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VIA E-MAIL: regs.comments@federalreserve.gov

August 20, 2010

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

Re: Docket No. OP-1388 – Home Mortgage Disclosure Act

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to provide these comments in connection with the Federal Reserve Board's (Board's) current review of Regulation C, the Home Mortgage Disclosure Act (HMDA), which requires credit unions and others to collect and report data on home mortgage loans, home improvement loans, and applications that do not result in loan originations. These comments are being submitted in conjunction with four public hearings that the Board is in the process of conducting, and we commend the Board for undertaking these efforts. We also appreciate that Philip Greer, Senior Vice President, State Employees Credit Union; Faith Anderson, Vice President and General Counsel, American Airlines Federal Credit Union; and Michael Long, Executive Vice President, University of Wisconsin Credit Union have or will have an opportunity to participate in these hearings as the Board considers whether certain data elements should be added, modified, or deleted. CUNA represents approximately 90 percent of our nation's 7,800 state and federal credit unions, which serve approximately 92 million members.

Summary of CUNA's Comments

- Although CUNA does not at this time advocate that specific, additional information be reported under HMDA, credit unions could support additional changes to the HMDA requirements if the Board or the new Consumer Financial Protection Bureau (CFPB) clearly demonstrates that the new information would further the goal of ensuring fair lending and antidiscriminatory practices, while minimizing the additional burdens of providing the new information.

- CUNA supports an approach offered by the Massachusetts Commissioner of Banks at a recent HMDA hearing in which new reporting requirements would apply only to the largest mortgage lenders that make the vast majority of mortgage loans. This would exclude credit unions and community banks, but could, if necessary, be expanded to all other lenders at a later time.
- Nondepository lenders, mortgage brokers, and non-lender loan purchasers should be subject to the same HMDA thresholds that apply to regulated financial institutions, and this threshold should be based on the number or volume of mortgage loans.
- Certain HMDA reporting requirements should be deleted, such as those related to loan preapprovals, unsecured home improvement loans, and whether the home is a manufactured home.
- Overall, a "bright line" approach should apply with regard to HMDA reporting in which a loan would need to be reported if there is a lien on the home and would not be reported if there was not a lien.
- Lenders should not be required to report home equity lines of credit and if this is required, then lenders should be permitted to report the entire credit line, instead of the portion that will be used for home purchase or improvements, which is currently required under the HMDA rules.
- CUNA opposes any requirement to report total income, rather than the income relied on by the lender in connection with the loan since this information would not likely be accurate and may also raise privacy concerns.
- The new Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) will require the reporting of additional information under HMDA, which will include data with regard to gender, credit scores, and the points and fees associated with the loan. We urge the Board or the CFPB to clarify that the points and fees should be those defined under other rules and that credit scores should not be required if the lender does not use the score as part of the loan underwriting process.
- The one area that the Board and the CFPB should review as part of this HMDA rulemaking process would be the issues with regard to reverse mortgages, the review of which is already being undertaken in other contexts by the Board and under the Dodd-Frank Act. These types of loans are very complex and confusing, which may lead to abuses and excessive fees by other types of lenders, similar to the complex mortgage loans that were a major cause of the recent economic crises.
- To the extent that new HMDA requirements are imposed, we urge that credit unions be given at least two years to implement these changes.
- As this HMDA rulemaking process unfolds, we believe it would be beneficial to conduct additional meetings with industry representatives, including credit unions, similar to the focus groups and consumer testing that the Board has done in connection with other recent, major rulemakings.

DISCUSSION

THE USEFULNESS OF NEW HMDA REPORTING REQUIREMENTS MUST BE JUSTIFIED

HMDA, which was enacted by Congress in 1975, makes available to the public information that helps to show whether financial institutions are serving the housing credit needs of their communities. HMDA data also helps identify possible violations of fair lending requirements and assists regulatory agencies in enforcing compliance with antidiscriminatory laws. This is an admirable goal that credit unions support.

Credit unions could also support additional changes to the HMDA requirements, provided that they further this goal of ensuring fair lending and antidiscriminatory practices. For example, there may be instances in which HMDA information may seem to indicate discrimination where none exists. In these situations, additional information, such as the loan-to-value ratio, the debt-to-income ratio, and credit score may justify the rate and terms that were provided to the borrower.

