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National Association of Federally-Insured Credit Unions

June 12, 2019

The Honorable Kathleen Kraninger
Director
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Home Mortgage Disclosure (Regulation C)
RIN: 3170-AA76

Dear Director Kraninger:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in regard to the Bureau of Consumer Financial Protection's (Bureau) proposed amendments to Regulation C's transactional and institutional coverage thresholds. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 117 million consumers with personal and small business financial service products. NAFCU supports increasing the institutional and transactional coverage thresholds, which exempt smaller lenders from data reporting requirements under the *Home Mortgage Disclosure Act* (HMDA).

General Comments

HMDA exists to ensure that consumers receive fair access to credit in the housing market, and NAFCU has always supported this intent. However, the Bureau must consider whether burdensome data collection requirements are necessary for small credit unions that do not originate a substantial number of covered loans or lines of credit. As NAFCU has commented on many prior occasions, the cost of HMDA compliance has contributed significantly to the overall regulatory burden experienced by credit unions in the aftermath of the financial crisis, and relief is needed to ensure that credit unions can provide the best possible service to their member-owners.

While HMDA and its implementing regulations provide one important mechanism for identifying discriminatory lending practices, the Bureau should also consider whether credit unions, who have not engaged in egregious redlining practices, should be afforded relief commensurate with their good conduct and reputation as trusted lenders in their communities. A universal adjustment to the transactional and institutional coverage thresholds would still benefit credit unions, but we ask that the Bureau carefully evaluate whether industry-specific relief may be appropriate under Section 1022 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act).

The proposed rule provides two alternatives that would permanently raise the closed-end institutional and transactional coverage threshold to either 50 or 100 closed-end mortgage loans in each of the two preceding calendar years. The proposal would also extend the current temporary institutional and transactional coverage threshold of 500 open-end lines of credit to January 1, 2022, and thereafter permanently reset the open-end threshold at 200 open-end lines of credit in each of the two preceding calendar years. Under the 2015 HMDA Rule, the two coverage thresholds are set at 25 closed-end mortgage loans and 100 open-end lines of credit in each of the two preceding calendar years.

Prior to the Bureau issuing its 2015 HMDA Rule, NAFCU emphasized repeatedly that the compliance costs associated with reporting at such low coverage thresholds would be much higher than estimated. The Bureau now acknowledges that the relief afforded by adjustments to the coverage thresholds would be greater than originally thought. NAFCU supports increases to both thresholds, which are discussed below.

The Bureau should increase the closed-end coverage threshold to 500 closed-end mortgage loans in each of the two preceding calendar years.

NAFCU appreciates the Bureau's consideration of the high compliance burdens that credit unions face when reporting HMDA data. Alternative 2 of the Bureau's proposal, which increases the institutional and transactional coverage threshold to 100 close-end mortgage loans, would exempt fewer than half of current credit union HMDA reporters. In nominal terms, this reduction may appear significant; however, the absolute number of HMDA-reportable loans or applications exempted is less substantial.[1] To provide more meaningful and long-term relief for credit unions, the Bureau should increase the closed-end coverage threshold to 500 closed-end mortgage loans in each of the two preceding calendar years. Based on the Bureau's own estimates, setting the threshold at this level would still capture 83 percent of total closed-end mortgage loan originations reported by depository institutions under the current coverage criteria. Furthermore, at a threshold of 500, the share of total closed-end loans covered across all originators would be nearly the same as the share of open-end lines of credit covered under the temporary open-end threshold.

Although the Bureau has withheld explicit consideration of a higher, closed-end coverage threshold because it could erode the usefulness of HMDA data or reduce opportunities for public and private investment, the high cost of HMDA compliance for credit unions at lower thresholds would have a more deleterious effect on access to credit than the absence of granular data elements. In addition, the Bureau did not find that *potential* public costs were preclusive when it adopted the temporary open-end coverage threshold. It is also important to note that HMDA is just one mechanism that can assist regulators' efforts to examine fair lending compliance. Regulators continue to have access to lending files, underwriting policies, and other records during examinations and may rely more heavily on these documents when assessing the performance of low-volume reporters.

NAFCU urges the Bureau to consider a 500 closed-end mortgage loan coverage threshold because it would provide longer-term relief to small but growing credit unions that have not yet achieved

[1] The Bureau estimates that a coverage threshold of 100 close-end mortgage loans would still capture approximately 96 percent of total originations reported by depository institutions under the current, closed-end coverage criteria.

the scale necessary to effectively absorb HMDA reporting costs. Setting the closed-end threshold at this level would also harmonize the Bureau's regulations with the partial HMDA exemption threshold adopted by Congress in Section 104 of the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (EGRRCPA). Congress likely considered the same tradeoffs that the Bureau has presented in the NPRM before selecting the 500 closed-end and open-end thresholds in Section 104. Lastly, establishing a 500 closed-end threshold would free resources at credit unions which would be spent in local communities to help originate loans to consumers—an activity that would better fulfill fair lending policies than more expansive data collection.

The Bureau should increase the open-end coverage threshold or, in the alternative, permanently maintain it at 500 open-end lines of credit.

