NEW JERSEY LEAGUE
OF COMMUNITY BANKERS

411 North Avenue East · Cranford · New Jersey 07016-2444 · (908) 272-8500 · Fax (908) 272-6626 · Website: www.njleague.com

April 20, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551.

RE: EFRPRA

Dear Sir or Madam:

The Compliance and CRA, Residential Lending, and Mortgage Steering committees of the New Jersey League of Community Bankers* ("the League") is pleased to respond to the request for comments and suggestions on ways to reduce burden in consumer protection rules pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Comments were requested about the clarity of these regulations as well as whether there is any redundancy or if any of the rules are outdated or unnecessarily burdensome. Our comments follow below:

**12 CFR Part 528 - OTS Nondiscrimination Regulations**

Section 528.1(a) defines the term "application" as follows:

"(a) Application. For purposes of this part, an application for a loan or other service is as defined in Regulation C, 12 CFR 203.2(b)."
What is meant by the phrase "or other service"? In 12 CFR 203.2(b), there is nothing that relates to "other service"? Does this also mean that the part 528 rules do not apply to loans that are not subject to HMDA?

Section 528.1 of the OTS regulations defines the term "dwelling" as follows:

"(c) Dwelling. The term "dwelling" means a residential structure (whether or not it is 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 home or manufactured home."
This is the same definition as 203.2(d) of Regulation C (HMDA). We would suggest that the OTS refer to the term as defined in 12 CFR 203.2(d) as was done with the definition of application.

---

* The New Jersey League of Community Bankers, founded in 1908, is a trade association representing 70 of New Jersey's savings banks, savings & loan associations and commercial banks with total assets of over $60 billion. The League's wholly-owned subsidiary, the Thrift Institutions Community Investment Corporation ("T.I.C.I.C.") assists League members in forming consortia to make loans on low-to-moderate income housing and economic development projects throughout New Jersey. Since its founding in September 1991, T.I.C.I.C. has facilitated loans on nearly 4,500 affordable housing units and has loans in process on over 500 more affordable housing units. Loans made and loans in process total nearly $302 million.

Section 202.4 of Regulation B has a general rule that prohibits discrimination on a prohibited basis in any credit transaction. We wonder if it is then necessary for the OTS to have its own nondiscrimination regulations that repeats or overlaps some of the protections of Regulation B. Perhaps the OTS nondiscrimination regulations should simply indicate that institutions must comply with ECOA and Regulation B as well as the Fair Housing Act and the regulations that implement the FHA. If the OTS wishes to prohibit discrimination on any basis not already discussed in these laws and regulations, we would suggest that the OTS regulations specifically state those areas it wishes to cover.

Section 528.9(c)(8) contains a reference to 24 CFR part 109. This section has been removed from the CFR.

**Regulation B (ECOA)**

The most recent amendments to Regulation B contained a revision to section 202.7(d)(1). The following sentence was added: "A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit." Comment 3 of the OSC says:

"3. EVIDENCE OF JOINT APPLICATION. A person's intent to be a joint applicant must be evidenced at the time of application. Signatures on a promissory note may not be used to show intent to apply for joint credit. On the other hand, signatures or initials on a credit application affirming applicants' intent to apply for joint credit may be used to establish intent to apply for joint credit. (See Appendix B). The method used to establish intent must be distinct from the means used by individuals to affirm the accuracy of information. For example, signatures on a joint financial statement affirming the veracity of information are not sufficient to establish intent to apply for joint credit."

