

November 15, 2018

Comment Intake
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

[Delivered Electronically](#)

Subject: Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities; Docket No. BCFP -2018-0011

To Whom It May Concern:

On Wednesday, March 21, 2018, the Bureau of Consumer Financial Protection (BCFP) issued a request for information regarding the Bureau's adopted regulations and new rulemaking authorities. The Bureau is seeking comments to assist with determining if the Bureau should amend rules already promulgated or issue new rules.

The Northwest Credit Union Association (Association)¹ is pleased to be able to offer comments on this request for information. The Association also appreciates the BCFP's willingness for dialogue to determine how rules can be structured to allow for a flourishing financial services market while also fulfilling its mission of consumer protection.

General Comments

From its inception, the BCFP has promulgated rules that stem from directives identified in the Dodd Frank Act of 2010. While we understand that there are key provisions from the Dodd Frank Act that must be enacted, the BCFP was also granted discretion in how the rules were written. Through the use of advisory groups, the BCFP did attempt to obtain industry feedback during the rule construction phases and in some cases, after the fact.

While the Association does appreciate the general industry input that the BCFP has tried to obtain, we recommend that the BCFP take more time to understand the industry impact before issuing a final rule. Constant amendments to final rules make compliance difficult for credit unions that have already spent the time and money training staff, updating systems, and updating forms. Issuance of final rules that have taken all impacts of the rules' requirements into account prior to finalization would be more beneficial for credit unions and consumers as they would allow for a more consistent operating environment. However, since the BCFP is requesting input on rules already promulgated, the Association is pleased to offer specific recommendations for the rules identified below.

¹ The Northwest Credit Union Association is a regional trade association representing the interests of more than 180 credit unions and their 6.5 million consumer-members; institutions that employ and engage more than 19,000 people and hold more than \$90 billion in aggregate assets. The Association is a nonpartisan advocacy organization representing the interests of its member institutions on a variety of systemically important banking issues.

Credit unions affiliated with the Association are principally domiciled in Idaho, Oregon, and Washington, but the Association also has members from the states of Alaska, California and Hawaii. Learn more about the Association at www.nwcua.org.

Idaho Office

2710 Sunrise Rim Road, Suite 100
Boise, ID 83705

Oregon Office

13221 SW 68th Pkwy, Suite 400
Tigard, OR 97223

Washington Office

18000 International Blvd, Suite 350
SeaTac, WA 98188

Phone Numbers

+ 1 800 995 9064 toll free
+ 1 877 928 6397 fax

Specific Suggestions

The Association is pleased to provide recommendations for rules that the BCFP has adopted and finalized as well as specific recommendations relating to the issuance of forthcoming rules. Additionally, the Association hopes the BCFP will take these comments into consideration regarding issuance of commentary and other guidance materials as well as adjusting the scope that the BCFP uses in determining which institutions will be subject to its rulemaking.

Payday Lending Rule

All loans made in accordance with NCUA's Part 701 should be exempt from Payday Lending Rule.

We appreciate the BCFP's willingness to address the payday lending market as there is a need for consumer protection in this space. However, credit unions have a long-standing tradition of providing financial services to underserved markets at rates that are not excessive. In 2010, the National Credit Union Administration (NCUA) amended its general lending rule, 12 CFR 701.21, to include provisions that allow for alternatives to payday loans (known as PALS). Since the 2010 rule, the NCUA board has proposed an amendment to this rule that would allow for another category of alternative payday loans, with a broader scope in the term length and dollar amount range. Because amendments to 12 CFR 701.21 would still include specific consumer protections, including limitations on fees, interest rates, and rollovers, we recommend that the BCFP exempt all credit unions that follow the guidelines for any and all payday alternative loans identified in 12 CFR 701.21 (whether by charter or parity). We respectfully request that the rule's scope of the PALS exemption be amended to include any loan that falls under NCUA's Part 701.21 payday alternative loans, as opposed to naming the specific section or program as this would allow loans made under the NCUA's proposed rule to qualify for the exemption as well. This exemption would remain consistent with the BCFP's numerous statements regarding credit unions' ongoing focus of consumer-friendly products and services.

Mortgage Rules

While the Association understands that a stricter regulatory environment was necessary due to the bad-actors that contributed to the financial meltdown through issuance of risky mortgage loans, credit unions were not the cause of the crisis and additional regulatory burdens placed on credit unions reduces the products and services that they are able to provide. Because of this, we recommend the BCFP amend the mortgage rules as follows:

