



October 5, 2012

## COMMENT CALL: CUNA'S INITIAL CONCERNS ON CFPB PROPOSED MORTGAGE LOAN ORIGINATOR COMPENSATION RULES

### **Background**

- The Consumer Financial Protection Bureau (CFPB) is soliciting comments on proposed rules regarding compensation for mortgage loan originators, such as credit union loan officers. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB is required to issue regulations regarding limits on such compensation and related provisions in the Act.
- Comments on the proposal are due to the agency October 16, 2012 and may be submitted through [www.regulations.gov](http://www.regulations.gov).
- Here is a copy of the CFPB's [summary](#) of the proposal.

### **Brief Summary of CUNA's Initial Concerns**

- **Qualification and Screening Standards.** Some of the most problematic provisions of this proposal have to do with the proposed qualifications for loan originators (for a consumer credit transaction that is secured by a dwelling) that under the Dodd-Frank Act apply to all mortgage loan originators.
- Currently, under state law and the federal Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), depository institutions, including credit unions, are generally subject to registration requirements and other creditors are generally required to obtain a state license. Individuals who are subject to SAFE Act requirements or state licensing are required to obtain a unique identification number from the National Mortgage Licensing System and Registry.
- Credit unions would be responsible for ensuring that their loan originators meet requirements under the SAFE Act and would also be required to:

obtain a state and national criminal background check through the NMLSR;

obtain a credit report under the Fair Credit Reporting Act, and information from the NMLSR about any administrative, civil or criminal findings by any government jurisdiction regarding the loan originator;

determine that the individual has not been convicted of or pled guilty or no contest to a felony; has demonstrated financial responsibility, character and general fitness to warrant a determination that the individual loan originator will operate fairly and efficiently; and provide periodic training covering federal and state requirements.

- **Compensation.** Depending on how the CFPB treats compensation, the proposal presents issues regarding the eligibility of mortgage loan originators for certain bonus plans and pooled compensation plans. For example, there are concerns as to whether credit unions would be able to include mortgage loan originators in a non-qualified bonus plan for all employees that are based on the overall performance of the credit union. There are also concerns that compensation that is pooled for originators when their performance levels differ may not be permissible.
- **Require Lenders to Make a No-Point, No-Fee Loan Option Available.** Under the proposed rule, if a loan originator (which includes credit unions and their employees who perform functions such as taking applications, offering, arranging, or otherwise obtaining an extension of consumer credit for another person in expectation of compensation) receives compensation from any person other than a consumer in connection with the credit transaction, such creditors that provide compensation to loan originations would have to make available to consumers a loan without discount points or origination points or fees, unless the consumers are unlikely to qualify for such a loan.
- **Require an Interest-Rate Reduction When Consumers Elect to Pay Upfront Points or Fees.** Consumers may pay points, which are expressed as a percentage of the loan amount, and fees to covers costs associated with origination or prepaid interest charges. However, the CFPB is seeking comment on a proposal to require that any upfront payment, whether it is a point or a fee, include a benefit for the consumer that must be “bona fide.” By this the CFPB means that consumers must receive at least a certain minimum reduction of the interest rate in return for paying the point or fee.
- **Place Restrictions on Arbitration Clauses and Financing of Credit Insurance:** The proposal implements Dodd-Frank Act provisions that, for both mortgage and home equity loans, prohibit including mandatory arbitration clauses in loan documents and increasing loan amounts to cover credit insurance premiums. We are not aware that credit unions utilize arbitration

clauses to a great degree but some may be financing credit insurance premiums.

- **Require Records to Be Retained for Three Years**, instead of the current general requirement under TILA to retain records for two years. Under the proposal, records sufficient to show all compensation a loan originator receives from a creditor, consumer or other person, and the compensation agreement that governs the payments for three years after the date of each receipt of payment. Records also subject to the three year requirement include evidence that the creditor has made available to a consumer a comparable alternative loan that does not include points and fees, or if such a loan was not available, a good-faith determination that the consumer was unlikely to qualify for such a loan; and compliance with the “bona fide” requirements (that the consumer received a reduction in the interest rate for paying the fee or the loan).

**Questions to Consider:**

1. Do you agree that the proposed requirements for loan originators to comply with new loan standards and requirements are redundant or unnecessary because credit unions are already regulated under the SAFE Act?

Yes\_\_\_\_\_. No. \_\_\_\_\_. Please explain your response.

2. Do the compensation limitations raise concerns for your credit union?

Yes\_\_\_\_\_. No.\_\_\_\_\_. Please explain your response.

3. Do you have concerns with the no-point, no-fee option?

Yes\_\_\_\_\_. No \_\_\_\_\_. Please explain your response.

4. Do you have concerns with the “bona fide” benefit requirement for loans that charge up-front fees or points?

Yes. \_\_\_\_\_. No \_\_\_\_\_. Please explain your response.

5. Will the three-year record keeping requirements present problems for your credit union?

Yes. \_\_\_\_\_. No \_\_\_\_\_. Please explain your response.