CUNA’S SUGGESTIONS FOR COMMON-SENSE REFORMS TO CFPB RULES AND POLICYMAKING
HOME MORTGAGE DISCLOSURE ACT (HMDA):

The CFPB has acknowledged that credit unions maintained sound credit practices through the economic crises and did not engage in the practices that led to the crash of the housing market. Nonetheless, the HMDA rule disproportionately penalizes credit unions where there has been no evidence of wrongful conduct. This makes little sense given credit unions’ field of membership requirements.

The CFPB should modify the 2015 HMDA final rule to provide meaningful exemptions that will provide relief to credit unions. It will be difficult for credit unions to effectively participate in the mortgage lending market if they are forced out as a result of rules not tailored to their size or structure. We suggest the CFPB provide relief for credit unions subject to this rule immediately since implementation deadlines are quickly approaching. We suggest the following:

• The CFPB should make modifications to the 2015 HMDA final rule to allow reporting for Home Equity Lines of Credit (HELOCs) to continue to be voluntary. HELOC reporting has always been voluntary under prior rules as these loans are distinct from first lien mortgages. When a consumer has already acquired a home, HELOC data, particularly a first draw amount on a second position lien, has little or no value in furthering the purpose of HMDA.

• The CFPB should make modifications to the rule so reporting thresholds for closed-end and open-end mortgages are increased. Exemption thresholds of 500 for closed-end mortgages and 1000 for open-end mortgages (if reporting of these loans is not voluntary) would provide greater relief for credit unions. Furthermore, a mortgage threshold of 500 is statistically insignificant to the collected data and will not hamper the regulator’s ability to monitor an institution for purposes of enforcing fair lending regulations. This is particularly evident for credit unions given their field of membership requirements.

• The CFPB should make modifications to the HMDA final rule so exemptions for collecting data better align with the current systems credit unions are using and allow for separate reporting of open-end and closed-end mortgages.

• The CFPB should make modifications to the rule so the required data points are limited to the enumerated data points in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Dodd-Frank Act enumerated data points are sufficient for purposes of identifying discriminatory practices and implementing the underlying purpose of the rule.

• The CFPB should study the ramifications on privacy and the potential for identity theft before collecting any additional data points or making them public.

• The rule calls for the use of a “balancing test” by the CFPB but does not otherwise indicate which fields will be made public. The CFPB should make modifications to the rule to clarify which fields will be made public and allow for notice and comment on the actual public data points.
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 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 CFPB 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:

• Origination waiting periods are harmful to consumers and lenders by delaying closings often not to the benefit of the consumer. The CFPB should modify the rules to allow waiting periods to be waived.

• The CFPB should provide a safe-harbor from TRID enforcement until it issues clear guidance and clarifies the technical and prescriptive TRID requirements. The rule should be modified to be principal-based instead of prescriptive.

• The CFPB should provide a definition for “residual income” in the Truth-in-Lending Act (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 CFPB should make modifications to Regulation Z to allow for an ability to cure violations prior to the right to proceed with litigation.

• The CFPB should remove the 2021 sunset for qualified mortgage (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 CFPB 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 CFPB 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/RESPA rules for which CUNA has requested additional guidance.

• The CFPB should increase the tolerance for appraisal fees. The zero-tolerance requirement has caused problems and delays for credit unions and consumers.

• The CFPB should remove the required three-day waiting period prior to closings. This waiting period is disruptive to borrowers and credit unions alike, and can result in credit union homebuyers losing opportunities to other potential buyers, such as investors paying cash.
MORTGAGE SERVICING REGULATIONS:
The CFPB argues that it has 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, force-placed insurance and in certain circumstances, early intervention requirements for borrowers in bankruptcy. The following changes would provide a more complete exemption for credit unions:

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

• The CFPB 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
  • 1026.41 – Periodic statements for residential mortgage loans

• The CFPB should extend the small servicer exemption to fully exclude application of the following provisions found in the Real Estate Settlement Procedures Act’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
  • 1024.17 – Escrow accounts

REMITTANCES:
The CFPB 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 CFPB 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 come back into, or continue to, participate in this market:

• The CFPB should repose 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 CFPB 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.
FAIR DEBT COLLECTION PRACTICE 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 CFPB 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 (FCUA). It is unclear what force of law CFPB bulletins have, and the lack of transparency surrounding them outside of the rulemaking process creates unclear requirements and due process concerns.
• The CFPB should withdraw its bulletin concerning service providers. Again, a bulletin issued outside of the rulemaking process creates confusion and unclear guidance.

