CUNA
Credit Union National Association

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January 13, 2014

The Honorable Shelly Moore Capito
Chairman
Subcommittee on Financial Institutions
and Consumer Credit
United States House of Representatives
Washington, D.C. 20515

The Honorable Gregory Meeks
Ranking Member
Subcommittee on Financial Institutions
and Consumer Credit
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Capito and Ranking Member Meeks:

On behalf of the Credit Union National Association (CUNA), I am writing to thank you for holding a hearing on the likely impact on Americans trying to buy homes from the Dodd-Frank Act's Ability to Repay/Qualified Mortgage Rule. CUNA is the largest credit union advocacy organization in the United States, representing America's 6,700 state and federally chartered credit unions and their 99 million members.

The Dodd Frank Act's ATR/QM Rule went into effect on January 10, 2014, so it is rather early to assess the impact it will have on the housing market other than to say that many of our members are concerned that it will have a negative impact on their mortgage lending and operations. As Congress considers the impact the regulation will have, we urge you to examine two key issues: (1) whether financial institutions need protection from lawsuits brought by private parties for a reasonable period of time after the effective date, and (2) whether credit unions ought to be subject to this regulation in the first place.

Congress Should Protect Lenders from Lawsuits Based on Early Noncompliance under the Rule

Eight mortgage related rules, including the ATR rule, become effective this month. Seven of these rules were finalized in October, and since then credit unions have been scrambling to come into compliance.

Finalization Dates for Mortgage Rules Effective January 2014			
Rule Name	**Date First Finalized**	**Date Last Amended**	**Number of Amendments/ Clarifications**
Ability to Repay/Qualified Mortgage	January 10, 2013	October 1, 2013	4
2013 HOEPA Rule	January 10, 2013	October 23, 2013	5
Loan Originator Compensation	January 20, 2013	October 1, 2013	2
ECOA Valuations	January 18, 2013	October 1, 2013	1
TILA HPML Appraisals	January 18, 2013	N/A	0
TILA HPML Escrows	January 18, 2013	October 1, 2013	3
Servicing TILA	January 17, 2013	October 23, 2013	3
Servicing RESPA	January 17, 2013	October 23, 2013	3

These new rules, and the commentary that accompanies them, weigh in at approximately 5,000 pages of new regulations. While we appreciate that the Consumer Financial Protection Bureau (CFPB) delayed finalization of many of these rules and included changes in an effort to be responsive to the concerns that we and others raised, the fact remains that a number of our members that make mortgage loans feel unduly burdened and that Congress, the CFPB and prudential regulators should not expect credit unions to be in compliance with these rules less than 100 days after final changes were adopted. As expected, many credit unions have indicated they would not be able to comply with the regulations on time, despite their best efforts.

The CFPB and the National Credit Union Administration (NCUA) have recently made statements that the agencies will provide some compliance flexibility to credit unions that are making good faith efforts to meet their responsibilities under the new mortgage rules. CUNA supports and appreciates these accommodations; however, credit unions that are not in compliance with these rules when they are effective are still vulnerable to lawsuits for up to several years because the *Truth in Lending Act*, under which the rules have been promulgated, carries a private right of action.

Only Congress can protect credit unions and other lenders from this threat, and we continue to urge you to take action on this matter as soon as possible.

Credit Unions' Structure and Performance Demonstrate that a Full Exemption Is Warranted

During the rulemaking process, the CFPB was receptive to and somewhat responsive to the concerns that credit unions raised. We appreciate the recent statements by the CFPB and the NCUA which emphasize to credit unions that not all mortgages need to be QMs. Nevertheless, we remain concerned about the long-term effect this rule will have on credit unions and their members, and we question why credit unions ought to be subject to the rule in the first place.

As we have noted in previous testimony before the Subcommittee, credit unions agree that it is always in the best interest of the credit union to assess a member's ability to repay when offering them a loan. That is what credit unions routinely did, even before the adoption of the rule.

