3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

January 20, 2022

Comment Intake – HMDA Assessment
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

RE: Request for Information Regarding the HMDA Rule Assessment (Docket No.: CFPB-2021-0018)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Consumer Financial Protection Bureau's (Bureau or CFPB) request for information (RFI) regarding its assessment of the 2015 *Home Mortgage Disclosure Act* (HMDA) Rule and its related amendments. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products. NAFCU appreciates the Bureau's efforts in assessing the HMDA rule and its related amendments as credit unions continue to face significant compliance burdens in reporting the required data. Among other things, NAFCU recommends that the Bureau remove unnecessary and unused data points and allow lenders to input "Not Provided" in the government monitored information (GMI) text boxes. Additionally, the CFPB should permanently increase the reporting thresholds for both open-end and closed-end loans.

General Comments

Congress originally enacted HMDA to promote transparency in the mortgage market. The purpose of HMDA is to provide the public with loan data that can be used to help determine whether financial institutions are serving the housing needs of their communities; to assist public officials in distributing public-sector investment to attract private investment to areas where it is needed; and to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. The HMDA rule contains four major elements: (1) institutional coverage and loan-volume thresholds; (2) transactional coverage; (3) data points; and (4) disclosure and reporting requirements. The Bureau is focusing its assessment for this RFI on institutional and transactional coverage, data points, the benefits of the new data and disclosure requirements, and operational and compliance costs. NAFCU's credit union members have always supported the intended purpose of HMDA and do not participate in discriminatory lending practices. Credit unions, as not-for-profit, member-owned community financial institutions always put their members first and aim to provide their communities with all of their financial product and service needs.

The HMDA rule and the data that it provides has brought greater transparency to the mortgage market. There is great value in the sum of the data collected because the collection of certain data required by the HMDA rule may be one of the best ways to help prevent and detect fair lending violations. Many of NAFCU's members use HMDA data to test for geographical analysis, look at trends, double check denials, and complete an analysis between their data and HMDA's data.

NAFCU applauds the Bureau for improving its software for collecting and uploading data; however, the Bureau can improve its analytics by using artificial intelligence (AI) and more robust technology to avoid unnecessary expenses. The utilization of AI could greatly improve analytics as well as reduce the challenges financial institutions face when trying to comply with HMDA. Compatibility of the HMDA system with the lender's system is a challenge faced by financial institutions when it comes to compliance with HMDA, sometimes requiring manual input of the data. The utilization of AI can reduce, and eventually eliminate, this challenge, reducing the amount of hours spent on HMDA compliance.

The unnecessarily burdensome operational and compliance costs of HMDA outweigh its benefit

Complying with HMDA is very expensive and unnecessarily burdensome for credit unions. NAFCU's members have experienced increased costs in the operation of and compliance with the HMDA rule. Despite the value of some HMDA data, the operational and compliance costs of HMDA outweigh its benefit for credit unions. According to NAFCU's 2021 *Annual Report on Credit Unions,* over 52 percent of respondents noted an increase in regulatory burden associated with HMDA in the last five years. Over 64 percent of respondents expect HMDA-related burdens to increase in the next three years, and 18 percent expect to increase staff devoted to HMDA compliance.

Changes in the HMDA rule have increased the complexity of HMDA reporting, creating more burdensome projects for lenders. Consequently, some credit unions have been forced to use a third party to assist with their HMDA compliance. NAFCU urges the Bureau to consider the impact of HMDA on community financial institutions, as these compliance costs will inevitably be passed on to consumers. One of NAFCU's members reported that they spend nearly $14,000 a year for HMDA software, not including the time and effort required to compile, update, explain, and analyze the data. That figure also does not include any programming and/or training for the Loan Origination System (LOS) that collects the data. NAFCU members initially thought HMDA would mainly involve one-time costs, but instead they have found that compliance with HMDA requires significant ongoing costs. Another one of NAFCU's members reported that it requires about 400 hours every year to comply with the HMDA rule.

