proposed definition of "open-end line of credit" and all covered transactions should include commercial loans secured by residential dwellings.*

The Bureau has proposed adding a new definition of "open-end line of credit" in § 1003.2(o). This amendment imports the definition used in the Truth in Lending Act's Regulation Z, but, unlike Regulation Z, would include loans made for a commercial purpose.[30] The Bureau "is [also] proposing to expand transactional coverage to include all mortgages secured by a dwelling, regardless of the purpose of the loan."[31] These changes are entirely appropriate where the credit is secured by a residence.[32] It is common for lenders to require small business owners to post collateral for commercial credit. And, the most logical – and frequently the only –collateral available to small business owners is their residential real estate. This is especially important in certain minority communities. It is, therefore, reasonable to expect the availability or abuse of both open- and closed-end credit to have a major impact on these communities.

For small business owners, the line between commercial and residential (or consumer) credit is somewhat artificial. A small business owner's job is often inextricably intertwined with her personal finances. Banks often require small business owners to personally guarantee business loans. The funds obtained from a commercial loan may be mostly used for business purposes, but they could just as easily be used for the occasional family expense. Most importantly, if the bank forecloses, the line between "commercial" and "residential" will be meaningless when the business owner's family, relatives, or tenants are evicted.

HMDA exists to help identify discriminatory lending practices, to help determine whether lenders are meeting housing needs, and to help officials determine how to "distribut[e] public sector investments in a manner designed to improve the private investment environment."[33] Data about dwelling-secured credit is directly relevant to HMDA's purpose, regardless of whether the credit is commercial or consumer.

c) *Open-end lines of credit should count toward the proposed reporting threshold.*

The Bureau proposes setting a loan-volume threshold of 25 covered loans, *excluding* open-end lines of credit.[34] The stated reason for the exclusion is simply that the Bureau does not have enough data on the excluded loans.[35] But excluding open-end lines of credit is irrational considering that the proposal otherwise acknowledges that such credit is important enough to make reporting mandatory. This exclusion risks distorting lending practices by encouraging some lenders (especially those not currently subject to HMDA) to favor extending open-end credit over closed-end. Lenders can easily do so by making HELOCs that are fully drawn at closing. The difference in Regulation Z

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[30] The definition would also be without regard to Regulation Z's definition of "consumer" or "creditor." These two exceptions are logical considering that they do not currently apply to HMDA and serve purposes not relevant to HMDA.
[31] 79 Fed Reg 51731 at 51746. (August 29, 2014).
[32] Elsewhere, the proposed rule would define "dwelling" as residential structure.
[33] 79 Fed Reg 51731 at 51734 (August 29, 2014).
[34] 79 Fed Reg 51731 at 51746, 51752, 51754 (August 29, 2014).
[35]79 Fed Reg 51731 at 51754 (August 29, 2014).

coverage of dwelling-secured open- and closed-end credit already encourages such lending practices. Adding another incentive (evading HMDA coverage) would perversely help disreputable lenders further conceal improper lending practices. The Bureau should eliminate the proposed exclusion and count open-end lines of credit toward the loan-volume threshold.

d) *The Bureau should clarify the definitions and coverage of dwelling-secured open-end lines of credit.*

The current version of Regulation C defines "[h]ome-equity line of credit" as "an open-end credit plan secured by a dwelling as defined in Regulation Z (Truth in Lending), 12 CFR part 1026." But the rule does not otherwise define "open-end credit." The proposed rule would remedy that by defining "open-end line of credit" in § 1003.2(o). But it is not clear whether the proposed rule will define "home-equity line of credit." Confusingly, proposed § 1003.4(a)(37) refers to a definition of "home-equity line of credit" in § 1003.2(h).[36] But neither the existing or proposed Regulation C has a § 1003.2(h). This is presumably a simple editing error.

Nevertheless, the proposal overall appears to maintain a confusing distinction between open-end lines of credit that will be designated as "HELOCs" and "open-end lines of credit that are not a HELOC."[37] This distinction may be a reference to reverse mortgages having a line of credit. Or it may refer to some other distinction not explained by the proposal.

The Bureau should clarify this morass by creating three clear classifications: closed-end credit secured by a dwelling, open-end credit secured by a dwelling, and reverse mortgages. Reverse mortgages should be subcategorized as having a line of credit or not.

e) *The amount of the first draw on a line of credit is vital information.*

We are very pleased to see that the Bureau proposes requiring lenders to report the amount first drawn on a line of credit (and open-end reverse mortgages) at closing.[38] This information will help determine how this form of credit is being used and will help identify spurious open-end credit. If the line is fully drawn (or nearly) at closing, that suggests that the borrower has a more immediate need for funds than a borrower who wants the line of credit as a "backup" for future needs. A fully-drawn HELOC may also suggest that the loan is actually mischaracterized closed-end credit. This information can be particularly illuminating for lenders that make large numbers of fully-drawn HELOCs. This data will likely be especially useful when combined with the other data to be collected under the proposed rule.

f) *Correct an erroneous assumption in the method for calculating the CLTV and include the full line of credit (whether drawn or not) for all transactions involving property secured by a HELOC.*

The Bureau proposes requiring financial institutions to collect the "ratio of the total amount of debt secured by a property to the value of the property,"[39] commonly known as the combined loan-to-value ratio ("CLTV"). We support this requirement, but recommend changes to the Bureau's proposed instructions. The Bureau proposes requiring the CLTV to be calculated as follows:

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[36] "[W]hether the covered loan is, or the application is for, a home-equity line of credit, as defined in § 1003.2(h)." Proposed § 1003.4(a)(37).
[37] *See* 1003.4(a)(37).
[38] Proposed 1003.4(a)(39).
[39] Proposed 1003.4(a)(24).