The 2015 HMDA Rule requires certain credit unions to report data on dwelling-secured, open-end lines of credit, including home-equity lines of credit (HELOCs). Prior to the 2015 HMDA Rule, Regulation C allowed, but did not require, reporting of HELOCs. In the 2015 HMDA Rule, the Bureau acknowledged that it "is difficult to predict the accuracy of the Bureau's cost estimates" for reporting open-end lines of credit, and added the current, baseline transactional and institutional coverage threshold of 100 open-end lines of credit to mitigate this burden. The current proposal notes that the Bureau temporarily raised the threshold for open-end lines of credit to 500 for a two-year period because of concerns that the Bureau may have underestimated the costs of open-end line of credit reporting in the 2015 HMDA Rule. The temporary threshold is set to expire in 2020 and would, if no action is taken, revert back to the baseline threshold of 100. If the baseline threshold remains unchanged, credit unions who originate an insubstantial number of open-end lines of credit would be burdened with significant compliance costs.

NAFCU supports reconsideration of the open-end threshold and asks that the Bureau increase the current temporary threshold. Reporting open-end lines of credit will always introduce challenges for credit unions that conduct originations across separate systems, particularly those that are small and have strained compliance resources. If the Bureau is unwilling to return to a voluntary reporting regime, then it should seek to moderate collection of open-end line of credit information until it can be certain that such data is essential to achieving HMDA's statutory purpose. In the alternative, the Bureau should permanently maintain the current, temporary threshold, which has a negligible impact on total lines of credit reported, and commit to a periodic review of the threshold to determine whether future increases would help ease regulatory burden for small lenders.

If the Bureau adjusts the temporary threshold to the proposed level of 200 open-end lines of credit after 2022, then 171 credit unions would lose the benefit of the temporary coverage level based on fourth quarter Call Report data from last year. For these credit unions, preparing for full compliance in 2022 will entail significant burdens that are disproportionate to the number of additional open-end originations reported to the Bureau. In terms of overall impact, eliminating the temporary threshold in favor of the proposed level would only increase coverage of open-end lines of credit by six percent while nearly doubling the total number of institutions required to report.

For credit unions that must report the full range of HMDA data, compliance with the requirement to report dwelling-secured open-end lines of credit has entailed staffing changes and severe technological disruption. Among those that do not currently report, there is great concern that an abrupt transition to open-end reporting will result in a substantial diversion of staff resources that could degrade member services and necessitate new software and system costs. For context, the median size of credit unions currently originating open-end lines of credit is only $119 million in total assets.

Most credit unions continue to use separate loan origination systems (LOS) to process closed-end loans and open-end lines of credit, an arrangement that often corresponds with manual input of data and increases the probability of human error. In a recent survey of NAFCU members conducted shortly before the submission of HMDA data on March 1, 2019, over a third found that standardizing the output of all LOS to meet HMDA requirements was “very challenging.” Furthermore, nearly half of respondents in NAFCU’s survey indicated that HMDA-related compliance costs exceeded their initial estimates.

Credit unions that do not currently report open-end lines of credit because originations fall slightly below the temporary coverage threshold will face significant burdens if the threshold is not increased before its expiration in 2020. For these lenders, which are often smaller depositories, the effort necessary to build entirely new reporting systems, integrate compliance software, and train new or existing employees vastly outweighs the marginal benefit of reporting data on 500 open-end lines of credit. Accordingly, NAFCU urges the Bureau to consider increasing the current, temporary threshold—or at the very least, maintain it at the current level.

NAFCU supports the incorporation of the 2018 HMDA Rule into Regulation C.

The 2018 HMDA Rule was issued as an interpretive rule to implement Section 104(a) of the EGRRCPA, which grants eligible financial institutions partial exemptions from HMDA's requirements for certain transactions. Incorporation of the 2018 HMDA Rule into Regulation C will help clarify and consolidate provisions related to the partial HMDA exemptions, which should aid in industry compliance. Most importantly, codification of the interpretative rule will ensure that the definitions for “close-end mortgage loan” and “open-end line of credit” are consistent with the way those terms are used in Regulation C. NAFCU supports the proposed commentary related to the optional reporting of certain data and the use of non-universal loan identifiers, which clarifies technical issues that were previously unaddressed in the 2018 HMDA Rule.

Conclusion

As NAFCU has advised the Bureau on many prior occasions, HMDA reporting for credit unions has a disproportionate cost impact because many lack the scale, sophistication, and bargaining power to easily implement fully-automated reporting systems. Since the passage of the Dodd-Frank Act, NAFCU member credit unions’ have reported that the number of total full-time equivalent employees devoted to total compliance activities has increased by 127 percent. HMDA represents a significant component of that overall cost.

For a large segment of credit unions, reliance on manual HMDA data entry can also lead to human error, which tends to magnify compliance burdens for low-volume reporters. Accordingly, NAFCU urges the Bureau to increase the institutional and transactional coverage thresholds for both closed-end mortgage loans and open-end lines of credit in order to provide relief to an industry whose good conduct and commitment to fair lending is recognized by regulators and members alike.

Should you have any questions or concerns, please do not hesitate to contact me at amorris@nafcu.org or 703-842-2266.

Sincerely

Andrew Morris
Senior Counsel for Research and Policy