October 1, 2015 – September 30, 2016

Annual report of the Credit Union Advisory Council

Letter to the Director from Credit Union Advisory Council Chair and Vice Chair

Richard Cordray, Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, D.C. 20552

Dear Director Cordray,

On behalf of the Credit Union Advisory Council (CUAC or Council), we are honored to present our annual report, which details the activities and progress made during the past reporting year.

During this year, the CUAC continued to focus on ensuring that the Bureau had the benefit of our best advice on a variety of consumer financial issues and emerging market trends as it carries out its mission to protect consumers and make consumer financial markets work for consumers. The CUAC met two times during the reporting year in Washington, D.C. Opening our meetings to the public continues to add significant value to our work.

As in prior years, in addition to our full Council meetings, the CUAC worked through its three committees: Cards, Payments and Deposit Markets; Consumer Lending; and Mortgages. Through these committees, the CUAC has continued to engage meaningfully among its members and with Bureau staff through in-person meetings and conference calls, providing our collective and individual perspectives on the ongoing work of the CFPB. Our committees focused on identifying key observations and principles for regulation on a range of topics, such as small dollar lending (payday), overdraft, consumer reporting, mortgage origination and servicing, faster payment principles, prepaid cards, and innovation in financial technology.

This annual report provides greater detail about these committee discussions. Meetings of the full CUAC were open to the public and are reflected in summaries posted to consumerfinance.gov.

Thank you for the opportunity to serve consumers through the CUAC. We look forward to what next year brings and continuing to fulfill our shared mission of protecting consumers in the financial marketplace.

Sincerely,

Kevin Foster-Keddie, Chair

Robin Romano, Vice Chair

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1. Executive summary

The Consumer Financial Protection Bureau (CFPB or Bureau) is the nation's first federal agency focused solely on consumer financial protection.[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the CFPB to protect consumers of financial products and services and to encourage the fair and competitive operation of consumer financial markets. The Bureau's mission is to help consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.

The Consumer Financial Protection Bureau's Credit Union Advisory Council (CUAC or Council) was chartered and established in September 2012. The CFPB does not have supervisory authority regarding credit unions and depository institutions with total assets of $10 billion or less. As a result, the CFPB does not have regular contact with these institutions, and it would, therefore, be beneficial to create a mechanism to ensure that their unique perspectives are shared with the Bureau.

The Advisory Council fills this gap by providing an interactive dialogue and exchange of ideas and experiences between credit union employees and Bureau staff. The Advisory Council shall advise generally on the Bureau's regulation of consumer financial products or services and other topics assigned to it by the Director. To carry out the Advisory Council's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The output of Advisory Council meetings should serve to better inform the CFPB's policy development, rulemaking, and engagement functions.

In fulfillment of its responsibility as articulated in requirements of the Federal Advisory Committee Act (FACA), the CFPB's Credit Union Advisory Council is pleased to present its Annual Report to the Director. This report primarily summarizes the activities and progress of the Council's committee meetings held over the last reporting year, September 2015 to September 2016. The discussion portion of the report is divided into sections aligned with the CUAC's statutory responsibilities, and the report also includes, in Appendix B, separate written statements submitted by Council members relating to the report.

[1] Previously, seven different federal agencies were responsible for rulemaking, supervision, and enforcement relating to consumer financial protection. The agencies which previously administered statutes transferred to the Bureau are the Board of Governors of the Federal Reserve System (Federal Reserve, Federal Reserve Board, or Federal Reserve Board System), Department of Housing and Urban Development (HUD), Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTS).

In this last reporting year, the Credit Union Advisory Council:

- Held two meetings – September 2015 in Washington, D.C. and March 2016 in Washington, D.C.

- Organized three policy committees, which have each met approximately 17 times:
  - Cards, Payments, and Deposits Committee;
  - Consumer Lending Committee; and
  - Mortgages Committee.

- Examined and discussed a variety of topics and issues including:
  - Trends and themes in financial services;
  - Home Mortgage Disclosure Act Database and rulemaking;
  - Know Before You Owe (TILA-RESPA Integrated Disclosures);
  - Mortgage Settlement booklet;
  - Marketing services agreements;
  - Arbitration;
  - Overdraft;
  - Marketplace lending;
  - Financial Education;
  - FOIA and ethics review;
  - Credit invisible consumers;
  - Small dollar lending;
  - Innovation in financial technology;
  - Debt collection;
  - Student lending; and
  - Consumer complaint operations.

Detailed summaries of the above topics discussed during full Council meetings can be found at consumerfinance.gov/advisorygroups.

This report fulfills the Credit Union Advisory Council, Federal Advisory Committee Act (FACA) requirement to submit an annual report to the Director.

