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National Association of Federally-Insured Credit Unions

October 11, 2019

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Home Mortgage Disclosure (Regulation C) Data Points and Coverage (RIN 3170-AA97)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) advance notice of proposed rulemaking (ANPR) soliciting comments related to the *Home Mortgage Disclosure Act* (HMDA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 118 million consumers with personal and small business financial service products. As member-owned financial institutions, credit unions have served a vital role as affordable and responsible lenders in their communities. NAFCU appreciates the Bureau's efforts in issuing this ANPR to appropriately balance the benefits and burdens associated with collecting and reporting HMDA data. NAFCU recommends reducing regulatory burdens by eliminating all data points adopted pursuant to the Bureau's discretionary authority. In addition, due to the burden outweighing the value of the data provided, NAFCU recommends the revision or elimination of several data points, including all free-form text boxes.

General Comments

NAFCU members have always supported the intended purpose of HMDA and do not participate in discriminatory lending practices. However, the current regulation requires the collection and reporting of increased, hyper-granular data points that do not achieve the statutory HMDA purpose. NAFCU has historically voiced concerns to the Bureau regarding the regulatory burdens posed by the HMDA rules. The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank) expanded the data points required for collection and reporting by credit unions in an effort to combat predatory and discriminatory lending in the mortgage market. According to NAFCU's 2018 *Federal Reserve Meeting Survey*, members identified a 75 percent increase in costs of HMDA compliance-related full-time employees (FTE) and a 121 percent increase for total HMDA compliance-related costs since 2010. This data indicates that HMDA compliance is particularly burdensome on smaller credit unions that do not have extensive compliance resources at their disposal. Accordingly, NAFCU encourages the Bureau to evaluate whether an exemption for credit unions is appropriate under section 1022 of Dodd-Frank.

The purpose of HMDA is to provide the public with loan data that can be used: i) to help determine whether financial institutions are serving the housing needs of their communities; ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and iii) to assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes. *See* 12 CFR 1003.1. The HMDA regulations should effectively carry out these intended purposes without being excessively burdensome. The below recommendations aim to do just that by eliminating certain HMDA data points that are not assisting the Bureau in effectuating the stated goals, as well as revising other HMDA data points to both reduce regulatory burdens while maintaining the stated purpose and promote fair lending.

The Bureau should eliminate all data points adopted pursuant to their discretionary authority.

HMDA sections 304(b)(5)(D) and (6)(J) give the Bureau discretionary authority to require disclosure of “such other information as the Bureau may require.” Utilizing this discretionary authority, the Bureau added the following discretionary data points: reasons for denial; origination charges; discount points, lender credits; interest rate; debt-to-income ratio; combined loan to value ratio; manufactured home secured property type; manufactured home land property interest; multifamily affordable units; automated underwriting system; reverse mortgage flag; open-end line of credit flag; and business or commercial purpose flag. NAFCU recommends the Bureau eliminate all data points adopted pursuant to the Bureau’s discretionary authority, and require only those data points expressly required by Dodd-Frank.

Adding the discretionary data points has increased compliance burdens at credit unions with reporting of technical, granular data. Since the enactment of Dodd-Frank credit unions have reported an excessive increase in compliance costs. According to NAFCU’s January 2019 *Economic & CU Monitor Survey*, 33 percent of respondents indicated that they are very concerned about HMDA compliance. In addition, these discretionary data points do not further the goals of HMDA. NAFCU requests that the Bureau eliminate all data points adopted under the Bureau’s discretionary authority.

The Bureau should revise or eliminate data points that are overly burdensome to collect and report, or do not assist in furthering HMDA’s intent.

Rate Spread

NAFCU members have reported rate spread as a particularly difficult data point to resolve in the process of checking the accuracy of HMDA data. The rate spread is the difference between the covered loan’s annual percentage rate and average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set. The APOR is an annual percentage rate derived from the average interest rates and other loan pricing terms currently offered to consumers by a set of creditors for mortgage loans that have low-risk characteristics. Dodd-Frank amended HMDA to require this data point, therefore NAFCU understands the inability to eliminate this data point; however, revising the data point would reduce operational burdens.

