



December 13, 2011

CONSUMER FINANCIAL PROTECTION BUREAU SEEKS INPUT ON HOW TO IMPROVE ITS RULES

This could be a very important opportunity to achieve regulatory relief for credit unions.

The Consumer Financial Protection Bureau (CFPB) has issued a request for comments from credit unions and other stakeholders on how the rules developed by other regulators that are now under the CFPB's authority could be streamlined.

Comments are initially due to the CFPB on March 5, 2012, but CUNA plans to work with Leagues, AACUL's Regulatory Advocacy Advisory Committee, key CUNA Subcommittees, the Councils, and other credit union officials to develop our response well before the comment deadline. CUNA is also utilizing "Operation Comment" to help credit unions develop their own responses. [Click here](#) to access the CFPB's document; if commenting directly to CFPB, commenters should refer to Docket No. CFPB-2011-0039 on the comment letter.

For more information about this initiative from the CFPB, contact CUNA Deputy General Counsel Mary Dunn at Mdunn@cuna.coop or Regulatory Counsel Jared Ihrig at jihrig@cuna.coop.

CFPB GOALS AND POTENTIAL OUTCOME WITH THIS REVIEW

The agency is planning a two-step process to review and consider rules for streamlining. Under the first step, for which comments are sought now, the CFPB would like to identify the highest priority areas for improvements, focusing on changes it can make without Congress having to revise any laws. After the CFPB reviews the comments on priority areas, it will consider whether to issue a proposal with specific changes for another round of comments. The agency has listed some specific areas that might be addressed, which are discussed below. It could also include streamlining provisions in other rule makings that are required under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The CFPB said it will consider five factors in reviewing recommendations for streamlining: potential benefits and costs for consumers and covered entities such as financial institutions; the likelihood that the CFPB can achieve the benefits and meet the requirements of the statute; the speed with which the public would benefit; the

governmental and private resources needed to realize the benefits; and the evidence to judge these factors.

Another goal with this request is to help the CFPB plan for reviewing the transferred rules more broadly than the issue of how to streamline them. The agency said its highest priority in this regard is implementation of the provisions in the Dodd-Frank Act on mortgage reform. With that in mind, the CFPB is seeking input on how it should review the transferred rules and in what order should they be considered.

WHAT RULES COULD BE STREAMLINED

Under the Dodd-Frank Act, rulemaking authority under key consumer financial protection laws was transferred from 7 agencies and consolidated in the CFPB, which plans to republish those rules as CFPB regulations in the coming weeks. (Some technical corrections and amendments required by Dodd-Frank will be reflected in the republished rules.)

While the CFPB stated that these transferred rules provide important consumer protections, it acknowledged that there may be opportunities to streamline the rules by "updating, modifying, or eliminating outdated, unduly burdensome, or unnecessary provisions."

The rules that the CFPB is seeking comments under this review are:

- The Consumer Leasing Act (Regulation M)
- The Electronic Fund Transfer Act (Regulation E)
- The Equal Credit Opportunity Act (Regulation B)
- The Fair Credit Reporting Act (Regulation V)
- The Fair Debt Collection Practices Act
- Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act (relating to non-federally-insured banks and savings institutions)
- Sections 502 through 509 of the Gramm-Leach-Bliley Act (Regulation P; relating to disclosure of consumer personal information)
- The Home Mortgage Disclosure Act (Regulation C)
- The Real Estate Settlement Procedures Act (HUD's Regulation X)
- The S.A.F.E. Mortgage Licensing Act
- The Truth in Lending Act (Regulation Z)
- The Truth in Savings Act (Regulation DD)
- Section 626 of the Omnibus Appropriations Act of 2009 (relating to unfair and deceptive mortgage lending acts and practices)
- The Interstate Land Sales Full Disclosure Act

SPECIFIC AREAS ALREADY FLAGGED

The agency's request for comments identifies some areas for possible improvements, most of which CUNA flagged to the agency. These include: inconsistent definitions

among different consumer protection rules; annual privacy notices; redundant screen and sign ATM fee disclosures; an exemption from home mortgage disclosure requirements for small creditors; an exemption from certain equal credit opportunity data collection requirements; whether different types of credit should have different thresholds for coverage under Truth in Lending; whether the standards for the consumer's ability to credit card debt analysis are too strict; should electronic signatures be permitted more widely; should disclosures via text messaging be permitted; and whether changes are needed in requirements for reporting, disclosure and anti-fraud provisions under the Interstate Land Sales Full Disclosure Act.