Because credit unions are member-owned financial cooperatives and thus, the costs of compliance must be borne by all members, and in light of that fact that the rule was designed to address problems credit unions did not engage in, we believe there is a very strong statutory and public policy case to be made that credit unions ought to be fully exempt from the QM Rule. That case is also based on how credit unions are structured, which produces a set of operational incentives that is different from for-profit financial institutions, and also on the historical performance of credit union mortgage loan portfolios. Moreover, the CFPB has the legal authority to provide such an exemption, and Congress should assure the agency it has such power. A recent letter to Director Corday, with an attached memorandum discussing the agency's authority to exempt credit unions, is attached.

The not-for-profit, cooperative structure of credit unions presents incentives that are different from the incentives of for-profit, shareholder-owned financial institutions. Because credit unions have no outside shareholders, they have no incentive to maximize profits, so they tend to be more conservative lenders than their for-profit brethren. This important distinction engenders the

tailoring of loan products to the needs of the borrower, as opposed to putting borrowers into a product that might not fit, but has a chance of having a positive impact on the institution's bottom line. Those who operate credit unions have no incentive to gamble on loans to members who do not have the ability to repay.

Credit unions have also historically been portfolio lenders, and continue to keep a significant percentage of mortgages on their books. If a credit union makes a bad loan to a member, it has an impact not just on the borrower but also on the other member-owners of the credit union, who may find credit less available and more expensive as a result of the loss.

The importance of these structural differences between credit unions and for-profit lenders is reflected in the historical performance of credit union mortgage portfolios. Prior to the financial crisis, annual net charge-off rates on residential mortgage loans at both banks and credit unions were negligible, less than 0.1%. However, as the recession took hold, losses mounted. At credit unions, the highest annual loss rate on residential mortgages was 0.4%. At commercial banks, the similarly calculated loss rate exceeded 1% of loans for three years, reaching as high as 1.58% in 2009.[1]

According to the CFPB, "the Ability-to-Repay rule is intended to prevent consumers from getting trapped in mortgages that they cannot afford, and to prevent lenders from making loans that consumers do not have the ability to repay."[2] Credit unions have implemented those goals since they were established in the United States over 100 years ago. They do not want their member-owners in mortgages they cannot afford. Credit unions are already doing what the CFPB and Congress want them to do. The overarching problem credit unions have with the Dodd-Frank ATR rule is that it makes it harder for them to achieve those goals for their members because the rule subjects credit unions to yet another layer of regulation that is appropriate for abusers of consumers. When regulators make it more difficult for credit unions to serve their members, consumers, communities and the economy lose.

We appreciate that the CFPB has allowed loans to be eligible for sale to FNMA or FHLMC to be considered QMs for 7 years or until the GSEs are dissolved, and included a small lender exemption in the final rule. However, as we have said to the CFPB and other policymakers, the exemption did not go far enough. Credit unions of all sizes should be exempt from the rule.

The rule currently exempts loans made by a financial institution with less than $2 billion in assets and that originates, together with affiliates, 500 or fewer first-lien mortgages in the prior year, and meets the following product features:

- Points and fees less than or equal to 3 percent of the loan amount (for loan amounts less than $100,000, higher percentage thresholds are allowed);
- No risky features such as negative amortization, interest-only, or balloon loans (balloon loans originated until January 10, 2016 that meet the other product features are QMs if originated and held in portfolio by small creditors);
- Underwriting information must be documented;
- The loan term does not exceed 30 years.

[1] Based on FDIC and NCUA data.
[2] http://www.consumerfinance.gov/f/201312_cfpb_mortgage-rules_fact-vs-fiction.pdf

Furthermore, the lender must generally hold the loan in portfolio for at least three years and consider and verify a borrower's debt-to-income ratio (DTI), regardless if the DTI exceeds 43 percent or the loan is government sponsored enterprise/agency-eligible.

We do not believe that asset size and number of mortgages are what guides the underwriting of credit union mortgages; the structure of credit unions, their historic mission to serve the best interests of their members and their very low default and delinquency rates are the significant distinguishing factors that support an exemption for credit unions. We urge the Subcommittee to encourage the CFPB to provide all credit unions an exemption from the QM rule. Moreover, we believe other community based financial institutions should be considered for similar treatment under the QM rule.

