

May 26, 2009

Michael Taliefero
Managing Director
ComplianceTech
2120 Washington Blvd. Suite 400
Arlington, VA 22204

Re: FOIA Appeal dated April 28, 2009

Dear Mr. Taliefero:

On April 23, 2009, you made a Freedom of Information Act (FOIA) request via e-mail; we received your request on April 24th. You requested certain records about financial institutions that NCUA regulates, vendors, consultants, academics and individuals who have ordered or requested to download the free HMDA or CRA Data Entry software provided by the Federal Financial Institution Examination Council (FFIEC) online at <http://www.ffiec.gov/software/default.aspx>. You requested the name, e-mail address, phone number, title, and user type of those who ordered or requested to download the software in order to enter HMDA or CRA data in 2007, 2008, or 2009. You also requested the latest mailing list used to distribute earlier versions of software in years prior to its availability online. Linda Dent, NCUA Staff Attorney, responded to your request via e-mail on April 28th. She stated that although NCUA is the HMDA enforcement agency for credit unions and their subsidiaries, we do not distribute the software for the filing of this data. Therefore NCUA has no records responsive to your request – data for entities that ordered or downloaded the software. The software is distributed by the Federal Reserve Board through the FFIEC's website. You appealed the denial on April 28, 2009. You are only appealing our decision in regard to individuals/entities that have downloaded the HMDA software, not the CRA software.¹ Your appeal is denied as explained below.

As Ms. Dent noted, NCUA does not distribute the HMDA reporting software. Neither does NCUA produce or own the software. Credit unions and their subsidiaries that are required to submit HMDA data may download the software from the FFIEC website. They may use the software to submit required data to the Federal Reserve Board (FRB) via the FFIEC website. NCUA is not involved with the software to which you refer in your FOIA request. We simply do not have a listing of the downloaders of the software. We also note that data may be submitted without use of the above-noted software.

The adequacy of an agency's search under the FOIA is determined by a test of "reasonableness," which may vary from case to case. Zamansky v. EPA,

¹As noted in Ms. Dent's letter, federal credit unions are not subject to CRA requirements and NCUA does not enforce CRA for any credit union.

767 F.2d 569, 571-73 (9th Cir. 1985). The reasonableness of an agency's search depends, in part, on how the agency conducted its search in light of the scope of the request. Hayden v. Department of Justice, No. 03-5078, 2003 WL 22305071, at *1 (D.C. Cir. Oct. 6, 2003). The question is not whether any documents responsive to the request might exist, but rather whether the search for any responsive documents was adequate. We contacted NCUA staff responsible for HMDA compliance. We provided staff with copies of your request and appeal and discussed the information requested extensively with them. Staff has assured us that we NCUA does not have the records that you request. We believe a reasonable search was conducted.

This paragraph will provide you with some additional information from our HMDA compliance staff; it is not required pursuant to the FOIA. Information is available on the FFIEC website about HMDA filers. The link on the FFIEC's website is www.ffiec.gov/hmdafeedback/hmdaproducts.aspx. On that page there is a link entitled "Reporter Panel." If you click on the link, there is additional detail about the public data that is available from the Federal Reserve Board through the FFIEC's web site. The FRB takes the data submitted for credit unions and their subsidiaries (including data submitted using the software) and, after analysis and scrubbing, forwards the data to NCUA for purposes of our determining compliance with HMDA. If you are interested in obtaining that information, it is available on the FFIEC's web site at the above hyperlink under the section entitled "Loan Application Register (LAR) & Transmittal Sheet (TS) Raw Data Windows Application" (previously known as LAR & TS Raw Data on CD-ROM). In addition, if you are interested in a list of credit unions that might be required to file HMDA data based on asset size, that information is available by generating a query at the link: <http://webapps.ncua.gov/customquery/> on NCUA's Internet site. The following link provides additional information about generating queries efficiently: <http://webapps.ncua.gov/customquery/CustomQueryTips.pdf>.

Pursuant to 5 U.S.C. 552(a)(4)(B) of the FOIA, you may seek judicial review of this determination by filing suit against the NCUA. Such a suit may be filed in the United States District Court where you reside, where your principal place of business is located, the District of Columbia.

Sincerely,

Robert M. Fenner
General Counsel

GC/HMU:bhs
09-0517
09-FOI-00110
09-APP-00008