- ***Mortgages held in portfolio at credit unions should obtain the Qualified Mortgage (QM) status, regardless of whether they meet the provisions prescribed in 12 CFR 1026.43(e)(2) provided the credit union determines, through its own standards, that the borrower has an ability to repay the loan.*** Credit unions already face examination scrutiny regarding the mortgage loans held in portfolio due to the risk that such loans pose to the credit union. Couple this with the fact that credit unions' mission and purpose is for the benefit of consumers and it becomes clear that it is in the best interest of credit unions to extend home loans that are safe for consumers. In 2017, U.S. credit unions had a total of 65,271,088 total loans on their books, totaling \$967 billion in loan dollars. Of those total loans, only 624,000 of them were greater than 60 days delinquent (for a total of \$7 billion), which is less than 1% of the outstanding loans and balances. Because of this, all mortgages originated and held in portfolio by credit unions of any asset size and regardless of the annual origination amount should be afforded the safe harbor status that Qualified Mortgages receive, regardless of meeting the requirements in 1026.43(e)(2), as long as the credit union determined that the member had the ability to repay the loan

- **Remove the 2021 sunset provision for QM loans that are eligible for sale to the Government-Sponsored Enterprises (GSEs).** Currently, creditors that otherwise meet the QM definition but exceed the 43% DTI requirement are able to sell their loans to GSEs while retaining the QM status. As the sale to GSEs is a necessary operation for many credit unions, removal of the sunset date will help ensure that credit unions can continue to make loans that are beneficial to consumers while also ensuring that they can sell them to GSEs, which affords credit unions the ability to make even more loans to borrowers in need.
- **Revise the definition of loan originator under the loan originator compensation rule to be in line with the SAFE Act definition.** Currently, the definition is overly broad and creates confusion among financial institutions. We recommend that the definition be consistent with the existing definition of mortgage loan originator found in the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). By bringing the TILA definition in line with the definition found in the SAFE Act, lenders would have a clear understanding of who is impacted by the rule and how those individuals are impacted.
- **Expand the reasons that a consumer can waive waiting periods under the TILA/RESPA Integrated Disclosure Rule (TRID).** While there are many bona fide reasons that waiting periods can be waived, the BCFP failed to recognize that in some cases, waiting periods can be harmful to the consumer and even result in loss of a home purchase. We recommend allowing a consumer to waive the required waiting period in writing for other reasons beyond the bona fide emergencies currently listed in the rule.

Fair Debt Collection Practices Act (FDCPA)

Continue to exempt credit unions from FDCPA

While not a rule that the BCFP has put forward yet, the Association strongly recommends that any changes to the FDCPA continue to exempt credit unions from the scope of the rule. Credit unions that collect debt in their name provide a service to their members by working with debtors to pay off debt through traditional and alternative methods. While the FDCPA doesn't prevent creditors from offering alternative payment options, adjusting the scope of the rule to include credit unions collecting their own debt could reduce the amount of positive impact a credit union could have with a delinquent borrower as it reduces communication options and subjects the credit union to potential monetary penalties. Credit unions need to retain the ability to counsel their members on the negative aspects of delinquent and charged off debt without a regulation hamstringing this ability. Additionally, credit unions are already subject to the Unfair, Deceptive or Abusive Acts or Practices (UDAAP) rule, which seeks to regulate bad actors in the financial marketplace. If the BCFP doesn't believe that all loans should be exempt from the FDCPA, we would encourage consideration of providing an exemption for loans originated directly by the creditor (direct loans).

Bureau Rulemaking Process

Utilize ANPRs more often

The Association recognizes that the BCFP was required to promulgate certain regulations rather quickly under the Dodd Frank Act, which sped up the rulemaking process. Often, this meant that the industry was not afforded the regular notice received through Advanced Notice of Proposed Rulemaking (ANPR) as we have come to expect with other agencies. Through ANPRs, agencies are able to gain more input from expert stakeholders and consumers, which are both beneficial

to the rulemaking process. Going forward, we strongly encourage the BCFP to utilize the ANPR process to provide not only earlier notice, but more time for comments from stakeholders.

Apply stronger weight to industry stakeholder comments

In addition to utilizing the ANPR process, the Association also encourages the BCFP to place a greater weight on comments received from industry stakeholders. While the Association and other financial industry stakeholders understand and appreciate that the BCFP's focus is consumer protection, industry feedback is vitally important to ensuring that the finalized rules do not carry unintended consequences. Placing a higher weight on stakeholder feedback can still allow for the achievement of consumer protection because a healthy consumer market benefits all participants. Stakeholder feedback should receive a greater weight because the comments are stemming from those in the best position to explain how the regulation will impact the industry as well as how that industry impact will affect consumers when actually obtaining the product or service.

The consideration of stakeholder comments could also help limit the amount of time the BCFP spends on the revision of rules. While we appreciate the BCFP's willingness to amend regulations after finalization, this process is burdensome on financial services providers and can often result in confusing interactions with consumers that are trying to obtain a product and either cannot or have limited ability to do so due to a poorly written provision in a regulation. Engaging industry stakeholders from the beginning and giving their comments proper consideration will result in less time spent amending rules and help shape regulations that are functional. This will allow service providers to operate in a better regulatory environment while still achieving the BCFP's primary goal of consumer protection in the financial marketplace.