In order to prevent errors, some credit unions implemented a HMDA review pipeline in which their underwriter goes into every loan and makes sure that all the information inputted is correct, taking the underwriter away from their regular duties. This loan review by the underwriter makes complying with HMDA a very manual process, even though it does decrease errors. The underwriter also reviews the HMDA report daily. NAFCU urges the Bureau to work with LOS

vendors to develop a system that incorporates HMDA reporting requirements to decrease the manual aspect of the process.

Credit unions have also been forced to significantly increase their operational staff to comply with HMDA. In some cases, credit unions have had to hire specific HMDA data analysts and employees to operate the Bureau's systems for HMDA compliance. Additionally, there are excessive employee training costs that come with complying with the HMDA rule. HMDA data not only has to be collected, but it also must be scrubbed to ensure compliance with the HMDA rule. Credit unions have inevitably had to implement audits and risk assessments on HMDA data due to the increase in required data points, and the time for these assessments continues to increase.

NAFCU urges the CFPB to eliminate the discretionary data points that do not contribute to the rule's stated purpose

The extreme expansion of data points required by the HMDA rule are beyond what the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) required and do not contribute to the purpose of the HMDA rule's inception. Several of the data points required to be reported are burdensome for credit unions to collect and represent regulatory overreach by the Bureau. Most of the data points pose significant system and operational challenges, and they do not transition well from application to software reporting. Due to the increased amount of data points, there is a high percentage of errors in the reporting process, which requires more due diligence on the part of the credit unions. This means more time and money spent on complying with HMDA.

Many of the data points can be eliminated because they are connected to one another. Moreover, there is no room for error because if a mistake is made, that creates a waterfall effect. The more data points that are required, the more scrubbing and testing required. NAFCU recommends that the Bureau eliminate the mandatory reporting of discretionary data points and only require those that were defined under Dodd-Frank. NAFCU also urges the Bureau to inform credit unions just how it intends to use data points when they are added to help institutions understand the Bureau's rationale and the importance of specific data points.

Rate Spread

The rate spread data point can be especially difficult to calculate within the HMDA software and regularly populates errors. 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. In some LOSs, the rate spread data point causes issues because it cannot provide an output. To fix this, credit unions have had to manipulate the information and convert it to something that works with the LOS and the Bureau's system.

The Dodd-Frank Act 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. Interest rates of HELOCs are based on the value of the property, therefore calculating the APOR of HELOCs provides no additional transparency and does not provide a more complete picture of the mortgage market.

Subcategories

The subcategories for the government monitoring information (GMI) data points add no value to the HMDA data; the Bureau does not use them and that is evidenced by the Bureau's HMDA reports. Further, for purposes of redlining/geographical and other related analyses, these subcategories are not typically utilized. These analyses are usually conducted at the main GMI category levels. Additionally, when taking an application in person or over the telephone, credit unions must read every GMI subcategory, another burdensome aspect of complying with the HMDA rule, with no benefit. In fact, credit unions have reported that applicants have shown their distaste for this requirement, including feeling that the credit union is prying too deeply into their personal information, as well as unnecessarily lengthening the application intake time.

When an application is being taken in person and the applicant says he or she does not wish to provide the GMI data, the HMDA rule requires the credit union to guess the applicant's race and ethnicity based on visual observation or surname. In general, "guessing" provides no added value to the purpose of HMDA, as it very well may provide inaccurate data about an applicant's race or ethnicity. Further, "surname" is an outdated and even more inaccurate way for collecting GMI data. Requiring credit unions to "guess" an applicant's race or ethnicity, whether by visual observation or surname, is burdensome and is not likely producing accurate or reliable data, and therefore, the benefit of doing so is highly outweighed by the burden.

NAFCU understands that GMI is needed and why it is required but the data points surrounding GMI are outdated and give the wrong information for outputs. Guessing has no place in HMDA because it creates inaccuracies in the data being provided as there is no way of ensuring that the guess is correct. Lenders should not be tasked with assuming their member's race, gender, etc.; this is information that will make the data useless if it is not accurate. NAFCU recommends that the Bureau remove the requirement that lenders must provide GMI data for applicants that choose not to provide it during in person applications and, rather, allow lenders to input "Not Provided" in the GMI text boxes if an applicant chooses not to provide that information.

