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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 203

[Regulation C; Docket No. 1398]

#### Home Mortgage Disclosure

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; staff commentary.

**SUMMARY:** The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation C (Home Mortgage Disclosure). The staff commentary is amended to increase the asset-size exemption threshold for depository institutions based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW). The adjustment from \$39 million to \$40 million reflects the increase of that index by 2.21 percent during the twelve-month period ending in November 2010. Thus, depository institutions with assets of \$40 million or less as of December 31, 2010 are exempt from collecting data in 2011.

**DATES:** Effective January 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** John C. Wood, Counsel, Division of Consumer and Community Affairs, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801 *et seq.*) requires most mortgage lenders located in metropolitan areas to collect data about their housing-related lending activity. Annually, lenders must report those data to their federal supervisory agencies and make the data available to the public. The Board's Regulation C (12 CFR part 203) implements HMDA.

Prior to 1997, HMDA exempted depository institutions with assets

totaling \$10 million or less, as of the preceding year-end. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (codified at 12 U.S.C. 2808(b)) amended HMDA to expand the exemption for small depository institutions. The statutory amendment increased the asset-size exemption threshold by requiring a one-time adjustment of the \$10 million figure based on the percentage by which the CPIW for 1996 exceeded the CPIW for 1975, and it provided for annual adjustments thereafter based on the annual percentage change in the CPIW. The one-time adjustment increased the exemption threshold to \$28 million for 1997 data collection.

Section 203.2(e)(1)(i) of Regulation C provides that the Board will adjust the threshold based on the year-to-year change in the average of the CPIW, not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million dollars. Pursuant to this section, the Board has adjusted the threshold annually, as appropriate.

For 2010, the threshold was \$39 million. During the twelve-month period ending in November 2010, the CPIW increased by 2.21 percent; as a result, the exemption threshold will increase to \$40 million. Thus, depository institutions with assets of \$40 million or less as of December 31, 2010 are exempt from collecting data in 2011. An institution's exemption from collecting data in 2011 does not affect its responsibility to report data it was required to collect in 2010.

#### Final Rule

Under the Administrative Procedures Act, notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary. 5 U.S.C. 553(b)(B). The amendment in this notice is technical. Comment 2(e)-2 is amended to update the exemption threshold. This amendment merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

#### List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

#### PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 203 continues to read as follows:

**Authority:** 12 U.S.C. 2801–2810.

■ 2. In Supplement I to part 203, under *Section 203.2 Definitions, 2(e) Financial Institution*, paragraph 2(e)-2 is revised to read as follows:

#### Supplement I to Part 203—Staff Commentary

\* \* \* \* \*

#### Section 203.2 Definitions

\* \* \* \* \*

#### 2(e) Financial Institution.

\* \* \* \* \*

2. *Adjustment of exemption threshold for depository institutions.* For data collection in 2011, the asset-size exemption threshold is \$40 million. Depository institutions with assets at or below \$40 million as of December 31, 2010 are exempt from collecting data for 2011.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, December 17, 2010.

**Jennifer J. Johnson,**  
*Secretary of the Board.*

[FR Doc. 2010-32210 Filed 12-22-10; 8:45 am]

**BILLING CODE 6210-01-P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

[Regulation Z; Docket No. R-1394]

#### Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim final rule, correction.

**SUMMARY:** This document corrects certain cross-references and typographical errors in the regulation, staff commentary to the regulation, and the supplementary information of the interim final rule published in the

**Federal Register** of October 28, 2010 (75 FR 66554) (Docket No. R-1394). A paragraph describing revisions to staff comment 1(d)(5)-1 is also added to the section-by-section analysis of the supplementary information. The interim final rule amends Regulation Z, which implements the Truth in Lending Act, in order to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

**DATES:** This correction is effective December 27, 2010.

**Compliance Date:** To allow time for any necessary operational changes, compliance with the interim final rule as corrected is optional until April 1, 2011.

**Comments:** Comments must be received on or before December 27, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Jamie Z. Goodson, Attorney, or Lorna M. Neill, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Board published an interim final rule in the **Federal Register** on October 28, 2010 (75 FR 66554) (Docket No. R-1394), amending Regulation Z (Truth in Lending) to implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-208, 124 Stat. 1376 (Jul. 21, 2010).