Credit Union Advisory Council meeting in Washington, DC held on March 24, 2016.

2. Role of the Credit Union Advisory Council

Section 1014(a) of the Dodd-Frank Act states:

The Director shall establish a Credit Union Advisory Council to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.[2]

The Credit Union Advisory Council provides feedback on a range of topics, including consumer engagement, policy development, and research. The CUAC consults on a variety of crosscutting topics, reports on meetings, and provides minutes and/or summaries of their meetings. Members of the Bureau's Council serve for limited, specified terms.

Credit Union Advisory Council group photo in Washington, DC March 24, 2016.

[2] Dodd-Frank Act, Pub. L. No. 111-203, § 1014(a).

3. Committees

Based on the success of the previous year's CUAC Committees, the CUAC again organized committees as authorized by Section 13 of the CUAC charter, which outlines that The Council may establish and dissolve committees, in consultation with the Bureau. Any committees shall report back to the Advisory Council and may include as participants individuals who are members of the Advisory Council and/or staff of the Bureau. Committees may, from time to time, call on individuals who are not members of the Council or staff of the Bureau, for the sole purpose of providing specific domain expertise and knowledge. The committees, if any, may not provide advice or work products directly to the Bureau.

The charter directs that each committee will be led by a committee Chairperson who shall be appointed and may be removed by the Chairperson of the CUAC. CUAC committees will be called by the committee Chairperson and shall be conducted via teleconference unless the Bureau's staff and committee Chairperson determine that an in-person meeting is necessary.

Credit Union Advisory Council Committee Meetings
[This table includes in-person meetings]

Cards, Payments, and Deposit Markets	Consumer Lending	Mortgages
October 8, 2015	October 8, 2015	October 8, 2015
November 5, 2015	October 29, 2015	November 17, 2015
January 28, 2016	February 11, 2016	April 21, 2016
February 4, 2016	March 24, 2016	July 29, 2016
March 24, 2016	June 23, 2016	August 2, 2016
May 12, 2016	July 7, 2016	August 4, 2016
July 7, 2016	August 9, 2016	August 16, 2016
		September 29, 2016

Following the process outlined in the CUAC charter and bylaws, members of like expertise and backgrounds are organized into three committees: Card, Payments, and Deposit Markets; Consumer Lending; and Mortgages. The schedule of CUAC committee meetings follows below.

In October 2015, each committee chair led a process to identify committee priorities, including issues about which committee members wished to learn more, identifying and highlight trends, and raising issues with Bureau staff members. The reporting year's priorities are outlined below.

- Cards, Payments, and Deposit Markets
  The Cards, Payments, and Deposit Markets Committee focused on work relating to prepaid cards, mandatory arbitration and class action waivers, third party payments, financial industry data breaches, financial technology, and virtual currencies.

- Consumer Lending
  The Consumer Lending Committee focused on work relating to the consumer lending lifecycle, from origination to collection. Specific issue areas included student loan servicing, alternative data, and small dollar lending.

- Mortgages
  The Mortgages Committee focused on work relating to Title XIV mortgage reforms, collaborated and provided feedback during the design of the Your Home Loan Toolkit and the Spanish translation, discussed the effects of GSE down payment revisions and mortgage insurance reductions, marketing services agreements and their impact on consumers and real estate markets, access to credit issues, Know Before You Owe, foreclosure and servicing issues post recent RESPA regulations, as well as analyzing the impact of CFPB enforcement actions in the mortgage markets more generally.

Over the course of the year, all of the committees made progress on their agendas. What follows are summaries of the reporting year's CUAC Committees' work.

Cards, Payments, and Deposit Markets Committee

The Cards, Payments, and Deposit Markets Committee met seven times between September 2015 and September 2016, **twice** in person as part of CUAC meetings and **five** times by phone. Committee membership changed in October 2015 to account for newly appointed members. During this timeframe, the committee discussed important topics in the consumer financial marketplace such as overdraft, payment networks, data aggregators, and Fin Tech (financial technology). During this same period, the committee produced a set of *Overdraft Guiding Principles*[3].

From October 2015 to January 2016, the committee spent three meetings focused primarily on data security; the committee engaged with the Markets Office and discussed the Federal Reserve Board's task force on Secure Payments.

Then, from February 2016 to March 2016, Card, Payment, and Deposit markets committee met via conference call to review the guiding principles on overdraft products paper. The committee spent three meetings focused on narrowing down the suggestions.

During the March 2016, in person meeting the committee discussed the Federal Reserve Board's task force on Secure Payments. In addition, the committee expressed feedback about data aggregators, fin tech companies, and COR processors. During the meeting, the committee finalized and presented the paper to the entire council for feedback.

