Credit Union National Association
CUNA

CUNA'S COMMON-SENSE REFORMS TO BUREAU OF CONSUMER FINANCIAL PROTECTION RULES AND PROCEDURES

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I. Executive Summary

This paper is the Credit Union National Association's (CUNA) comprehensive response to the various requests for information (RFIs) issued by the Bureau of Consumer Financial Protection (Bureau or CFPB) in the spring of 2018.

Credit unions are the original consumer financial protectors. Because of their not-for-profit, cooperative ownership structure, credit unions do not face the same market pressures and they do not have the same structural motives as for-profit financial services providers. This distinction, combined with decades of providing consumer friendly financial services, is the key reason that consumer protection regulation should be tailored so that it is not overly burdensome on credit unions.

Unfortunately, the Bureau, in its first several years of existence, missed opportunities to leverage credit unions' mission and history to the benefit of consumers, and finalized regulations that harmed credit unions and their members. Consumers lose when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers into the arms of the providers engaged in the very activity that the rules were designed to curtail. Under its new leadership, the Bureau has the responsibility to examine all aspects of its activity to ensure it is fulfilling its mission without impeding the delivery of safe and affordable financial services. We applaud the process the Bureau is undertaking.

We urge the Bureau to look closely at the impact that its rules have had on credit unions and their members and to streamline regulations to reduce burden or exempt credit unions entirely, as appropriate: the Bureau's rules should focus on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry. If the Bureau spent less time regulating and supervising credit unions, it could spend more time on the abusers of consumers, which is why the Bureau should work more closely with the National Credit Union Administration (NCUA) to ensure credit union compliance with pertinent regulations and transfer supervision of the largest credit unions back to NCUA.

Throughout its history, the Bureau has invited feedback from stakeholders on its rulemakings but there has been little evidence in final rules that the Bureau has heard and responded to the concerns; this should change and we make several recommendations related to the Credit Union Advisory Council and other feedback mechanisms.

We also hope the Bureau will make significant changes to the consumer complaint database to ensure that the complaint intake process is effective and fair. And, as the Bureau takes steps to address the rules that have been promulgated in recent years, it is important that it take steps to reduce regulatory burden while at the same time recognizing the cost to credit unions and consumers of any change in regulation.

As the Bureau moves forward with new rulemakings, we encourage it to make use of the Advance Notice of Proposed Rulemaking (ANPR) process to solicit additional stakeholder views, and work with the Small Business Administration (SBA) to ensure that the Small Business Regulatory Enforcement Fairness Act (SBREFA) process is efficient and effective. Once rules are finalized, the guidance provided by the Bureau must be accurate, easy to understand, and timely; and, enforcement must be fair.

Credit unions and the Bureau share a common mission related to financial health. By leveraging credit unions' expertise in financial education rather than implementing additional rulemaking to guide certain consumer choices, the Bureau could provide a strong foundation for good consumer health. Credit unions are ready to be partners with the Bureau in this regard.

Once again, we applaud the Bureau for undertaking these RFIs and we go into greater detail below on the areas in which the Bureau seeks information.

II. The Credit Union Business Model Is Inherently Consumer Friendly

CUNA appreciates the opportunity to comment on the Bureau's series of RFIs issued under Acting Director Mick Mulvaney. CUNA is the largest trade association in the United States representing America's credit unions. With its network of affiliated state credit union associations, CUNA represents over 5,550 credit unions and their 110 million members.

Credit unions are not-for-profit, financial cooperatives, owned and operated by their members for the benefit of their members. Credit unions can be chartered under federal law or state law; they operate in every state and territory in the United States, and were established "for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive

purposes."[1] In contrast, banks and savings associations are for-profit financial institutions that are either investor owned or mutually owned by their customers.

Credit unions are the original consumer financial protectors. They only operate to benefit their members and are not beholden to shareholders or profits. As such, credit unions often provide lower rates on loans and fees for services, higher returns on deposits, and additional communication with members. Because member service is the primary emphasis and purpose of a credit union, consumers can rely on fair, transparent, and equitable treatment. Members understand the difference between a credit union and a bank or other financial services provider. As illustrated by Consumer Reports, credit unions were among the highest rated services it ever evaluated, "with 93 percent of . . . customers highly satisfied, on average, vs. 69 percent for the four biggest banks."[2] Credit unions' inherent consumer focus demonstrates why they require less oversight for consumer protection and fewer regulatory requirements compared to banks and other for-profit financial institutions.

The Bureau currently has the authority to write consumer financial protection regulations and issue guidance that affects the financial services industry, including credit unions if there is a need. CUNA understands the Bureau's role in regulating the financial services industry and ensuring bad actors and irresponsible lending practices are controlled so this country does not repeat the mistakes of the 2008 financial crisis. Indeed, avoiding these mistakes was why the Bureau was created. Rather than impulsively reject the creation of the Bureau, credit unions acknowledged the need for additional protections from Wall Street banks and abusers of consumers when Congress developed the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (Dodd-Frank Act).

However, as the Bureau has acknowledged, credit unions were not responsible for the 2008 financial crisis, and were instead the trusted institutions that consumers looked to for safe and competitively priced financial products and

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[1] NCUA, *A Brief History of Credit Unions, available at* https://www.ncua.gov/About/Pages/history.aspx.

[2] Jeff Blyskal, *Choose the Best Bank for You*, Consumer Reports, *available at* http://www.consumerreports.org/banks-credit-unions/choose-the-best-bank-for-you/ (Dec. 4, 2015) ("That satisfaction is driven by good customer service, not surprising when you consider that credit unions are owned and managed by their members.").

services.[3] Therefore, CUNA strongly believes the Bureau's efforts and resources should focus on the problem actors in the industry, not credit unions.

We are encouraged by the Bureau's series of RFIs aimed at transforming the Bureau into a more effective and efficient agency. Our *CUNA Recommendations* articulated in this paper are ones the Bureau can and should implement to better focus its time, effort, and resources on the problem actors in the industry, upholding the intent of the Dodd-Frank Act.

III. Bureau Regulations Have Harmed Credit Unions

Credit unions have faced enormous regulatory burden since the creation of the Bureau. In the United States, nearly half of all credit unions employ five or fewer full time employees. More than half have assets of less than $50 million. Moreover, credit unions with less than $20 million in assets account for over 40% of all U.S. credit unions. Despite the large number of small credit unions and the indisputable difference in structure and resources between them and the largest banks, they have been subjected to more than 200 regulatory changes since the financial crisis that they did not cause. This has equated to several thousand pages of new or modified requirements despite high satisfaction ratings from consumers[4] and despite that credit unions already deliver roughly $10 billion in savings to 100 million members every year.[5]

Small credit unions have been particularly harmed by one-size-fits-all rules that do not account for their less complex structure. A recent study found that in 2014 alone, the cost of regulatory burden on credit unions was $7.2 billion.[6] The study also revealed that from 2010 to 2014, regulatory impact on credit unions

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[3] *See* Feb. 28, 2018 Remarks by Mick Mulvaney, Bureau Acting Director, at CUNA Governmental Affairs Conference (stating, "We recognize the fact that you all did not cause the financial crisis . . . and that you should not be regulated like the folks who might have done those things.").

[4] Jeff Blyskal, *Choose the Best Bank for You*, Consumer Reports, *available at* http://www.consumerreports.org/banks-credit-unions/choose-the-best-bank-for-you/ (Dec. 4, 2015). "Credit unions are among the highest-rated services they have ever evaluated, with 93 percent of their customers highly satisfied."

[5] Credit Union National Association, State-by-State Data on the Benefits of Credit Union Membership, *available at* https://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Legislative-Hot-Topics/State-by-State-Data-on-the-Benefits-of-Credit-Union-Membership/.

