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October 29, 2014

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1500 Pennsylvania Ave. NW
Washington, DC 20220

RE: Docket No CFPB-2014-0019; Home Mortgage Disclosure (Regulation C)

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents federal credit unions, I am writing to you regarding the Consumer Financial Protection Bureau's (CFPB) proposed changes to the collection and reporting requirements under the Home Mortgage Disclosure Act (HMDA). *See* 79 FR 51731 (August 29, 2014).

The proposed rule would amend Regulation C, which implements HMDA. Section 1094 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) made significant changes to HMDA. The proposed rule implements these amendments, and also proposes additional requirements that are not mandated under the Dodd-Frank Act.

General Comments

As you are aware, credit unions are not-for-profit, member-owned financial institutions. This structure, as well as over one-hundred years of espousing a member-first philosophy, fosters a culture that prioritizes the well-being of consumers. NAFCU and our members believe that the well-being of consumers begins with an acute attention to fair lending. As a result, we have always supported HMDA's intention of promoting fair lending and ensuring that consumers receive equitable access to credit in the housing market.

Each credit union has a unique membership with unique characteristics. Accordingly, the CFPB's changes to HMDA reporting requirements should not be one-size-fits-all;

instead, they should provide credit unions and small institutions with the flexibility necessary to continue to meet their members' needs.

NAFCU has consistently maintained that the tidal wave of the Bureau's new regulations, taken individually, and more so in their cumulative effect, have significantly altered the lending market in unintended ways. In particular, the ability-to-repay, qualified mortgage, and mortgage servicing rules have required credit unions of various sizes and complexities to make major investments, and incur significant expenses. Taken all together, these regulations have made credit unions rework nearly every aspect of their mortgage origination and servicing operations. As proposed, the changes to HMDA collection and reporting would require even more reworking and additional expense.

NAFCU appreciates the CFPB's work to implement the Dodd-Frank-required changes to HMDA data collection and reporting. The proposed rule is clearly a result of extensive engagement with industry stakeholders, and we commend the Bureau for its responsiveness to feedback and input from credit unions throughout the HMDA rulemaking process. Despite these efforts, NAFCU does not believe the CFPB has given adequate consideration to the burden that the proposed rule would have on small entities. NAFCU has significant concerns about the proposal because we believe it will disproportionately impact small financial institutions that were not responsible for the financial crisis.

Transactional Coverage

The proposed rule would make significant changes to the types of loans that are subject to HMDA reporting under Regulation C, as well as how reportable loans are identified. Regulation C currently requires covered depository and nondepository institutions to collect and report data regarding applications for, and originations and purchases of, three types of loans – home purchase, home improvement, and refinancing. Home equity lines of credit (HELOCs) may be reported at an institution's option, but are not currently required to be reported. The proposed rule would expand the scope of reportable transactions to include all closed-end loans, open-end lines of credit, and reverse mortgages secured by dwellings, regardless of the purpose of the loan or line of credit. This proposed coverage test would bring HELOCs within the scope of reportable transactions, thus making their reporting mandatory. Unsecured home improvement loans, however, would no longer be reported.

NAFCU strongly supports eliminating the requirement to report unsecured home improvement loans. Under Regulation C currently, unsecured home improvement loans that are used, at least in part, for repairing, rehabilitating, remodeling, or improving a dwelling or the real property on which it is located, and that are classified by the financial institution as home improvement loans, are reportable. As the Bureau acknowledged in the proposal, this data is of limited value in today's lending environment. In fact, the CFPB indicates that few fair lending cases appear to rely on this data. Further, the Bureau has stated that it is not aware of any instances where a community group relied on

this category of information to determine if a financial institution was serving the housing needs of its community or any research studies that relied on this type of data. Given this research, NAFCU and our members believe that the burden associated with reporting unsecured home improvement loan data clearly outweighs the value of the information. Therefore, we strongly support the Bureau's proposal to remove the requirement to report unsecured home improvement loans.

