



WASHINGTON, D.C.

**Redacted**

June 1, 2020

Comment Intake— Taskforce on Federal Consumer Financial Law  
Consumer Financial Protection Bureau  
1700 G Street, NW  
Washington, DC 20552

Re: Request For Information To Assist the Taskforce on Federal Consumer Financial Law; Docket No. CFPB-2020-0013

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. On behalf of our members, we are writing in response to the Consumer Financial Protection Bureau's (CFPB or Bureau) request for information to assist the Taskforce on Federal Consumer Financial Law (the Taskforce).

### **General Comments**

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 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 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 are harmed when one-size-fits-all rules force credit unions to pull back safe and affordable options from the market, pushing consumers toward providers engaged in the very activity that the rules were designed to curtail. Going forward, 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 urge the Task Force, as it conducts its review, to look closely at the outsized impact that the Bureau's rules have had on credit unions as community-based financial institutions and to recommend the Bureau streamline regulations with an eye toward improving the financial health and well-being of consumers. To that end, credit unions believe the Bureau's rules should focus on Wall Street banks and the unregulated and under-regulated sectors of the financial services industry.

Credit unions work every day to advance their communities and empower their members' financial well-being. It is critical that the regulatory structure to which credit unions are subject, as well as the regulations they must follow, enable them to meet the diverse and evolving financial services needs of America's credit union members. There are several steps that should be taken to ensure credit unions can continue to be consumers' best financial partner.

## **A Bipartisan Commission is Essential to Ensuring the CFPB's Continued Independence and Effectiveness**

While not within the CFPB's authority to change, CUNA believes any meaningful attempt to address the Bureau's ability to carry out its mission should begin with the structure of the Bureau itself. In that regard, the current structure—with a single director—gives too much authority to one person and does not provide meaningful oversight and accountability. It ultimately fails consumers. First, it disrupts consumer protection and functioning markets in an interest to achieve a political agenda that suits the party of the president; second, it produces frequent and severe changes in policy that increase costs of compliance that are generally passed on to consumers in the form of higher interest rates and fees, making credit and services more expensive and less available, particularly to vulnerable borrowers. While entities that must comply with the ever-changing regulatory perspective that the Bureau's structure produces may have a loud voice, be assured that the consumers the Bureau was intended to protect are the ones who pay the ultimate price of this misguided structure.

To ensure consumers benefit from both strong protections as well as regular access to products and services, the Task Force should support the enactment of legislation that changes the Bureau's leadership structure to a multimember, bipartisan commission. A multi-member commission would enhance consumer protection by ensuring that diverse perspectives are considered prior to finalizing rules and prevent disruptions caused by leadership changes. Credit union members and other consumers would benefit from transparent policymaking that includes more voices. This structure is consistent with the traditions of our democracy and would provide certainty that is essential for consumers and the financial services industry, regardless of which political party controls the White House.

Perhaps the best evidence of the virtues of a CFPB commission is the fact that leaders of both parties have supported a multi-member commission only to back off that support when it was politically convenient to do so. This type of political approach is a disservice to the consumers Congress has entrusted the Bureau to protect.

As we said when the CFPB was originally proposed,

*Consumers of financial products, especially for consumers of products and services provided by currently unregulated entities, need greater protections, and CUNA agrees that a CFPA could be an effective way to achieve that protection, provided the agency does not impose duplicative or unnecessary regulatory burdens on credit unions.<sup>1</sup>*

A decade later, this remains our view. The Bureau could be a more effective way to achieve important consumer protections, if Congress takes the steps to fix the Bureau by changing the structure to a bipartisan commission.

## **The CFPB's Execution of Its Regulatory Agenda Should Ensure Credit Unions and Other Providers Are Able to Provide Efficient, Safe and Affordable Products and Services**

America's credit unions value the CFPB's mission, "to make consumer financial markets work for consumers, responsible providers, and the economy as a whole." Unfortunately, credit unions' ability to provide their members with high-quality and consumer-friendly financial products and services has been significantly impeded by several rules promulgated under past leadership. As mentioned above, the CFPB's overly broad approach to rulemaking resulted in burdensome regulatory requirements being imposed on credit unions based on the mistakes and irresponsible practices of other industry stakeholders.