In June 2016, the council had a conference call where the Card, Payment, and Deposit markets committee presented the final Guiding Principles Document on Overdraft.

Consumer Lending Committee

The Consumer Lending Committee met **7** times between October 1, 2015, and September 30, 2016, **three** in person as part of CUAC meetings and **four** times by phone. During this timeframe, the committee discussed important topics in the consumer financial marketplace such as small dollar lending, auto lending, and student lending.

[3] Cards, Payments, and Deposit Markets Committee- Overdraft Guiding Principles

In October 2015, the committee met twice. In the first meeting, members welcomed newly appointed Council members and leadership, spent time planning for the fiscal year 2016 and discussed how credit unions can utilize payday alternative products to provide low-cost small dollar loans in their communities. At the next committee meeting, committee members received a brief overview of the CFPB's small dollar lending Small Business Regulatory Enforcement Fairness Act (SBREFA) proposals. After the overview, committee members engaged in a discussion on the proposals asked questions and shared constructive feedback. Members inquired how the proposals would impact states that do not have usury laws and if the proposal would help limit excessive interest rates. Additionally, some members noted that the proposals as drafted might have unintended consequences for credit unions who refinance auto loans. Members stated that typically the consumer has the option to purchase add-on products when refinancing their auto loan through a credit union. Member cautioned that for consumers with low credit scores it is possible that the auto loan would refinance above the 36% all in Annual Percentage Rate (APR) and be covered by the rule when add-on products are factored into the APR calculation.

Then, in February 2016, the committee met to discuss auto lending and shared their market intelligence with CFPB subject matter experts. Members shared that they participate in both the indirect and direct auto lending marketplace. There are concerns relating to the frequency and cost of add-on products being sold by dealerships to the consumer. A majority of members agreed that consumers can receive more cost effective add-on products from credit unions that are typically three times cheaper than the dealerships. Some members highlighted that they have seen an increase in older American co-signers on auto loans. Members believe this is because dealerships are using a grandparent's credit score in order to gain approval for the loan of a grandchild, who may have a thin credit file.

Then, in March 2016, June 2016, and August 2016 the committee met three times and focused on the Bureau's Payday, Vehicle, Title and Certain High-Cost Installment Loans Notice of Proposed Rulemaking (NPRM). During the first meeting, members met to prepare for a large Council discussion on small dollar loans. Then, at the next meeting, committee members received a briefing from Bureau subject matter experts on the NPRM and members asked clarifying questions to enhance their understanding of the details. In August 2016, the committee met and provided ex parte comments on the Bureau's Payday, Vehicle, Title and Certain High-Cost Installment Loans NPRM. The committee has included an ex parte memo as an appendix to this report summarizing those conversations. Committee members also shared their thoughts about the year's work and ended the meeting with appreciations for the service of those committee members with expiring terms.

In September 2016, the committee met for the last time of the reporting period and welcomed new members and leadership. The committee spent time planning for the fiscal year 2017 and also heard from a Bureau subject matter expert relating to the work she does to monitor the student lending marketplace.

Mortgages Committee

The Mortgages Committee met 8 times between October 2015 and September 2016, two in person as part of CUAC meetings and 6 times by phone. Committee membership changed in October 2015 to account for newly appointed members. During this timeframe, the committee discussed important topics in the residential mortgage marketplace such as: Mortgage Servicing, Know Before You Owe (KBYO), Home Mortgage Disclosure Act (HMDA), Qualified Mortgage Rule, and Small Creditor-Rural - Underserved Populations conversations, High Priced Mortgage Loan Origination challenges and Access to Credit Issues.

From October 2015 to January 2016, the committee spent two meetings focused primarily on Qualified Mortgage Rule, Small Creditor-Rural regulations, High Priced Mortgage Loan Origination challenges and Access to Credit Issues. During the first meetings, members interacted with Bureau staff and discussed several topics including: 1) Amendments relating to small creditors and rural or underserved areas under the Truth in Lending Act, 2) potential issues with High Priced Mortgage Loans, specifically the escrow regulatory implications on Mobile Homes and 3) engaged in conversations regarding current student loan debt burden and the impact on potential home buyers. Committee members expressed concerns regarding an ongoing issue with some Credit Unions, which apparently are having difficulties originating High Priced Mortgage Loans in the mobile home space. The issue at hand appears to be related to a 2010 Rule from the Federal Reserve which requires escrowing for taxes and insurance if the property is a principal dwelling. CUAC members mentioned that this issue affects access to credit and that these consumers will have to rely on small-dollar ($15-$20K) predatory lending to buy these Mobile Homes. Regarding Access to Credit, the Committee engaged in an open conversation regarding student loans and the negative impact for consumers that can’t buy homes or cars due to this debt burden.