While NAFCU supports the proposal's elimination of unsecured home improvement loan reporting, we have concerns with the inclusion of HELOCs within the scope of reportable transactions. NAFCU has some members that presently report HELOCs voluntarily, as well as some who do not. NAFCU believes the optional nature of this reporting is critical and should not be changed. The Bureau's stated basis for mandating HELOC reporting is providing additional data for research and a better understanding the potential effect of HELOCs on the nation's economic recovery. NAFCU and our members believe this justification is inconsistent with HMDA's purpose, which is "intended to provide the public with loan data that can be used: (1) to help determine whether financial institutions are serving the housing needs of their communities; (2) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (3) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes." *See* 12 CFR 1003.1(b)(1).

HMDA exists to ensure that consumers receive fair access to credit in the housing market. NAFCU has always supported this intent. We, however, believe that mandating HELOC reporting to provide additional data for research purposes is inappropriate. While NAFCU understands the Bureau's desire to identify discriminatory lending practices, we believe that HELOCs are not a sufficient measure of subprime lending or a valid indicator of potential discriminatory practices in the housing market. NAFCU continues to hear from our members that HELOCs are often used for purposes other than real estate. Credit union members, like many consumers, treat HELOCs as consumer loans, not mortgage loans. Reporting HELOCs, therefore, will not only result in an increased burden for credit unions, but it will also yield inaccurate data for HMDA analysis.

Mandating HELOC reporting will also pose significant compliance costs and burdens on credit unions. Credit unions would need to make costly modification to their systems in order to collect and report HELOCs. A number of NAFCU's members have indicated that they use different operational systems to originate and manage HELOCs. Because these systems are separate from their traditional mortgage loan origination platforms, credit unions will need to expend significant costs to either work with third-party vendors or hire and train employees to capture this data. Simply put, the perceived research benefits of mandating HELOC reporting would not justify the associated costs and burden. NAFCU encourages the CFPB to retain the current optional reporting for HELOCs.

Institutional Coverage

Generally speaking, whether an institution is covered by Regulation C's data collection and reporting requirements depends on its asset size, location, and whether it is in the business of residential mortgage lending. For depository financial institutions, such as credit unions, Regulation C currently requires HMDA data reporting if they meet the following criteria: (1) on the preceding December 31, it had assets of at least $43 million; (2) on the preceding December 31, it had a home or branch office in an Metropolitan Statistical Area (MSA); (3) during the previous calendar year, it originated at least one home purchase loan or refinancing of a home purchase loan secured by a first-lien on a one-to-four unit dwelling; and (4) the institution is Federally insured or regulated, or the mortgage loan referred to in item (3) was insured, guaranteed, or supplemented by a Federal agency or intended for sale to Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. *See* 12 CFR 1003.2.

The proposal seeks to add another criterion establishing a uniform loan volume threshold, the "25-loan volume test." For credit unions, the addition of this new criterion would mean that HMDA reporting would only be required if the credit union meets the current criteria in Section 1003.2 and originated at least 25 covered loans, excluding open-end lines of credit, in the preceding calendar year. NAFCU supports this change, but believes the threshold should be increased.

NAFCU believes the proposed threshold is too low. Small lenders who originate 25 loans cannot provide an accurate or complete picture of the quality of financial institution lending. Yet, these lenders are required to expend the resources necessary to collect and report data. NAFCU urges that the CFPB reexamine the proposed threshold with a level of reasonableness between the data supplied by small lenders and the amount of resources expended by these lenders to do so. NAFCU believes the resources of small lenders should be spent in their communities, originating the loans that their communities really need, rather than expending them to supply data that is overall immaterial to HMDA analysis. NAFCU, therefore, encourages the CFPB to expand the threshold.

NAFCU supports expanding the coverage of nondepository financial institutions as proposed. We believe the collection of pertinent data from a wider array of entities will likely provide a more accurate picture of national and local lending patterns, and may assist all lenders, regulatory agencies, and the public in comparing lender performance using the aggregated data compiled by the FFIEC.

