



Credit Union Regulatory Issues

Talking Points

(September 2021)

I. Credit Union Regulatory Burden

- We believe federal financial regulators should take action to streamline current regulations, eliminate antiquated and inconsistent requirements, provide exemptions for credit unions where appropriate, and curb future regulatory requirements.
- Tailored and focused regulations are especially necessary given the operational pressures caused by the current COVID-19 crisis and its economic fallout.
- Credit unions are consumers' and small businesses' best hope for receiving affordable and fair financial services since their customers are also their owners. This key incentive—that credit union customers are member-owners—is lacking in the for-profit banking industry.

II. CFPB Issues

Exemption Authority/Tailoring Regulations

- Broad, overly complex regulations strain the finite resources of community-based credit unions and often result in their exit from markets or reduced product offerings. This trend negatively affects consumers' ability to access financial services from reputable providers.
- Congress crafted the Dodd–Frank Act to authorize the Bureau to tailor rulemakings so responsible actors in the financial services marketplace are not negatively impacted.
- The Bureau should use its exemption authority to protect credit union members from one-size-fits-all rulemakings that are inappropriate when applied to the not-for-profit structure of credit unions.

Small Business Lending Rulemaking

Section 1071 of The Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) to require financial institutions to compile, maintain, and submit to the Bureau certain data on credit applications by women-owned, minority-owned, and small businesses.

- Credit unions support the goals of section 1071 and seek to provide all members with fair and equitable financial opportunities. That said, we are concerned about the potential for unintended consequences and the substantial compliance costs associated with the creation of a broad data collection where one does not currently exist.
- As service providers legally bound to serve a specific field of membership and comply with statutory member business lending (MBL) restrictions, the data collected by the Bureau would likely be incomparable to other lenders that are legally permitted to serve anyone walking through their doors or accessing their websites.
- We support Bureau efforts to tailor its rule to have a minimal impact on credit unions and to avoid creating unintended barriers for small business borrowers seeking credit.

Ability-to-Repay (ATR)/Qualified Mortgage (QM) Rule

In 2020 and early 2021 rulemakings, the Bureau extended the expiration of the Temporary GSE QM “patch” and finalized a new and more flexible General QM definition. In addition, it proposed a new Seasoned QM category in recognition that longer-tenured mortgages with no or minimal defaults are, by definition, sustainable and free of ATR issues. The Bureau allowed the new General QM definition to become effective but delayed the mandatory compliance deadline for its use until October 1, 2022, simultaneously signaling an intention to review and revise the rule.

While this extended the theoretical availability of the old, DTI-based General QM definition and the Temporary GSE QM “patch”, the extension was largely moot as the government-sponsored enterprises (GSEs), under the conservatorship of the Federal Housing Finance Agency (FHFA), issued their own policies declining to purchase loans based on these QM definitions. This means the majority of credit unions must implement the General QM definition without regard to the Bureau’s extension and knowing that changes to the rule are likely in the short-term.

- We urge the Bureau to work closely in coordination with the FHFA, NCUA, and other regulators to avoid this kind of regulatory conflict, confusion, and waste of credit union resources. Further, we urge the Bureau to engage stakeholders in discussions on potential policy changes so it can understand potential consequences before it acts.
- Further, we recommend the Bureau allow the new General QM definition to stand as finalized and for the mandatory compliance deadline to pass on October 1, 2022.

We also recommend the Bureau issue a statement to that effect to provide clarity and certainty for lenders. The Bureau can then study the effectiveness of the price-based definition and release a new General QM definition or additional QM definitions based on its findings.

Regulation by Enforcement

In the past, the Bureau engaged in the practice of “regulation by enforcement,” especially in regard to the “abusiveness” standard. The Bureau’s “I know it when I see it” approach resulted in uncertainty in the financial services marketplace and presented due process concerns.

- We support the Bureau taking meaningful steps toward establishing clear standards for and transparency in all aspects of its authority.
- If the Bureau wants to make actionable policy, then it should either propose regulations through the notice-and-comment process or issue policy statements that clarify expectations for regulated entities.

Home Mortgage Disclosure Act (HMDA)

The Bureau has repeatedly acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, in 2015, the CFPB chose to adopt a HMDA Final Rule that disproportionately burdened credit unions with finite resources despite no evidence of past wrongful conduct.

While both the CFPB and Congress recently provided meaningful HMDA relief for smaller lenders, we recommend the Bureau adopt additional accommodations, such as:

- Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary;
- Reduce the HMDA data set for all reporters to the data points required by statute; and
- Reconsider the privacy balancing test used to determine which HMDA data points are made available to the public in favor of consumer privacy.

Short-term, Small Dollar Lending

Credit unions provide the safest and most affordable loan options for consumers in need of emergency credit. Consumers’ access to emergency credit is especially important given the current environment as evidenced by the joint statement from the federal banking regulators encouraging financial institutions to provide responsible small dollar-lending in response to COVID-19.

- We continue to advocate for the rules governing short-term, small dollar lending to be tailored to address predatory lending practices while not inhibiting credit unions from offering affordable small dollar products to members in need.
- We recommend the CFPB expand the Payday Rule’s partial carve-out for the Payday Alternative Loan I (PAL) program to also cover NCUA’s PAL II program.

Debt Collection

The collection of debts from borrowers is critical to the safety and soundness of any lending institution. Credit unions, as financial cooperatives, collect debts from their member-owners and, in certain circumstances, retain third-party collectors for this purpose. Credit unions’ interest in a debt collection rulemaking, therefore, is two-fold: as first-party lenders that are not subject to the Fair Debt Collection Practices Act (FDCPA) and as institutions that may retain third-party lenders that are.

- Credit union strongly oppose any debt collection rulemaking that would result in the FDCPA, which specifically focuses on third-party debt collectors, being extended to creditors and first-party collectors, either directly or indirectly.
- The Bureau should consider the broad impact of its debt collection rule on consumers and the operations of third-party collectors and seek to limit disruption to this critical function.

Remittances

We support appropriate safeguards for consumers initiating remittance transfers, including clear and understandable disclosures. The Bureau’s increase of the rule’s “normal course of business” threshold to 500 transfers provided significant regulatory relief to several hundred credit unions. However, the threshold increase should be considered merely the first step toward restoring the market after providers left due to the high cost of compliance with the Remittance Rule.

We recommend the CFPB consider additional substantive amendments to the Remittance Rule. Specifically, the Bureau should:

- Preserve the 500 transfer “normal course of business” safe harbor threshold and consider increasing the threshold to 1,000 remittance transfers; and
- Eliminate the 30-minute cancellation requirement or provide consumers the ability to opt-out of the mandated waiting period.

Financial Education Initiatives

- The Bureau should utilize financial education efforts to guide consumer behavior. This approach, rather than rulemaking to guide consumer choices, provides the foundation for sustainable financial health.