Outlined below are high-level priorities and recommendations credit unions have provided to the CFPB regarding its regulatory approach and several specific rules:

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<sup>1</sup> Letter from Credit Union National Association to House Financial Services Committee Chairman Barney Frank. July 14, 2009.

## *Regulating America's Credit Unions*

CUNA has strongly urged the Bureau to closely monitor the impact that its rules have had on credit unions and their members and to appropriately tailor regulations to reduce burden or exempt credit unions entirely, as appropriate. If the Bureau spent fewer resources on regulating and supervising credit unions and other small lenders subject to federal prudential regulation, then it could spend more time focusing on entities that may be actively engaged in objectionable practices that exploit consumers. We believe this can be accomplished without sacrificing important consumer protections provided by credit unions.

Throughout their history, credit unions have been supervised by several different federal agencies. The lesson that comes through clearly, based on these different supervisory arrangements, is that credit unions are best positioned to succeed when supervised and examined by a regulatory agency that has familiarity with the characteristics that differentiate credit unions from other financial services providers. For that reason, the CFPB should aim to work more closely with the National Credit Union Administration (NCUA) throughout the rulemaking process and use its statutory authority to transfer consumer protection regulation supervision of the largest credit unions to NCUA. The NCUA understands the credit union model and operational issues and is best equipped to examine and supervise credit unions for regulatory compliance.

## *Effectively Using Statutory Authority*

In the wake of the financial crisis, Congress contemplated the need for exceptions to certain rules and crafted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to authorize the Bureau to tailor its rules so those acting responsibly in the financial services marketplace are not needlessly 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 . . . (Emphasis added)<sup>2</sup>*

Congress' words are unambiguous and clearly grant the CFPB 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. Credit unions and credit union service organizations (CUSOs) should receive appropriate exemptions from the Bureau's regulatory requirements. However, it is critically important for the Bureau to understand that credit unions are not asking to be exempt from all its rules; instead, we ask the Bureau to consider, in the course of promulgating new rules or changes to existing rules, whether the regulations credit unions are presently following need to be changed. In short, if credit unions are not contributing to the problems that the Bureau is trying to address, then they should not be subject to the rules targeting those problems.

## *Debt Collection*

The Bureau is in the process of promulgating the first set of rules under the 40-year old Fair Debt Collection Practices Act (FDCPA). As you know, this law was enacted to establish guidelines and limitations on the practices of third-party debt collectors. Many credit unions use third party collectors to assist with the collection of delinquent accounts, and when they do so, the collection practices are subject to the FDCPA.

In passing the FDCPA, Congress excluded lenders collecting their own debt (first-party collectors) from the law's coverage because it recognized, unlike third-party collectors whose relationship with the debtor exists

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<sup>2</sup> 12 U.S.C. § 5512(b)(3)(a).

solely to collect payments, first-party collectors have significant incentive to protect their good will and maintain an ongoing banking relationship with the borrower long after the collections process has been concluded. This relationship-based approach to first-party debt collection holds true today and, therefore, CUNA strongly opposes any effort through legislation or regulation to expand the FDCPA to credit unions that collect their own debts.

#### *Short-term Small Dollar Lending*

Credit unions often provide the safest and most affordable loan options for consumers in need of emergency credit. The Bureau's rules governing short-term, small dollar lending should be meaningfully tailored to address predatory practices in the small dollar, short-term lending space. However, any rule targeted toward underregulated payday lenders should be crafted so as not to inhibit credit unions from offering affordable small dollar loan products to members in need. CUNA has called on the Bureau to revise its current payday rule to allow more credit unions to enter the short-term, small dollar lending space. Such revisions would include creating a broader, express exemption for credit union loan products and working with the National Credit Union Administration (NCUA) to expand the partial carve-out for the Payday Alternative Loan I (PAL) program to cover the recently established PAL II option.