Understand the financial burden of constant regulatory amendments and offer a solution

The Association also encourages the BCFP to consider the financial cost of multiple amendments. When a rule is finalized, credit unions dedicate time, resources, and money to preparing for implementation of and compliance with the rule through training, system and program updates and policy and procedure changes, as well as the creation or amendment of existing forms. Unfortunately, most of these changes incur a cost, much of which can significantly hurt a credit union's ability to continue to offer innovative solutions due to reduced income. For example, a small credit union in the northwest that originates eight mortgages a year and realizes a total income of \$19,000 is significantly impacted when they continuously have to ask for their loan operations system (LOS) and forms providers to make changes due to amendments, many of whom charge substantial fees (from hundreds to tens of thousands of dollars) for the changes. If the BCFP determines that multiple amendments are the best approach for rules under its authority, we respectfully request that the BCFP create a grant program for smaller credit unions to help cover the burden of the regulatory changes related to the multiple amendments. It benefits consumers to have many options when searching for a financial service provider, so enabling smaller credit unions with funding to help offset the cost of the changes would be beneficial not only to the credit union, but to the consumers that they strive to serve.

One-Size Does Not Fit all

Utilize statutory authority to exempt credit unions from rules

The Association, along with many industry partners, recommend that the BCFP cease its one-size-fits-all regulatory scheme. The BCFP has long indicated its acknowledgement of the credit union industry's lack of participation in the events that led to the financial downturn as many of the questionable practices were not deployed by credit unions. Additionally, the Dodd-Frank Act provided the BCFP with exemption authority in Section 1022², stating that "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..." This provision clearly provides the BCFP with the authority to exempt credit unions from rules in which it makes sense to do so. For example, because credit unions have a history of working with borrowers that banks wouldn't lend to, exemption was an appropriate course of action for the Ability to Repay and Qualified Mortgage Rule. Instead, credit unions are forced to turn borrowers away that have a debt-to-income (DTI) ratio higher than 43% or retain the loan in their portfolio if the DTI is over that amount. However, portfolio retention isn't always possible for credit unions and is something that is heavily reviewed during examinations as portfolio loans are considered an interest rate risk to credit unions and must be managed accordingly. This has caused some credit unions to exit the closed-end mortgage loan market leaving consumers with fewer choices or forcing them into a home equity line of credit, which might not be the best option for the consumer.

The Association strongly urges the BCFP to consider its exemption authority when issuing proposed and final rules. The BCFP should take the requisite time to determine if a final rule that doesn't exempt not-for-profit, consumer focused credit unions is the best approach for ensuring consumer protection. Since the credit union model (whether state or federally chartered) is inherently consumer friendly, the issuance of regulations that impose a greater regulatory burden upon these institutions may end up harming the very consumers that the BCFP is trying to protect. Promulgating rules that force participants out of the marketplace is not beneficial to consumers and actually harms them by reducing their choices. This means that they can be forced to utilize institutions that charge higher rates and fees on products and services that they can no longer obtain elsewhere.

Commentary and Guidance

The BCFP's implementation resources are valued

The Association has received numerous comments from its member credit unions regarding the commentary, guidance, and resources that the BCFP publishes. The expanded commentary to many of the regulations promulgated by the BCFP has been immensely helpful in determining how to appropriately comply with the rules. While there is still work to be done, as discussed above, the Association urges the BCFP to continue to include detailed commentary in addition to its other resources. For example, the commentary to the TILA-RESPA Integrated Disclosures Rule has provided answers to many questions from those in the industry. Additionally, the resources available in the Implementation and Guidance section of the BCFP's website is helpful in determining certain aspects of compliance with the rules. The BCFP should continue to put forth its Small Entity Compliance Guides, guides for impacted industries, quick reference charts, supervision and examination materials, and forms, as these are all helpful and appreciated.

Respond to questions sooner

In addition to these resources, the Association encourages the BCFP to respond to inquiries about regulations within 24-48 hours of receiving such inquiries as they are normally time sensitive in

² 12 U.S.C. § 5512(b)(3)(a)

nature. If additional research is needed, notification of the additional time needed would be beneficial to the financial institution prompting the research. We would also encourage the BCFP to not only track questions received from industry stakeholders, but to publish FAQs for questions it receives frequently, as other agencies such as the National Credit Union Administration, Department of Defense, and the Financial Crimes Enforcement Network often do.

Conclusion

In conclusion, the Association and its member credit unions appreciate the ability to comment on the BCFP's promulgated rules and rulemaking process. We strongly encourage the BCFP to consider these recommendations while amending existing regulations and putting forth new rules.

We appreciate the BCFP's commitment to protecting consumers while also considering the best way to write effective rules. Thank you again for the opportunity to comment on these issues. We would be pleased to answer any questions you may have.

Respectfully,



Katie Clark
Director, Regulatory Compliance and Risk Management
Northwest Credit Union Association