



cuna.org

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February 17, 2012

Ms. Monica Jackson  
Office of the Executive Secretary  
Bureau of Consumer Financial Protection  
1700 G. St NW.  
Washington, D.C. 20006

Re: Docket No. CFPB-2011-0020

Dear Ms. Jackson:

The Credit Union National Association (“CUNA”) appreciates the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB” or “Bureau”) interim final rule (“rule”) on its new Regulation C, 12 CFR Part 1003. We appreciate your consideration of our views on this important matter. While we recognize that the rule substantially duplicates the Federal Reserve Board’s Regulation C and does not impose any new substantive obligations on regulated entities, CUNA wishes to take this opportunity to provide input to the CFPB concerning the substance of the rule itself.

By way of background, CUNA is the nation’s largest credit union trade organization, representing approximately 90 percent of our nation’s 7,300 state and federal credit unions, which serve over 94 million members.

**Required Data Element Reporting Should Take Into Consideration the Regulatory Burden and Costs Placed Upon Credit Unions**

While CUNA recognizes that the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) amended the Home Mortgage Disclosure Act (“HMDA”) to require covered financial institutions to report additional data elements, and that these data elements will be addressed by the CFPB in future rulemakings, CUNA nonetheless urges the Bureau to consider the additional regulatory burdens and costs which may be placed upon covered credit unions as this rulemaking process moves forward. CUNA would be happy to work with the CFPB’s Office of External Affairs and/or applicable rule-writing staff to further contribute and assist in this important area which will affect HMDA reporting and Regulation C in the near future.



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## **The Rule's Appendix B Procedures Concerning Data Collection on Ethnicity, Race & Sex Should be Amended**

One of the key provisions within the rule with which CUNA has significant concerns is the procedural requirement that when a mortgage loan applicant applies in person, and elects not to provide his/her ethnicity, race and/or sex, the lender is then required to note this fact on the form, and then note the applicant's ethnicity, race, and sex on the basis of an employee's visual observation or surname. (See Appendix B to Part 1003 – Form and Instructions for Data Collection on Ethnicity, Race and Sex, II.D). Obtaining information in this fashion could lead to severely inaccurate data, and CUNA would urge the CFPB to consider amending this requirement within the appendix to the rule so that in these instances, such applications are treated similarly to those taken by mail, telephone or internet when the applicant declines to answer these questions or fails to provide such information. CUNA believes that this change will lessen the regulatory burden on affected credit unions, and also assist the Bureau in obtaining more accurate and more consistent information with respect to these particular data elements.

## **Definitions Within Rules Should be Harmonized Where Permissible and Where Appropriate**

CUNA believes that certain definitions as listed in § 1003.2 of the rule should be harmonized, where permissible, and where appropriate, with similar definitions located in either other regulations that fall under the purview of the CFPB, or the underlying statute of the rule. For example, the term "Application," as listed in the rule, means "an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested." 12 U.S.C. § 2802, the definitions section of HMDA, defines a "completed application" as "...an application in which the creditor has received the information that is regularly obtained in evaluating applications for the amount and type of credit requested." The CFPB's Regulation B, 12 C.F.R. Part 1002.2, contains a differing definition for both "Application" as well as "Completed Application":

"Application means an oral or written request for an extension of credit that is made in accordance with procedures used by a creditor for the type of credit requested. The term application does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit," and

"A completed application means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental

agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.”

Yet another definition for the term “Application” appears in the CFPB’s Regulation X:

“Application means the submission of a borrower’s financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower’s name, the borrower’s monthly income, the borrower’s social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.”

Certainly, these examples are not intended to be an exhaustive list of such differing definitions, but are intended to show the overlap and confusion that credit unions experience when attempting to comply with regulatory requirements in separate regulations, each of which impacts residential mortgage lending practices, in the above examples, and relates to the HMDA reporting requirements required by Regulation C. Similar examples could be used with respect to the terms “dwelling” as defined by the rule, and differing definitions in Regulation Z, 12 C.F.R. Part 1026.2, as well as for the term “refinancing,” which is also defined differently by both the rule as well as Regulation Z, 12 C.F.R. Part 1026.20. These types of variances between definitions, when not required by statute, can cause an extreme amount of confusion among credit unions attempting to fully comply with legal and regulatory requirements. CUNA also notes that the CFPB’s Regulation B and the rule are both anti-discriminatory regulations, yet differing definitions prevail, despite Comment 1 to § 1003.2 which provides, “Consistency with Regulation B. Bureau interpretations that appear in the official staff commentary to Regulation B (Equal Credit Opportunity, 12 CFR part 1002, Supplement I) are generally applicable to the definition of an application under Regulation C. However, under Regulation C, the definition of an application does not include prequalification requests.”