INDIRECT LENDING:
The CFPB issued a fair lending guidance bulletin that was unsupported by research or data. Credit unions support the goal of fair lending and strongly oppose any discriminatory policies. However, this guidance bulletin was also not issued through the normal course of the Administrative Procedures Act or the public rulemaking process. As such, the following actions are appropriate:

• The CFPB should withdraw the indirect lending guidance since it lacks transparency and has caused confusion about the CFPB’s jurisdiction and interest in this market. Policymaking in this area should be open to the public and responsive to those comments.

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, as the CFPB further analyzes this rule, we suggest the following as an appropriate action:

• The CFPB 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.
PAYDAY AND SMALL DOLLAR LOANS:
In the proposed payday and small dollar loan rule, the CFPB is attempting to sweep consumer-friendly credit union small dollar loan products and services into the rule using its UDAAP authority. It, unfortunately, proposes new and complex requirements on credit unions despite little to no data suggesting these products have any pattern of harm to consumers. To the contrary, consumers have stated that credit union small dollar loans are often their safest and best option for credit. Accordingly, we suggest the following:

• The CFPB should exempt credit unions entirely from its proposed payday and small dollar loan rulemaking. Credit unions have no pattern of abuse or history of harm to consumers in the small dollar lending space. In fact, they are among consumers’ safest and most affordable options for small dollar loans.

UDAAP:
It is troubling that the CFPB has proposed policies that conflict directly with feedback from credit unions’ prudential regulator, the National Credit Union Administration (NCUA), who 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.” Since existing checks and balances on the use of UDAAP have not been appropriately followed, we think the following changes would provide more clarity and consistency for credit unions:

• The CFPB should issue a Request for Information on whether to eliminate 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 what the rules and requirements are and how the CFPB plans to engage in enforcement actions surrounding them.

• The CFPB 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 is particularly important for actions the CFPB has taken that conflict with NCUA precedent.
VOLUNTARY PRODUCTS:
Federal credit unions are subject to the FCUA and TILA’s Regulation Z, which are significantly altered by the CFPB’s proposed new “All-in APR” calculation. Currently, federal credit unions typically view their loans under the TILA Regulation Z definition of cost of credit to determine what fees are finance charges, which does not include application fees, insurance or other voluntary products within the cost of credit. Accordingly, we suggest the following as appropriate actions:

• The CFPB should clearly delineate that ancillary products that are not required as part of the credit are not fees for the payment for the credit granted, and the fees are not finance charges for purposes of Regulation Z. This will ensure that credit unions are not impeded from offering consumers the safest and most affordable insurance and other voluntary product options.

ARBITRATION:
Credit unions are democratic organizations owned and controlled by their members. It is difficult to imagine a case in which class action litigation against a credit union would be the best course of action for credit union members, since it would put them in a position of having to sue themselves as owners. Accordingly, we suggest the following:

• The CFPB should exempt credit unions from any new arbitration requirements because of their unique member ownership structure in which class action litigation would lead to member harm.

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 CFPB 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 would not coincide with the CFPB’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 CFPB should not include credit unions in this rule using their Section 1071 and/or Section 1022 exemption authority. Regulatory burden likely to be associated with this rule, particularly for smaller credit unions, would harm the ability of small business owners to obtain credit from their credit union.
ACCESS TO FINANCIAL RECORDS:

According to the CFPB, 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 CFPB 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.