Although we are not at this time advocating that additional information be reported, we raise these examples to highlight the analysis that the Board and the CFPB should carefully undertake when considering the extent that new information reporting should be required. This analysis should also focus on whether additional information will help determine if inappropriate loans are being targeted to minority groups. For example, in the recent past, interest-only adjustable rate mortgages (ARMs), payment option ARMs, prepayment penalties, yield spread premiums, and certain ARM loans in which the rate increases rapidly with limited restrictions, have been targeted disproportionately to minority groups and other vulnerable consumers. Without this type of analysis, we are very concerned that any additional reporting requirements may not further the goals of HMDA and may only serve to impose significant, additional burdens on credit unions.

Many credit unions have limited staff, many of whom have multiple responsibilities and tasks, and are not in a position to take on significant additional regulatory burdens, especially since compliance with many of these requirements may have to be completed manually, which is costly and very time consuming. Even for credit unions that do not collect this information manually, changes in these reporting requirements will impose significant costs in terms of additional software, compliance training for staff, and other expenses associating with collecting the additional information.

Also, the plight of all credit unions with regard to additional regulatory burdens has been compounded in recent years as a result of the many new rules that

have been issued. Just since the beginning of 2008, credit unions and other financial institutions have been subject to new, and very significant, requirements with regard to mortgage lending (which includes Regulation Z and the rules that implement the Real Estate Settlement Procedures Act and the Secure and Fair Enforcement for Mortgage Licensing Act), credit cards, other open-end lending, internet gambling, the Bank Secrecy Act, the Fair and Accurate Credit Transactions (FACT) Act, gift cards, overdraft protection plans, student loans, and accounting.

In addition, the Dodd-Frank Act will impose even more burdens on credit unions, which were not in any way responsible for the financial crisis that this Act is intended to address. These include new limitations on interchange fees, additional collection requirements on consumer loans, new disclosures under the Truth in Lending Act and the Real Estate Settlement Procedures Act, additional disclosure requirements for remittances, and even include additional HMDA reporting requirements that are the subject of the Board's current review process.

For these reasons, we urge the Board and the CFPB to carefully consider the benefits of the information that is being sought by any new HMDA reporting requirements. This needs to include comparing it to the cost and burdens that would be imposed on credit unions and other types of lenders, while also taking into consideration the multitude of recent regulatory burdens that have been imposed in recent years, as well as the new ones that will be imposed under the Dodd-Frank Act.

In other words, the focus on this HMDA review should be to ensure that the right data is collected, not simply expanding these data collection requirements that may only result in additional data of questionable value. We believe that greater emphasis on the fair lending examination process may, in the alternative, serve to address the regulators' concerns in this area and believe that greater enforcement of current requirements may also address the goals of any new HMDA reporting requirements.

At the July 15, 2010 HMDA hearing in Atlanta, Steven Antonakes, the Massachusetts Commissioner of Banks, suggested an approach based on observations from the Massachusetts examination experience in which any new HMDA requirements would apply only to the very large mortgage lenders that make the vast majority of mortgage loans. In his view, this would exclude credit unions and community banks, recognizing the overwhelming compliance burdens these institutions currently face, as described above, and that these smaller financial institutions were not responsible for the problems that the HMDA requirements are intended to address. Mr. Antonakes also envisioned that any new requirements could later be expanded to include credit unions and community banks if it appears that the application of these risk-based requirements to the large mortgage lenders was not sufficient.

We wholeheartedly support this concept and encourage the Board and the CFPB to seriously consider this approach. We also urge that such an approach be considered with regard to other significant consumer protection rules that will be issued in the future.

FINANCIAL INSTITUTIONS AND NONDEPOSITORY LENDERS SHOULD BE SUBJECT TO THE SAME HMDA REPORTING THRESHOLDS

Currently, HMDA reporting requirements apply to nondepository lenders that originate at least $25 million in home purchase loans. This is in contrast to the threshold for financial institutions in which a small institution is subject to the HMDA reporting requirements even if it has as little as $39 million in assets and originates just one mortgage loan.

To address the goals of HMDA and to adequately monitor the mortgage lending market, we believe the reporting threshold for nondepository lenders should be the same as for other lenders. Unlike credit unions and other financial institutions, nondepository lenders are not regulated to the same extent by a federal agency or subject to government examinations. We believe there should be more focus on these nondepository lenders that are not currently subject to federal regulations or examinations and believe HMDA reporting requirements should also apply to all types of entities involved in mortgage lending, such as mortgage brokers and non-lender loan purchasers with a threshold level of lending, as described below. Including all of these parties will provide more complete information in which to identify fair lending problems and discriminatory practices.