The subcategories of the ethnicity/race category pose multiple collection and reporting burdens that outweigh the benefits of collecting the data. 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 that does not further this goal. Additionally, lenders are required to report whatever is entered by the applicant, regardless of legitimacy, accuracy, or spelling. These additional sub-categories are causing lengthier application processes and borrower frustrations, especially for applications taken over the telephone. As a result, the overall member experience is negatively impacted.

NAFCU recommends that the Bureau modernize Regulation C to address the development of gender identification. Numerous states now permit nonbinary gender to be shown on state-issued IDs, but HMDA only allows for “Female, Male, or I do not wish to provide.” Making HMDA subcategories consistent with state law gender identifications allows for consistency across the board.

Business or Commercial Purpose

There is a transaction indicator data field on the loan/application register (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 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 are Not Applicable, this does not further the purposes of HMDA, causing the burden to outweigh the benefit. Therefore, the Bureau should eliminate this data point.

Loan Purpose

Revising data points to reflect common industry definitions will better assist the Bureau in its stated purpose. Specifically, 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.” This inconsistency with industry definitions requires credit unions to enter the information manually. Industry standards should be recognized and utilized as they are consistent across financial institutions and reduce the confusion and unnecessary compliance burdens caused by manual entry.

For lenders that use the Uniform Residential Loan Application (URLA), there is a disconnect between loan purpose for HMDA reporting and loan purpose on the URLA, including for Home Equity Line of Credit (HELOC). An example is, a HELOC that does not satisfy and replace another lien on the property is reflected as a “refinance” on the URLA but is reported as “other” on the HMDA-LAR. These inconsistencies create system programming challenges and increase the regulatory burden on lenders. NAFCU recommends that the Bureau make its data points consistent with the URLA and revise all data points to account for industry adopted definitions.

Thresholds

As the temporary thresholds expired on January 1, 2022, NAFCU again urges the Bureau to adopt increased reporting thresholds for both open-end and closed-end loans. NAFCU supports

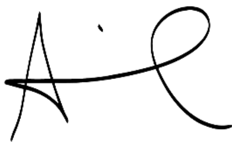
increasing the institutional and transactional coverage thresholds, which exempt from HMDA reporting requirements smaller credit union lenders that may be unable to scale operations and absorb the costs of compliance. NAFCU appreciates the Bureau's recent rulemaking efforts to permanently increase the threshold for closed-end loans from 25 to 100 and for open-end loans from 100 to 200, as this has provided some regulatory relief to credit unions that are not high-volume mortgage lenders. The temporary open-end loan threshold of 500 was particularly helpful for credit unions, and NAFCU urges the Bureau to either increase this threshold, or, in the alternative, make the 500-loan threshold permanent.

Increased loan thresholds will provide more long-term meaningful relief for credit unions. As highlighted, the compliance costs the HMDA rule continue to increase as does the operational complexity of reporting. Due to historically low interest rates and pandemic conditions over the past two years, the credit union industry saw slightly higher mortgage lending in both 2020 and 2021. For many credit unions, this increased volume was unexpected, and they will have to start planning for HMDA reporting and compliance. NAFCU urges the Bureau to adopt higher reporting thresholds as soon as possible for both closed and open-end mortgage loans and then continue to adjust these thresholds as necessary.

Conclusion

NAFCU appreciates the opportunity to comment on the Bureau's RFI and supports the assessment of the HMDA rule because it is unduly burdensome and costly for NAFCU's member credit unions. NAFCU recommends that the Bureau allow lenders to input "Not provided" in the GMI text boxes, remove unnecessary and unused discretionary data points, and permanently increase the reporting thresholds for both open-end and closed-end loans. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2268 or amoore@nafcu.org.

Sincerely,



Aminah Moore
Regulatory Affairs Counsel