NAFCU suggests the Bureau revise this data point to require an APOR calculation for only fixed-rate loan products. Open-end lending products, such as a home equity line of credit (HELOC) should not be subject to an APOR calculation given the operational difficulty in calculating it. Credit union members also reported that during the 2019 filing season, some software was unable to calculate the APOR for HELOCs, and manual calculations were required. According to NAFCU's March 2019 *Economic & CU Monitor Survey*, 25 percent of respondents reported manual entry of this data point, while 15 percent of respondents reported a combination of manual and automatic entry. In addition, the Bureau's 2015 final rule noted that reporting of the rate spread for all loans would provide a more complete understanding of the mortgage market and improve loan analysis. However, interest rates for HELOCs are typically based on the value of the underlying property; therefore, it does not provide transparency or a more complete picture of the mortgage market as intended. NAFCU supports fair lending and non-discriminatory lending practices, therefore, the Bureau should revise this data point to require reporting the rate spread of only closed-end loans. Revision of this data point to only closed-end loans will bolster HMDA's fair lending goals.

Business or Commercial Purpose

Lenders are required to collect and report HMDA data on covered loans, including dwelling-secured business or commercial purpose loans and lines of credit, but only if used for home purchase, home improvement or refinancing. Additionally, there is a transaction indicator data field on the LAR where lenders are required to mark the covered transaction as either being primarily for a business or commercial purpose or not primarily for a business or commercial purpose. NAFCU members have noted a high degree of operational burden in collecting and reporting data for business or commercial purpose mortgages. Credit unions have found this data point to be particularly burdensome to validate given the various business entity structures. Moreover, business or commercial purpose loans, and the associated transaction indicator data field, provide little to no value to the Bureau because the substantial majority of these loans are made to non-natural persons which have no associated government monitoring information (GMI) data. Typically, the GMI data fields are reported as Not Applicable for non-natural persons pursuant to the filing instructions. This data point was added pursuant to the Bureau's discretionary authority. Given that the majority of the data reported is Not Applicable, this provides little value in furthering the purposes of HMDA, and the benefit does not outweigh the burden, therefore the Bureau should eliminate this data point.

Loan Purpose

Data reported for loan purpose can understandably assist the Bureau in ensuring HMDA's stated purposes are being met. However, the Bureau should revise this data point to reflect common industry definitions. To illustrate, credit unions that provide a refinance of a primary residence for the purchase of a second property would define this as a "refinance." However, HMDA defines this loan purpose as a "loan purchase." The inconsistency with industry definitions is causing credit unions to enter the information manually. According to NAFCU's March 2019 *Economic & CU Monitor Survey*, 38 percent of respondents noted that they manually enter this information.

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Industry standards should be recognized and utilized; they are standard across financial institutions, and reduce the confusion and unnecessary compliance burdens of manual entry. NAFCU requests the Bureau revise this data point to account for industry-adopted definitions.

Ethnicity/Race

Credit unions report that the race and ethnicity data points pose multiple collection and reporting burdens that outweigh any benefits that may result from collection of such data. Part of the difficulty is attributable to the availability of sub-categories an applicant may utilize to further self-identify his or her race or ethnicity. Although the race and ethnicity data points assist the Bureau in identifying possible discriminatory lending practices, the sub-categories seek the collection of hyper-granular data. These additional sub-categories are causing lengthier application processes and customer frustrations, especially for applications taken over the telephone. As a result, the overall member experience suffers.

In addition to the problematic sub-categories, HMDA requires credit unions to report to the Bureau any information provided by the applicant in the free-form text boxes. Credit unions report members are including information in the free-form text box that is not helpful to the Bureau. For example, credit unions report applicants utilizing the sub-category free-form text box to answer “not applicable” or “human.” Applicants have provided credit unions with more creative information such as “unicorn,” not realizing that the information they provide must be reported to the Bureau. This disaggregated race and ethnicity data is not helpful for HMDA purposes.