Conclusion
As we have testified before, credit unions face an unprecedented regulatory burden. With the implementation of these rules, impact of the burden has become even more severe. We appreciate the subcommittee's continued oversight of the ever mounting regulatory responsibilities and liabilities facing community financial institutions, and we look forward to continuing to work with you on legislative solutions to relieve credit unions of regulatory burden and enhance their ability to serve their members.

On behalf of America's credit unions and their 99 million members, thank you for your consideration of our views.

Best regards,

Bill Cheney
President & CEO

Attachment

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January 10, 2014

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1801 L Street NW
Washington, D.C. 20036

Dear Director Cordray:

I trust you had an enjoyable holiday season, and want to wish you a very Happy New Year.

I was able to catch your appearance on "The Daily Show" Wednesday evening and was pleased with the comments you made regarding credit unions relative to the new mortgage rules. More specifically, you stated that the rules are "really taking mortgage lending back to what community banks and credit unions have done for decades, checking out the numbers to make sure people can actually succeed in the loan, not just giving it to them and not caring if they fail."

I could not agree more and as we have stated on numerous occasions, because of their pro-consumer lending practices that have resulted in very low default and delinquency rates, credit unions do not need new rules to force them to treat their borrowers fairly.

Your appearance with Jon Stewart came on the heels of comments you reportedly made to the National Association of Realtors this week in which you suggested that the exemption level under the Ability to Repay (ATR) Rule for community based institutions may be rethought at the CFPB.

Now that the initial task of developing the mortgage rules is behind the CFPB, CUNA urges the agency to revisit exemption issues as soon as possible. We do not think the agency's reconsideration should be limited to the ATR Rule but should include other mortgage rules and the international remittance transfer rule as well.

We feel strongly that the agency has solid statutory authority to exempt credit unions broadly, particularly from regulations designed to address abuses in which credit unions were not engaged. In that connection, I am resending to you a detailed legal analysis which demonstrates convincingly, we believe, that CFPB does indeed enjoy broad authority to exempt credit unions and other community financial institutions from its rules

or specific provisions in its rules. The memorandum was prepared by outside counsel with extensive experience at the Federal Reserve and at the CFPB itself.

We urge the CFPB to give this issue the consideration it deserves in light of the impact of the CFPB's major rules on credit unions.

I would welcome the opportunity for CUNA to meet with you on the exemption issues soon and will work with your office to try to set that up, depending on your availability.

In the meantime, CUNA and our members look forward to working constructively with you and your agency throughout this year and your tenure, as we have in the past.

Best regards,

Bill Cheney
President & CEO

Attachment

The Consumer Financial Protection Bureau's Statutory Authority to Provide Exemptions for Credit Unions

You have asked us about the extent to which the Bureau of Consumer Financial Protection ("Bureau") has statutory authority to exempt credit unions from disclosure and other obligations imposed by certain consumer financial laws and regulations issued by the Bureau under those laws. Specifically, this memorandum addresses the Bureau's statutory authority to exempt credit unions from obligations imposed by: (1) Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act[1] ("Dodd-Frank Act") and Bureau regulations issued under Title X; and (2) the "enumerated consumer laws" and Bureau regulations to implement those laws.

Executive Summary

As described in greater detail below, the Bureau has several sources of statutory authority that it could use to provide exemptions from the requirements of statutes or implementing regulations generally or the requirements of certain provisions specifically.[2] These statutory provisions individually and together grant broad authority to the Bureau and constitute a strong legal framework to support the agency's reasonable use of its exemption authority.

For example, Section 1022 of Title X of the Dodd-Frank Act permits the Bureau to exempt ***any* class of covered person from *any* provision of Title X or *any* rule issued by the Bureau under Title X** if such an exemption is consistent with relevant statutory considerations that the Bureau must take into account in issuing an exemption.

