October 29, 2014

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

RE: **Home Mortgage Disclosure, Docket No. CFPB-2014-0019, RIN 3170-AA10**

VIA ELECTRONIC MAIL: www.regulations.gov

Dear Ms. Jackson,

The Michigan Credit Union League (MCUL), the statewide trade association representing 97% of the credit unions located in Michigan and their 4.5 million members, appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB's) proposed rule amending Regulation C which implements the Home Mortgage Disclosure Act (HMDA).

The MCUL prefaces this comment letter with significant concerns associated with the tremendous amount of new regulation being imposed on credit unions. Individually, credit unions, along with other financial institutions have spent thousands of dollars to comply with the CFPB Mortgage Rules that became effective at the beginning of 2014. Additionally, credit unions are in the process of spending thousands of additional dollars for changes required under the CFPB's Integrated Mortgage Disclosures. After all the changes to technology systems, policies, and procedure takes place, along with employee training, they will again have to spend additional capital and employee time to comply with the necessary changes in this proposed rule. The MCUL strongly urges the CFPB to take into account the negative and unnecessary impact these proposed regulations are having on an industry that did not contribute to the financial crisis. The avalanche of new regulations has become a primary driver for our smaller institutions to merge as the burden of compliance has accelerated. The MCUL does not believe it is the intention of the CFPB to cause community based institutions to struggle or close – yet, the pressure of all the new regulations is having this effect.

Institutional Coverage

The MCUL strongly disagrees with the 25 loan threshold proposed by the CFPB. This appears to be an arbitrary number set by the CFPB, similar to Regulation E revisions providing a safe harbor for credit unions who issue 100 international remittance transfers. This threshold is far too low and doesn't provide a reasonably sized small institution exemption. For these reasons and those stated earlier, summarizing the significant costs

Headquarters: 101 S. Washington Square, Suite 900, Lansing MI 48933-1703
Mailing Address: P.O. Box 8054, Plymouth, MI 48152-7097
Toll-Free: 800.262.6285 • Web: mcul.org

and impact to credit unions, the MCUL encourages the CFPB to increase this threshold significantly, to 1000 loans at a minimum.

Transactional Coverage

The CFPB proposes to expand HMDA coverage to include mortgage loans, reverse mortgages and lines of credit secured by a dwelling. This expanded coverage will mandate reporting on home equity loans and certain commercial loans. Although the CFPB believes these modifications would simplify the regulation, at what expense? This additional coverage will drastically increase the number of loans being reported by credit unions. This expanded coverage translates into additional system enhancements since lending platforms are typically different for home equity and commercial lending products, additional staff time to compile and aggregate data, and staff training.

Although the CFPB is correct that credit unions find the regulation confusing and experience compliance challenges when determining whether and how to report the data, the MCUL does not believe that all-inclusive transactional coverage is the appropriate solution. In short, expanding the compliance burden will not make the regulation easier to comply with – it will make things worse.

Composition of Loan Volume Test

As discussed previously, the MCUL believes the 25 loan threshold proposed by the CFPB is too low. Consistent with that, the MCUL does not believe that open-end lines of credit should count towards the proposed loan volume threshold. There are a significant amount of smaller asset sized credit unions that don't have the knowledge or portfolio capacity to provide closed-end first mortgages. However, they do have the in-house expertise to provide their members with the availability of a home equity line of credit (HELOC). Including HELOCs in the threshold would cast a wider coverage net and significantly impact more credit unions, particularly smaller institutions.

Home Improvement Loan

The MCUL supports the clarification and subsequent exclusion of home improvement loans that are not secured by a lien on a dwelling. This will ease the compliance burden associated with the credit union's determination of the purpose of a loan without collateral.