#### *Home Mortgage Disclosure Act (HMDA)*

The Bureau has consistently acknowledged that credit unions maintained sound credit practices through the economic crisis and did not engage in the practices that led to the crash of the housing market. Nevertheless, the CFPB chose to adopt a HMDA Rule in 2015 that disproportionately burdened credit unions with finite resources despite no evidence of past wrongful conduct. This overly broad treatment makes little sense especially when considering credit unions' field of membership requirements.

While some HMDA relief was provided to smaller institutions as a result of S. 2155, CUNA recommends the CFPB to consider additional modifications to Regulation C that would provide meaningful, reasonable accommodations to credit unions:

- Allow reporting for Home Equity Lines of Credit (HELOCs) to once again be voluntary; and
- Reduce the HMDA data set for all credit unions to only those data points specifically required by statute.

#### *Ability-to-Repay/Qualified Mortgage*

The Bureau completed and issued an assessment report on the impact of the 2013 Ability-to-Repay and Qualified Mortgage Rule (ATR/QM rule). Last year, the CFPB issued an advance notice of proposed rulemaking on whether to propose revisions to the definition of QM considering the planned expiration of the Temporary GSE QM "patch." This temporary category of QM is scheduled to expire in January 2021.

In response to the reconsideration of the GSE QM "patch," CUNA recommends the Bureau eliminate from the general QM category the debt-to-income (DTI) ratio requirement and the associated Appendix Q. Financial institutions need regulatory flexibility, especially as the industry and consumers recover from the COVID-19 crisis.

#### *Unfair, Deceptive, or Abusive Acts or Practices (UDAAP)*

In the past, the Bureau engaged in the practice of "regulation by enforcement," especially in regard to the "abusiveness" standard. The Bureau's "I know it when I see it" approach resulted in increased uncertainty in the financial services marketplace and presents due process concerns. CUNA is supportive of the Bureau's recent steps toward establishing clear standards for and transparency in what is considered "abusive"

behavior. However, the recent policy statement on abusive should be the first step on the path toward greater clarity.<sup>3</sup>

Regarding the process for a future action, CUNA recommends the Bureau:

- Continue to solicit meaningful stakeholder feedback on the “abusiveness” standard to determine whether a future rulemaking is necessary;
- Clarify that previous enforcement actions or consent orders that conflict with statutory or judicial precedent create no new expectations for compliance; and
- Clarify and reaffirm the Bureau’s narrow authority under the Dodd-Frank Act in regulating the business of insurance and that UDAAP is not a backdoor to regulate insurance activities.

### *Disparate Impact*

Credit unions firmly believe that illegal discrimination should have no place in the financial services market. Individuals and institutions engaging in discriminatory behavior should and must be penalized. Accordingly, credit unions have long supported the existence of fair lending laws, including the Equal Credit Opportunity Act (ECOA), and their use as tools to help eradicate illegal discrimination from this nation’s consumer credit markets. As part of those efforts, however, it is essential that both financial institutions and consumers have a clear understanding of the standards imposed by the law and the requirements for demonstrating compliance with its mandates. CUNA would support the CFPB reconsidering and further clarifying its position on disparate impact considering recent Supreme Court rulings and Congressional disapproval of the Bureau’s bulletin on indirect auto lender compliance with ECOA. During that process, the Bureau should seek meaningful stakeholder feedback on the ideas under consideration prior to issuing an official policy statement or rulemaking in order to mitigate any unintended effects of the Bureau’s actions.

### *PACE Financing*

As PACE financing programs have grown in number over the past decade, these unconventional loan programs have remained a serious concern for credit unions, consumer groups, and other entities participating in the housing market. While the general goal of increasing access to energy efficient housing modifications is admirable, the absence of conventional consumer protections and adequate safeguards have left homeowners vulnerable and could lead to undesirable effects on the housing market. Extending robust consumer protections to PACE programs, as mandated by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA or S. 2155), is imperative and should be a high priority for the CFPB. To that end, CUNA encourages the Bureau to promulgate a PACE financing rule that subjects these programs to the Truth in Lending Act (TILA) while also adding other protections for consumers, including meaningful underwriting requirements and clear, understandable disclosures.