[6] Hui, V., Myers, R., Seymour, K, *Regulatory Financial Impact Study*, Cornerstone Advisors, Inc., *available at* http://www.cuna.org/regburden/ (Feb. 2016).

increased by $2.8 billion. This represents a 40% increase since 2010, not even counting the effect of asset growth.

One of the most disconcerting issues the study confirmed is that small credit unions bear the brunt of regulatory burden and costs. For smaller credit unions—the three quarters of credit unions with assets below $100 million—regulatory costs rose from 0.78% of assets in 2010 to 1.12% of assets in 2014, an increase of 43%. Regulatory costs now account for 30% of total operating expenses at smaller credit unions; and almost 10% of total operating expenses at these credit unions in 2014 were new regulatory expenses added since 2010. For credit unions with assets between $100 million and $1 billion, the increase in regulatory expenses was 40%, and was 28% at credit unions with over $1 billion in assets.

These increases come on top of the already heavy regulation credit unions faced prior to 2010. Notably, these numbers do not include the very significant costs of other rules implemented after the study, such as the Truth in Lending Act and Real Estate Settlement Procedures Act (TILA-RESPA) integrated disclosure and new requirements, the Home Mortgage Disclosure Act new disclosure requirements, and the new Military Lending Act requirements.

A 2017 Regulatory Burden Financial Impact Study by Cornerstone Advisors highlights the growing cost to credit unions of increased regulations. Cornerstone conducted detailed surveys of 51 credit unions—representing small, medium, and large institutions—to gather detailed estimates of expenses related to regulatory compliance, including staffing, third-party expenses, and capitalized expenses. The study estimates that the total combined regulatory cost for credit unions is $6.1 billion per year, representing 46 basis points of assets. This translates to $115 per credit union household. Considering average credit union return on assets (ROA) of 77 basis points, this is a significant burden of regulation on credit unions, and prevents them from dedicating resources to better serve their members, for example, by improving interest rates or expanding products and services. While these compliance costs stem from regulations from several different agencies, the thousands of pages of new rules from the Bureau over the past few years are a top concern to credit unions.

Furthermore, through an additional open-ended survey of credit union chief executive officers (CEOs), the study reveals that Bureau rulemakings have a trickle-down impact on smaller credit unions which are often unable to address the rulemakings efficiently and effectively. The reality is that when credit unions are burdened by the cost of regulation, consumers receive fewer options for financial products and services.

CUNA Recommendation

CUNA strongly urges the Bureau to consider the burden its regulations have had on the credit union industry these past several years, and consequently, consumers. Actions should be taken to streamline current regulations to eliminate antiquated and inconsistent requirements, provide exemptions for credit unions where appropriate, and curb future regulatory requirements, absent compelling evidence for the need. When credit unions endure regulatory burden, fewer resources become available for products and services for their members.[7]

IV. The Bureau Should Adjust Its Focus

Congress created the Bureau to address the irresponsible lending and banking practices of large too-big-to-fail banks and unregulated financial institutions, and this is where the Bureau should focus most of its time and resources. This can be achieved, in large part, by tailoring regulations to address the bad actors in the industry and those that caused the financial crisis, which does not include our nation's credit unions. This narrowly focused approach is more efficient, and ultimately more effective, than blanket policy or regulatory changes that inappropriately apply to those financial institutions—which is most of all financial institutions—that are not predatory toward consumers.

Credit unions remain one of the most heavily regulated entities in the country, even though they do not engage in the anti-consumer practices that caused the financial crisis. And, regulatory burden is one of the prime reasons there is a significant consolidation taking place in the community financial institution sector. Difficulties in maintaining high levels of member service in the face of increasing regulatory burden are undoubtedly a key reason that roughly 300 small credit unions merge into larger credit unions each year. Consumers lose when they have fewer choices in the marketplace because the absence of competition drives up cost and reduces access to products and services.

It is in consumers' best interest to have greater access to credit unions for several important reasons. First and foremost, because credit unions are member-

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[7] *See* 12 U.S.C. § 5511(b) ("The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services . . . outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens.").

owned and this pro-consumer approach to the market has a moderating effect on anti-competitive pricing and predatory activity. In addition, as detailed below, the credit union cooperative structure also discourages excessive risk taking by credit unions. Because they take on less risk, they tend to be less affected by the business cycle, and therefore can serve as an important counter cyclical economic force in local markets, softening the blow of economic downturns in local economies.

CUNA Recommendation

CUNA urges the Bureau to focus its rules on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry. The Bureau should scrutinize its proposals to ensure any changes will have minimal adverse impact on the institutions serving Main Street, such as credit unions. In many respects, credit unions are consumers' and small businesses' last hope for receiving affordable and fair financial services, because their users are also their owners. This key incentive—that credit union customers are member-owners—is clearly lacking in the for-profit banking industry.

A. The Financial Crisis of 2008 and the Cause of Overregulation on Credit Unions

To fix the current regulatory paradigm, the Bureau should understand why the current system was established. The global financial crisis of 2008 is widely viewed as the worst economic dislocation since the Great Depression of the 1930s, and the root cause of the crisis was the collapse of the subprime mortgage market.

The years leading up to the financial crisis were characterized by massive mortgage originations fueled by low market interest rates and home buyer expectations of double-digit home-price increases. Overall during the 2003-2006 period, a record $3.2 trillion in home mortgages were originated, with about 20% of this total considered subprime. The subprime mortgage sector served borrowers with poor credit histories at higher interest rates.

One of the major developments leading to the large increase in subprime lending was the adoption of new credit scoring techniques. This allowed lenders to sort applicants by creditworthiness and set risk-based loan interest rates.

The overwhelming majority of subprime loans were originated by big banks and by mortgage brokers who then sold the loans to Wall Street investment banks. The investment banks, in turn, packaged the loans into collateralized debt obligations and sold these to investors around the world. As with any new credit product, investors had difficulty evaluating the subprime debt default risk.

Models constructed to predict mortgage loan default risk relied on historical data, which assumed if the unemployment rate remained low, defaults would be manageable. However, the models ignored two factors keeping defaults low over the 2002-2005 period: first, rising home prices allowed subprime borrowers the opportunity to refinance loans or sell their properties whenever they were unable to make monthly payments; and second, falling interest rates from 2001 to 2004 reduced Adjustable Rate Mortgage (ARM) indexes, which limited the teaser interest rate increases.

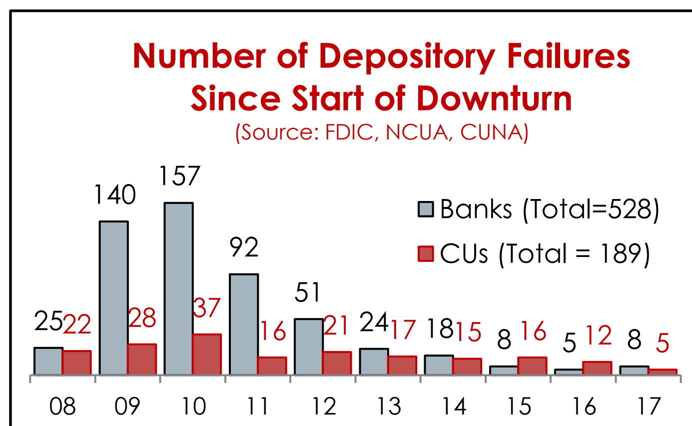
As the Bureau proceeds through a reform process, this history is pertinent. There is no argument with the fact that when the overall health of the financial system is in danger, actions must be taken to repair the harm and prevent future turmoil. However, policymakers have a responsibility to focus on solving the problems that put the health of the system in jeopardy. In the case of the 2008 financial crisis and the fundamental disregard of basic consumer protections by abusers of consumers, credit unions were not the cause of nor contributor to the problem.

