Americans for Financial Reform
Accountability, Fairness, Security

September 9th, 2009

TO: Staff of Financial Services Committee

FROM: Americans for Financial Reform and associated organizations

RE: Section 188, HMDA Enhancement Section of HR 3126

Dear Colleagues:

We thank Chairman Frank and the staff of the Financial Services Committee for their receptiveness to suggestions for strengthening the HMDA data disclosure enhancements in HR 3126. The Administration and the Financial Services Committee have recognized that augmented data on lending activities bolsters CRA and fair lending enforcement and also provides vital information to the public regarding lenders' record of meeting credit needs with responsible loans. In this spirit, we ask you to consider further strengthening the HMDA data disclosure requirements in a few critical areas.

The three "C's" of responsible underwriting are an assessment of character, capacity, and collateral. The current HMDA data provides only the barest glimpse of these underwriting components. Character, or the record of borrower repayments, is captured (albeit imperfectly) in credit score information. Capacity is reflected in a measure of a borrower's total debt load in relation to income. Finally, collateral is the property value of the home. H.R. 3126, as currently written, provides the public with information about property values, along with some information on credit scores. We request that you consider more detailed loan-by-loan disclosure of some measure of creditworthiness as well as adding debt-to-income information to the Section 188.

As the recent GAO report of July 2009 on fair lending indicates, the Office of the Comptroller of the Currency recognizes the importance of enhanced HMDA data and has requested that some of the largest banks it regulates report this data to the agency on a confidential basis. The GAO, for its part, also recommends that Congress consider augmented HMDA data - including detailed assessment of the terms and conditions of loans extended to protected class borrowers - as a vital tool for improved fair lending enforcement.[1]

Our detailed recommendations follow.
For questions about our recommendations, please contact Josh Silver, Vice President of Research and Policy at NCRC at 202-464-2708, Calvin Bradford with National Peoples Action at 757-259-4605, or Geoff Smith, Vice President at Woodstock Institute at 312-368-0310.

Loan Level Data Disclosure

[1] See GAO, July 2009, Fair Lending: Data Limitations and the Fragmented U.S. Financial Regulatory Structure Challenge Federal Enforcement Efforts.

The Federal Reserve Board has provided two types of important data disclosure to the general public. For community organizations and citizens not expert at statistical data analysis, the Federal Reserve Board has provided summary tables available from the website of the Federal Financial Institutions Examination Council (FFIEC) in PDF format. These tables provide information on various loan types and purposes, the action on a loan application (such as whether the lender accepted or denied the application, and the pricing on the loan (whether the loan is prime or high-cost). This information is arranged by income and racial category of the neighborhood and by the income, gender, and race/ethnicity of the borrower. These summary PDF tables are valuable, but in addition, researchers need the data in a format that can be manipulated on a loan-by loan level so that additional statistical analyses can determine if minorities, women, and other protected classes are receiving loans for which they are qualified or are being steered into more costly loans or loans with unfavorable terms and conditions. The Federal Reserve provides this loan-by-loan data or "raw" data in a format that can be read by excel, Access, SPSS, SAS and other statistical packages.

H.R. 3126's wording must require that this "raw" data dissemination continue, and that 'raw' data be provided in the new categories and areas it lays out. As currently phrased, we believe that H.R. 3126 *does* require the dissemination of both summary and raw data. However, there is a repeated use of the word "grouping" in certain lines of the bill which may be interpreted in a narrow manner to prevent the "raw" data disclosure of the new variables such as property value that H.R. 3126 requires. In particular, lines 18-20 on page 203 and lines 11-13 on page 204 refer to "grouping." In contrast, lines 17-21 on page 207 refer to loan-level and application-level disclosure, which requires raw data to be provided by lenders.

To clarify this matter, we ask that Committee staff ask Legislative Counsel to provide an interpretation of whether the current language requires the disclosure of both summary and raw data. If Legislative Counsel suggests some tightening of the language to ensure raw data disclosure, we would be pleased to provide you with wording suggestions, which we believe are relatively straightforward. In addition, we urge members of the House Financial Committee to issue remarks in the Committee reports accompanying this bill reiterating that both summary and raw data disclosure must be provided in formats that are easily accessible to the general public so that accountability, transparency, and enforcement opportunities are maximized.

Pricing Data

We are pleased that the Committee has expanded the pricing information that lenders would be required to report in HMDA data. Specifically, H.R. 3126 has critical information including total points and fees and, for all loans, price spread information that reveals the difference between a loan's Annual Percentage Rate (APR) and a benchmark rate. These pricing data elements (and all other data elements in Section 188) must be preserved as the bill proceeds through mark-up and floor action.