In addition, we recommend the Bureau work with other relevant regulators and industry stakeholders during the rule development process. And finally, although the Bureau likely does not have the authority to address the issue of lien status, credit unions remain concerned with the first lien status of PACE loans under some state laws as such laws have the potential to disrupt the market and negatively affect traditional lenders.

### *Small Business Data Collection*

The Dodd-Frank Act amended the Equal Credit Opportunity Act (ECOA) 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.

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<sup>3</sup> CFPB Announces Policy Regarding Prohibition on Abusive Acts or Practices (January 24, 2020) available at <https://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-policy-regarding-prohibition-abusive-acts-practices/>

Credit unions' unique and distinct memberships, a consequence of legally-mandated 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. CUNA has recommended any rule issued under this authority expressly exclude credit unions from reporting requirements. 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 needed credit from their credit union. This concern is amplified by the current pandemic. Right now, credit unions are working hard to ensure the small businesses they serve continue to have access to credit and key financial services to whether the economic crisis. We do not believe now is the right time for the Bureau to promulgate additional hurdles for small businesses to get loans from local credit unions.

#### *Alternative Data*

For several years, the CFPB has studied the use of alternative data as a potential method to expand access to the mainstream credit system. While we agree with the Bureau regarding the importance of serving underserved communities, credit unions are already playing an important role in meeting the needs of these consumers. The unique structure of credit unions and their close relationship with members allows them to be more flexible than other financial services providers when finding ways to meet consumers' needs and providing credit. They also work with certain members through financial education and other efforts to help them improve their financial well-being and establish their creditworthiness.

We support efforts to encourage innovation and alternative solutions but also caution the CFPB against creating regulatory burdens, prescriptive requirements, or complex processes for using alternative data that could be counter-productive to the stated goal of increasing access to credit for more consumers. If the CFPB chooses to move forward with any policymaking in this area, we urge it to consider how credit unions already are working with their member-owners to find ways to provide credit to consumers with low credit scores or who are facing other financial challenges.

#### *Industry Outreach*

CUNA values the outreach the CFPB has engaged in with the credit union industry. We appreciate the meetings, discussions, and roundtables conducted throughout the country, and we encourage the CFPB to continue with this engagement. However, the pandemic has required government and businesses to adjust to a new reality that in-person forums may not be feasible for a prolonged period. In the interest of public health, the Bureau should continue to conduct frequent, meaningful industry outreach through conference calls, virtual meeting software, and live webinars. These efforts will assist in the agency's understanding of the credit union business model and how regulations and additional requirements affect operations and service to consumers.

In particular, the CFPB's Credit Union Advisory Council (CUAC) is an asset, and we are pleased that the Council is actively utilized by the Bureau. We support a statutory requirement for this Council, as well as longer terms for CUAC members, such as three-year terms. CUNA also supports roundtable discussions with credit unions of all sizes throughout the country before rulemakings are conducted that could affect credit union operations. We also encourage the Bureau to engage in outreach with Credit Union Service Organizations (CUSOs).

Furthermore, CUNA encourages the Bureau to 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.

### *Cost/Benefit Analysis to Rules for Credit Unions*

The Bureau prides itself on being a data-driven agency. Unfortunately, there have been Bureau rulemakings that lacked or did not demonstrate sufficient evidence, data, research, or other information to substantiate assertions within the rulemaking.

CUNA urges the Bureau to base its rulemakings on thorough data and research. The Bureau should also be wholly transparent in its reliance on data, ensuring the public has access to the same information that the Bureau relies on as a foundation for its rulemakings.

### *Guidance and Implementation Support*

The past several years has seen a massive increase in consumer financial services regulations. This increase in regulations is particularly burdensome for credit unions which, unlike big banks, do not have dozens of legal experts in house to assist with compliance questions.

CUNA encourages the Bureau to provide compliance resources to the industry, such as Frequently Asked Questions (FAQs) with interpretations, to assist industry stakeholders on regulatory implementation. An example of helpful FAQs was the Department of Housing and Urban Development's Real Estate Settlement Procedures Act FAQs, which the industry regularly used as a resource.