B. Consumer Protection is the Foundation of Credit Unions

The financial crisis reinforced that the principal objective for the for-profit sector is to maximize shareholder returns. For these entities, consumers are a means to this end, and incentives are aligned in a way that can (and often does) cause harm to consumers.

In the case of toxic mortgages, such as subprime mortgages, for-profit entities focused on maximizing loan originations (specifically fee income from those originations) even though many of the loans originated were not in borrowers' best interests.

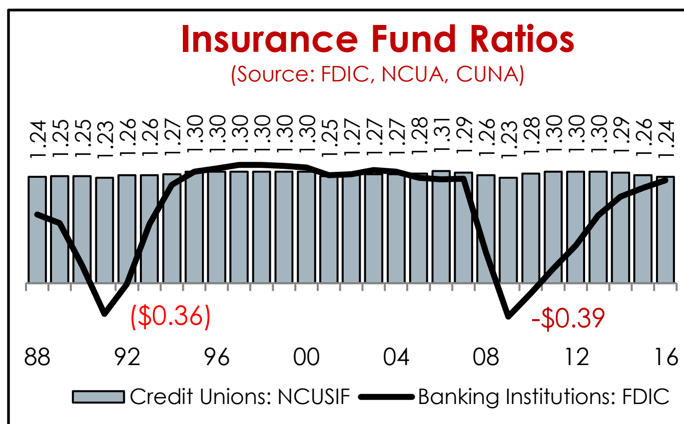
In contrast, for not-for-profit financial cooperatives, consumers are not a means to the end, they are the end. They are the very reason the credit union exists. Credit unions provide access to affordable and safe credit products, and are a point of opportunity for marginalized communities. Incentives at credit unions are aligned in a way that ensures little or no harm is done to the member-owners. The incentives faced by credit union management (one member-one vote democratically operated



boards, the absence of stock options for senior management and board members, the absence of pressure from stockholders to maximize profits) induce management to eschew higher-risk, higher-return strategies.[8]

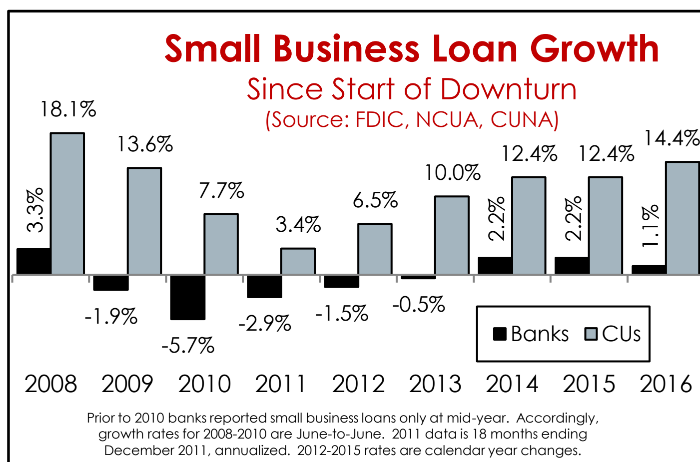
In addition, credit unions often hold their mortgages in portfolio and therefore care about what ultimately happens to those loans.

Prior to the crisis, 70% of credit union mortgage originations were held in portfolio—only 30% were sold into the secondary market. In the broader credit union loan portfolio, the percentage of loans held in portfolio is even higher. This means that credit unions care deeply about what ultimately happens to their loans, especially whether those loans are repaid. The housing market crisis was closely linked to lenders who adopted the originate-to-sell model. These lenders cared little about repayments because the quality of their sold loans ended up being someone else's problem.



[8] Edward J. Kane and Robert J. Hendershott, *The Federal Deposit Insurance Fund that Didn't Put a Bite on U.S. Taxpayers*, Journal of Banking and Finance, 20 (Sept. 1996), pp. 1305-1327. Kane and Hendershott describe how the cooperative structure of credit unions presents credit union decision makers with incentives that are strikingly different from those faced by a for-profit financial institution, making it less feasible for credit union managers to benefit from high-risk strategies.

As a result, credit union operations are less risky, and subject to less volatility over the business cycle. For example, from 2008 to 2012, the average annual net charge-off rate on credit union loans was 0.97%, with a standard deviation of 0.20%. In contrast, the similarly computed average at commercial banks over the same period was 1.83%, with a much greater standard deviation of 0.73%.



Because of this lower-risk profile, relatively few credit unions failed during the crisis and the credit union insurance fund ratio remained positive.

This allowed credit unions to serve as a counter-cyclical force in the economy, continuing to lend as for-profit financial institutions failed or had to curtail operations due to damaged balance sheets caused by less risk averse practices leading up to the crisis.

From June 2007, the onset of the financial crisis, to December 2012, credit union loans increased by 13%—while banking industry loans increased by only 3% (further, the banking loan increase arose primarily from an accounting change that caused reporting of some securitized assets to be shifted from off-balance sheet to on-balance sheet). Similarly, over this same period, business loans at credit unions increased 63%, while business loans at banks grew by only 4% (and bank small business loans declined by 14%).

The record is clear—credit unions did not contribute to the creation of the mortgage market bubble or to the crisis caused by the collapse of the subprime mortgage market. Credit unions are the best consumer-friendly option in the marketplace.

CUNA Recommendation

The Bureau should spend less time trying to fix a system that is not broken—and spend more time firmly focusing on bad actors in the marketplace, whose risks pose threats to the financial system.

C. Greater Focus Should Be on Less Regulated Nonbank Lenders

The Bureau's small dollar rulemaking is an excellent example of the need to focus on less regulated nonbank lenders rather than credit unions. Credit unions

have seen firsthand how their members have been taken advantage of and have had unfortunate financial situations exacerbated further by predatory lenders claiming to offer a solution. The speed and convenience that storefront and online payday lenders offer comes with high costs and fewer protections.

Lenders that offer this type of credit, and particularly loans offered by completely unregulated offshore and online lenders in states where this lending is illegal, should have been the primary focus of the Bureau's rulemaking.

While we believe predatory and abusive lending practices deserve increased scrutiny, credit unions do not have a history of consumer abuse. In the case of small dollar lending, we noted in our October 5, 2016, comment letter that in the three years preceding our comment, credit unions accounted for 0.088% of payday lending complaints and 0.0006% of total complaints filed with the Bureau's consumer complaint database.

We appreciate the Bureau's recognition that credit unions offer products and services in consumer-friendly ways and that these products are often the best option for those in need, such as in the context of short-term, small dollar loans. The Bureau's future regulations should reflect its recognition and statements.

CUNA Recommendation
CUNA urges the Bureau to focus regulatory requirements on anti-consumer products and lenders that need the additional oversight.

V. Credit Unions Want Change at the Bureau

CUNA has received feedback for years from credit unions about the Bureau's regulatory burden and its effect on their members. In a recent survey conducted in March by CUNA, credit unions provided extensive feedback on how regulatory burden is negatively impacting their operations.[9]

The survey showed the following:

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[9] CUNA conducted a survey entitled, "2018 CFPB Improvements (Request for Information) Survey" in March 2018; 272 credit union professionals completed the study, which was administered by CUNA's Market Intelligence unit. The purpose of the study was to: (1) measure credit unions' perceptions of the rulemaking activities, policies, and procedures that have been undertaken by the Bureau over time, and (2) give the Bureau feedback and suggestions on ways to improve outcomes for credit unions and the consumers that they serve.