Expansion of Data Collection

The proposed rule would also add new data points to the reporting requirements established in Regulation C, and modify certain existing data points. Some of the proposed new data points are specifically identified in Section 1094 of the Dodd-Frank Act, such as the borrower's age and credit score, loan term, total points and fees, and the length of any teaser or introductory interest rate period. Others are proposed pursuant to

the CFPB's discretionary rulemaking authority to carry out the purposes of HMDA by addressing data gaps. These discretionary data points include such things as the reasons for denying an application, the automated underwriting system used (if any) and its recommendation, the applicant's or borrower's debt-to-income ratio (DTI), loan-to-value ratio (LTV), and the name and version of the credit scoring model used.

The proposed data fields would impose a significant regulatory and operational burden on credit unions. A 2014 NAFCU survey of our members found that credit unions will incur an average initial cost of $9,591 to update systems with the Dodd-Frank required changes, and an ongoing average annual cost of $3,842. To implement the additional data points beyond those mandated by Dodd-Frank, NAFCU's members have indicated that they expect an average initial cost of $13,955 to update systems and an ongoing average annual cost of $4,842. A significant number of NAFCU's members anticipate having to increase fees for consumers in order to offset the new costs associated with proposed additional HMDA reporting requirements.

Given the tremendous burden that these proposed changes will place on credit unions, NAFCU believes that the Bureau has failed to provide compelling reasons how the collection of the additional data ensures fair access to credit in the housing market. In particular, NAFCU does not believe that the CFPB has provided satisfactory justification for having proposed data points that were not mandated by Dodd-Frank. The Bureau's stated basis for the addition of the discretionary data points is providing additional research and a better understanding the housing market. NAFCU and our members believe this justification is inconsistent with HMDA's purpose, which as we noted above, is intended to ensure fair lending and anti-discriminatory practices in the housing market.

Credit unions, like many small financial institutions, do not have the depth and breadth of staff resources and technology to reprogram their system in order to accommodate these discretionary data points without incurring significant costs. For credit unions that do not have automated collection systems, additions to the HMDA dataset will pose particularly significant implementation costs because the loan officer at these credit unions puts the required data points into a spreadsheet manually and it must be reviewed by another party. Even those credit unions that utilize automated systems often have staff manually review the collected data for accuracy before submission.

While NAFCU and our members support HMDA requirements that further the goal of ensuring fair lending and anti-discriminatory practices, we are concerned that some of the additional reporting requirements may not further this goal and may only serve to impose significant additional compliance and reporting burdens. Therefore, NAFCU believes that the Bureau should limit the changes to the HMDA dataset to no more than those mandated by the Dodd-Frank Act.

Privacy

HMDA reports currently include the name of the credit union, mortgage amount, year of transaction, and census tract of the property. This information already provides an opportunity to identify the majority of mortgagors being reported under HMDA. Because there is little privacy protection in HMDA data, adding more sensitive and non-public information, such as debt-to-income ratios, credit scores, creditworthiness, or borrower age, would create considerable privacy concerns.

NAFCU has concerns that unless the Bureau establishes the appropriate safeguards, the proposed additional data points could be reverse engineered in an invasive and abusive manner. Although the CFPB has indicated that the National Mortgage Database will not include consumers' personally identifiable information, NAFCU and our members would like additional assurances that the Bureau will take the necessary steps to de-identify and scrub the collected data before it is publically disclosed. NAFCU strongly believes that it is critical that any changes to the HMDA dataset incorporate safeguards against the misuse of sensitive consumer financial data.

Quarterly Reporting

The proposal seeks to require quarterly reporting for institutions with high volume of transactions. Regulation C currently requires credit unions to submit their HMDA data to the CFPB by March 1 following the calendar year for which the data are compiled. The CFPB is proposing to require financial institutions that report large volumes of HMDA data to submit their data to the appropriate agency on a quarterly, rather than an annual basis. This would include credit unions that reported at least 75,000 covered loans, applications, and purchased covered loans, combined, for the preceding calendar year.

