MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

May 25, 2017

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

RE: **Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure Act (Regulation C) October 2015 Final Rule; CFPB – 2017-0010; RIN 3170-AA64**

Dear Ms. Jackson:

The Michigan Credit Union League (MCUL), the statewide trade association representing 100% of the 244 credit union located in Michigan and their 5 million members appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) Proposed Rule on Technical Corrections and Clarifying Amendments to the Home Mortgage Disclosure Act (HMDA) October 2015 Final Rule.

The MCUL would like to preface our comments with our ongoing concerns associated with the overwhelming amount of regulation that has been imposed upon credit unions since the enactment of the Dodd-Frank Act. Credit unions, along with community banks, have spent thousands of dollars on costs associated with compliance changes related to the CFPB's mortgage rules including the costs associated with changes to core systems, policies, procedures, employee training and updates to documentation. The MCUL urges the CFPB to understand the negative impact the countless pages of regulation have imposed upon credit unions, an industry that did not contribute to the financial crisis. The inundation of regulation is causing smaller institutions to merge or liquidate because of the burden associated with compliance. The MCUL does not believe it is the intention of the CFPB to cause community based institutions to suffer, however it is a very real consequence that the CFPB should consider.

The CFPB's HMDA rule is not precluded from causing significant burden to credit unions. With the effective date drawing closer credit unions are again feeling overwhelmed and struggling to come into compliance. With this recent proposed rule addressing technical corrections and clarifying amendments to the final rule – while necessary – the MCUL believes the CFPB should take the opportunity to address more than just those issues identified in the proposal.

The intent of the proposal is to provide clarifications, technical corrections, or minor changes and to address areas of the 2015 final rule that the CFPB has identified that may be problematic. The MCUL is supportive of a number of the technical corrections and clarifying amendments proposed

but agrees with our national association, Credit Union National Association (CUNA), that there are a number of issues in the proposal that need to be addressed.

As CUNA noted in their comments to the CFPB, the following issues have been identified with the rule as proposed:

1. The amendments to the commentary for section 1003.2(f) suggests that a loan "secured by five or more separate dwellings in more than one location should be reported as secured by a multifamily dwelling" would appear to conflict slightly with the definitions under Regulation X (RESPA) 1024.2 and under the Truth-in-Lending Act (Regulation Z) in 1026(a) which would classify them as a 1-4 family loan (unless they are for business purposes). It is recommended these definitions be harmonized.

2. It is recognized that the comment deadline for this rule is approximately 6 months prior to the January 1, 2018 mandatory compliance date to begin collecting data under the rule. Any final rule is likely to occur after the January 1, 2018 effective date which presents a host of compliance, implementation and programming issues for credit unions. Although the proposed rule does provide effective dates to take effect on January 1, 2019 or January 1, 2020 to correspond to related effective dates for amendments included in the Final Rule, the better approach would be to delay compliance with the entire 2015 HMDA Final Rule until the CFPB completes the appropriate clarifications, or for at least one year, to avoid confusion as to the interpretation of the rule.

3. We also note the CFPB's statement that it believes this proposal will not add additional costs to financial institutions. Any change to the data collection means credit unions will spend time updating policies and procedures, audits and adjusting programming in their systems. Although these proposed changes are favorable and ultimately will make compliance easier, they do not happen in a vacuum. Any change to the regulations will create a cost to institutions.

Compliance Burden - Reporting HELOCs

While not explicitly addressed in this proposal the MCUL would like to take the opportunity to further address the compliance burdens the HMDA Final Rule is imposing upon credit unions, specifically the new requirements for reporting Home Equity Lines of Credit (HELOCs). The 2015 Final Rule makes mandatory, reporting of HELOCs. Until now HELOC reporting has always been voluntary. Many credit unions, including the MCUL member credit unions providing feedback, indicate their HELOCs are on separate systems from regular mortgages and the financial impact for having to modify systems, reporting and other checks and balances was not considered in the financial impact of the 2015 HMDA Final Rule.

The additional reporting requirement will disproportionately impact small credit unions at a much greater level than large credit unions. This additional coverage will drastically increase the number of loans being reported by credit unions. At a minimum, the MCUL, together with CUNA,

encourages the CFPB to allow for the separate reporting of HELOC HMDA data versus closed-end reporting so institutions with separate systems are not required to bear the overwhelming costs of combining data generated from separate systems into one report for purposes of filing. The CFPB would receive the same underlying set of data, yet the compliance costs would be markedly reduced. This is an easy technical change to a known compliance issue that would be a logical extension of this proposed rule.

Privacy Concerns

In our previous comments to the CFPB during the comment period for the 2015 Final Rule, the MCUL expressed concerns over privacy of member information. The 2015 Final Rule contained a "balancing test" that the CFPB indicates that it will utilize to determine which data points will be made available to the public and in what format the data will be made available. If a significant number of new data points are to be published credit unions could be subject to a public purview of their proprietary underwriting criteria.

The CFPB indicated it will allow a process for the public to provide input regarding the application of the "balancing test", yet six months before the January 1, 2018 effective date, the CFPB has yet to provide a process. Credit unions and consumers are in the dark as to how the individual personal financial information will be used by the CFPB or to whom it will be made available. This lack of transparency raises serious confidentiality and privacy concerns as fields such as age, credit score, address, loan-to-value and debt-to-income ratio are included in the data.

