



March 5, 2012

Bureau of Consumer Financial Protection  
Docket No. CFPB-2011-0039  
Research, Markets & Regulations Division, Bureau of Consumer Financial Protection,  
1500 Pennsylvania Avenue NW. (Attn: 1801 L Street NW),  
Washington, DC 20220

To Whom It May Concern:

On behalf of the Credit Union Association of New York, I would like to take this opportunity to suggest where regulations can be streamlined and the regulatory process improved to benefit both consumers and financial institutions. The Association believes that this is potentially one of the most important regulatory notices of the year. In preparing our response, we surveyed our members, talked to individual credit unions and consulted with our own compliance staff, which handles more than 5,500 inquiries each year from credit unions across New York State about how to best comply with the full range of compliance issues. While the following suggestions are by no means all encompassing, they do highlight the areas where changes would have the most immediate and beneficial impact without diminishing protections afforded to our members.

When Congress created the Bureau of Consumer Financial Protection it not only gave it the responsibility for coordinating the implementation and enforcement of consumer protection laws, but also gave it the responsibility to make the regulatory system more efficient by identifying redundant and overly burdensome regulations. The importance of this latter responsibility cannot be underestimated: there are simply too many detailed regulations coming at credit unions at a fast and furious pace. This is hampering the effectiveness of all credit unions and posing a threat to the survival of many smaller ones that simply do not have the resources to dedicate adequate finances to meeting compliance demands and member services (<http://www.cutimes.com/2012/01/16/cus-tally-up-the-rising-cost-of-the-compliance-bur>).

### **A Product By Product Approach Should Be Taken To Regulatory Streamlining**

Regulatory drafting should, whenever possible, start with one simple question: what steps must the credit union or bank take to legally provide a product or service to its members? While this may seem like a basic point, over the years regulations for many key areas of consumer protection have become so convoluted that there is no longer a straightforward answer to that question. One of the most important steps that the CFPB could take in reviewing regulations is to organize the regulations by product. Regulations should serve as a check list for ensuring compliance.

*Leading the Way*



## Reforming Regulation Z

There is no regulation that epitomizes the need for regulatory streamlining more than Regulation Z, which implements the Truth in Lending Act. The Truth in Lending Act is based on the simple and laudable proposition that consumers should be able to easily compare the terms of credit. While its purpose can be reduced to a simple sentence, its application has spawned thousands of pages of mind-numbing legalese that must be translated into equally confusing consumer disclosures which, far from helping the consumer compare credit terms, all too often frustrate and confuse them. These disclosures do, however, provide the basis for lawsuits which also do little to better inform the consumer about the terms of credit she is receiving. In an ideal world, Congress and regulators would start from scratch by keeping the statute in place but none of its regulations. Recognizing that this is not realistic, there are several steps that the CFPB could take to aid financial institutions to more clearly implement these regulations.

Regulation Z should be grouped not by open-end and closed-end credit, but by the most common products it regulates. The goal would be to make compliance easier by eliminating the need for cross-referencing regulations and applying terms in different contexts. For example, 12 CFR 1026.5 dealing with form of disclosures provides as follows:

(A) The following disclosures need not be written: Disclosures under §[1026.6\(b\)\(3\)](#) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under §[1026.6\(b\)\(2\)](#) and related disclosures of charges under §[1026.9\(c\)\(2\)\(iii\)\(B\)](#); disclosures under §[1026.9\(c\)\(2\)\(vi\)](#); disclosures under §[1026.9\(d\)](#) when a finance charge is imposed at the time of the transaction; and disclosures under §[1026.56\(b\)\(1\)\(i\)](#).

There are no fewer than seven cross-references, each of which exempts specific products, and this is the section dealing with *general disclosure requirements* for open-end-loans. The problem is that many of the most commonly used financial products today were not in existence or wide use when these regulations were originally promulgated. As new products came into existence, they were simply grafted onto the existing regulations. For example, much of the preceding paragraph could be eliminated if all of the relevant regulations dealing with unsecured open-end lines of credit were placed in one section and all of the required regulations for complying with home equity lines of credit were placed in another.