In addition to this general authority, of the eighteen enumerated consumer laws, eleven provide the Bureau with specific exemption authority. Specifically, of the eighteen enumerated consumer laws:

- Five permit the Bureau generally to provide exemptions for specific classes of transactions only;
- Five permit the Bureau to make exemptions from specific statutory provisions only; and
- One permits the Bureau to provide exemptions for specific classes of transactions and also permits the Bureau to make exemptions from specific statutory provisions.

As discussed below, however, the various statutes generally do not define the phrase "class of transaction" or otherwise clarify whether a "class of transaction" may apply to a specific type of institution. Nonetheless, the Bureau's exemption authority under specific provisions of certain laws may be broader than its more general "class of transaction" authority.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] We note that, in large part, the Bureau's exemption authority is permissive and not mandatory. That is, where permitted, the Bureau may (but is not required to) provide exemptions.

Five of the eighteen enumerated consumer laws permit the Bureau to make exemptions for classes of transactions subject to substantially similar state laws.[3] This "substantially similar state law" exemption authority requires, among other things, that there be a state law that is substantially similar to the federal law and that there is adequate provision for enforcement of that state law.

Regardless of the source of exemption authority, our discussion below assumes that any Bureau use of its exemption authority would be consistent with the Administrative Procedure Act. Specifically, we assume that any Bureau use of its exemption authority by rule would not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[4] For example, if the Bureau were to make an exemption for credit unions and not for other types of institutions as well, the Bureau would need a sufficient basis for treating credit unions differently than other types of institutions.

Background on the Bureau

As you know, Title X of the Dodd-Frank Act created the Bureau as an independent agency within the Federal Reserve System. In general, the Bureau is charged with writing rules to implement a number of federal consumer financial laws, as well as supervision and enforcement of those laws. Certain consumer financial protection functions previously performed by the federal banking agencies and the National Credit Union Administration ("NCUA") were transferred from such agencies to the Bureau. In addition to inheriting supervisory and enforcement authority for certain institutions, the Bureau is generally authorized to issue regulations to implement various consumer financial protection laws. Separately, the Bureau is authorized to engage in rulemakings and to take certain actions regarding unfair, deceptive or abusive acts or practices in connection with consumer financial products and services.[5]

Broad Bureau Exemption Authority Under Section 1022 of Title X

Section 1022 of Title X of the Dodd-Frank Act authorizes the Bureau "to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law."[6] Section 1022 permits the Bureau to "prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof."[7] The "Federal consumer financial laws" include Title X, the "enumerated consumer laws" and any Bureau rule prescribed under Title X or the enumerated consumer laws. As a result, in addition to any other rulewriting authority provided for under Title X or the enumerated consumer laws, Section 1022 separately authorizes the

[3] Note that only one law, the Fair Debt Collection Practices Act, includes only the "substantially similar state law" exemption authority. That is, four of the five laws that include this type of exemption authority also include another type of exemption authority, such as the "class of transaction" authority discussed above.
[4] 5 U.S.C. § 706(2)(A).
[5] *See* 15 U.S.C. § 5531.
[6] 12 U.S.C. § 5512(a).
[7] 12 U.S.C. § 5512(b)(1).

Bureau to write rules as it deems appropriate to carry out the purposes and objectives of the Federal consumer financial laws.

Section 1022 also provides the Bureau with exemption authority with respect to Title X and the rules that the Bureau may prescribe to carry out the purposes and objectives of the Federal consumer financial laws (*i.e.*, Bureau rules issued under Title X). Specifically, Section 1022 provides that the Bureau "**may conditionally or unconditionally exempt any class of covered persons . . . from any provision of [Title X], or from any rule issued under [Title X]**, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of" the Title.[8]

This exemption authority is far-reaching. Section 1022 authorizes the Bureau to provide an exemption from a Bureau rule issued under Title X that addresses conduct governed by an enumerated consumer law, even if that specific law does not provide the Bureau with independent exemption authority. That is, the Bureau's authority to provide an exemption from a rule issued under Title X is not contingent on statutory exemption set forth under the underlying enumerated consumer laws.