- Nearly 75% of reporting credit unions "strongly agree" that the Bureau's rulemaking processes and procedures should be improved, and that there are aspects of the Bureau's engagement with credit unions and other credit union industry stakeholders that should be improved.

- Of the rulemaking changes examined, survey respondents found the following to be the most important, with not less than 73% and as many as 89% of credit union survey respondents indicating it is "very important" that a change be made with respect to each of these five processes and procedures:
  - More carve-outs and exemptions for credit unions;
  - Better guidance and tools for implementing rules;
  - More focus on the impact on small credit unions through the SBREFA Process;
  - More time implementing rules; and
  - More cost-benefit research and analysis to inform the rules.

- Credit unions were asked to indicate how important it is to them that the Bureau revisit and change a list of already-established rules, taking into consideration the investment of resources the credit union has already incurred to implement the rule. Survey respondents were most adamant that the following rules be changed:
  - TILA/RESPA requirements;
  - Mortgage origination rules; and
  - Qualified mortgage requirements.

- When it comes to the Bureau supporting credit unions' ability to innovate, at least 90% of credit union survey respondents "strongly" or "somewhat agree" that the Bureau should:
  - Do more to support credit union innovation;
  - Increase financial literacy and education collaboration; and
  - Better define what is considered an unfair, deceptive, or abusive act or practice (UDAAP) to improve credit unions' ability to innovate.

- Among the steps the Bureau could take to encourage and support innovation:
  - Nearly 90% of credit union survey respondents believe (1) less complex rules and (2) more flexibility in areas where there is no pattern of consumer abuse are very important.
  - About 75% indicate that (1) fewer rules; (2) policy that aligns better with NCUA requirements; (3) more research and analysis before

proposing a rule; and (4) more narrowly tailored rules focusing on culprits are very important.

- Roughly 30% of the credit unions surveyed believe the Bureau is doing well in their (1) willingness to engage with the credit union industry and (2) compliance guides and other materials.

- About 15% of the credit unions surveyed believe the Bureau does well in (1) informing examiners and staff and (2) communicating with the credit union industry via blogs, social media, and websites.

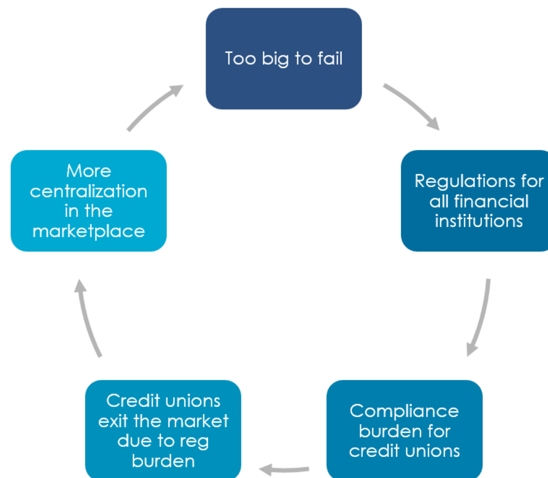
CUNA Recommendation

CUNA urges the Bureau to consider this feedback from credit unions, as it is illustrative of the regulatory burden experienced since the Bureau's inception and its ramifications for consumers.

VI. The Bureau Should Exempt Credit Unions from Regulations

This paper has provided ample evidence to support one goal of the Bureau moving forward: that it should exempt credit unions from regulations targeted at other industry bad actors. When extensive regulations make it more expensive and/or difficult to access safer and more affordable credit from credit unions, consumers pay the price. The Bureau has repeatedly stated it does not want to impact credit union lending. The only way to assure that does not happen is to exempt credit unions and credit union service organizations (CUSOs) from certain regulatory requirements entirely, especially if their behavior is not the impetus for the rule. The Bureau has the law and precedent on its side to exercise exemption authority to protect consumers by exempting credit unions and CUSOs from certain rulemakings to allow them to continue to provide products and services for consumers, free from unnecessary regulatory burden.

As discussed throughout this paper, during the past several years, there has been a cycle of using regulations to curb abusive practices by too-big-to-fail institutions. Unfortunately, these regulations have been applied to all financial institutions, including credit unions, which have not engaged in irresponsible lending and banking practices, in a one-size-fits-all manner. Massive regulations lead to unduly regulatory compliance burden for the smaller or less complex financial institutions, such as credit unions, which can then lead to their exit from certain markets. If there is greater centralization in the marketplace, there is a greater chance that large financial institutions will become even larger and thereby, even more likely to become too-big-to-fail.



Congress contemplated the need for exemptions in certain rules and took precautions when enacting the Dodd-Frank Act to allow the Bureau to tailor its rules so those acting responsibly in the financial services marketplace are not unnecessarily hampered by those rules. Congress deliberately provided this authority expressly in Section 1022 of the Dodd-Frank Act:

> *The Bureau, by rule, may conditionally or unconditionally exempt* ***any class of covered persons****, service providers or consumer financial products or services from any provision of this title, or from any rule issued under this title . . . .*[10] (Emphasis added.)

These words are unambiguous, and as the Supreme Court of the United States has recognized, the plain meaning rule holds that the words of a statute mean what an ordinary or reasonable person understands them to mean.[11] The Chevron doctrine also clearly outlines that if Congress unambiguously addressed a question at issue, then the agency has deference to follow the words of the statute.[12]

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[10] 12 U.S.C. § 5512(b)(3)(a).

[11] *See*, e.g., *United States* v. *Shreveport Grain & Elevator Co.*, 287 U.S. 77 (1932) "Reports of congressional committees explaining the bill may be considered in determining the meaning of a doubtful statute, but will not be used to support a construction contrary to the plain import of its terms."

[12] *Chevron, U.S.A., Inc.* v. *NRDC, Inc.*, 467 U.S. 837, 842 (1984) "When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court."

To exempt credit unions from a rule issued under Title X, the Bureau could 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 1021(a), 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."[13]

When issuing an exemption under Dodd-Frank Act Section 1022(b)(3)(A), the Bureau must consider the following factors, as appropriate:

- The total assets of the class of covered persons;
- The volume of transactions involving consumer financial products or services in which the class of covered persons engages; and
- Existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

While the statute gives broad discretion to the Bureau to take into consideration these factors only "as appropriate," credit unions are structured differently than for-profit financial institutions and nonbank lenders, and these differences allow the Bureau to meet all three factors of this test in most cases.

The structure of both state-chartered and federal credit unions is different than other financial institutions. Nonbank lenders are for-profit financial institutions that use consumer lending to make profits for private equity companies, publicly traded stock, hedge funds, or other investors. They are driven by the goal to originate as many loans as possible. Credit unions, in contrast, are not-for-profit, financial cooperatives with a statutory mission of "promoting thrift among [their] members and creating a source of credit for provident or productive purposes."[14]

By establishing this mission in 1934 and reaffirming it in 1998,[15] Congress recognized that credit unions are inherently different. The inclusion in the Federal Credit Union Act of the phrase "provident or productive purposes" is purposeful

[13] 12 U.S.C. § 5511(a).
[14] 12 U.S.C. § 1752.
[15] Pub. L. No. 105-219.

and particularly pertinent to the question of structural differences. For a loan to have a provident or productive purpose it must be useful and beneficial for the borrower. Credit unions put their members first and lend so that members can improve their financial situation. This lending approach provides considerable benefit to consumers and is a key byproduct of the structural difference between credit unions and other lenders. The member-ownership structure, in conjunction with the mission or promoting thrift and providing access to credit for provident or productive purposes, substantially reduce the likelihood that credit unions would engage in lending or provide financial services that are harmful to consumers. These integral protections combined with compliance obligations with state and federal prudential regulations, create a massive distinction between credit unions and other financial institutions.