The banking industry has been having difficulty obtaining a consistent opinion as to how this should be implemented. A web site used by many compliance professionals has a discussion board where this topic has been discussed quite extensively. The web site is www.bankersonline.com Creditors are concerned whether they must create an addendum to the Fannie Mae/Freddie Mac Uniform Residential Loan Application (Form 1003) to have a joint applicant document his or her intent to be a joint applicant. Some discussion participants indicated that they were hearing one opinion from FDIC examiners and a different opinion from the Federal Reserve. Some have said that when the FRB added the lines to obtain the initials or signatures of joint applicants on the model forms for secured/unsecured credit found in Appendix B to Regulation B they thought this was something that creditors had to change on their existing loan forms. Some discussion participants have said that the FRB has said as long as the application has a section labeled "Applicant" and then "Co-applicant" and both parties sign the application form, then there is no need to get any other signatures or initials to document the parties intent to be joint applicants. It appears that creditors are confused by the language in the Regulation. We would suggest that the Federal Reserve Board revisit this language.

Another area that seems to be causing some confusion is language that appeared in the supplementary information section of the 3/18/03 issue of the Federal Register that contained the final rule. There was a discussion of the requirement under section 202.9(b)(2) to provide the specific reasons for denial. It indicated that a lender would have to advise the primary applicant if their joint applicant's credit history caused you to deny or modify the credit request. It also said that a joint applicant should have no expectation of privacy. Under Regulation B, when there are multiple applicants, creditors are only required to provide a Regulation B adverse action notice to the primary applicant when one is readily apparent. There is no discussion in the regulation or in the OSC as to how one is to make the determination as to who is the primary applicant. Is it the first person listed on the loan application form? Is it the person with the most income? Guidance on this would be appreciated.

Under paragraphs (a) and (b) of section 615 of the Fair Credit Reporting Act (as amended by the FACT Act), creditors are required to provide notice to a consumer when information from a consumer reporting agency or from an outside third party source is used in whole or in part to cause the creditor to take adverse action. Regulation B discusses issuing a combined adverse action notice that makes the required Regulation B and FCRA disclosures. After reviewing some questions and answers from bankers that were posted on Bankersonline.com, it seems that there is some confusion. If John Doe and Mary Smith apply for joint credit and John Doe is the first name on the application and Mary Smith has very poor credit, to whom should the creditor send the adverse action notice? If the parties reside at separate addresses, should a combined Regulation B/FCRA adverse action notice be mailed to John Doe specifying that the loan request has been declined due to the unsatisfactory credit history of his co-applicant, Mary Smith and then a separate copy be sent to Mary Smith so that she can receive the FCRA disclosures? What if they both resided at the same address? Would it be acceptable to only send one letter addressed to both parties at that address?

The Federal Trade Commission and the Federal Reserve Board have begun to issue regulations to implement the various provisions of the FACT Act. Regulation V is the FRB rule for the FCRA. Would the FRB consider more clearly explaining the section 615 notice requirements and how they interrelate with Regulation B's adverse action notice requirements? It might be helpful to address this in Regulation B and in new Regulation V.

Section 202.13 of Regulation B governs information for monitoring purposes. A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application certain information regarding the applicant(s). The applicant's ethnicity, race, sex, marital status, and age must be requested. Comment 5 of the OSC to this section discusses transactions that are not covered. The last part of the comment says, "An application for an open-end home equity line of credit is not subject to this section unless it is readily apparent to the creditor when the application is taken that the primary purpose of the line is for the purchase or refinancing of a principal dwelling." For those creditors that are required to comply with Regulation C (HMDA), it is optional to report home equity lines of credit. As a result, some creditors may not be collecting the section 202.13 information if they are subject to HMDA and choose not to report HELOCs. Section 202.13(d) discusses substitute monitoring programs. Some consider HMDA to be a substitute monitoring program. We believe this referred to the OCC's monitoring program. Comment 2 to section 202.5(a)(s) of Regulation B says, "Regulation C generally requires creditors covered by the Home Mortgage Disclosure Act (HMDA) to collect and report information about the race, ethnicity, and sex of applicants for home-improvement loans and home-purchase loans, including some types of loans not covered by §202.13." Something should be put in the commentary to section 202.13 to make it clear that there may be times when monitoring information is not required by Regulation C but must be requested under Regulation B. This would relate to HELOCs whose primary purpose is the purchase or refinancing of a principal dwelling.