Similarly, as regulators attempt to impose additional notice requirements on subprime loans, the traditional notion of a closed-end loan does little to aid a practitioner trying to comply with regulations and provide adequate notices to consumers. For example definitions for a HOEPA loan (1026.32) provide the following set of definitions:

*Definitions.* For purposes of this subpart, the following definitions apply:

(1) For purposes of paragraph (a) (1) (ii) of this section, *points and fees* means:

(i) All items required to be disclosed under §[1026.4\(a\)](#) and 1026.4(b), except interest or the time-price differential;

### *Leading the Way*



(ii) All compensation paid to mortgage brokers;

(iii) All items listed in §1026.4(c)(7) (other than amounts held for future payment of taxes) unless the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor; and

(iv) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident, written in connection with the credit transaction.

If the regulations were organized in a more coherent and logical manner, credit unions could more efficiently provide legally mandated disclosures. In this way, we could move Regulation Z back towards its original goal as opposed to being little more than a tripwire for compliance violations.

The CFPB has already taken important steps in beginning this process by proposing combined disclosures for RESPA and Regulation Z. The mortgage process is now so heavily regulated through virtually every stage of the mortgage process, from the taking of the mortgage application (Regulation B) to notification that the mortgage has been sold (RESPA), that the mortgage lending area could easily be grouped as a standalone area of regulation, perhaps even listed in the order of the process.

Standardized definitions would be another change that would make the regulations easier to use. While there are narrow circumstances in which a "term of art" needs to be given a definition unique to a specific section, this should be the exception rather than the rule. How many definitions of a business day are necessary? Once in place a poorly drafted or duplicative regulation has a multiplier effect, since every financial institution affected by a given regulation must search out its meaning. A regulation with subtle distinctions also leads to the type of issues that can only be resolved through litigation.

### **ATM Fee Disclosures**

12 CFR 205.16 currently requires that a member receive both a posted notice that a fee may be imposed and an electronic notification of the fee being imposed prior to a transaction being executed. This redundant notice requirement provides little benefit to the consumer and has actually resulted in credit unions and banks being sued for failing to provide the posted notice.

In creating the statutory framework for regulating electronic fund transfers, Congress provided that the regulator shall "demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions" (15 USC 1693B (a) (3)). Consequently, while the statute is controlling, the regulator is given the

#### ***Leading the Way***



obligation to ensure that any regulations promulgated pursuant to statutory authority do not burden financial institutions while providing little benefit the consumers. As applied to ATM notice requirements, the clear intent of the statute is to ensure that members are put on notice that a debit transaction is going to cost them money prior to any transaction taking place.

This goal is more than adequately accomplished with the existing electronic disclosures that inform members precisely how much they are going to be charged.

### **Improvements to the Regulatory Process**

Regulations should detail precisely what changes are being made to existing regulations with a table that cross-references provisions that will be amended under a given proposal. For example, the NCUA has proposed changes to the way credit unions account for troubled debt restructurings. The regulation includes a chart summarizing existing law and the changes that will be made to the corresponding power under the proposal. Since it is increasingly common for regulations and their introductory material to include several hundred pages of explanation, a concise reference point is crucial not only for purposes of researching the regulation, but also to assess the proposals' overall impact and intent.

### **Coordination with State Law**

Regulations often touch on issues that are already being addressed on the state level. While it would be impossible for regulatory material to reference all 50 states, there are certain generic observations which could aid institutions seeking to comply with both sets of mandates. All regulations should include answer the following questions:

1. Will compliance with this regulation satisfy any legal obligations in this area otherwise imposed on me by my state? (In other words, is it the CFPB's belief that this regulation preempts state law?)
2. Under what circumstances will compliance with a state law or regulation satisfy CFPB compliance requirements for a given regulation?
3. Why is this issue one that is best dealt with on the federal level?

Answering these questions would require the CFPB to analyze existing state regulation and consider the extent to which it is sufficient to address the concern.

The opportunity to examine the regulatory process as well as specific regulations is a unique and crucial power that has been given to the Bureau. Given the complexity of the regulations and scope being exercised by the Bureau, it is our hope that this request for information be the beginning and not the end of an ongoing and systemic look at all of our consumer protection

*Leading the Way*



regulations. I hope these comments are helpful and the Association looks forward to participating in this ongoing dialogue.

Sincerely,

A handwritten signature in black ink, appearing to read "W. J. Mellin". The signature is fluid and cursive, with the first and last names being the most prominent.

William Mellin  
President/CEO  
Credit Union Association of New York

*Leading the Way*