The CFPB has indicated they are not aware of any instance where a community group relied on unsecured home improvement data to determine if a financial institution was serving the housing needs of a neighborhood. The MCUL therefore questions the need for including home equity loans, as proposed in the HMDA reporting process. Borrowers utilize home equity loans for different purposes, most commonly home improvement and debt consolidation. The MCUL fails to see the relevance of including these types of loans, even if they are unsecured, as they are analogous to the home improvement loan for this consideration. These two common reasons for obtaining a home equity loan do not include serving the housing needs of the neighborhood. Is the same data distorting the overall quality of the HMDA dataset? The CFPB indicates that "excluding unsecured home improvement loans from the set of reportable data would improve the quality of the

data, which would provide citizens and public officials of the US with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment." It is also noteworthy that, while credit unions adhere to such standards voluntarily, they are not subject any legal obligations under the Community Reinvestment Act or similar laws – this impliedly subjects credit unions to a metric and a burden that is not legally required of them.

The CFPB notes that another reason for expanding the scope to include all dwelling-secured lines of credit is to prevent evasion of HMDA. The CFPB indicates that unscrupulous financial institutions could attempt to evade HMDA's requirements by persuading applicants to obtain an open-end line of credit instead of a closed-end mortgage loan. Data used to justify this inclusion was taken from hearings held in 2010, prior to the CFPB-issued revisions to the mortgage rules, which became effective in January 2014. The CFPB promulgated rules specifically to address steering consumers towards particular loan products with their loan originator compensation requirements. The MCUL strongly urges the CFPB to consider how the mortgage lending business has evolved since the implementation of those rules, as opposed to simply proposing more regulation to address the same issues at this time.

The CFPB also seeks comments on whether the regulation should be modified so that financial institutions would not be required to identify covered loans for the purpose of home improvement. If the regulation is approved as proposed, credit unions will be required to report on significantly more loans than previously required. With these proposed amendments, the determination has been made that the reportable criteria should be related to the collateral securing the loan. If the critical component to determine if financial institutions are serving the housing needs of their communities is in fact the use of the funds, the CFPB should require the reporting of loans used for that purpose, as opposed to just collateral requirements. With the increase in the types of loans that are required to be reported, the MCUL agrees that this would be administratively overwhelming for credit unions, without proper justification. The MCUL could potentially support the reporting on home improvement loans without the collateral requirements.

Owner-Occupancy

In general, the MCUL is concerned with expanding CFPB's reach beyond requirements in the Dodd-Frank Act, to request more information from credit union HMDA reporters. Specifically, the CFPB seeks comments on the proposed modification that will require the reporting of property as a principal residence, second residence or an investment property. The CFPB believes this information may be useful for communities and local officials to develop policies tailored to the unique characteristics associated with these types of purchases. However, the CFPB fails to provide sufficient evidence to support the need for this type of information, or for additional regulation beyond that already implemented by the agency, other than citation of recent studies that demonstrate that the speculative purchase of homes by investors contributed to the housing bubble that preceded the financial crisis.

HMDA reporting currently required financial institutions to report owner occupancy status. The regulation currently indicates that “not owner-occupied as a principal dwelling” is to be used for second homes or vacation homes, as well as rental properties. Before the CFPB strays outside of the scope of Dodd-Frank to require additional reporting and expense for financial institutions, timely research should be conducted and provided as to the actual necessity. What is insufficient about the current reporting requirements?

Additionally, the CFPB raises the housing market crisis as justification for the premature implementation of HMDA rules and exceeding the scope of Dodd-Frank. However, no recent research after the January 2014 effective date of the CFPB Mortgage Rules has been offered in connection with this assertion.

Parcel Identifier/ Postal Address

As the CFPB notes in their proposed rule, including a parcel identifier in the HMDA data raises significant privacy concerns because of the ability to easily identify that borrower. The same privacy concerns are inherent when collecting postal address, which can also be used in accessing local tax records to identify a borrower. The identity of the borrower, coupled with the expansive data being requested in this proposal, could result in a significant and unjustifiable intrusion on a credit union member’s privacy.