Additionally, credit unions report that applicants will often self-identify using a free-form text box under the wrong “Other” sub-category, or the applicants will use a free-form box either in addition or alternatively to checking one of the provided categories or sub-categories. Further, any special characters entered in a free-form box will transfer into the HMDA platform, then resulting in validity errors that require the re-scrubbing and re-submission of data. The data must be re-scrubbed and re-submitted until no validity errors exist. This process is extremely time consuming and requires significant staffing resources for data from the free-form boxes that provides little value to the Bureau. To illustrate some of the confusion that the sub-categories and free-form boxes present, the current ethnicity options an applicant may choose from are below:

Ethnicity:

- Hispanic or Latino

 - Mexican
 - Puerto Rican
 - Cuban
 - Other Hispanic or Latino – *Print origin, for example, Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.*

Not Hispanic or Latino

I do not wish to provide this information

Appendix B to Part 1003 clearly states that there are two aggregate ethnicity categories: Hispanic, and not Hispanic. The following examples are scenarios that often arise at credit unions:

- An applicant selects both Hispanic and Not Hispanic;
- An applicant selects Not Hispanic, and then populates the free-form Other Hispanic or Latino box with data even though they self-identified as Not Hispanic;
- An applicant selects Hispanic and then populates the Other Hispanic or Latino free-form box with a race or ethnicity that the credit union knows is a race or ethnicity that should be populated elsewhere. For example, an applicant populates the Other Hispanic or Latino free-form box and inputs White, and insists that White is their ethnicity;
- An applicant intentionally provides incorrect self-identification information in the free-form box (e.g., alien, human, N/A);
- An applicant selects both, “I do not wish to provide this information,” and one or more of the aggregate categories; and
- Prior to the credit union initiating or finishing the categories and/or sub-categories, the applicant stops the credit union to inform them that they do not wish to provide the information. This often occurs during an application made over the phone.

The collection and reporting of HMDA data is particularly difficult in the instance of a phone application or situation where a credit union reads the disclosures and options to an applicant (e.g. web application). According to the 2017 HMDA amendments, an applicant is not required to select an aggregate race or ethnicity category as a precondition to selecting a subcategory. Given the language, coupled with the fact that no exception has been provided for telephone applications, credit unions are required to read all categories and subcategories to an applicant over the telephone. The new GMI disclosures, including the requirement to provide all category and subcategory options to an applicant, has proven to be incredibly burdensome and time consuming for telephone applications.

Credit union staff must provide a volume of information to applicants, which has, in turn, soured the member experience and caused confusion. Understandably, providing information regarding one's race and ethnicity is sensitive and credit unions report that telephone applicants have painted the credit union as the “bad guy,” stating that the questions are racist and upsetting to the members. Further, applicants have reported feeling overwhelmed by the volume of questions and then become frustrated and selected an answer to move the call along without listening to all of the selection options. This could indicate that a portion of responses to questions, particularly those toward the end of the disclosure, are inaccurate.

In addition, credit unions report that telephone applicants offer a race that is actually an ethnicity category, or offer a category and subcategory the applicant wishes to have entered into a free-from text box instead of choosing a category or subcategory. This latter example creates confusion for credit unions who must determine whether the free-form text box should be populated, when the information provided is a predetermined category or subcategory. Additionally, if an applicant offers information for a free-form text box, credit unions often report difficulties in correct spellings, although they attempt to rectify all spelling errors before inputting information into the

LAR. From the collection perspective, this is burdensome and time-consuming at the application phase. The process of rectifying spelling errors requires extra resources including staff and time, which creates a significant cost burden on smaller credit unions. Additional guidance regarding the collection and reporting of HMDA data for telephone applications would alleviate some of the challenges credit unions face.