When Congress enacted the Dodd-Frank Act, it very clearly conveyed to the Bureau the authority to exempt any class of covered entities from its rules. CUNA has strongly urged the Bureau to use this authority to help protect credit union members from the many problems associated with creating one-size-fits-all rules that are inappropriate for the different not-for-profit structure of credit unions. Notwithstanding that the statutory construction provides unmistakable clarity with respect to the Bureau's exemption authority, Congress has recently provided additional and emphatic clarity. In letters sent to the Bureau, 329 Members of the House of Representatives, including Acting Director Mulvaney, and 70 Senators—bipartisan supermajorities of both chambers—have urged the Bureau to use its exemption authority to protect credit unions and their members from burdensome regulations.[16]

In their letter, the Representatives stated:

> *When Congress passed the Dodd-Frank Act, it specifically recognized the need to tailor regulations to fit the diversity of the financial marketplace. Section 1022(b)(3) gives the CFPB authority to adapt regulations by allowing it to exempt "any class" of covered persons from its rulemakings. As you undertake this and other rulemakings, we urge you to consider the benefits credit unions and community banks provide and ensure that regulations do not have the unintended consequences of limiting services or increasing costs for credit union members.*[17]

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[16] Letter from 329 U.S. Members of the House of Representatives to former Bureau Director Richard Cordray (Mar. 14, 2016).
[17] *Id.*

The Senators were just as unequivocal:

> *Dodd-Frank explicitly granted the CFPB the authority to tailor regulations in Section 1022(b)(3)(A) by allowing the CFPB to "exempt any class" of entity from its regulatory requirements. We believe the CFPB has robust tailoring authority and ask that you act accordingly to prevent any unintended consequences that negatively impact community banks and credit unions or unnecessarily limit their ability to serve consumers.*[18]

Many signatories of these letters were seated in Congress during consideration of the Dodd-Frank Act and have been helpful in resolving any confusion about the legislative intent behind the language in Section 1022.

CUNA Recommendation

Credit unions and CUSOs should receive appropriate exemptions from Bureau regulatory requirements. It is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we implore the Bureau to consider how credit unions are vastly different from other financial service providers, particularly those who have a history of abusing consumers, and to tailor certain rules accordingly.

VII. Bureau External Engagements

CUNA values the outreach that the Bureau has engaged in with the credit union industry. We appreciate the frequent meetings, discussions, and roundtables the Bureau has conducted with credit unions throughout the country. We encourage the Bureau to continue to engage credit unions in its external outreach, as these efforts will assist in its understanding of the credit union business model and how regulations and additional requirements affect operations and service to consumers.

CUNA Recommendation

We have the following recommendations for the Bureau moving forward:

- The Bureau's Credit Union Advisory Council (CUAC) is a valuable asset and should be preserved. Credit unions have different structures and business models. This Council can educate the Bureau on credit union

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[18] Letter from 70 U.S. Senators to former Bureau Director Richard Cordray (July 2016).

differences and how various regulations and requirements affect their operations.

- For CUAC meetings, we encourage the Bureau to maintain a balance between public and confidential portions of the meetings. Indeed, increasing the confidential portion of the meeting can lead to greater candor and frank dialogue by all parties. Former CUAC members have told CUNA that it would be helpful to have additional time for non-public meetings where constructive feedback can be more easily provided to Bureau officials and staff.

- It would be helpful if CUAC members had longer terms, such as three-year terms. By the time a two-year term has expired, CUAC members have barely had the time to understand the Bureau and its processes and procedures. Allowing longer terms for CUAC members can ensure the Bureau receives the most informed and educated advice from industry representatives with a broader perspective.

- The Bureau should conduct roundtable discussions with credit unions of all sizes throughout the country before engaging in rulemakings that could affect their operations. Roundtable discussions can be conducted throughout the United States, in various locations, to ensure feedback is representative of all credit unions. In addition, the Bureau can conduct more informal discussion with credit unions via conference call, to ensure it receives feedback from credit unions from many parts of the country. We also encourage the Bureau to conduct discussions with CUSOs.

- The Bureau should provide frequent webinars and open communication through all channels with industry stakeholders about new rules and requirements. This outreach is critical for smaller financial institutions with fewer compliance resources.

VIII. Bureau Complaints Processing

CUNA supports the ability of consumers to access timely and clear information on consumer financial products and services. Further, we recognize that the Dodd-Frank Act requires the Bureau to maintain a user-friendly and efficient method for consumers to lodge complaints regarding the improper activities of financial institutions. However, we continue to have concerns with the Bureau's consumer complaint database overall.

We believe we are in an exceptionally strong position to evaluate the complaint system objectively for two reasons. First, the high level of consumer satisfaction

with credit union services suggests that relatively few complaints will be filed with the Bureau concerning credit unions. As member-owned cooperatives, credit unions are simply less likely to offend their member-owners compared to institutions that serve customers only for purposes of rewarding investors. Second, only a small number of credit unions are large enough to have any consumer complaints included in the Bureau's database.

CUNA Recommendation

Even though the number of credit union-related complaints is extremely low, to ensure the complaint intake process is effective, we urge the Bureau to take steps so that the number of non-substantive and meritless complaints does not increase. Thus, we urge the Bureau to revisit the complaint intake system's process of filtering out clearly frivolous consumer complaints. While soliciting complaints via the Bureau's website makes the process efficient for consumers, it also has the potential of increasing unfounded complaints. It is important that the Bureau be aware that each complaint a credit union receives—regardless of merit—has a cost to the credit union and in turn its members.

CUNA urges the Bureau to take appropriate steps to verify the legitimacy and accuracy, to the extent possible, of a consumer's complaint and/or compliment prior to public disclosure. Further, under the current system, we believe it is possible that some institutions are effectively unable to respond to consumers' narrative description of complaints due to privacy restrictions. We ask the Bureau to explore improvements to the process.

In addition, we ask the Bureau to reexamine its marketing of the complaint system to consumers. Since most credit unions are not supervised by the Bureau, any complaints regarding them should be directed to the NCUA, not the Bureau. The Bureau's marketing directs consumers to the Bureau's complaint system, which causes confusion and delays in response when those consumers are then redirected to the NCUA and/or the credit union directly. The Bureau should explore how it can revise its marketing to alleviate consumer confusion and reduce unnecessary correspondence among agencies, institutions, and consumers.

IX. Bureau Rulemaking Review

CUNA encourages the Bureau to conduct an extensive review of the regulations under its jurisdiction. This review should streamline requirements, eliminate outdated or superfluous requirements, and provide exemptions for certain industry stakeholders, such as credit unions and CUSOs, where appropriate. It is critical that the Bureau keep in mind that any change in regulation—even a change intended to reduce regulatory burden—comes with a cost. As such,

we have several recommendations on regulatory changes that should be made.

CUNA Recommendations

A. Mortgage Origination Rules

Borrowers should have appropriate disclosures when buying a home, but the sweeping substantive changes made by the new Truth-in-Lending Act and Real Estate Settlement Procedures Act (RESPA) Integrated Disclosure (TRID) rules and the Ability-to-Repay (ATR) underwriting requirements increase the regulatory burden on credit unions and create arbitrary barriers to homeownership. The Bureau should recognize credit unions are not predatory lenders but good faith partners for their members seeking to buy a home, and make significant changes to the TRID framework.

We suggest the following as appropriate actions:

- The Bureau should consider all credit union mortgage loans that are held in portfolio to be qualified mortgage (QM) loans.

- Origination waiting periods are harmful to consumers and lenders by delaying closings to the detriment of the consumer and their preferences. The Bureau should modify the rules to allow waiting periods to be waived.