GENERAL QUESTIONS FOR COMMENT

The CFPB has raised eight questions on general subjects it would like commenters to address. Credit unions and leagues are urged to consider these questions but also to provide feedback to CUNA as soon as you can on what specific consumer law requirements are overly burdensome for your credit union without providing sufficient consumer protections. The eight general questions are:

1. The CFPB could define its priorities for reviewing the inherited regulations in at least two different ways. It could focus on a particular regulation or set of regulations. Or it could focus on a market sector and all of the regulations that apply to that sector. Commenters may suggest other approaches. What approach should the CFPB take, and why? In what order should the CFPB review the inherited regulations, and why?
2. Commenters are invited to offer their highest priorities for updating, modifying, or eliminating specific provisions of regulations that are outdated, unduly burdensome, or unnecessary. Commenters are asked to single out their top priority. Suggestions should focus on revisions that would not require Congressional action. Commenters may wish to take into account the five factors the CFPB plans to consider to set its priorities: the size, likelihood, and speed of potential gains from streamlining; the resources needed to achieve the gains; and the strength of the evidence with which to judge these factors. Commenters may consider suggesting provisions of regulations that should be:
 - Simplified, rationalized, or consolidated;
 - Relaxed, modified, or eliminated, perhaps for smaller firms or certain classes of transactions, without undermining essential protections;
 - Updated to reflect current practices and technology;
 - Adjusted to avoid unintended consequences; or
 - Changed to remove an obstacle to responsible innovation.
3. The CFPB is in the midst of testing new mortgage disclosures under the Truth in Lending Act and Real Estate Settlement Procedures Act. Are there *other* required disclosures that available evidence suggests should be considered for modification or removal?

4. For each suggestion in response to questions 2 and 3, commenters are asked to describe and, where possible, quantify the potential benefits *and* costs to consumers *and* providers of changing the regulation as recommended.
5. For each suggestion, commenters are asked to submit or identify empirical models, data, research, case studies, or other evidence the CFPB could use to analyze and, if possible, to quantify or describe the potential costs and benefits of the changes the commenter advocates.
6. Are there pilots, field tests, or demonstrations that the CFPB could launch to better assess benefits and costs of potential revisions to regulations?
7. The CFPB is interested in identifying practical measures it can take, apart from revising regulations, to make compliance with the inherited regulations easier. For example, are there systematic ways the CFPB could improve guidance about how to comply with regulations? Are there ways the CFPB could make it easier for financial institutions to obtain answers to specific compliance questions they may have? The CFPB will evaluate recommendations according to the same factors it will use to evaluate suggestions to revise regulations.
8. The CFPB also is interested in identifying practical measures it could take to promote, or remove obstacles to, responsible innovation in consumer financial services markets.

SPECIFIC QUESTIONS FOR COMMENT

In addition to the general questions reprinted above, the CFPB has also asked several detailed questions about specific regulations that are now within its jurisdiction.

Annual Privacy Notices

Regulation P of the Board of Governors of the Federal Reserve System and parallel regulations of other Federal agencies govern the treatment of nonpublic personal information about consumers. These regulations generally require that financial services providers give a privacy notice to a customer annually during a customer relationship. Providers have questioned the value of providing consumers annual notices where the provider's privacy practices have not changed since the last notice, at least where the provider does not share information with other firms (or shares in narrow cases). Should there be an exception from the requirement to provide an annual privacy notice in these or any other circumstances?

ATM Fee Disclosures

Under Regulation E, any person that operates an automated teller machine (ATM) that imposes a fee on any consumer for withdrawing funds or inquiring about a balance must disclose the amount of any fee the operator charges. The operator must disclose the

fee on the ATM screen or in a paper notice before the consumer must pay a fee. In addition, the regulation requires the operator to post a sign on the ATM itself that fees “will” or “may be imposed” but does not require the sign to state the fee amount. 12 C.F.R. § 205.16(c). Should the requirement to post a sign be eliminated? Are other disclosures of ATM fees adequate to inform consumers?