Demographic Information

The MCUL agrees with the elimination of any requirement to collect demographic information when the customer or member declines to specify that information. The MCUL concurs that a visual observation of demographic information is highly subjective, and places the financial institution in a poor position by overriding the wishes of applicants who do not wish to provide that type of information.

Rate Spread

The CFPB seeks comments on the scope of the rate spread reporting requirement and whether it should be expanded to cover purchased loans. The MCUL does not believe financial institutions should be required to include the rate spread between the annual percentage rate (“APR”) and the average prime offer rate (“APOR”) for a comparable transaction as of the date the interest rate is set. That determination, along with the additional disclosure requirements associated with a high priced mortgage loan (“HPML”) are required during the application, underwriting and pre-closing process. Requiring this information for the purchasing financial institution would require a retroactive manual process of determining the APOR and recording that information purely for the HMDA process.

Lien Status

The CFPB is proposing to require the reporting of lien status for purchased loans. Although the MCUL agrees that lien position does have an impact on loan pricing, the MCUL does not see the need to report this information, especially when the loan has

already been reported with lien status information by the originating institution. The MCUL also discourages the CFPB from creating a requirement to report the actual priority of the lien. “First lien” and “subordinate lien” provide sufficient evidence as to the potential disparity in pricing. The CFPB does not offer any significant justification for such a granular level of detail, which again will add to the reporting burden for credit unions.

Credit Score

The CFPB proposes the reporting of a credit score, when it is used as a factor in a credit decision, even if it was not a dispositive factor. The proposal would require financial institutions to report the name and version of the credit scoring model for the score reported in certain circumstances. While the CFPB requests comments on the commentary clarifying the reporting requirements when multiple credit scores are used, and on the fields described for reporting credit bureau data, the MCUL takes issue with the necessity of reporting credit score altogether. Specifically, the MCUL is deeply concerned that when combined with information required in other data fields, such as the parcel number of a property, the financial profile of a member could be exposed and the their privacy compromised.

Origination Fees / Discount Points / Pre-Discounted Rate

With the requirement to include the aggregation of borrower-paid origination fees, the CFPB is correct in their analysis as to the limitations of this data in providing useful information. However, the MCUL agrees that if the CFPB believes this information is important, that it should coincide with the required “borrower-paid” reporting field on the new mortgage Closing Disclosure. However, the MCUL notes that with the proposed HMDA increase in coverage to home equity lines of credit, this information would not be collected for this product type. This begs the question as to the true usefulness of the data. The proposed HMDA revisions appear designed to capture as much data as possible, without supporting justification as to the true use or benefit.

Additionally, the CFPB proposes to require reporting of the APR the borrower would have received if they did not utilize any discount points or rebates. The CFPB is correct that not all financial institutions store this calculation in the same “system readable” format as with existing HMDA data fields. As with many of the data points being proposed by the CFPB, entire systems will have to be overhauled, along with policies and procedures, in order to make sure certain information is recorded and calculated properly.

Interest Rate

The CFPB proposes to require reporting of an interest rate associated with a mortgage loan. The CFPB also states that the interest rate “provides pricing information separate from the elements of loan pricing, such as the rate spread, and may alone enable preliminary comparison among borrowers or communities.” The MCUL is concerned that the CFPB is seeking information, with no other justification than the agency “has received feedback in its outreach that the benefits of reporting….justify the costs.”

Debt-to-Income Ratio

The MCUL encourages the CFPB to utilize standards already required under existing regulations. Specifically, the requirement for HMDA reports to calculate a different Debt-to-Income (DTI) ratio than what is required under the Ability-to-Repay (ATR) requirements under Regulation Z adds another layer of burden, in inexplicable fashion. If the CFPB is going to require the reporting of certain data elements that are already defined in another regulation, this reporting regulation should use the same calculations for consistency and because systems have already been built to accommodate those calculations.