Section 202.14 of Regulation B governs the requirement to disclose the consumer's right to a copy of the appraisal report. The OSC gives examples of appraisal reports. Creditors are permitted to require consumers to pay for the credit report before it is released to them. Many lenders are making use of automated underwriting systems such as Fannie Mae's Desktop Underwriter or Freddie Mac's Loan Prospector. Would the information provided by these systems that relates to the value of the dwelling be something that creditors would have to provide to consumer's if requested? If lenders do not charge the customer any appraisal fee for such reports, then is there no need to make the disclosure and no obligation on the creditor's part to release a copy of the information that assigns a value.

Comment 1 of the OSC to Appendix B of Regulation B needs to be updated. It still references the 1003 form dated October 1992. The 9/11/03 issue of the Federal Register contained a technical amendment to Regulation B. Appendix B was updated to remove the joint Freddie Mac/Fannie Mae Uniform Residential Loan Application (Form 65/1003) dated 10/92 and replace it with the form dated 01/04. If the FRB will update the commentary to this section, it would be helpful if it would also address whether the form adequately documents someone's intent to be a joint applicant or whether creditors must create a separate addendum for use with this form to provide such evidence.

**Regulation C (HMDA)**

Section 203.2(k) of Regulation C was recently revised to have a new definition of the term "refinancing." There is one definition for purposes of determining whether a creditor is covered by HMDA and there is another definition for determining when to report a transaction as a refinancing. For reporting purposes, the new definition says that both the existing obligation and the new obligation are secured by liens on dwellings. You no longer have to look to the purpose of the transaction. Lenders have expressed the concern that some commercial loan transactions that were previously not reportable under the prior definition may now be reportable. Section 302 of the Home Mortgage Disclosure Act discusses the purpose of the law. Paragraph (b) says that "The purpose of this chapter is to provide the citizens and public officials of the United States 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." Having financial institutions report information on the HMDA-LAR about a business purpose loan that was originated in a prior year that involved a lien on a dwelling and was being refinanced on or after 1/1/04 and will still be secured by a lien on a dwelling seems inconsistent with the purpose of HMDA. It does not seem that these are the types of transactions that were originally intended to be reported. We would recommend that the definition of refinancing be amended to indicate that the purpose of the new loan had to be for personal, family, or household purposes.

Under revised Regulation C, which was effective 1/1/04, creditors are required to request information using the new ethnicity and race categories for HMDA-covered applications. Calendar year 2004 data will be reported by 3/1/05. The agencies will evaluate the submitted data and create disclosure statements that must be made available to the public. These statements are normally not available until July or August. When Regulation C was amended, new model language for the HMDA Poster or HMDA notice was provided. The revised notice indicates that data about the ethnicity of applicants is available. Some regulatory agencies have been advising banks to post the new notices effective 1/1/04. Since this data will technically not be available to the public until the summer of 2005, would the FRB consider making a comment in the OSC that the use of the revised language is not required until such data regarding ethnicity is actually available?

**Regulation Z (TILA)**

Appendix H to Regulation Z contains model forms for closed end credit. There is no model form showing creditors how the FRB expects a variable rate discounted or premium priced loan to be disclosed. Comment 10 of the OSC to section 226.17(c)(1) explains the rules for coming up with a composite APR and disclosing the payment schedule on such loans. It would be helpful to see a model form with actual numbers on it. When disclosing the payment schedule for such loans, the only payment stream that will show what the customer will actually pay towards principal and interest is the first payment stream on a final TIL. For discounted or premium rate loans, the lender is supposed to then determine whether any periodic interest rate caps would prevent the creditor from adjusting the rate to the fully indexed rate. If so, then the next payment stream would reflect a payment based on the capped interest rate. If after this payment stream the rate can go to the fully indexed rate without being capped, then the creditor would use the fully indexed rate to determine the payments for the remainder of the term. This information is all hypothetical. The customer will likely not actually follow this payment schedule. When preparing the early Truth In Lending Disclosure most creditors mark these payment streams and other numbers with an "e" to indicate that they are estimated figures. Comment 9 of the OSC to section 226.17(c)(1) discusses the use of estimates in variable rate transactions. It says "The variable-rate feature does not, by itself, make the disclosures estimates." What did the FRB intend by this comment? Is it permissible for creditors to mark these payment amounts with an "e" to indicate that they are estimated when it is the final TIL? For variable rate loans that are not priced at a discount or at a premium, you are to disclose all payments based on the initial interest rate. Again, on a final TIL may the creditor mark such payments with an "e" to indicate that they are estimates? This information is always confusing to consumers. There is also no indication to the customer about what interest rates are being used to calculate payments in any additional payment streams.