- The Bureau should provide a definition for "residual income" in TILA Regulation Z ATR requirements. The lack of a clear definition forces significant documentation requirements and creates unnecessary litigation and liability risk. This risk adversely affects consumers with less than meticulous credit records.

- The Bureau should make modifications to Regulation Z to allow for an ability to cure violations prior to the right to proceed with litigation.

- The Bureau should remove the 2021 sunset for QM loans that are eligible for sale to the Government-Sponsored Enterprises (GSEs) to prevent market disruptions. The current exemption allows lenders to exceed the general requirement that QM loans have a debt-to-income ratio of 43%, an onerous standard. The exemption for GSEs assists in maintaining a functioning mortgage market.

- The Bureau should revise the loan originator compensation rules to narrow the overbroad definition of "loan originator." The definition, as currently

written, is unclear and could potentially require registration of all employees of a credit union.

- The Bureau should clarify the assignee liability under the lending rules/statutes. This lack of clarity has the unintended consequence of causing the secondary market to reject loans because of possible technical, non-impactful errors. This is, in large part, due to the unclear interpretation of TILA and RESPA rules, for which CUNA has requested additional guidance.

B. Mortgage Servicing Regulations

The Bureau has stated that it tailored its servicing rules by making certain exemptions for small servicers that service 5,000 or fewer mortgage loans. However, significant requirements under the servicing rules are excluded from the exemption and must be followed by large and small servicers alike. Small servicers remain subject to requirements related to successors-in-interest and force-placed insurance. The following changes would provide a more complete exemption for credit unions:

- The Bureau should change the language of the force-placed hazard insurance notice to include reference to a policy that provides insufficient coverage.

- The Bureau should expand the small servicer exemption to fully exclude application of the following Regulation Z provisions to successors in interest:
    - 1026.20 – Disclosure requirements regarding post-consummation events;
    - 1026.36 – Prohibited acts or practices and certain requirements for credit secured by a dwelling;
    - 1026.39 – Mortgage transfer disclosures; and
    - 1026.41 – Periodic statements for residential mortgage loans.

- The Bureau should extend the small servicer exemption to fully exclude application of the following provisions found in RESPA's Regulation X, including for successors in interest:
    - Subpart C – Mortgage Servicing, including: mortgage servicing transfers, error resolution procedures, requests for information, force-placed insurance requirements; and
    - 1024.17 – Escrow accounts.

C. Remittances

The Bureau regularly cites the exemption to entities that provide fewer than 100 remittances annually as an example of regulatory relief to small entities. However, this exemption threshold is a prime example of one that has not provided significant relief to credit unions. We have continually communicated to the Bureau that the international remittance transfer final rule has crippled credit union participation in this market with over half (55%) of credit unions that have offered international remittances sometime during the past five years having either cut back or eliminated the service.

The following changes would allow credit unions to reenter, or continue to, participate in this market:

- The Bureau should re-propose this rule with an increased exemption threshold of at least 1,000. This would exclude significantly more credit unions from the onerous compliance requirements of the rule and allow them to continue offering this critical service to their members.

- The Bureau should remove consumers' ability to cancel a transfer for 30 minutes (or longer) following initiation of a transaction because of the associated compliance burden. This requirement has created an unduly burdensome compliance concern for credit unions.

D. Fair Debt Collection Practices Act (FDCPA)

When Congress enacted the FDCPA and for decades since, it recognized that including credit unions in a statute addressing abusive debt collection practices is unnecessary because credit unions are highly-regulated and supervised, and have longstanding relationships with their members. Since the enactment of the FDCPA, no subsequent law, including the Dodd-Frank Act, has changed this directive.

As such we believe the following actions concerning the FDCPA are appropriate:

- The Bureau should withdraw debt collection bulletins that attempt to use its Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) authority to place new requirements on creditors despite no statutory changes in the FDCPA or Federal Credit Union Act. It is unclear what force of law Bureau bulletins have, and the lack of transparency surrounding them outside of the rulemaking process creates unclear requirements and due process concerns.

E. Prepaid Cards

The final prepaid card rule defines prepaid accounts that access certain overdraft services or credit features as "credit cards," subjecting them to Regulation Z requirements. Credit unions oppose application of Regulation Z to overdraft services on prepaid products for several reasons, including that such application will likely reduce consumer choice in the prepaid product space.

Accordingly, we suggest the following change as appropriate action:

- The Bureau should modify the rule so Regulation Z requirements do not apply to the overdraft features of prepaid accounts. This change conflicts with decades of precedent in this area and could harm consumers by making it more difficult to provide prepaid cards.

F. Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)

It is troubling that the Bureau has proposed policies that conflict directly with feedback from credit unions' prudential regulator, the NCUA, which examines credit unions for safety and soundness. This is particularly concerning since the Dodd-Frank Act mandates that when issuing rules under UDAAP authority, "the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies."[19]

Given existing checks and balances on the use of UDAAP have not been appropriately followed, we believe the following changes would provide more clarity and consistency for credit unions:

- The Bureau should issue an RFI on whether to eliminate or clarify the overly-subjective "abusive" prong of UDAAP. It should also seek feedback on whether any other aspects of its UDAAP authority should be changed. Consumers and industry need more certainty about exactly what the rules and requirements are and how the Bureau plans to engage in enforcement actions surrounding them.

- The Bureau should issue a bulletin clarifying that previous enforcement actions or consent orders that conflict with statutory or judicial precedent create no new expectations for compliance. This would help provide more transparency and due process to credit unions and consumers. This

[19] 12 U.S.C. § 5531(e).

is particularly important for actions the Bureau has taken that conflict with NCUA precedent.

- The Bureau should also clarify its limited role in regulating the business of insurance. The Bureau's authority is shaped by the "enumerated consumer laws," but the Bureau's past enforcement actions have stepped over the line and relied on its UDAAP authority for its justification. The Bureau should explicitly clarify and reaffirm its narrow authority under Dodd-Frank in regulating the business of insurance—particularly as it applies to credit unions and banks selling insurance—and that UDAAP is not a backdoor to regulate insurance activities.

G. Small Business Lending

Section 1071 of the Dodd-Frank Act amends the Equal Credit Opportunity Act 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. This is one of the last remaining required rulemakings in the Dodd-Frank Act. Credit unions' unique and distinct memberships, a consequence of legally-restricted fields of membership, would not correspond with the Bureau's plans for data collection and would likely result in data that does not portray a complete or accurate picture of credit union lending.

We therefore recommend the following:

- The Bureau should exclude credit unions from this rule using its Section 1071 and/or Section 1022 exemption authority. The regulatory burden likely to be associated with this rule, particularly for smaller credit unions, could harm the ability of small business owners to obtain credit from their credit union.

H. Access to Financial Records

According to the Bureau, greater access to consumer data by data aggregation companies benefits consumers because it allows companies to innovate as they develop tools and services for consumers, such as personal financial management tools, credit decisions, bill payment, and fraud protection. We agree that some of the tools and services that rely on data aggregation are useful to consumers. However, the benefits of such practices are certainly not without serious risks.

Accordingly, we suggest the following:

- The Bureau should proceed carefully in the context of third-party access to consumer data. Credit unions are concerned with the very real threats to financial account providers, such as potential liability and the potential harm to consumers. Such harm could result from unauthorized account access or authorized access by unscrupulous third-party aggregators.

X. Bureau Rulemaking Processes

A. Notice of Proposed Rulemaking/Advance Notice of Proposed Rulemaking

The Dodd-Frank Act included numerous statutorily required rules with specific deadlines, most of which were concerning the mortgage rules that have already been issued. The only statutorily required rule remaining for the Bureau to implement is the Small Business Lending rule.