As the Bureau recognizes, sometimes different definitions are necessary to fulfill different statutory objectives, but other times those differences may be unnecessary. Additionally, certain key terms are not defined within regulations. The CFPB cites as examples, the terms “approved,” “denied,” and “withdrawn,” noting that both Regulations B and C contain important obligations of a creditor, depending on the action taken with respect to a given loan application. CUNA believes that consistency between the regulations should be the rule in these instances, and that such key terms should be defined, where practicable, and that such definitions be applied across regulations, if and where appropriate, and when allowed by statute.

## **The Definition of “Financial Institution” Should Be Amended**

§ 1003.2 of the rule defines “Financial institution,” in part, as “A bank, savings association, or credit union that:

- (i) On the preceding December 31 had assets in excess of the asset threshold established and published annually by the Bureau for coverage by the act, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve month period ending in November, with rounding to the nearest million...”

CUNA strongly urges the CFPB to consider amending this portion of the definition for “Financial Institution” to base the reporting threshold for HMDA on the amount of mortgage loan applications submitted to, originations and purchases of home purchase loans, home improvement loans, and refinancings made by a financial institution for each calendar year, rather than on an institution’s asset size.

CUNA believes that the asset size alone does not represent the most appropriate standard by which the HMDA reporting threshold should be set. CUNA recognizes that this recommendation will require a statutory amendment to HMDA, and we urge the Bureau to work with both CUNA and members of Congress to effectuate this important reporting change to assist in relieving the regulatory burden currently being placed on smaller-sized credit unions.

Additionally, some credit unions do not originate home purchase loans, but occasionally refinance a home purchase loan as an accommodation to a member. In such instances, the credit union is required to collect, report and disclose the required HMDA mortgage data, even though this type of activity may represent only a fraction of the loans made by a credit union. CUNA would urge the CFPB to consider an exemption for such credit unions that make or refinance only small numbers of loans on an annual basis.

## **CUNA Urges the CFPB to Work to Minimize the Regulatory Burden Associated with HMDA Reporting on Credit Unions of All Sizes**

In addition to our comments above concerning the newly required data elements mandated by the Dodd-Frank Act, CUNA urges the CFPB to be mindful of the extremely burdensome quantity and extent of regulations that credit unions currently face. As compared to many larger financial institutions, most credit unions do not have the resources or budgets to allow for expansive compliance tools and resources to assist with the numerous operational compliance and cost burdens which often times result from the promulgation of regulations. In this light, we would strongly encourage the Bureau to work closely with CUNA and credit unions in general, to reduce the overall regulatory

burden associated with HMDA reporting requirements contained within the rule, such as the completion of the HMDA Loan Application Register, the completion of the Modified Loan Application Register, and the collection of the required HMDA data elements, as a whole, where possible. In prescribing regulations to implement HMDA, "...the Bureau shall make every effort to minimize the costs incurred by a depository institution in complying with this subsection and such regulations." 12 U.S.C.S. § 2803(j)(7).

### **Conclusion**

Where possible, CUNA strongly urges the CFPB to amend the rule to reflect the above comments and suggestions. Where legislative action is required, CUNA urges the Bureau to work closely with CUNA and members of Congress to assist in further streamlining the regulatory requirements and burdens placed upon credit unions with respect to the rule and HMDA.

Thank you for the opportunity to comment on the CFPB's Regulation C. If you have any questions concerning our letter, please feel free to contact CUNA's Senior Vice President and Deputy General Counsel Mary Dunn or me at (202) 508-6732.

Sincerely,



Jared Ihrig  
Regulatory Counsel



OHIO CREDIT  
UNION LEAGUE

February 17, 2012

VIA Web: <http://www.regulations.gov>

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Washington, D.C. 20220

**RE: Docket No. CFPB -2011-0020 OCUL comments on CFPB Interim Final Rule-Home Mortgage Disclosure (Regulation C)**

Dear Ms. Jackson:

The Ohio Credit Union League (OCUL) appreciates the opportunity to comment on the Consumer Financial Protection Bureau's (CFPB) Interim Final Rule on Home Mortgage Disclosures (Regulation C), 12 C.F.R. Part 1003 that duplicates the Federal Reserve Board's (Fed) Regulation C.

OCUL is the trade association for credit unions in Ohio and advocates on behalf of Ohio's 379 federal-and state-chartered credit unions, serving their 2.7 million members. The comments reflected in this letter represent the recommendations and suggestions that OCUL believes would be in the best interest of Ohio credit unions.

### **Analysis and Commentary**

OCUL agrees with the CFPB's decision to make certain that the interim final rule would only make non-substantive, technical, formatting, and stylistic changes. Therefore, the rule would not impose any new substantive obligations on credit unions and other institutions subject to existing Regulation C. OCUL also agrees with the preservation of the past numbering of the Fed's Regulation C, regulatory text, supplements, and appendices including model forms and clauses.