Property Value

The CFPB proposes reporting of the property value used in making the credit decision. The CFPB indicates that obtaining the "property value in addition to loan amount allows HMDA users to estimate the loan-to-value ratio (LTV)." If the CFPB seeks information to conduct certain measurements, yet intends for the necessary analysis to be completed with minimal reporting fields, the use of both general and specific fields that overlap (such as combined loan-to-value (CLTV)) should be examined and avoided in light of the significant burden and added costs that financial institutions will incur with additional and unnecessary data points.

Implementation Period

The MCUL encourages the CFPB to entertain an implementation period of at least three years. With such substantial changes, the CFPB must consider the costs that will need to be budgeted and the time needed to fully develop and integrate updated technology systems. As with prior necessary core system enhancements, scheduling for changes on this scale can take as long as a year due to lack of vendor resources. Additionally, the CFPB will need to consider the amount of time credit unions will need in order to interpret the final regulation, conduct relevant staff training, hire necessary staff to comply with the requirements, and revise and update necessary policies and procedures.

Inapplicable Fields

The CFPB recognizes that financial institutions generally spend a significant amount of time compiling HMDA data dealing with inapplicable fields. For reverse mortgages specifically, the CFPB proposes to develop a HMDA submission system that automatically removes inapplicable fields for that product type. The MCUL encourages the CFPB to further develop this type of submission system that would provide for similar efficiency for purchased loans and other loan types that don't have specific reporting requirements. This will help credit unions improve the accuracy of their data file and reduce overall burden.

Qualified Mortgage Status

The MCUL questions the rationale for reporting qualified mortgage ("QM") status of a loan. The CFPB indicates that this data would "ensure that the citizens and public officials of the United States are provided with sufficient information to enable them to determine

whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located." However, the QM status is a mechanism that provides the credit union with a safe harbor from litigation and should not be used as a criteria to assess whether a credit union is serving its members or its community. Whether or not a credit union decides to underwrite loans that do not strictly meet QM criteria is a risk-based business decision. On numerous occasions, Director Cordray has publicly commented that financial institutions, and in particular community institutions, should not be discouraged from making non-QM loans where appropriate to serve the needs of their communities and members or customers. In itself, this proposed requirement implies a contrary assertion.

Joint guidance was issued by five regulatory agencies[1] that indicate that a creditor's decision to offer only QMs would **not**, absent other factors, elevate fair lending risk. Based on this guidance, the MCUL questions the need for this type of information for any fair lending purpose. Further, the MCUL has concerns over a reporting burden on credit unions based on the underlying activity of the reported data, which is not legally required of credit unions.

<u>Cost to Consumers</u>

The CFPB seeks comments on the costs of these proposed revisions to consumers. In consultation with Michigan credit unions, the MCUL believes the impact on consumers as a result of this proposal could be significant. There is a strong likelihood that a certain percentage of the compliance costs would need to be passed on to the borrower, and the length and complexity of the lending process itself will be increased for the borrower.

The CFPB indicates they are unable to readily quantify benefits of the proposal to consumers with precision, because they do not have the data to completely assess and quantify how effective the Dodd-Frank amendments to HMDA will be in achieving those benefits. Without any research establishing an underlying rationale of consumer benefit for even those amendments required by Dodd-Frank, let alone data elements outside the scope of the law, it seems premature and possibly short-sighted to expand reporting requirements.

<u>Data Accuracy</u>

The CFPB also indicates that the proposed changes to HMDA would greatly reduce the rate of false positives identified in HMDA fair lending exams by financial institutions and subsequently reduce the associated compliance burden on financial institutions. The MCUL disagrees with this analysis, and is perplexed as to how the agency came to the conclusion that this proposal would reduce any burden when the reporting requirements for the data points in the proposal have more than doubled.

