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March 14, 2016

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

RE: Home Mortgage Disclosure Act (HMDA) Resubmission Guidelines (Docket No.: CFPB-2015-0058)

Dear Ms. Jackson:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the Consumer Financial Protection Bureau's (CFPB) request for information regarding potential changes to its Home Mortgage Disclosure Act (HMDA) resubmission guidelines. *See* 81 FR 1405 (January 12, 2016). NAFCU and our members urge the Bureau to mitigate the burden of HMDA data reporting by increasing the error percentage thresholds to reduce the likelihood of triggering the requirement to resubmit data in addition to creating a safe harbor for institutions reporting few entries on their loan/applicant register (LAR).

General Comments

NAFCU and our members believe that the well-being of consumers begins with fair lending and we support HMDA's mission to ensure that consumers receive access to credit in the housing market. As member-owned not-for-profit cooperatives, credit unions are dedicated to providing their members with financial products designed to help each member reach their individual financial goals. At the same time, NAFCU remains concerned that the tidal wave of regulation related to mortgage lending has significantly altered the market in unintended ways. For example, the HMDA final rule has undeniably required credit unions to revise their mortgage origination and servicing operations, setting off a chain of high-cost and time-intensive system upgrades.

While amending the HMDA resubmission guidelines will surely impact all financial institutions, the Bureau's course of action is of significant importance to small institutions. In particular, despite reporting comparatively small amounts of HMDA data, a small institution triggering the requirement to resubmit data would be required to expend significant cost and staff time to manually resubmit HMDA data on top of the resources already exhausted during the initial reporting process. NAFCU believes the Bureau should increase the error percentage thresholds that trigger the requirement to resubmit data, create a safe harbor for entities reporting fewer entries on their LAR, continue to work towards an improved submission process, and develop strong procedures for protecting sensitive borrower information.

Resubmission Guidelines

Increased Error Percentage Thresholds

The Bureau needs to recognize the substantial costs inflicted by the current resubmission guidelines and increase the error thresholds while also providing a safe harbor for institutions that report fewer applications on their LAR. Under the current resubmission guidelines, institutions reporting fewer than 100,000 loans or applications on the LAR are required to correct and resubmit HMDA data when errors are found in (1) ten percent or more of the LAR sample entries; or (2) five percent or more of sample entries within an individual data field. For institutions reporting 100,000 or more entries on the LAR are required to correct and resubmit HMDA data when errors are found in (1) four percent or more of the LAR sample entries; or (2) between two and four percent of the sample entries within an individual data field. However, the guidelines also note that resubmission may be required even if error rates are below the specified thresholds if the errors make analysis of the institution's lending unreliable.

The current resubmission scheme is especially troublesome as Regulation C has been amended to substantially increase the number of reported data points. Although admittedly some of the data points were explicitly mandated by the *Dodd–Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act), a considerable number of data points were added at the CFPB’s discretion. These discretionary data points have swelled the data set to roughly 38 total data points, which is more than double the current reporting requirement.

Many credit unions do not have the depth and breadth of staff resources and technology to reprogram their systems in order to accommodate these discretionary data points without incurring significant costs. For credit unions that do not have automated collection systems, the expanded HMDA data set poses a significant implementation cost because loan officers at these credit unions manually enter the data points into a spreadsheet prior to review by another party. Even credit unions that utilize automated systems often conduct manual accuracy reviews of the data before submission. While NAFCU and our members support the accurate reporting of HMDA data, we remain concerned that the current resubmission guidelines are not compatible with the substantially expanded data set and only serve to inflict additional regulatory burden.

In order to ease the compliance burden on institutions, the Bureau should increase the error percentage thresholds that trigger the requirement to resubmit HMDA data. Although reporting institutions conduct carefully coordinated procedures for the collection and review of the required HMDA data, it is likely that some errors may occur during the long process from collection to submission. This likelihood rises as the number of data points expands and becomes more complex. It is important to note, resubmission is not a simple process. An institution that is required to resubmit its HMDA data often has to do so manually and at great cost in staff time and financial resources, regardless of whether or not the errors were immaterial or unintentional. NAFCU believes increasing the error percentage thresholds would go a long way towards minimizing the number of institutions that would be required to resubmit their data to the Bureau as a result of unintentional and harmless errors.

Resubmission Safe Harbor

NAFCU acknowledges that the CFPB's HMDA final rule made an effort to exempt low-volume lenders from the requirement to report through the codification of loan-volume thresholds. However, a significant number of small institutions still fall within the reporting requirements of HMDA. As a result, NAFCU recommends the Bureau create a safe harbor for low-volume lenders, which report fewer entries on their LAR, to ensure that these institutions will not be required to bear the substantial financial weight of resubmission. Such a safe harbor would provide regulatory relief to small institutions reporting HMDA data while still ensuring the overall HMDA data is accurate and informative of lending patterns.

HMDA Data Submission Process

In the final rule, the Bureau detailed a new web-based tool for electronically submitting HMDA data was in development and financial institutions will be required to submit data electronically beginning in 2018. NAFCU believes the swift development of this tool is necessary as the current process of submitting (and potentially resubmitting) HMDA data to the Bureau is impractical and results in confusion and frustration. Consequently, NAFCU strongly supports the Bureau's efforts to remedy these issues and establish an electronic system of submitting HMDA data that not only precipitates accurate reporting but also allows credit unions to efficiently fulfill their HMDA reporting obligations.

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, has created substantial privacy concerns. In particular, it is likely the additional reported data points can more easily be linked to individual applicants or borrowers.

The sensitivity of the additional data being collected under HMDA coupled with the Bureau's control over the disclosure of data to the public has resulted in the need for the CFPB to actively engage the industry as they move forward with the HMDA rule's implementation. The Bureau has already stated in the preamble to the final rule, and in the supporting statement for this information collection, that it will be gathering additional feedback on the use of the privacy balancing test to determine which HMDA data will be publicly disclosed, redacted, or modified.

NAFCU and our members look forward to continuing our work with the Bureau to ensure consumers' privacy interest are protected.

Conclusion

As the CFPB has repeatedly acknowledged, credit unions have not engaged in the type of practices that the Bureau is seeking to prevent through a modified and expanded Regulation C. And yet, the rule's compliance requirements will undoubtedly add to the regulatory burden felt by credit unions, which drains resources and limits their ability to serve their members. Therefore, NAFCU and our members urge the Bureau to address the overwhelming regulatory burden by increasing the error percentage thresholds to reduce the likelihood of triggering resubmission and creating a safe harbor for institutions reporting few entries on their LAR.

NAFCU appreciated the opportunity to share its thoughts on the resubmission guidelines and other HMDA issues. Should you have any questions or concerns, please feel free to contact me at amonterrubio@nafcu.org or (703) 842-2244.

Sincerely,

Alexander Monterrubio
Regulatory Affairs Counsel