In our view, the best approach would be a threshold that would apply to all lenders that would be based on the number or dollar amount of mortgage loans, as opposed to the current threshold for financial institutions, which is based on asset size. The current asset threshold has no bearing on whether an institution's involvement in mortgage lending is significant enough to warrant attention under HMDA. Regardless of the threshold that is used, nondepository lenders should receive the same, if not more, scrutiny with regard to HMDA reporting.

CERTAIN CURRENT HMDA REPORTING REQUIREMENTS SHOULD BE DELETED

Although the Board is considering expanding the HMDA reporting requirements, we believe certain current requirements should be deleted. Specifically, the reporting of loan preapprovals should be removed as a HMDA requirement. As highlighted during the July 15, 2010 hearing, this information is not widely used

by those who review and those who use HMDA data so there is no reason to impose this burden on lenders.

In addition, we believe that the requirement to report unsecured home improvement loans should also be deleted. In our view, credit union members use these loans for a wide variety of purposes and not just for home improvements. It is also difficult for credit unions to accurately capture this information, and we believe loans in general that are not secured by a home should not be required to be reported under HMDA. We also believe the requirement to report whether a home is a manufactured home should be deleted as this information does not appear to further the goals of HMDA.

SCOPE OF HMDA REPORTING

Over the years, credit unions have had questions as to which types of loans are to be reported under HMDA. We believe this can be addressed by adopting a "bright line" approach in which a loan would need to be reported if there is a lien on the home and would not be reported if there was not a lien. This would facilitate credit unions' efforts to comply with these reporting requirements and minimize errors in the reporting of the HMDA data.

HOME EQUITY LINES OF CREDIT (HELOCs)

Currently, lenders have the option of reporting HELOCs, although lenders who elect to report this information must only report the portion of the credit line that is intended for home purchase or home improvement purposes, instead of the entire credit line. We urge the Board or the CFPB to consider removing this requirement to report HELOCs. Borrowers access HELOCs for a wide variety of consumer purchases that may not be housing-related, and it is simply too difficult to determine with sufficient accuracy as to how these funds are being used.

If HELOC reporting will still be required, we recommend lenders be permitted to report the entire credit line, instead of the portion that will be used for home purchase or improvements, which is currently required under Regulation C. Reporting the entire line of credit will be much easier for the lender and it may, therefore, facilitate the reporting of this type of information. We also do not believe that identifying the portion used for home-related purposes will be very accurate and can it change over time.

REPORTING OF TOTAL INCOME

The Board requested comments as to the costs and benefits associated with requiring lenders to report total income, rather than income relied on by the lender. We would strongly oppose the requirement to report the total income. We believe credit union members will not understand the need to collect

information on income that is not being considered by the lender. We also question the accuracy of the information since it would be difficult to verify and believe credit union members will have privacy concerns with regard to disclosing personal, financial information that is not related to the loan application process.

CLARIFICATIONS TO HMDA REPORTING REQUIREMENTS UNDER THE DODD-FRANK ACT

The Dodd-Frank Act will require the reporting of additional information under HMDA, which will include data with regard to gender, credit scores, and the points and fees associated with the loan. As part of this HMDA rulemaking process, we urge the Board or the CFPB to clarify certain of these new reporting requirements. For example, Regulation C should define the points and fees that are to be collected under HMDA as they are defined under other rules, such as the Regulation Z, the Truth and Lending Act. Also, credit scores should not be required if the lender does not use the credit score as part of the loan underwriting process. This would impose additional burdens on lenders that would not be justified if the credit score was not a factor in the loan decision.

REVERSE MORTGAGES

A key area that should be reviewed as part of this HMDA rulemaking process would be the issues with regard to reverse mortgages, which is currently being reviewed by the Board in other contexts and is the subject of several provisions of the Dodd-Frank Act. These types of loans are very complex and confusing, which may lead to abuses and excessive fees by other types of lenders, similar to the complex mortgage loans that were a major cause of the recent economic crises. We are concerned these abuses will increase as the population ages rapidly in coming years, resulting in greater demand for reverse mortgage loans from those who will need to access their home equity to help support themselves during their retirement years.

TIME NEEDED TO COMPLY WITH NEW HMDA REQUIREMENTS

To the extent new HMDA requirements are imposed, we urge that credit unions be given at least two years to implement these changes. For example, if a final rule is issued in January 2012, then this should apply to data that is collected beginning in January 2013, which is then reported in early 2014.

INDUSTRY FOCUS GROUPS

We appreciate that the Board is conducting these hearings as part of the process of assessing whether additional changes are needed with regard to the HMDA reporting requirements. As this process unfolds, we believe it would also be beneficial to conduct additional meetings with industry representatives, including