[1] http://www.ncua.gov/News/Press/StmtFairLendingCompliance20131022.pdf

Privacy

With the information being proposed for HMDA collection, credit unions' proprietary underwriting criteria will be subject to public scrutiny. This information, along with the contents contained in credit union lending databases, has always been available at the request of a regulatory agency. The MCUL fails to understand the need for this extensive amount of information to become publicly available through the collection of additional HMDA data when regulators have access to this type of information through other means. Instead of requiring credit unions to build new platforms to satisfy this proposal, the CFPB should explore ways to utilize comparable and equally useful lending data they already have access to through other means.

Definitions

The MCUL proposes that the CFPB maintain the existing definition of "financial institution," but should increase the asset threshold to provide greater regulatory relief for more credit unions. If the CFPB is attempting to capture non-depository institutions in their proposed revisions to transactional coverage, it should be to that end that the revisions are focused. Requiring smaller asset size credit unions to report HMDA data and develop appropriate systems for that purpose is not justified. The CFPB indicates that requiring data from a broader range of non-depository institutions would ensure that citizens and public officials are provided with sufficient information to enable them to determine whether financial institutions are fulfilling their obligations to serve the housing needs of communities and neighborhoods in which they are located. What the CFPB fails to consider is that these recent rulemakings are effectively eliminating any ability of depository institutions to serve the housing needs of their community because they are unable to afford the compliance associated with maintaining a mortgage program.

Summary

The CFPB appears to request HMDA data to measure compliance with its previously published Mortgage Rules. Requiring the points and fees, rate spread, QM status, DTI ratio, etc., are all underwriting data points to measure relative to certain Mortgage Rules. The MCUL does not believe that HMDA was created to, nor should it be used to, document every underwriting consideration on a loan application. If the CFPB wants to monitor compliance with its Mortgage Rules, it should be conducted through the examination process and not a publicly available platform. The CFPB indicates that "HMDA does not regulate the interactions between lenders and borrowers." However the information that is being collected through the HMDA process appears designed to do just that, and to assess institutional compliance in a manner that intrudes on the purview of prudential regulators that oversee depositories that fall below applicable thresholds.

Data used by the CFPB to justify their rationale for increased HMDA reporting is dated. The MCUL encourages the CFPB to update their research on the market impact of the newly effective Mortgage Rules before promulgating new requirements based on old data. Additionally, the CFPB's approach appears to be catch-all, to include data points that could easily be calculated with less reporting requirements. The CFPB should examine reporting systems that automatically disable reporting fields for certain product

types where information is inapplicable. The CFPB is relying entirely on the financial institutions to develop system enhancements without taking any responsibility to build efficiencies on their systems.

As mentioned earlier, the MCUL is extremely concerned with the amount of regulation from the CFPB. Credit unions are struggling to keep pace. The CFPB indicated in the Paperwork Reduction Act section of the proposal that the CFPB believes the total estimated industry burden for the approximately 6,250 HMDA respondents would be approximately 4,700,000 hours per year (which would vary by institution depending on the size, complexity and respondents). Generally speaking, this would equate to 752 hours per year. For the average full-time employee working 40 hours a week, this is 19 weeks out of the year, specifically devoted to HMDA. This analysis doesn't even consider the amount of time associated with compliance with other regulations, issued by the CFPB, NCUA, and other regulators. Credit unions with limited staff are unable to sacrifice this level of time commitment and are exiting the mortgage market altogether. This has the exact opposite effect of "fulfilling their obligations to serve the housing needs of communities and neighborhoods in which they are located." The CFPB should consider measuring that result as well, and for the reasons stated throughout this letter, the MCUL encourages the CFPB to analyze the overall institutional coverage, and increase its applicable threshold from 25 loans to at least 1,000.

The CFPB is restricting and will eventually effectively eliminate a competitive mortgage market through the sheer amount and complexity of regulations it is promulgating. The CFPB must be more responsive to the plight of small community institutions that did not cause the financial crisis, yet are now subject to the same rules as those larger, culpable players that have the ability to absorb these costs.

We appreciate the CFPB's willingness to consider our comments and remain available for further discussion.

Sincerely,

Ken Ross
Executive Vice President & Chief Operating Officer