In order to exempt credit unions from a rule issued under Title X, the Bureau must determine that such an exemption is appropriate to carry out the purposes and objectives of Title X. The broadly stated "purpose" of Title X, as described in Section 1029A, is for the Bureau to implement and enforce the Federal consumer financial laws "consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive."[9] For example, if credit unions could no longer offer certain consumer financial products or services because of an inability to do so on a competitive cost basis, including because compliance costs outweigh revenue, the Bureau may find an exemption appropriate in order to ensure or expand consumer access to those products.

Moreover, the stated "objectives" of Title X, as described in Section 1029A, are that the Bureau's authority under the Federal consumer financial laws is "for the purposes of ensuring" that: (1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions; (2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; (3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; (4) federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and (5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.[10] For example, the Bureau may find it appropriate to rely on the "burden" objective (3) or the "markets" objective (5) to take the position that an exemption is appropriate where credit unions were not able to provide their members with access to certain financial products or services because of compliance burdens or cost challenges.

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[8] 12 U.S.C. § 5512(b)(3)(A) (emphasis added).
[9] 12 U.S.C. § 5511(a).
[10] 12 U.S.C. § 5511(b).

Finally, Section 1022 also includes three statutory considerations that the Bureau must take into account in issuing an exemption to a rule issued under Title X. Specifically, in issuing such an exemption, the Bureau must, as appropriate, consider three factors: (1) the total assets of the class of covered persons; (2) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and (3) existing provisions of law that are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.[11] The statute is silent on how the Bureau should consider these factors. Nonetheless, based on the context, the Bureau might determine that an exemption is appropriate where, for example, a covered person has fewer total assets or engages in a volume of transactions that is less than the average covered person.

Bureau Exemption Authority Under the Enumerated Consumer Laws

As indicated above, the Dodd-Frank Act transferred certain existing rulewriting authority under the "enumerated consumer laws" from other agencies to the Bureau. Of the enumerated consumer laws, the following twelve provide the Bureau with some type of express exemption authority:

(1) the Consumer Leasing Act of 1976 ("CLA");
(2) the Electronic Fund Transfer Act ("EFTA"), except for Section 920 (debit interchange);
(3) the Equal Credit Opportunity Act ("ECOA");
(4) the Fair Credit Billing Act ("FCBA");
(5) the Fair Credit Reporting Act ("FCRA"), except for Section 615(e) (red flags) and Section 628 (disposal of credit report information);
(6) the Fair Debt Collection Practices Act ("FDCPA");
(7) Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act ("FDIA");
(8) Sections 502 through 509 of the Gramm-Leach-Bliley Act ("GLBA"), except for Section 505 (enforcement) as it applies to Section 501(b) (information security);
(9) the Home Mortgage Disclosure Act of 1975 ("HMDA");
(10) the Home Ownership and Equity Protection Act of 1994 ("HOEPA");
(11) the Real Estate Settlement Procedures Act of 1974 ("RESPA"); and
(12) the Truth in Lending Act ("TILA").[12]

Each of these twelve enumerated consumer laws provides the Bureau with specific exemption authority, but such authority is not uniform. For ease of use, we have separated the

[11] 12 U.S.C. § 5512(b)(3)(B).

[12] *See* 12 U.S.C. § 5481(12). Six of the enumerated consumer laws either do not provide the Bureau with specific rulewriting authority or do not provide the Bureau with express authority to make exceptions for credit unions. These six laws are: (1) the Truth in Savings Act; (2) the Alternative Mortgage Transaction Parity Act of 1982; (3) the Home Owners Protection Act of 1998; (4) the Interstate Land Sales Full Disclosure Act; (5) the S.A.F.E. Mortgage Licensing Act of 2008; and (6) Section 626 of the Omnibus Appropriations Act, 2009. If, however, the Bureau were to issue a rule under Title X relating to conduct also covered by these six laws, Section 1022 would appear to provide the Bureau with exemption authority for that rule, assuming that the rule was issued pursuant to Title X and not one of the six laws.

discussion of the Bureau's exemption authority into the following three sections based on the type of exemption authority:

- General authority to exempt specific classes of transactions;
- Authority to make exemptions from specific provisions of a statute; and
- Authority to exempt persons subject to substantially similar requirements under state law.