NAFCU recommends the Bureau remove the subcategories and free-form boxes to reduce confusion and provide reliable data for fair lending purposes. Removal of the subcategories would alleviate the regulatory burdens associated with collecting and reporting HMDA data from telephone applications as well as mitigate confusion for applicants. If the subcategories are not removed, then the Bureau should provide an exception for telephone applications that requires credit unions to only read the subcategories if an aggregate race or ethnicity category is selected.

Mortgage Licensing System and Registry Identifier

Currently, lenders are required to report the Nationwide Mortgage Licensing System and Registry unique identifier (NMLSR ID) for the mortgage loan originator, or report that the mortgage loan originator is not required to obtain an NMLSR ID. However, this data point does not currently account for situations of an automatic denial. In the event of an automatic denial, a mortgage loan originator is not involved with the loan by any means, therefore rendering this data point not applicable in this situation. But there is no option for credit unions to report this non-applicability. Although Dodd-Frank requires this data point, NAFCU recommends that the Bureau provide clarification in an official comment on the proper procedure for reporting this data point in the context of an automatic denial. Alternatively, the Bureau should revise this data point to include an automatic denial option for reporting.

Debt-to-Income (DTI) Ratio

The Bureau adopted this data point as part of its discretionary authority under HMDA as a means to analyze the rationale and discrepancies for loan denials. DTI is one of many factors used in the overall credit decision process by credit unions, and it varies depending on the credit product. The inconsistent data will not assist in identifying discriminatory lending practices. NAFCU recommends the Bureau eliminate this discretionary data point.

Lenders are required to report an applicant's DTI that is relied on in making the credit decision. The term "relied on" is not defined in section 1003.4(a)(23). This ambiguity causes confusion for lenders as they may rely on multiple DTI calculations throughout the credit review period. To illustrate, a credit union may calculate an applicant's DTI at the time the application is submitted and then calculate DTI a second time during the credit review process as the applicant may have paid down debt or have increased income since the initial calculation. Credit unions then have two or more DTI calculations relied on for the credit decision. If the first DTI is reported, internal systems generally flag this as incorrect because the most recent DTI calculation was not reported. The official interpretation of section 1003.4(a)(23) provides that if a credit union calculated the DTI twice, then the DTI must be reported if it was the calculation relied on. NAFCU recommends

the Bureau define whether “relied on” constitutes the initial DTI calculated or the latest DTI calculation that the lender had relied on for a credit decision.

Free-Form Text Boxes

In general, the free-form text boxes create manual work for credit unions increasing the burdensome task of collecting and reporting data points. In addition, any information put into a free-form text box must be reported to the Bureau as-is. Information placed in these free-form text boxes must be scrubbed to ensure there are no errors; therefore, credit unions must have the requisite compliance resources and staff to complete this task. Compliance resources are limited for smaller credit unions, and the removal of the free-form text boxes would provide some HMDA compliance relief. According to NAFCU’s June 2019 *Economic & CU Monitor Survey*, 56 percent of respondents reported the collection of data in the free-form text fields as moderately challenging, and 11 percent of respondents indicated the collection as very challenging. Also, free-form text boxes provide the Bureau with disaggregated data that does not assist in fulfilling HMDA’s stated purposes. The disaggregated data provides outliers or inaccurate data reported by an applicant. Any potential usefulness of the data collected in the free-form text boxes does not outweigh the burden of the manual compliance work that it creates. Therefore, NAFCU recommends the removal of all free-form text boxes.

Reporting and Collecting HMDA Data Points for Automatic Lending Denials

NAFCU remains concerned about situations involving an automatic denial process and whether HMDA data must be collected and reported. Numerous credit unions have an automatic denial processes in place in which a submitted application is automatically denied on the basis of certain criteria, such as a certain FICO score, as predetermined by the credit union. To illustrate this issue, applications subject to an automatic denial process are never assigned to a loan officer, thus NMLS ID data information is not collected. Beside the NMLS ID data point, there are additional data points that are not collected at the time of the automatic denial.