In addition, we ask the Committee to consider breaking out fees paid to the lender and fees paid to the broker. If fee gouging occurs on a loan, regulatory agencies and the general public need to know whether the lender or the broker is charging the abusive fees.

Our suggested language is as follows:

On page 204, on line 1, add a *"(B) fees received by brokers including Yield-Spread premiums, direct fees, and other fees that are required to be disclosed on the Good Faith Estimate and the HUD-1 form"*

Immediately after the new (B) subparagraph, add a new "*(C) fees received by lending institutions including origination fees and other fees that are required to be disclosed on the Good Faith Estimate and the HUD-1 form,"*

Whether the loan is fixed or adjustable rate clearly impacts pricing. We request, therefore, that a data field be added that indicates whether a loan is fixed or adjustable rate. The bill already requires the number of months after which any introductory interest rate adjusts. Our request would make it easier for the general public to interpret the HMDA data regarding the type of loan received by various groups of borrowers.

On page 204, line 19 add a new sub-paragraph, "*(C) a data field indicating whether the loan is fixed-rate or an adjustable rate mortgage."*

Credit Scores

As currently drafted, H.R. 3126 requires lending institutions to disclose credit scores in such form as the Consumer Financial Protection Agency (CFPA) proscribes. The CFPA will then disclose the data to the general public in a summary or aggregated form (see page 205, lines 17 through 19), but lenders are not required to disclosure credit score information to the general public on a loan-by loan or application-level (see page 208, lines 3 through 5). We appreciate that credit scores will be disclosed in some form, yet we urge the Committee to consider loan-by-loan disclosures of credit scores. We believe that various data disclosure options can overcome privacy concerns or concerns regarding interpretation of credit scores. For example, the CFPA could require that data be released on the range in which the credit score on a particular loan falls: the HMDA data could indicate in which quintile of risk the specific credit score for the particular loan was (for example a FICO score of 750 would be classified by a numeric code as being in the least risky quintile). Also, an additional data field would include codes for the commonly used credit scoring systems such as FICO or whether the lender used its own proprietary credit scoring system.

Our suggested language is as follows:

On page 205, strike lines 17 through 19 and replace with "*(I) the credit score of mortgage applicants and mortgagors in such form as the Agency may proscribe. The Agency may develop categories of risk related to loan prices. The Agency shall also develop a data* *field that indicates the type of credit score used such as FICO or a lender's proprietary model"*

On page 208, strike lines 3 through 5.

Total Debt-to-Income

As noted above, a robust measure of a borrower's capacity to pay the loan is the debt-to-income ratio, commonly referred to as the "back-end ratio." We ask the Committee to include debt-to-income in HMDA data.

Our suggested language is as follows:

On page 204, line 16 insert a new sub-paragraph B, "(B) the debt-to-income ratio; debt shall refer to total debts including mortgage and non-mortgage debt"

Income Documentation

A lack of full documentation of borrower income contributed to high delinquency and default rates during the foreclosure crisis since borrower income was inflated in several cases in risky loans. It is thus important to have loan-by-loan data on whether the lender required full documentation of borrower income.

On page 205, line 20 insert new sub-paragraph J, *"(J) information on whether the financial institution required full documentation of borrower income."*

Open Lines of Credit

A significant amount of problematic home equity lines of credit were offered during the peak years of the housing bubble. Including open lines of credit secured by homes is therefore needed in the HMDA data.

On page 205, line 21 insert a new sub-paragraph K, *"(K) open lines of credit secured by a principal residence."*

Data on Loan Performance (Delinquencies, Defaults, and Foreclosures)

The current foreclosure crisis demonstrates that early warning systems are imperative. Better early detection systems might have averted or at least lessened the severity of the current crisis. Data disclosure and analysis is an integral part of early detection; if worrisome trends in delinquencies and defaults were publicly disclosed, policymakers and stakeholders might have taken concerted action earlier. We thus recommend that you consider adding loan performance data in Section 188. Below, the language on loan performance data collection and disclosure from HR 1479 is reproduced.

(d) Creation of Database on Loan Performance-

(1) IN GENERAL- The Board of Governors of the Federal Reserve System shall--

(A) create a database on loan performance (whether loans are current, delinquent, or in default or foreclosure);

(B) link the database on loan performance with data collected pursuant to the Home Mortgage Disclosure Act of 1975; and

(C) make such information publicly available.

(2) OTHER INFORMATION- The database established pursuant to paragraph (1)(A) shall also contain information on loan modifications, including the type of loan modification, such as interest rate reductions, principal loan balance reductions, repayment plans, forbearance, and modifications that increase outstanding balance owed.

(3) COLLABORATION AND COLLECTION- The Board of Governors of the Federal Reserve System shall--

(A) collaborate with other relevant Federal and State agencies; and

(B) collect information for the database on loan performance from loan servicers and other financial institutions.