Class of Transaction Exemption Authority

A number of the enumerated consumer laws authorize the Bureau to make exceptions for classes of transactions that would otherwise be covered by these laws. Specifically, TILA, EFTA, ECOA, HMDA, RESPA and CLA each provide the Bureau with general authority to exempt classes of transactions. As discussed below, these statutes do not define the scope of this "class of transaction" exemption authority.

- Section 104 of TILA provides that the statute does not apply to any transaction for which the Bureau determines by rule that coverage under the statute is not necessary to carry out its purposes.[13]

- Section 105 of TILA provides that any Bureau regulation to carry out the purposes of TILA (except for the mortgage limitations of Section 129 (HOEPA)) "may provide for such . . . exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of [TILA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith."[14]

- Section 105 of TILA also authorizes the Bureau to exempt by regulation from all or part of TILA "all or any class of transactions, other than transactions involving any mortgage described in section 103(aa), for which, in the determination of the Bureau, coverage under all or part of [TILA] does not provide a meaningful benefit to consumers in the form of useful information or protection."[15]

- Section 129H of TILA provides that the Bureau, the federal banking agencies, the NCUA and the Federal Housing Finance Agency may jointly exempt by rule "a class of loans" from the requirements of Sections 129H(a) and 129H(b) (relating to limitations on higher-risk mortgages without a written appraisal and the related appraisal requirements) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.[16]

- Section 904 of the EFTA provides that any Bureau regulation to carry out the purposes of the EFTA "may provide for such . . . exceptions" for any class of electronic fund

[13] 15 U.S.C. § 1603(5).
[14] 15 U.S.C. § 1604(a).
[15] 15 U.S.C. § 1604(f)(1). In determining whether to exempt a class of transactions, the Bureau must consider five factors, including, for example, whether the goal of consumer protection would be undermined by the exemption. 15 U.S.C. § 1604(f)(2).
[16] 15 U.S.C. § 1639h(b)(4)(B).

transfers or remittance transfers, as the Bureau believes are necessary or proper to effectuate the purposes of the EFTA, to prevent circumvention or evasion thereof or to facilitate compliance with the EFTA.[17]

- Section 703 of the ECOA provides that any Bureau regulation to carry out the purposes of the ECOA "may provide for such . . . exceptions" for any class of transaction, as the Bureau believes are necessary or proper to effectuate the purposes of the ECOA, to prevent circumvention or evasion thereof or to facilitate compliance with the ECOA.[18]

- Section 703 of the ECOA also provides that the Bureau's regulations may exempt from the ECOA "any class of transactions that are not primarily for personal, family, or household purposes, or business or commercial loans made available by a financial institution, except that a particular type within a class of such transactions may be exempted if the Bureau determines, after making an express finding that the application of [the ECOA or any ECOA provision] of such transaction would not contribute substantially to effecting the purposes of" the ECOA.[19]

- HMDA provides that the Bureau's regulations to carry out the purposes of HMDA "may provide for such . . . exceptions" for any class of transaction that the Bureau believes are necessary or proper to effectuate the purposes of HMDA, to prevent circumvention or evasion thereof or to facilitate compliance with HMDA.[20]

- RESPA provides the Bureau with authority "to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of" the statute.[21]

- The CLA provides the Bureau with authority to "provide for . . . exceptions for any class of transactions, as the Bureau considers appropriate."[22]

To use these specific exemption authorities, the Bureau must classify or distinguish transactions that otherwise would be subject to the underlying statute. That is, the Bureau must determine what a "class of transactions" entails. Although the phrase "class of transaction" is not defined in the relevant statutory provisions, the plain language references transactions and not persons or specific types of persons, such as creditors. Nonetheless, the Bureau could take the position that one way to classify or distinguish transactions is to look to the type of institution that is engaging in the transaction, such as a credit union that is not for profit (as opposed to for-profit entities). For example, the Bureau could take the position that a credit card issued by a not-for-profit credit union (or similar entity) is a "class of transaction" for purposes of TILA.