The amount of HMDA data collected is dependent upon the credit unions’ definition of an “application.” For instance, if a credit union’s Regulation B and Regulation C definition of an application is the same as the *Truth in Lending Act/Real Estate Procedures Act* (TILA/RESPA) Integrated Disclosure Rule (TRID), then it is more likely that HMDA data is not collected. Under TRID, there are only six pieces of information required for an application. These include: name, income, social security number, property address, and estimate of the value of the property, and the mortgage loan amount sought. Conversely, if the credit union’s Regulation B and Regulation C definition are more extensive than TRID’s definition, more HMDA data points may be collected.

Currently, there is no clear guidance on whether a credit union must obtain the missing HMDA data points when the application has been denied, or how this should be reported on the LAR. Obtaining missing HMDA data from an applicant is burdensome and time consuming. In addition, a credit union would have to reach out to members who ultimately will not be receiving the loan

for which they applied. Therefore, NAFCU recommends the Bureau provide guidance on whether HMDA data must be obtained for applications subject to an automatic denial process, and how this information must be reported on the LAR.

Collection Practices

In general, the regulatory and operational burdens on credit unions have increased over the past few years. Implementation of changes has increased costs associated with HMDA compliance. Increased costs include additional full-time employees hired, as well as additional costs for research, quarterly and annual reviews, and risk assessments. According to NAFCU's March 2019 *Economic & CU Monitor Survey*, 49 percent of respondents noted that HMDA-related compliance costs exceeded their initial estimates. Increased costs ranged from 10 to 50 percent more than expected and budgeted. Some credit unions' core service providers included HMDA compliance in service contracts, therefore no implementation or on-going costs were incurred; however, this varied across service providers. In addition to increased costs for HMDA compliance, NAFCU members encountered several reporting issues in submitting data prior to the March 2019 deadline.

Several NAFCU members report that service providers did not have the required systems updated and in place for the 2019 filing deadline. Thus, credit unions had to manually enter the information or find work-arounds in order to timely file the required HMDA data. NAFCU previously voiced concerns to the Bureau that this issue may happen and had requested a one-year delay of the general effective date to allow systems to update. Some NAFCU members experienced issues with their loan origination systems (LOS) not mapping to the HMDA platform correctly. According to NAFCU's March 2019 *Economic & CU Monitor Survey*, 53 percent of respondents use separate LOS systems for different types of loans. Credit unions must then standardize the output of all LOS data to meet HMDA requirements. In addition, credit unions reported issues where LARs would revert to previous versions when uploaded to the HMDA platform. This reversion caused confusion for filers who thought they had corrected syntactical or validity errors but continued to receive error codes. This also significantly slowed the technical review process for credit unions and service providers. NAFCU requests that any data point revisions or eliminations made in the future allow sufficient time for LOS providers to update their software ahead of the annual HMDA filing deadline.

Privacy Concerns

Lastly, we would like to reiterate our concern that the vastly expanded HMDA data point collection raises serious privacy concerns. HMDA reports currently include the name of the credit union, mortgage amount, year of transaction, and census tract of the property. Reporting of this information already provides an opportunity to identify the majority of mortgagors under HMDA. HMDA data collected and reported includes sensitive and non-public information, and the disclosure could leave members less secure and potentially more vulnerable to targeted scams. We appreciate the Bureau's final policy guidance completely excluding some loan-level data, when applying the Bureau's balancing test. Despite the Bureau grouping certain loan-level data into value ranges, we are still concerned about privacy even after modification of the sensitive

information. NAFCU urges the Bureau to initiate the rulemaking process regarding the public release of HMDA data as noted in the agency's spring 2019 rulemaking agenda.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU is supportive of regulatory relief in collecting and reporting HMDA data points. The burden of compliance should not outweigh the benefit to the Bureau, and the required data points must further the intent and stated purpose of HMDA. NAFCU supports fair lending and non-discriminatory lending practices. NAFCU recommends the Bureau eliminate the data points adopted pursuant to its discretionary authority. In addition, the Bureau should eliminate or revise those data points that are overly burdensome and cause confusion during the collection and reporting process. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,



Kaley Schafer
Regulatory Affairs Counsel