(i) For a covered loan that is a home-equity line of credit, by dividing the sum of the unpaid principal balance of the first mortgage, the full amount of any home-equity line of credit (whether drawn or undrawn), and the balance of any other subordinate financing by the property value identified in paragraph (a)(28) of this section;

(ii) For a covered loan that is not a home-equity line of credit, by dividing the combined unpaid principal balance amounts of the first and all subordinate mortgages, excluding undrawn home-equity lines of credit amounts, by the property value identified in paragraph (a)(28) of this section.[40]

These instructions are flawed in two ways:

1. *HELOCs may be first mortgages.* The first clause appears to assume that any HELOC involved will be a subordinate lien on the property. The first clause is applicable when the covered loan is a HELOC. There, the instructions refer to "the first mortgage," and "any *other* subordinate financing," thereby implying that the HELOC will be subordinate financing.[41] This assumption is plainly incorrect. A HELOC can be the highest priority encumbrance (i.e. a first mortgage) if the property is unencumbered when the HELOC is consummated.

2. *The undrawn line of credit should always be included.* The second clause erroneously instructs lenders to exclude any undrawn line of credit. Doing so is a mistake because it will create an "apples-to-oranges" comparison, making it impossible to compare the CLTV for HELOC and non-HELOC transactions. The Bureau does not explain why it recommends two different methods, though the proposal appears to be based on a desire to use the lending industry's MISMO data standards.[42] While standardization has benefits, it does not justify the adoption of inferior measurements.

All LTV calculations involving HELOCs should use the full amount of credit available to the borrower. This is the safest and most reliable approach. A borrower with credit available on a HELOC could access the entire undrawn amount the day after the lender makes an LTV calculation. A fully drawn HELOC exposes the lender to the same risks as a closed-end loan of equivalent size. Because the borrower has access to the full line of credit without any additional underwriting, an LTV analysis that ignores the undrawn amount will be unreliable and quickly irrelevant.

g) *Require institutions to report the risk-adjusted, pre-discounted interest rate for all loans, not just closed end transactions subject Regulation Z § 1026.19(f).*

The Bureau proposes linking the duty to report the risk-adjusted, pre-discount interest rate (the rate a borrower would pay absent any no bona fide discount points) to whether a covered loan is subject to the disclosure requirements in Regulation Z § 1026.19(f).[43] As the Bureau recognizes, doing so would exclude HELOCs and reverse mortgages from the duty to report the risk-adjusted, pre-discount rate.[44] But the Bureau gives no explanation or rationale for this decision.

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40 *Id.*
41 *See* Proposed 1003.4(a)(24)(i) (emphasis added).
42 *See.*79 Fed Reg 51731 at 51794 (August 29, 2014).
43 79 Fed Reg 51731 at 51789 (August 29, 2014).
44 79 Fed Reg 51731 at 51789-90 (August 29, 2014).

Excluding HELOCs and reverse mortgages from this requirement will limit the ability to compare data across loan types. It will also prevent regulators from determining whether lenders are overcharging certain communities for discount points. This is precisely the type of data regulators and community advocates need to determine whether lenders are servicing – or harming – borrowers. We cannot imagine any justification for imposing this requirement one category of loan products but not others. Lenders that offer discount points surely must know what the rate would be without the discount. If the lender cannot provide that information, such an inability strongly suggests that the discount points are not bona fide. We urge the Bureau to correct this gap and to require this data for all covered loans.

16. § 4(a)(38) Qualified Mortgage Status

We applaud the Bureau's inclusion in the proposed reporting requirements data on whether a loan is subject to the Ability to Repay rules and whether a loan meets the Qualified Mortgage standard. Qualified Mortgages bring with them special limitations on liability for the creditor and thus should be monitored closely to determine whether the contours of the rule are bringing intended consequences, such as more sustainable loan terms and better loan performance. We query whether the safe harbor for prime QM loans may invite other unsustainable practices – a concern that could be explored through such data reporting. We support the inclusion of a field reflecting whether the loan is subject to the ability to repay requirement; such information will help data users meaningfully use the QM field by excluding loans for which this designation is unavailable.

We also favor the proposed instruction for identifying the types of Qualified Mortgages so that they can be analyzed separately where appropriate. Balloon QMs may have very different loan performance. Identification of "temporary" QMs will be generally useful for identifying government guaranteed loans and for examining whether the different underwriting standards for those QM loans result in different loan performance.

Including this data point also will serve the needs of regulators at HUD, the VA, and the USDA, where agencies administer their own QM rules. Because a loan's QM status is becoming an integral part of mortgage industry data, this data point will not create a burden on lenders. The analysis can be mechanized for efficiency purposes. However, because small lenders have a somewhat different QM definition, publically available data should be able to distinguish between QM loans from smaller lenders versus larger lenders.

Finally, as the Bureau notes, reporting of a loan's QM status will shed light on whether these more sustainable loans are available to borrowers in communities where the lenders are located. More broadly, it will help identify who is receiving QM loans, and who is not, and how the characteristics of QM loans (by neighborhood, prime vs. subprime, etc.) vary.

IV. Conclusion

We appreciate the opportunity to comment on proposed amendments to Regulation C implementing amendments to HMDA. We believe that the various proposals will close significant gaps in current HMDA reporting and aid significantly in enforcement of fair lending.