NAFCU believes the costs of quarterly reporting would significantly outweigh any benefits it might confer. To report on a quarterly basis, credit unions would need to develop and implement costly new systems and expend valuable staff resources. While NAFCU understands the Bureau's desire to identity discriminatory lending practices in a timely manner, we believe that the Bureau should not impose an increase in the reporting burden where the benefit is speculative at best. NAFCU encourages the CFPB to retain the current requirement that covered institutions report once a year.

Disclosure Statements

The Bureau is further proposing to allow HMDA reporters to make their disclosure statements available by referring members of the public that request a disclosure statement to a publicly-available website. Currently, credit unions are required to make their disclosure statements available to the public in its home offices and, in addition, to either make it available in certain branch offices or to post notice of its availability and provide it in response to a written request. The proposal, however, would allow a credit union to make its disclosure statement available to the public by making available a

notice that clearly conveys that the disclosure statement may be obtained on the FFIEC website and that includes the FFIEC's website address.

NAFCU appreciates the CFPB's work to ease Regulation C's disclosure statement requirements, as the current rule has proved onerous. Currently, credit unions are required to download or print the statements from the FFIEC website in order to have them available for members. NAFCU continues to hear from our members that this requirement represents an unproductive expense for credit unions that could be better directed toward serving consumers. NAFCU believes the statements' availability on the FFIEC website appropriately meets consumers' needs in an efficient and cost effective manner for credit unions. Therefore, NAFCU and our members welcome the proposed alternative delivery method because we believe it will reduce regulatory burden without impacting consumers' ability to access their financial institution's HMDA data.

Implementation

Although the proposal does not address an implementation timeline for the changes to Regulation C, NAFCU and our members strongly urge the CFPB provide HMDA reporters ample time to implement the new collection and reporting requirements.

As the Bureau considers the effective date for changes to Regulation C, NAFCU asks that it contemplate the interplay between the various mortgage rules that became effective earlier this year and the mortgage disclosure rules integrating the Truth-in-Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) disclosure forms that will become effective in 2015. Credit unions, like all financial institutions, are working with their staffs and vendors to implement these changes. NAFCU and our members encourage the Bureau to delay the determination of the effective date for Regulation C's changes until credit unions have had time to implement the combined mortgage disclosure rules. NAFCU recommends delaying the effective date of any changes to the collection and reporting requirements under HMDA until at least January 1, 2017.

Alternatively, the CFPB could use its broad authority to consider the regulatory burden on small entities and provide an extended effective date for all credit unions. As we have stated on numerous occasions, Congress granted the CFPB this authority with the understanding that small entities will be disproportionately affected by the agency's extensive regulations issued pursuant to the Dodd-Frank Act. NAFCU believes that the issue of the effective dates of these proposed changes is well within the scope of the agency's discretionary authority related to small entities.

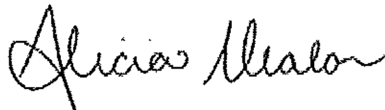
Conclusion

As the CFPB has itself repeatedly acknowledged, credit unions have not engaged in the type of mortgage servicing practices that the agency is seeking to identify through an expanded HMDA dataset. Credit unions want to continue to aid in the economic recovery, but are being stymied by overregulation. As proposed, this rule will only

further stifle growth, innovation and diversification at credit unions. NAFCU and our members, therefore, urge the Bureau to address the compliance costs and regulatory difficulties faced by credits unions raised in this letter.

NAFCU appreciated the opportunity to share its thoughts on HMDA data collection and reporting and would like to discuss this matter further. Should you have any questions or concerns, please feel free to contact me at anealon@nafcu.org or (703)-842-2266.

Sincerely,



Alicia Nealon
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