Coverage/Scope of Regulation C (Home Mortgage Disclosure)

Under Regulation C, a depository institution generally must collect, report, and disclose certain mortgage data if it originated or refinanced one home purchase loan in the preceding calendar year, its assets exceed a specified minimum, and it is located in a metropolitan statistical area. 12 C.F.R. § 203.2(e). As a result, some depository institutions that do not originate home purchase loans but occasionally refinance a home purchase loan as an accommodation for a customer are required to collect, report, and disclose mortgage data. Should depositories that make or refinance small numbers of loans be exempted? If so, what number of loans would be appropriate?

Coverage/Scope of Regulation B (Equal Credit Opportunity)

Under Regulation B, all creditors that take applications for home purchase loans or refinancings of home purchase loans must request information about applicant characteristics such as race and ethnicity. 12 C.F.R. § 202.913(a). Regulators can use these data to monitor compliance with fair lending obligations. Under Regulation C, some depository and other mortgage lending institutions are exempt from collecting applicant characteristic information based on factors such as location, size, and loan volume. 12 C.F.R. §§ 203.1(c), 203.2(e). Should Regulations B and C have a consistent exemption for data collection, or do the data collections serve different purposes justifying different scopes of coverage?

Under Regulation B, all creditors that take action on applications for credit must timely notify applicants of the action. 12 C.F.R. § 202.9(a). Should creditors that receive a small number of applications be exempted from this requirement? If so, what is the appropriate number of applications? Should the existence or size of an exemption vary based on type of product? If the CFPB adopted an exemption, what adjustments would it need to make to requirements for adverse action notices under the Fair Credit Reporting Act?

Coverage/Scope of Regulation Z (Truth in Lending)

In general, Regulation Z covers a creditor if it extended consumer credit more than 25 times in the past calendar year (or more than 5 times, for transactions secured by a dwelling). 12 C.F.R. § 226.2(a)(17)(v). Should these thresholds be raised? What would be an appropriate threshold? And should a similar exemption be applied to disclosure requirements under the Real Estate Settlement Procedures Act that the CFPB will integrate with Truth in Lending disclosure requirements?

Regulation Z generally covers a creditor if it makes more than 25 consumer loans in total of any type. Should different types of consumer credit have different thresholds? For example, should creditors be exempted from the student loan requirements if they made less than a certain number of student loans in the preceding calendar year, regardless of how many other consumer loans they made?

Ability to Pay Credit Card Debt

Regulation Z requires credit card issuers, before extending credit, to assess the individual borrower's ability to repay the loan. 12 C.F.R. § 226.51. This requirement is based on a provision of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit CARD Act), P.L. 111-24, 123 Stat. 1734 (2009). Concern has been expressed by some card issuers and also some members of Congress that these rules may have the unintended consequence of precluding some individuals, especially non-working spouses, from obtaining credit they are capable of repaying. Should this section of Regulation Z be amended, and, if so, how?

Electronic Disclosures

The inherited regulations require that certain disclosures, including periodic statements and receipts under Regulations E and Z, be provided to consumers in writing in a form that they may keep. The Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*) permits disclosures that must be provided in writing to be provided electronically if the provider meets certain requirements, including obtaining the consumer's consent. Some parts of the inherited regulations permit certain disclosures to be provided electronically or in writing. Should the CFPB permit other disclosures now required to be in writing to be delivered in electronic form?

In addition, mobile banking has become more prevalent and widely used by consumers since the E-Sign Act was adopted. For mobile banking applications, should the CFPB consider allowing certain disclosures to be provided by text messaging, even though text messages are not readily retainable and, if so, under what circumstances and with what safeguards?

Interstate Land Sales Full Disclosure Act

The Interstate Land Sales Full Disclosure Act (ILSA) (15 U.S.C. § 1701 *et seq.*) imposes reporting, disclosure, and anti-fraud protections on some interstate land sales. Commentators have questioned whether improvements in consumers' access to information about these sales warrant changes to reporting and disclosure requirements. They have also indicated that technological changes may warrant updates to the form and manner of reporting and disclosure. Changes in state property regulations in past decades may also warrant changes to ILSA regulations. For these or other reasons, what changes to implementing regulations, if any, should the CFPB make?