Some customers are using the right of rescission as a way to get out of lock-in agreements. They locked in a rate on a mortgage refinance but by the time the loan closing date arrives interest rates have declined. The consumers will attend the closing and sign all of the loan documents and then rescind the transaction. The bank is obligated to return any and all fees paid to the lender or any other party in connection with the transaction. The consumers then reapply to the lender and lock-in at a new interest rate. The right of rescission was intended to give customers time to think about whether they wanted to have a lien on their home and be able to change their minds within three business days. Under ECOA, you cannot discriminate against someone because they have exercised any of their rights under the Consumer Credit Protection Act, which includes Truth In Lending. You cannot forbid someone who has rescinded a transaction from reapplying. Is there a way that the regulatory agencies can close this loophole that consumers seem to have found?

It would be helpful to lenders and borrowers alike to eliminate the 3-day right of rescission where an existing mortgage loan is simply being modified and the borrower is taking cash out. Our members have rarely had a situation where the right of rescission is exercised in these circumstances, but the requirement means that the borrower must wait 3 days to obtain the additional money.

**Regulation Z and Regulation C**

The calculation that a creditor must perform to determine whether a loan is subject to HOEPA based on the APR test is not the same calculation that must be done to report the APR spread under Regulation C. Why are these calculations so different? Is there anything that can be done to make them more consistent? It is difficult to train employees on the need to perform two different calculations.

**Simplification of Truth In Lending and RESPA**

Several years ago there was a mandate that a study be conducted about simplifying Truth In Lending and RESPA. As a result of the study, HUD initiated a proposed rule to amend Regulation X. HUD recently withdraw a proposed rule from OMB review The FRB revised the sections of Regulation Z that deal with HOEPA loans based on concerns about predatory lending. What if any actions have been or will be taken by the FRB to implement some of the suggestions that came out of this study? We realize that RESPA or Regulation X were not on the 1/21/04 list of regulations to be reviewed. However, we wish to point out that HUD has failed to amend Regulation X to implement a change to RESPA that occurred in 1996 regarding the mortgage servicing disclosure. The change was part of an effort to reduce regulatory burden. Creditors are no longer required to obtain the applicant's signature on this loan before they can fund the loan. Creditors are also no longer required to show the three year historical record of transferring the servicing on mortgage loans. These changes were made to section 6 of RESPA but have not been incorporated into Regulation X. Some creditors have had OTS examiners who cited the failure to get the applicant’s signature on the mortgage servicing disclosure as a violation. Compliance Officers indicate that once they point out the statutory change, the examiners remove the violation. One compliance officer has had to explain this in two prior compliance exams. It would be helpful if HUD would make this amendment to Regulation X to avoid examiner confusion.

**Community Reinvestment Act Regulations**

Documentation requirements for CRA loans are a major burden for our member banks and anything that can be done to reduce this burden would be helpful. Also, particularly in areas like northern New Jersey that have extremely high housing costs, many lenders serve communities where there are no low-to-moderate income Census tracts. Lenders should be given credit for serving the community surrounding a branch office even if it does not contain low-to-moderate income Census tracts.

Thank you for this opportunity to comment. If there are any questions or a need for clarification, please contact me at 908 272 8500, ext. 614.

Sincerely,

James Meredith

James M. Meredith
Senior Vice President