CUNA Recommendation

As future Bureau rules, including the small business lending rule, lack a statutorily required or set implementation timeline, we strongly urge the Bureau to employ greater use of ANPRs rather than only using the Notice of Proposed Rulemaking (NPR) process. An illustrative example of rulemaking that would have benefited from more external stakeholder engagement before moving forward is the Bureau's payday and small dollar lending rule.

B. Small Business Regulatory Enforcement Fairness Act (SBREFA)

Credit unions are member-owned financial cooperatives that operate for the purpose of promoting thrift and providing access to credit. One-size-fits-all regulation does not work for Main Street: local credit unions, small community banks, and the consumers and small businesses they serve. This regulatory philosophy has created a rigged system favoring the largest institutions—the very institutions that caused the financial crisis that adversely impacted so many Americans—that can afford to comply with the "solutions" dreamt up in Washington. Now, over-regulation of small institutions is hurting consumers, costing them time and money, and limiting their financial product and service choices.

Congress anticipated the possibility of such problems and enacted protections for credit unions and other small financial service providers. The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) amended the Regulatory Flexibility Act of 1980, to require some federal agencies to hold a SBREFA panel if the agency finds its proposed rule is likely to have a significant impact on a substantial number of small entities. The Bureau is one of the agencies required to engage in the SBREFA process, and credit union representatives have served as Small Entity Representatives (SERs) on several panels for its rulemakings.

While we appreciate that SBREFA adds a layer of protection for small credit unions, we believe the Bureau should consider the feedback it receives during this process more seriously, including by making changes to rulemakings before the proposal stage instead of merely asking for public comment in response to SER feedback. Additionally, we believe reforms to this process are needed to ensure there is more accountability if Bureau rules do not reflect feedback provided prior to publication of final rules, including during SBREFA panels.

Credit union employees divert time and resources from their daily jobs serving members to provide feedback to the Bureau on extremely complex SBREFA outlines of proposed rules. During the SBREFA process, these representatives are usually given less than a month to: read and digest complex outlines which can require legal and economic analysis, work to determine how the Bureau's proposals could impact their credit union, and compile data and feedback that the agency itself may not have even collected on a wide scale basis or analyzed. In short, SERs are often asked to do as much work as a federal government agency, and meanwhile continue to operate their credit union and serve the many members relying on them for financial services. Moreover, they are asked to travel to Washington, D.C. to participate in a day long panel *on their own dime*, as well as participate in several conference calls beforehand.

While this process can be burdensome to the small credit unions that participate, they nonetheless continue to volunteer in the SBREFA process because they know that rules which do not account for different institutions' size and structure can be catastrophic, lead to the elimination of products and services, and accelerate small credit union consolidation. Too often in prior SBREFA panels, Bureau officials have willfully ignored the feedback credit union representatives have provided about harmful proposals, improperly tailored to their size and structure.

We are concerned that the Bureau views the SBREFA process as a check-the-box exercise, and often has not included the suggestions and feedback small credit unions have provided in proposed or final rules, despite the multiple sacrifices made to participate in the process. The condensed timeframe of SBREFA and the complexity of the outlines of rules under consideration have also made it difficult for credit unions to analyze and provide feedback on all aspects of multifaceted outlines within the 60-day window. On several occasions, some of the major problems that a rule could cause for credit unions were identified after the SBREFA process.

We have received feedback from many credit unions that participated on SBREFA panels that they felt final rules did not include enough changes and/or exemptions to limit the impact on small credit unions. As a result, small credit unions have had the most difficulty complying with new mortgage rules, even after participating in SBREFA. In August 2016, the Government Accountability Office released a report with observations from some of the earlier Bureau SBREFA panels, which found that out of the 57 SERs who participated, seven were reportedly satisfied with the Bureau's final rules.[20]

CUNA Recommendations

Based on CUNA's experience and the feedback we have received from credit unions, we have the following recommendations for the Bureau to ensure its SBREFA process is efficient and effective moving forward:

- SERs should receive preparation materials well in advance of a SBREFA panel to allow them to gather information and feedback prior to the meeting.

- The Bureau should conduct a series of calls with SERs prior to the SBREFA panel to review materials and receive feedback.

- The Bureau should thoroughly consider comments by SERs before proposing rulemakings. Comments made by SERs should influence a proposed rule, not merely be mentioned in the proposal for public comment. If the Bureau must redraft proposals based on SER feedback, it should do so.

- SERs should receive the final SBREFA report before it is published in the *Federal Register* along with the proposed rulemaking.

C. The Bureau Should Work with the NCUA

As the prudential regulator for federally-insured credit unions, the NCUA is the government expert on credit union operations. Because credit unions operate differently than banks and other for-profit financial institutions, regulatory requirements affect them differently. The NCUA understands the unique

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[20] Government Accountability Office, Consumer Financial Protection Bureau Observations from Small Business Review Panels, (Aug. 2016) *available at* http://www.gao.gov/assets/680/678964.pdf.

structure and business model of credit unions, and therefore should be engaged throughout the entire rulemaking process.

CUNA Recommendation

The Bureau should work with NCUA and use its credit union experience on future rulemakings affecting credit unions.

D. The Bureau Should Apply a Cost/Benefit Analysis to Rules for Credit Unions

The Bureau prides itself on being a data-driven organization. Former Director Cordray often referred to the data beneath consumer complaints as the Bureau's "compass," playing a key role in identifying and prioritizing the agency's actions, including in the realm of rulemakings.

Data for data's sake is insufficient, and it is critical that the agency's policy and regulatory decisions be wholly supported by relevant, timely, representative data. Unfortunately, it is not uncommon for a Bureau rulemaking to lack (or at least appear to the public to lack) sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking.

CUNA Recommendation

It is critical that the Bureau base its decisions on data. Almost equally as critical is that the Bureau be wholly transparent in its reliance on data, ensuring the public has access to the same information—absent confidential and personally identifiable information—the Bureau relies on as a foundation of its rulemakings.

XI. The Bureau Should Coordinate Future Efforts

Under Section 1042(a)(1) of the Dodd-Frank Act, state attorneys general and state regulators are empowered "to enforce provisions of this title or regulations issued under this title, and to secure remedies under provisions of this title or remedies otherwise provided under other law." Therefore, subject to some exceptions, state officials can enforce both the generic ban in Title X against unfair, deceptive or abusive conduct and any specific rules that the Bureau enacts. Without coordination between federal and state regulators, enforcement of consumer protections will overlap, leading to a patchwork of conflicting resolutions which will create uncertainty in the industry and confusion among the public.

Recently, several states have ramped up enforcement of consumer financial protections. At least two states, New Jersey[21] and Pennsylvania,[22] have created a "state-level" Bureau to spearhead enforcement. In December, state attorneys general from 17 states sent a letter[23] to President Trump emphasizing their statutory authority to enforce state and federal consumer protection laws. The attorneys general further vowed to "redouble [their] efforts at the state level to root out such misconduct and hold those responsible to account" should the Bureau pursue a less aggressive enforcement posture.

CUNA Recommendation

While we respect the authority of the Bureau and the states to enforce Dodd-Frank Act provisions, we strongly urge the parties to coordinate to ensure enforcement is transparent and consistent.

XII. Bureau Guidance and Implementation Support

The past several years has seen a massive increase in consumer financial services regulations. The increase in regulations is particularly burdensome for credit unions which, unlike massive banks, do not have dozens of legal experts in house to assist with compliance questions. There are, however, ways in which the Bureau can assist the industry in complying with consumer financial services regulatory requirements.