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[17] 15 U.S.C. § 1693b(c).
[18] 15 U.S.C. § 1693b(a)(1).
[19] 15 U.S.C. § 1693b(b). Note that such an exemption may only be for a period of five (5) years and only may be extended if the Bureau determines that such exemption remains appropriate. 15 U.S.C. § 1693b(c).
[20] 12 U.S.C. § 2804(a).
[21] 12 U.S.C. § 2617(a).
[22] 15 U.S.C. § 1667f(a)(2).

Each of the provisions cited above (other than the CLA) provide that the exemption authority must be used as necessary or appropriate to fulfill the purposes of the underlying statute. Similar to the discussion above with respect to Section 1022, the need to determine that an exemption is appropriate to fulfill the purposes of the underlying statute would apply in the context of providing an exemption for credit unions; that is, where applicable, the Bureau would have to determine that an exemption for credit unions meets the underlying purpose of the statute. Depending on the specific exemption being considered, the Bureau may determine that an exemption for credit unions is consistent with a statute's purpose, such as if the Bureau were to find that such an exemption would ensure or expand consumer access to a particular financial product or service. For example, the Bureau is currently considering a remittance regulation under Regulation E. In this context, the Bureau may determine that an exemption for credit unions is consistent with the EFTA's purpose.

Although not exemption authority *per se*, we note that Section 904 of the EFTA directs the Bureau by regulation to modify the requirements of the EFTA "on small financial institutions if the Bureau determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of" the EFTA.[23] In addition to the Bureau's authority under the EFTA to provide for exceptions, including potentially for small financial institutions, the Bureau also would have the authority to modify (and presumably reduce the compliance burden associated with) specific requirements of the EFTA for small financial institutions.

Exemption Authority for Specific Statutory Provisions

A number of the enumerated consumer laws, specifically, TILA, FCBA, FCRA, GLBA, Section 43(d) of FDIA and HOEPA, include provisions that permit the Bureau to make exceptions from specific requirements of those laws (as opposed to exemptions from the laws generally). In some cases, such as, for example, TILA, this specific exemption authority is in addition to other exemption authority.

- Section 129D of TILA provides that the Bureau may exempt from the requirements of Section 129D(a) (relating to escrow or impound accounts) a creditor that: (1) operates predominantly in rural or underserved areas; (2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau; (3) retains its mortgage loan originations in portfolio; and (4) meets any asset size threshold and any other criteria the Bureau may establish, consistent with the statutory purpose.[24]

- The FCBA provides that the Bureau may by rule provide "reasonable exceptions" to the statute's limitation on increases in the annual percentage rate for promotional rates for credit card accounts within the first six month such rate is effective.[25]

[23] 15 U.S.C. § 1693b(c).
[24] 15 U.S.C. § 1639d(c). Note that the Federal Reserve Board issued a proposal in March 2011 to make such an exemption. *See* 76 Fed. Reg. 11,598 (Mar. 2, 2011).
[25] 15 U.S.C. § 1666i-2(b).

- Section 615(h) of the FCRA specifies that the Bureau's rules to implement the risk-based pricing requirements must address "exceptions to the [risk-based pricing] notice requirement . . . for classes of persons or transactions regarding which the agencies determine that notice would not significantly benefit consumers."[26]

- Section 504 of the GLBA provides that the Bureau's regulations to implement the GLBA privacy provisions may include exceptions to Section 502's opt-out requirements and limitations on reuse of information and sharing of account numbers for marketing purposes.[27]

- Section 43(d) of the FDIA provides that the Bureau may make exceptions to the Section 43(b) disclosure requirements applicable to depository institutions that do not have federal deposit insurance (*i.e.*, consumer oriented disclosures regarding the fact that an institution lacks federal deposit insurance) for any such institution that "does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money."[28]