In the interim final rule, Docket No. R-1394, published on October 28, 2010, (75 FR 66554) make the following corrections:

1. On page 66555, in the first column, line 24, correct "April 1, 2010" to read "April 1, 2011".

2. On page 66556, in the third column, immediately under the heading "IV. Section-by-Section Analysis," add the following:

*"Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement and Liability*

*Section 226.1(d) Organization*

Section 226.1(d) describes how Regulation Z is organized. Section 226.1(d)(5) describes Subpart E of Regulation Z, which this interim final rule amends by adding new § 226.42, "Valuation Independence." The interim final rule also revises comment 1(d)(5)-1 to add a new subpart 1(d)(5)-1.ii, stating that compliance with the interim final rule is mandatory on April 1, 2011, for open- and closed-end extensions of consumer credit secured by the

consumer's principal dwelling. The revised comment also states that § 226.36(b), which is substantially similar to § 226.42(c) and (e), is removed effective April 1, 2011. The comment explains that applications for closed-end extensions of credit secured by the consumer's principal dwelling that are received by creditors before April 1, 2011, are subject to § 226.36(b) regardless of the date on which the transaction is consummated. However, parties subject to § 226.36(b) may, at their option, choose to comply with § 226.42 instead of § 226.36(b), for applications received before April 1, 2011. To illustrate, the comment explains that an application for a closed-end extension of credit secured by the consumer's principal dwelling received by a creditor on March 20, 2011, and consummated on May 1, 2011, is subject to § 226.36(b), but the creditor may choose to comply with § 226.42 instead. The comment further explains that, for an application for open- or closed-end credit secured by the consumer's principal dwelling that is received on or after April 1, 2011, the creditor must comply with § 226.42."

3. On page 66558, in the first column, line 50, correct "Section 226.42(b)(5)" to read "Section 226.42(b)(3)".

3a. On page 66558, in the second column, line 4, correct "§ 226.42(b)(5)" to read "§ 226.42(b)(3)".

4. On page 66559, in the third column, line 41, correct "comment 42(c)(1)(1)-3" to read "comment 42(c)(1)-3".

5. On page 66570, in the first column, lines 1-3, remove "companies that publicly hold themselves out as".

6. On page 66574, in the second column, lines 1-2, correct "on rates" to read "on information about rates".

7. On page 66575, in the third column, line 39, correct "comment 42(g)-6" to read "comment 42(g)(1)-6."

8. On page 66576, in the second column, line 34, correct "§ 226.42(b)(2)" to read "§ 226.42(b)(1)".

9. On page 66578, in the second column, line 23, correct "18,749,687" to read "75,894".

10. On page 66580, in the second column, revise the List of Subjects under 12 CFR Part 226 to read as follows: "Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping, Truth in Lending".

**Authority Citation for Part 226 [Corrected]**

11. On page 66580, in the second column, under the authority citation, correct the reference to "124 Stat. 1376, 2188" to read "124 Stat. 1376, 2187".

**§ 226.42 [Corrected]**

12. On page 66581, in the third column, line 1, in § 226.42(d)(3)(i), correct "based the value" to read "based on the value".

13. On page 66582, in the first column, line 29, in § 226.42(f)(2)(i) introductory text, correct "a creditor shall" to read "a creditor or its agents shall".

**Supplement I to Part 226 [Corrected]**

14. On page 66583, in the first column, line 57, in paragraph 1(d)(5)-1.ii, correct "(ii)" to read "i".

15. On page 66583, in the first column, line 63, in paragraph 1(d)(5)-1.ii, correct "§ 226.42(b) and (e)" to read "§ 226.42(c) and (e)".

16. On page 66583, in the third column, lines 50-51, in paragraph 42(c)(1)-3, correct "See comment 42(b)(5)-1." to read "See comment 42(b)(3)-1."

17. On page 66584, in the first column, line 7, in paragraph 42(c)(1)-4, correct "exceed" to read "exceeds".

18. On page 66584, in the third column, lines 13-14, in paragraph 42(d)(2)(ii)-1, correct "(as defined in paragraph (d)(4)(ii) and comment 42(d)(4)(ii)-1)" to read "(as defined in paragraph (d)(5)(i) and comment 42(d)(5)(i)-1)".

19. On page 66585, in the first column, lines 1 and 3, in paragraph 42(d)(3)-1 (continued from previous page), correct "paragraph (d)(2)" to read "paragraph (d)(3)".

20. On page 66585, in the second column, lines 35-36 and line 37, in paragraph 42(d)(4)(ii)-1, correct "paragraph (d)(4)(i)" to read "paragraph (d)(4)(ii)".

21. On page 66585, in the second column, line 46, in paragraph 42(d)(5)(i)-1, correct "paragraphs (d)(3) and (d)(4)(ii)" to read "paragraphs (d)(2) and (d)(4)(i)".

22. On page 66587, in the first column, lines 22-26, in paragraph 42(g)(1)-1, correct "Uniform Standards of Professional Appraisal Practice established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9) (USPAP))" to read "Uniform Standards of Professional Appraisal Practice (USPAP) established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9))".

23. On page 66587, in the second column, line 31, in paragraph 42(g)(1)-4, add "and" before "other persons that provide 'settlement services'".

By order of the Board of Governors of the Federal Reserve System, acting through the

Secretary under delegated authority, December 14, 2010.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2010-31824 Filed 12-22-10; 8:45 am]

**BILLING CODE P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 701**

**RIN 3133-AD75**

#### **The Low-Income Definition**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending the definition of “low-income members” to clarify that, in determining if a credit union qualifies for a low-income designation, the comparison of credit union data, whether individual or family income data, must be with statistical data for the same category. The amendment will clarify the intention of the original regulatory text so it is consistent with the geo-coding software the agency uses to make the low-income credit union (LICU) designation.