We also encourage the Bureau to conduct webinars on final rulemakings, with opportunities for questions and answers from Bureau staff. The Bureau should house all of its compliance resources, including recorded webinars, final rule summaries, and FAQ documents in a central location on its website. 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 help the industry.

### *Financial Health, Literacy, and Educational Outreach*

The most effective way to protect consumers is through education. Credit unions are uniquely positioned to provide financial education resources to members and to focus on consumer financial well-being. Credit unions are instruments to bring cooperative credit to communities. Because their members have equal ownership stakes in the credit union, it has a direct interest in promoting the financial literacy and sound financial judgment of each member.

CUNA encourages the CFPB to work with our organization, credit unions, and the National Credit Union Foundation in its consumer education efforts. We are all effective partners because our priority is the financial health of consumers.

Furthermore, CUNA strongly recommends the Bureau utilize financial education efforts to guide consumer behavior. This approach, rather than additional rulemakings to guide consumer choices, provides the foundation for solid consumer financial health. Consumer education is proactive, not reactive, and should be the Bureau's default when addressing consumer financial services issues or industry practices. CUNA, credit unions, and the Foundation are able and willing partners in consumer education initiatives implemented by the Bureau.

### **The Bureau Should Effectively Coordinate with State Authorities to Avoid Duplication and Inconsistency**

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.

In recent years, several states have ramped up enforcement of consumer financial protections, going so far as to create “state-level” CFPB equivalents to spearhead enforcement. 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. Without such 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 financial services industry and confusion among the public.

### **The Bureau Should Support a National Data Privacy Standard that Addresses Data Security Requirements and Preempts State Laws**

CUNA believes data privacy is a critical issue and we have urged Congress to establish a strong, national data privacy standard. It should go without saying that any serious data privacy statute should include robust data security requirements that all who hold consumer data must follow. Unfortunately, as we have seen the debate over a federal data privacy standard develop, discussion of security requirements has been virtually nonexistent. Nevertheless, we do not see any way for data privacy laws or regulations – including breach notification requirements – to achieve their objectives without a strong security standard that is preemptive of state law and applies to all entities that hold or use consumer data.

As the Bureau is well-aware, financial institutions have long been subject to federal laws that protect the use and security of consumers’ information. The privacy regulations required by the Gramm–Leach–Bliley Act (GLBA) were originally promulgated by each financial institutions’ regulator but are now under the CFPB’s authority. There is a reason we have not seen widespread data breaches in the financial services sector as we have seen in other sectors: GLBA, although not perfect, has worked well and helped to solidify credit unions’ and banks’ long history of safeguarding information.

With that vast amounts of data that businesses now collect with and without consumers’ permission and/or knowledge, informed consent and even awareness of data collection and use has become confusing for consumers. States are now stepping in to fill gaps to ensure consumers are protected when any business collects, uses or houses their information. Although state privacy regulations can help consumers, they will also result in a patchwork of protections that will vary from state to state and likely result in many different privacy and data security requirements. A hodgepodge of state requirements will provide uneven protection for consumers and expensive compliance for businesses. The best approach for consumers moving forward is for Congress to develop a strong privacy law that applies to all businesses and entities that collect, house or otherwise possess information. In that spirit, the Task Force should recommend the CFPB support Congress adopting a federal standard and apply it to everyone. This will ensure efficiency for businesses and strong, consistent protections for consumers.

### **Conclusion**

As CUNA stated 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.”<sup>4</sup>*

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<sup>4</sup> 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 20, 2010).



The need for consumer protection remains, but rulemakings must be targeted to address the problems in the industry and exclude credit unions from additional requirements when credit unions are not engaged in the problematic activity.

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our views on the Bureau's stewardship of the nation's consumer financial protection laws. If you have questions or require additional information, please do not hesitate to contact me at **Redacted** or

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Sincerely,



Alexander Monterrubio  
Senior Director of Advocacy & Counsel