OCUL urges the CFPB review certain definitions in the regulation for consistency with other regulations that are under their authority and that credit unions are required to comply with. Discrepancies on these definitions make it harder for credit unions to train their staff and to have consistency in their procedures for serving their members. Uniform definitions would avoid potential confusion

For example, an application, refinancing, and dwelling on Regulation C are defined differently when compared to the Truth in Lending Act (Regulation Z) and the Real Estate Settlement Procedures Act (Regulation X). Below, OCUL cites these varying definitions and encourages the CFPB to review and proposed needed modifications for consistency as warranted.



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**Under Regulation C (HMDA) section 1003.2:**

**An application** means; 1) an oral or written request for a home purchase loan, a home improvement loan, or a refinancing that is made in accordance with procedures used by a financial institution for the type of credit requested.

(2) Preapproval programs. A request for preapproval for a home purchase loan is an application under this section if the request is reviewed under a program in which the financial institution, after a comprehensive analysis of the creditworthiness of the applicant, issues a written commitment to the applicant valid for a designated period of time to extend a home purchase loan up to a specified amount. The written commitment may not be subject to conditions other than: (i) Conditions that require the identification of a suitable property; (ii) Conditions that require that no material change has occurred in the applicant's financial condition or creditworthiness prior to closing; and (iii) Limited conditions that are not related to the financial condition or creditworthiness of the applicant that the lender ordinarily attaches to a traditional home mortgage application (such as certification of a clear termite inspection).

**Dwelling** means a residential structure (whether or not attached to real property) located in a state of the United States of America, the District of Columbia, or the Commonwealth of Puerto Rico. The term includes an individual condominium unit, cooperative unit, or mobile or manufactured home.

**Refinancing** means a new obligation that satisfies and replaces an existing obligation by the same borrower, in which: (1) For coverage purposes, the existing obligation is a home purchase loan (as determined by the lender, for example, by reference to available documents; or as stated by the applicant), and both the existing obligation and the new obligation are secured by first liens on dwellings; and (2) For reporting purposes, both the existing obligation and the new obligation are secured by liens on dwellings.

**Under Regulation X (RESPA) section 1024.2 :**

**Application** means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

**Refinancing** means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender.

**Under Regulation Z (Truth in Lending ) section 1026.2(19):**

**Dwelling** means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

More importantly, OCUL commends the CFPB in its efforts to simplify and adopt consistent disclosures in plain language that are easier to understand. However, OCUL also suggests that the CFPB also consider a common sense regulatory process to its regulations and policies and interact with the other relevant federal agencies to adopt consistent definitions applicable to all agencies in order to minimize confusion.

**Conclusion**

OCUL supports the CFPB's efforts to preserve parts of the regulation such as model forms that reduce the burden to the credit unions. Accordingly, OCUL urges the CFPB to coordinate its regulatory efforts to remove regulatory burdens that are duplicative and unnecessary. As stated above, we ask the CFPB to review and establish uniformity to certain definitions in the regulations such as "Application," "Refinancing," and "Dwelling."

The Ohio Credit Union League appreciates the opportunity to provide comments on the interim final rule on Home Mortgage Disclosures and is available to provide additional comments or information on this proposal if so requested. If you have any questions, please do not hesitate to contact me at (800) 486-2917 or [jkozlowski@ohiocul.org](mailto:jkozlowski@ohiocul.org).

Respectfully submitted,



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cc: Mary Dunn, Credit Union National Association General Counsel  
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Paul Mercer, OCUL President  
Jennifer Ferguson, Government Affairs Committee Chair



# PUBLIC SUBMISSION

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## General Comment

The fact that Government Monitoring Information is not required on all Residential Mortgage Loan Transactions unless they are HMDA reportable sets banks up to fail.

This part of REG C needs to be carefully re-considered. HMDA reporting is very complicated and time-consuming, and whether or not GMI has been collected further complicates the issue.

# PUBLIC SUBMISSION

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## General Comment

1. I recommend a higher threshold for HMDA applicability than 1 home purchase or refinance loan, for example, 5 or more.
2. I recommend a higher threshold for enforcement action for HMDA errors than the current regulatory guideline of 5%, particularly for depository institutions with relatively small number of entries (say, 30 or less).
3. I recommend more guidance on the "preapproval" program. Currently some regulators include "Commitment letters" (following FULL application, in the definition). I think the information about pre-approvals is overly burdensome (many institutions no longer offer preapprovals because of the HMDA regulatory burden).
4. I recommend HMDA LARs be considered accurate if reported data is within accurate "ranges". For example, so long as the reported income remains within the actual income with respect to the income category for that census tract (i.e. low, moderate, middle, upper), the entry should be considered accurate. Income should also

be allowed to be stated as NA for business purpose loans (not just loans to businesses), where the property's cash flow is the "income" being considered. Alternatively, additional guidance is necessary to agree "Gross annual income" to business or property revenue/cash flows.

5. Another field that causes high regulatory burden is "application received". The process of making an "application" along with the differing definitions of "application" between Reg B, RESPA, Reg Z, and HMDA, make a specific date difficult to pin down. Again, accuracy with ranges would severely reduce this range (say, within 10 days of the date that a reviewing examiner might consider a better "application received" date.)