**DATES:** Effective December 23, 2010 this rule finalizes without change, the interim final rule published on August 5, 2010, 75 FR 47171 (Aug. 5, 2010). That interim rule was effective upon publication on August 5, 2010.

**FOR FURTHER INFORMATION CONTACT:** Regina Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or telephone: (703) 518-6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Federal Credit Union Act (Act) authorizes the NCUA Board (Board) to define “low-income members” so that credit unions with a membership consisting of predominantly low-income members can benefit from certain statutory relief and receive assistance from the Community Development Revolving Loan Fund. 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1757a(c)(2)(B), 1772c-1. This authority has been implemented in § 701.34 of NCUA regulations, known as the low-income rule. 12 CFR 701.34. In April 2008, the Board proposed substantial changes to the rule, which had previously been based on measuring median household income, with geographic differentials for certain areas with higher costs of

living. 73 FR 22836 (April 28, 2008). In brief, the Board proposed to, and as adopted in the final rule, did replace median household income with median family income or median earnings for individuals as better measures, more flexible, and in line with standards used by other Federal agencies. 73 FR 71909 (Nov. 26, 2008).

As discussed in the preamble to the final rule, NCUA also undertook as part of the regulatory changes to facilitate the low-income designation process by eliminating the requirement for credit unions to apply for the designation. NCUA is in the process of implementing geo-coding software to make the calculation automatically for credit unions during the examination process.

NCUA will make the determination of whether a majority of an FCU’s members are low-income based on data it obtains during the examination process. This will involve linking member address information to publicly available information from the U.S. Census Bureau to estimate member earnings. Using automated, geo-coding software, NCUA will use member street addresses collected during FCU examinations to determine the geographic area and metropolitan area for each member account. NCUA will then use income information for the geographic area from the Census Bureau and assign estimated earnings to each member.

73 FR at 71910-11. NCUA’s software ensures that the same categories of data available for member income at a particular credit union are compared with like categories of statistical data on income from the Census Bureau. In particular, individual member earnings information is compared to median individual earnings data and family income information is compared to median family income data.<sup>1</sup>

The final rule in November 2008 also provided credit unions, as an alternative

<sup>1</sup>NCUA’s geo-coding software, known within the agency as the “Low-Income Designation Assessment Tool,” is currently a stand-alone software program developed by NCUA’s Office of the Chief Information Officer with guidance from regional staff experienced in low-income designation. Regional staff as well as Economic Development Specialists currently use the tool as needed based on requests from credit unions. Eventually, the same software rules will be embedded into the NCUA AIREX examination software. The current version performs 30 different ratio calculations for each member based on a variety of factors and data to determine whether the member meets the low-income definition. The variety of ratios is expansive in order to provide all of the possible options for members to meet the definition. Factors recognize the following: (1) Data sources include both decennial income data as well as American Community Survey income data; (2) different data is incorporated for metro vs. non-metro geographic areas; and (3) ratio options include comparisons of census tract and block group income data, to zip code, county, MSA, state, and national data, plus comparisons of county income data to CBSA, state, and national income data.

to relying on NCUA’s geo-coding software, the option of providing actual income information about their members as a basis for qualifying as a LICU. Confusion has arisen regarding the appropriate comparison of actual member information and statistical data from the Census Bureau, prompting the need for this clarifying amendment. The confusion arises from a discussion in the preamble to the final rule, where the Board stated:

The rule also provides an alternative basis for an FCU to qualify for a LICU designation. An FCU may be able to demonstrate the actual income of its members based on data it has, for example, from loan applications or surveys of its members. An FCU may qualify as a LICU if it can establish a majority of its members meet the low-income formula. For example, an FCU with 1,000 members may be able to show the actual income of 501 or more of its members is equal to or less than 80% of the MFI for the metropolitan area(s) where they live. As a practical matter, the Board thinks few FCUs will need this option because NCUA’s approach of matching member residential information with Census Bureau income information will provide an estimate very close to members’ actual income.

73 FR at 71911. The rule provides median family income or median individual earnings as alternatives and, as noted above, NCUA’s geo-coding software compares like categories of data. Unfortunately, the above-quoted statement in the preamble indicated that, as an alternative to relying on the NCUA’s geo-coding, a credit union could apply for a low-income designation relying on a comparison of actual income data for individual members to statistical data on median family income as the basis for the designation. This would not be a valid or meaningful comparison. The Board believes that, as a matter of logic and statistical reasoning, only like categories of data may be compared in making the determination that a credit union’s membership meets the low-income definition. Actual individual member income information should not be measured against median family income, but rather, against individual median earnings.

##### **Interim Final Rule and Comments**

In July 2010, the Board issued an interim final rule amending § 701.34(a)(1) by clarifying that median family income and median earnings for individuals are alternative bases on which credit union members may qualify as low income. 75 FR 47171 (Aug. 5, 2010). In addition, the interim final rule amended the subsection of the rule regarding the option for credit unions to submit their own information