- Section 129 of HOEPA provides that the Bureau may by rule exempt specific mortgage products or categories of mortgages from certain of Section 129's prohibitions, such as for prepayment penalties, balloon payments and negatively amortizing loans.[29]

To the extent that this exemption authority is not based on a specific type of transaction or product (like the HOEPA exemption authority), the Bureau would not have to address the scope of a "class of transaction" in order to use such authority, as discussed above. That is, the Bureau would not need to define a type of institution, such as a credit union, as a "class of transaction" in order to use this exemption authority. For example, to the extent a provision simply indicates that the Bureau has the authority to make exemptions without imposing conditions on such authority (*e.g.*, section 504 of the GLBA), the Bureau should have greater authority than under a provision that limits its exemption authority to certain types of transactions or products or under a provision that requires that the Bureau find that an exemption is appropriate to carry out the purposes or objectives a statute. As a result, the Bureau may have even greater flexibility to make exemptions for credit unions under these provisions than the "class of transactions" authority discussed above.

Substantially Similar State Law Exemption Authority

A number of the enumerated consumer laws authorize the Bureau to exempt from coverage under those laws classes of transactions that are subject to state laws that impose

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[26] 15 U.S.C. § 1681m(h)(6)(B)(iii).
[27] 15 U.S.C. § 6804(b).
[28] 12 U.S.C. § 1831t(d).
[29] 15 U.S.C. § 1639(p)(1). Note that the Bureau must find that an exemption is in the interest of the borrowing public and will apply only to products that maintain and strengthen home ownership and equity protection. 15 U.S.C. §§ 1639(p)(1)(A) - (B).

substantially similar state requirements or provide for greater consumer protection and that make adequate provision for enforcement. Specifically, TILA, FCBA, HMDA, CLA and FDCPA include this type of exemption authority.

- Section 123 of TILA directs the Bureau by regulation to exempt from the requirements of Chapter 2 of TILA (relating to consumer credit cost disclosures) "any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under [Chapter 2], and that there is adequate provision for enforcement."[30]

- The FCBA directs the Bureau to exempt from the requirement of the statute "any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under [the Act] or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement."[31]

- HMDA provides that the Bureau may by rule exempt from HMDA's requirements "any State-chartered depository institution within any State or subdivision thereof, if the [Bureau] determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under [HMDA], and that such law contains adequate provisions for enforcement."[32]

- The CLA directs the Bureau to write rules exempting from the requirements of the statute "any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under [the Act] or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement."[33]

- The Fair Debt Collection Practices Act ("FDCPA") directs the Bureau to exempt from the FDCPA's requirements "any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by [the FCPA], and that there is adequate provision for enforcement."[34]

This type of exemption authority is more limited than the others discussed above. First, the Bureau must find that a class of transactions subject to the specific federal statute is also subject to a similar state law. This factor itself could limit the availability of the exemption to state-chartered credit unions in some instances. The Bureau also must find that the state law's requirements are "substantially similar" to those imposed by the federal statute. In addition, the Bureau must find that there is adequate provision for enforcement of the state laws. Also, this

[30] 15 U.S.C. § 1633. Note that the Bureau has proscribed procedures for a state to apply for such an exemption. 12 C.F.R. pt. 1026, App. B.
[31] 15 U.S.C. § 1666j(b).
[32] 12 U.S.C. § 2805(b).
[33] 15 U.S.C. § 1667e(b).
[34] 15 U.S.C. § 1692o.

type of exemption authority is frequently limited to exempting classes of transactions. Since credit unions only would be exempt if they were also subject to substantially similar state laws, it is not clear whether this exemption authority would be as meaningful as the other exemption authorities discussed herein.

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As discussed above, Section 1022 of Title X of the Dodd-Frank Act and a number of the enumerated consumer laws provide the Bureau with express authority to provide exemptions from the requirements of statutes or implementing regulations generally or the requirements of certain provisions specifically. These various statutory provisions individually and together grant broad authority to the Bureau and constitute a strong legal framework to support the agency's reasonable use of its exemption authority.

We trust that this memorandum is responsive to your request. If we can provide further assistance on this matter, please let us know.