CUNA Recommendation

CUNA has the following recommendations to enhance the Bureau's ability to assist the industry with compliance with consumer financial services rules and requirements:

- The Bureau should accept inquiries regarding compliance with its regulations and guidance by telephone, email, or through its website. Reponses to inquiries should be provided by Bureau staff within 24-48 hours of receiving the inquiry. For questions that require additional research, we

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[21] State of New Jersey (Mar. 27, 2018), *Attorney General Grewal Announces New Leadership at the Division of Consumer Affairs* [Press release], *available at* http://nj.gov/oag/newsreleases18/pr20180327a.html.

[22] Office of the Attorney General (July 20, 2017), *Attorney General Josh Shapiro Announces Consumer Financial Protection Unit* [Press release], *available at* https://www.attorneygeneral.gov/taking-action/press-releases/attorney-general-josh-shapiro-announces-consumer-financial-protection-unit/.

[23] Schneiderman, Eric T. Letter to President Donald Trump (Dec. 12, 2017), *available at* https://ag.ny.gov/sites/default/files/sign_on_letter_re_cfpb.pdf.

strongly encourage Bureau staff to provide an initial response at least within the 24-48-hour timeframe.

- The Bureau should track questions it receives from the industry. These questions should be used by Bureau staff to make annual adjustments to regulations or commentaries to address ambiguities.

- If there are questions the Bureau receives frequently, we encourage it to also publish written guidance or Frequently Asked Questions (FAQs) with written interpretations to assist industry stakeholders on regulatory implementation. An example of helpful FAQs was the Department of Housing and Urban Development's RESPA FAQs, which the industry regularly used as a resource.

- The Bureau should conduct interactive webinars on proposed and final rulemakings. Webinars should provide information about regulatory requirements and practical examples of how to comply with new requirements. Bureau staff should also take and answer industry questions received during the webinars. Questions can be answered during the live webinars or through follow-up written communications such as FAQ documents.

- We encourage the Bureau to provide both comprehensive final rule summaries and short one-page summaries for final rules. Both summaries are helpful resources and tools for industry compliance. When possible, we strongly encourage the Bureau to provide flow charts that illustrate how to comply with various regulations. These resources can be especially helpful for smaller credit unions with limited compliance resources.

- The Bureau should place all its compliance resources, including recorded webinars, final rule summaries, and FAQ documents, in a central location on its website for easy and quick access.

- The Bureau should frequently update compliance guides on its website so industry stakeholders always have the most recent information accessible.

- The Bureau should also conduct annual outreach with industry stakeholders, especially credit unions, to receive feedback on its current compliance resources and what additional resources would be helpful to the industry.

XIII. Working with the Bureau on Credit Union Financial Well-Being, Literacy, and Educational Outreach Efforts

After the recession, a variety of research was conducted to evaluate how consumers were performing with their finances. In the face of several startling statistics—for example, in 2013, almost half of Americans could not come up with $400 in the case of an emergency[24]—it was clear that people were not "bouncing back" financially from the dizzying and monumental downturn of 2008-2012. Rather, they were becoming more and more financially fragile.

In fact, over the last five years, there has been increasing focus in the financial institution community to contemplate measuring and improving consumer financial health. There are many avenues to improve financial well-being. Helping consumers save, plan, borrow, and spend[25] appropriately are mechanisms to aid people in achieving their aspirations, using money as a tool rather than it being a hindrance to those aspirations.

Credit unions are uniquely positioned to provide financial education resources to members and to focus on consumer financial well-being. By definition, credit unions are instruments to bring cooperative credit to communities. As equal member-owners in a credit union, the credit union, as a whole, has a direct interest in promoting the financial literacy and sound financial judgment of each member.

The National Credit Union Foundation (the Foundation) works with credit unions and national leaders in financial well-being to help credit unions meet people where they are in life and work to improve their financial well-being. The Foundation administers various programs to promote the credit union difference and establish financial education within communities. In addition to helping members diagnose financial health issues, the Foundation provides resources and grant opportunities for credit unions to help build financial capability among members. Furthermore, the Foundation has spearheaded a financial health conference for credit unions for the past three years, focusing on how credit unions can measure their members' financial well-being and how credit unions can effectively operationalize member financial health. The Foundation

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[24] Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2013* (July 2014), *available at* https://www.federalreserve.gov/econresdata/2013-report-economic-well-being-us-households-201407.pdf.

[25] Center for Financial Services Innovation, Eight Ways to Measure Financial Health (May 10, 2016), *available at* https://cfsinnovation.org/research/eight-ways-to-measure-financial-health.

has worked with the Bureau to leverage its financial well-being scale as part of these efforts.

The Foundation also conducts and facilitates ongoing research to identify specific products that credit unions should consider offering to improve financial health of credit union members when it comes to saving, spending, borrowing, and overall financial planning. In 2017, the Foundation wrapped up a year-long grant funding effort to conduct Consumer Financial Health Check-ups with the Center for Financial Services Innovation (CFSI). From this work, it was discovered that more than half of credit union members are struggling financially, only a quarter of members are highly satisfied with their present financial situation, and only half of members engage in key financially healthy behaviors, like saving and planning.

Interestingly, the NCUA recently issued a prototype Call Report Profile, which allows credit unions to demonstrate financial literacy and member services offered, including financial counseling, financial education, financial literacy workshops, first-time homebuyer programs, and online financial literacy training modules.

The Foundation, CUNA's Center for Professional Development, credit union leagues, and credit unions also partner to train credit union staff as front-line financial counselors and educators through the Enhanced FiCEP Program. Since the program's inception in 2012, 448 credit unions in 25 states have participated, graduating over 2,660 Certified Financial Counselors to date. In 2017 alone, the Enhanced FiCEP Program graduated 500 students who are now able to give professional financial counseling to help members better prepare for their financial futures.

In addition, the Foundation is a champion for the Emmy-award winning educational children's program, Biz Kid$, which teaches young adults about finances and entrepreneurship. Biz Kid$ is fully funded by America's coalition of over 300 credit unions and affiliates, and includes a television series, free classroom curriculum, outreach activities, and much more.

CUNA Recommendation

As demonstrated with this list, the Foundation is an excellent resource to the financial services industry. CUNA strongly encourages the Bureau to partner with the Foundation in its consumer education efforts.

Furthermore, CUNA strongly recommends the Bureau utilize financial education efforts to guide consumer behavior. This approach, rather than additional

rulemaking to guide certain consumer choices, provides the foundation for good consumer financial health. Consumer education is proactive, not reactive, and should be the default for the Bureau when addressing issues with consumer financial services or industry practices. More can and should be accomplished with the Bureau's consumer financial education efforts. Indeed, CUNA and the Foundation are both able and willing partners in consumer education initiatives implemented by the Bureau.

XIV. Conclusion

As CUNA indicated when the Dodd-Frank Act was enacted,

> "Consumers of financial products, especially consumers of products and services provided by currently unregulated entities, need greater protections and a consumer financial protection agency could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions. In order for such an agency to work, consumer protection regulation must be consolidated and streamlined; it should not add to the regulatory burden of those who have been regulated and performed well, such as credit unions."[26]

The need for consumer protection remains. Over the last several years, the Bureau has missed opportunity after opportunity to ensure that its rulemakings do not adversely impact credit unions' ability to serve their members. We hope this process will lead the new leadership at the Bureau in the direction of ending one-size-fits-all regulation and bringing common sense to credit unions' regulatory requirements.

On behalf of America's credit unions and their 110 million members, thank you for considering our views.

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[26] Letter from Credit Union National Association to Members of the House of Representatives regarding H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act (June 30, 2010). *Available upon request.*