October 29, 2014

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

Re: Home Mortgage Disclosure (Regulation C) – Docket No. CFPB-2014-0019 (RIN 3170-AA10)

Dear Director Richard Cordray:

The National Coalition for Asian Pacific American Community Development (National CAPACD) applauds the efforts of the Consumer Financial Protection Bureau (CFPB) to update the reporting requirements of the Home Mortgage Disclosure Act (HMDA) regulations in order to improve information on consumers’ access to mortgage credit. While there are many good aspects in the proposal, we ask the CFPB to expand the scope of the proposal to address limitations in current data disaggregation and language requirements that make it difficult to accurately identify the challenges faced by low-income, immigrant Asian American and Pacific Islander (AAPI) communities.

Current HMDA Reporting Requirements are Ineffective

The HMDA race and ethnicity data as currently reported has been ineffective in capturing the varied experiences of AAPI borrowers. While the aggregated data has generally shown that Asian borrowers have similar experiences to non-Hispanic white borrowers, it has masked the reality of lending disparities and discrimination practices experienced within Asian subpopulations.

For example, according to the U.S. Census Bureau, between 2008 and 2009, homeownership rates in California dropped from 38% to 28% for the Hmong community and 45% to 43% for the Korean community despite homeownership rates for Asian Americans in aggregate increasing slightly from 57% to 58%.
In a 2011 joint report\(^1\) with the Southeast Asia Resource Action Center, we found that only 35% of Fresno Hmong residents are homeowners, with 64.2% of them paying more than 30% of their income towards mortgages. Similarly, we found that just 40% of Hmong community members in Sacramento County are homeowners, compared to 60% of the general population. Of these, nearly 70% of Hmong homeowners pay more than 30% of their income towards housing. Further, after reviewing surname search of foreclosure data from a 4-month period (May to August 2010), we also found that Southeast Asian Americans who were in default in Merced County accounted for 5% of all Notices of Default, while representing only 3% of the county’s population. Similarly, Southeast Asian Americans accounted for 5% of all Notices of Default in Sacramento County while representing only 4% of the population in the county.

Analysis of 2008 foreclosure data by surname in Queens, New York, also found that South Asian households represented a disproportionate share of risky mortgages – representing between 3.5 to 7 times more than their share of the population.\(^2\)

In all of these situations, non-traditional data analysis revealed disproportionate concentration of a greater risk for foreclosure and actual foreclosure among specific subpopulations of Asian Americans that we believe warrant closer documentation through HMDA.

Further, with 40% of Asians and 15% of Native Hawaiians and Other Pacific Islanders speaking English “less than very well,”\(^3\) limited-English proficient (LEP) AAPI borrowers are more vulnerable to predatory lending and abusive or deceptive servicing practices.

In prior public hearings, including the 2006 Home Ownership and Equity Protection Act hearings, LEP borrowers and advocates raised concerns with the Federal Reserve regarding borrowers who negotiated their loans in a non-English language but received English-only documents with less favorable terms than promised. A recent GAO report found statistically significant disparities in the rate of loan modification denials, cancellations, and re-defualts for LEP borrowers and other protected groups as compared to non-Hispanic white borrowers after analyzing certain loan modification data under the Department of Treasury’s Home Affordable Modification Program (HAMP).\(^4\)

**Recommendations**

To address these concerns, we recommend that the reporting of loan data should include:

- Disaggregated data for Asian American and Pacific Islander borrowers. We recommend including at least the following Asian subcategories: Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, and Other Asian; and the following Native Hawaiian and Pacific Islander categories: Native Hawaiian, Guamanian or Chamorro, Samoan, and Other Pacific Islander.
- The preferred language spoken by the loan or loan modification applicant.
- The language in which the loan or loan modification was negotiated.
- The language of the loan documents.

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\(^1\) Untold Stories of the Foreclosure Crisis: Southeast Asian Americans in the Central Valley, National Coalition for Asian Pacific American Community Development and Southeast Asia Resource Action Center, April 2011

\(^2\) Queens Neighborhoods with High Percentages of South Asian Owners in Default, Chhaya CDC January 12, 2009 (analysis of June-December 2008 Notice of Default)

\(^3\) U.S. Census Bureau 2010 5 Year ACS

\(^4\) Troubled Asset Relief Program: More Efforts Needed on Fair Lending Controls and Access for Non-English Speakers in Housing Programs, GAO-14-117, February 6, 2014
Successful Models for HMDA

We recognize that requiring additional HMDA fields for race/ethnicity and language preference can result in an additional burden for implementation. For your reference, we have also identified several current models for data disaggregation that can serve as a model for data collection.

For example, the new data collection standards implemented by the Department of Health and Human Services as required by the Affordable Care Act Section 4302 can serve as a minimum standard for HMDA. Section 4302 required HHS to establish data collection standards for race, ethnicity, sex, primary language, and disability status. The new standards include additional subcategories that roll-up to the OMB minimum standard categories – Asian (Asian Indian, Chinese, Filipino, Japanese, Korean, Vietnamese, and Other Asian), Native Hawaiian and Other Pacific Islander (Native Hawaiian, Guamanian or Chamorro, Samoan, and Other Pacific Islander).

With the landscape of growing sub-ethnic groups in the United States being very dynamic, we would further suggest that CFPB consider adding additional sub-ethnic categories as each group reaches a minimum threshold as measured through Census data. The Voting Rights Act provides a model for calculating threshold for incorporating additional subpopulations. Section 203 of the Voting Rights Act requires certain jurisdictions to provide bilingual voting materials in communities that meet a certain threshold of limited-English proficient residents. Section 203 covers localities where there are more than 10,000 or more than 5% of the total voting age citizens who are members of a single minority language group. Similarly, CFPB can set minimum thresholds that would necessitate the collection of additional racial and ethnic subcategories in HMDA to capture the needs of growing sub-ethnic concentrations in specific regions.

In 2012, the California State Legislature enacted AB 1599, which provides greater language access for homeowners in the non-judicial foreclosure process. Specifically, the legislation requires that a mortgagee, trustee, beneficiary, or authorized agent provide to the mortgagor or trustor a summarized notice of default and notice of sale for residential 1-4 real property in five foreign languages (Spanish, Chinese, Tagalog, Korean, and Vietnamese). It further requires that the Department of Corporations produce the translations and make them available without charge on its website. The foreign languages specified in AB 1599 can serve as the minimum specified languages reported on for HMDA.

Conclusion

National CAPACD strongly believes that expanding current HMDA data disaggregation and language requirements is necessary to accurately identify possible discriminatory lending patterns and determine whether financial institutions are serving the needs of AAPIs and other low-income immigrant communities. We look forward to working with CFPB on this very important matter.

Thank you for the opportunity to provide feedback on the HMDA proposal. If you have any questions, please contact me at lisa@nationalcapacd.org or 202-223-2442.

Sincerely,

Lisa Hasegawa
Executive Director