The MCUL fails to understand the need for this extensive amount of information to be publicly available when regulators have access to this type of information through other means, outside of HMDA data. It would appear that the CFPB is using their authority to expand and impose requirements on financial institutions who can barely keep pace, both from a financial and interpretive basis on the vast amount of regulation.

Due to these concerns the MCUL supports the following additional changes recommended by CUNA.

1. Delay the effective date of the HMDA 2015 Final Rule for at least one year or until such time as the CFPB has articulated which data points will be made public and in what format.

2. Conduct a study regarding the impact on consumer privacy resulting from information made published available under HMDA and the potential for identify theft; and

3. Limit the number of required data points to only those expressly mandated under the Dodd-Frank Act and not the additional, extensive CFPB created data points, yet add little in the way of useable data to enforce the underlying purpose of HMDA and create an enormous compliance burden on credit unions.

Dodd-Frank Section 1022 Authority to Exempt Credit Unions

Countless letters with bipartisan support have been sent urging the CFPB to exercise its exemption authority under Section 1022 of the Dodd-Frank Act. As recently as August 10, 2016 the Credit Union National Association, with the support of all state credit union leagues submitted another request urging the CFPB to exercise its exemption authority. The MCUL would like to add emphasis to one particular section of this letter:

> *We believe that Congress was very clear in the enactment of the Dodd-Frank Act that the CFPB has the ability to exempt any class of entity from its rulemaking. Where there is no evidence of harm to or abuse of consumers, the CFPB should exercise this authority so that providers that have been serving consumers in a safe and affordable manner can continue to do so efficiently. The CFPB's resistance to the plain language of the statute and the subsequent bipartisan message of more than three-quarters of the elected representatives in the federal government is baffling and disrespects the consumers who elected the Congress. We strongly encourage the CFPB to reconsider its perspective on Section 1022 and finalize rules that allow credit unions to continue to offer services to consumers under the current regulatory scheme.*[1]

Also in 2016 Congress sent letters to the CFPB, with 329 Members of the House of Representatives and 70 Senators – bipartisan supermajorities of both chambers – urging the CFPB to use its exemption authority to protect credit unions and their members from burdensome regulations.[2]

In their letter, the Representatives state:

> When Congress passed the Dodd-Frank Act, it specifically recognized the need to tailor regulations to fit the diversity of the financial marketplace. Section 1022(b)(3) gives the CFPB authority to adapt regulations by allowing it to exempt "any class" of covered persons from its rulemakings. As you undertake this and other rulemakings, we urge you to consider the benefits credit unions and community banks provide and ensure that regulations do not have the unintended consequences of limiting services or increasing costs for credit union members.[3]

The Senators were just as unequivocal:

Dodd-Frank explicitly granted the CFPB the authority to tailor regulations in Section 1022(b)(3)(A) by allowing the CFPB to "exempt any class" of entity from its regulatory requirements. We believe the CFPB has robust tailoring authority and ask that you act accordingly

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[1] http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Removing-Barriers-Blog/Removing-Barriers-Blog/We-are-Dissapointed-in-CFPB-s-Rejection-of-Bipartisan-Calls-for-Expanding-Exemption-Authority/

[2] Letter from 329 U.S. Members of the House of Representatives to CFPB Director Richard Cordray, *available at* http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-and-Testimony/Letters/2016/Stivers-Schiff-Letter-w-signatures/ (Mar. 14, 2016).

[3] *Id.*

to prevent any unintended consequences that negatively impact community banks and credit unions or unnecessarily limit their ability to serve consumers.[4]

Section 1022(b)(3) of the Dodd-Frank Act gives the authority to adapt regulations by allowing it to exempt 'any class' of covered persons from its rulemakings.

(3) Exemptions –

(A) In general – The CFPB, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the CFPB determines necessary or appropriate to carry out the purposes and objectives of this title in subparagraph (B).

(B) Factors – In issuing an exemption, as permitted under subparagraph (A), the CFPB shall, as appropriate, take into consideration –

(i) the total assets of the class of covered persons;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.[5]

It is also important to address Section 1022(b)(2)(A)(ii) of Dodd-Frank that requires the CFPB to specifically consider the impact of its rulemakings on depository institutions under $10 billion in assets. The section explicitly states:

"(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the CFPB shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

This means the Consumer Financial Protection CFPB *must* consider the impact of their new regulations (or changes to existing regulations) on credit unions below $10 billion in assets. This is a statutory requirement.

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[4] Letter from 70 U.S. Senators to CFPB Director Richard Cordray, *available at* http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-and-Testimony/Letters/2016/160718-Letter-to-CFPB-on-Tailoring-Regulations/ (July 2016).

[5] https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm

To that end the MCUL would like to call on the CFPB to follow what is in statute and recognize the difference of credit unions from other financial service providers and strongly consider utilizing their exemption authority under any current and future rulemaking.

The MCUL supports the CFPB's efforts to fix known issues with the 2015 HMDA Final Rule. However, we strongly encourage the CFPB to consider further measures of clarification and regulatory relief for credit unions, specifically an outright exemption as discussed in our comments.

Sincerely,

Dave Adams
CEO, Michigan Credit Union League and Affiliates