Committee members recommended that the CFPB continue to educate young consumers regarding the impact of student loans before they embark for college. A member stated that some universities are freezing tuition and even controlling overall college costs to minimize the impact to students; however, all members emphasized that more has to be done and expect the Bureau and the Department of Education to work together on this critical issue.

During the CUAC committee call, the Office of Regulations provided a brief update regarding new Know Before You Owe requirements (KBYO). Members expressed some frustration, as their Credit Unions have "lost loan deals" because they cannot commit to providing/closing a loan in less than 30 days. One member stated that his credit union is losing business, as other non-bank lenders are claiming to be able to close within a shorter timeframe. Another member noted that they are struggling with settlement companies, which did not prepare for these new KBYO requirements and are even using non-KBYO disclosures such as HUD-1's in these transactions. Members asked if the Bureau could explore doing more KBYO outreach to title companies; these closing delays increase consumer cost, as they have to pay rate extension fees due to closing delays. Lastly, members recommended the Bureau consider separating buyer and seller information in the closing disclosure; some sellers do not want to share private information with the Buyer's realtor and the buyers during the loan closing. The member stated that it would have been better to have a 90 to 180 day implementation period so financial institutions would have time to adapt to new rule requirements. All members agree that closing loans within 30 days are a "thing of the past" due to new KBYO requirements.

Regarding HMDA, members asked clarifying questions to Bureau staff regarding the rule thresholds on Mortgages and Home Equity Lines; specific to reporting requirements. Members are proactively interacting with their vendors, in preparation for new 2018 HMDA requirements; specifically regarding the Unique Loan Identifiers as the current systems do not have the capabilities to be able to calculate digits and run the formula as identified. Members expressed some concerns regarding the burden caused by this rule and the fact that a lot of manual input is still required; leaving room for error and exposing consumers' Personally Identifiable Information. A member recommended that the Bureau should allow software vendors to integrate with the agency's HMDA link; this coupled with all the additional entry items will be another programming and training process for credit unions. A member highlighted that all these vendor and software related costs will eventually be passed to their members. "The cost to purchase a home will continue to rise, which is not a positive outcome for consumers".

From February 2016 to May 2016, the committee spent two meetings focused on Know Before You Owe, HMDA, and Access to Credit. During these meetings, members provided feedback regarding recent KBYO examinations performed by their regulator. Members noted that their regulators wanted to ensure that their institutions had the resources and systems in place to comply with the KBYO requirements. Most CUAC members have observed improvements with vendor relationships and KBYO origination and closing activities, members did express continuing frustration regarding how title companies are operating post the KBYO effective date. It appears that these companies are having compatibility issues, including lack of systems integration. Members stated that closing timeframes have been delayed from 30 to 45-day closings. Other members expressed some frustration regarding how title companies are operating post-KBYO effective date. It appears that these companies are having compatibility issues, including lack of systems integration. These issues trigger consumer frustration and closing delays. A member stated that some local competitors are closing loans in less than 30 days. It appears that these institutions are taking “shortcuts” when it comes to providing consumers the initial Closing Disclosure (CD). Another member mentioned that they are still having some issues with HELOC origination due to new KBYO requirements. Their institution is performing random audits in order to correct these issues before their next exam. A member mentioned that their institution is facing some challenges when it comes to balancing the Closing Disclosure (CD) before loan closing. “It used to take a few hours, now it can take up to three days. “ Most delays are caused by the Title Company, as they continue having system issues.

During Access to Credit discussions, members discussed the new Fannie Mae HomeReady mortgage product which allows the use of nontraditional income and it allows non-sourced down payment funds. If GSE’s have not learned from the recent housing collapse, caused in great part by products like these, “these lax underwriting standards are dangerous for consumers and real estate markets alike”. Members urged the Bureau to monitor how this program performs and if it is truly serving its intended purpose of allowing low to moderate income families obtain responsible mortgage loans.

During the March 2016 CUAC in person meetings, the Mortgages Committee continued their discussion on Know Before You Owe (KBYO), including committee feedback on KBYO exams and any existing KBYO vendor issues. Committee members expressed concerns regarding questionable practices being employed by non-depository institutions during the issuance of Loan Estimates. Members allege that these non-banks are “low balling” these estimates in order to lure consumers in and then correct them at the latter stage of the process and increase these fees. Members still expressed some frustration with loan closing delays due to the new KBYO disclosure mandates. Members also addressed that title companies are still having issues implementing rule requirements in their processes; hence causing process bottlenecks.

Committee Chair Robin Loftus reminded committee members to access the new Rural/Underserved CFPB tool and confirm that potential properties are considered rural and or underserved before originating loans. She was pleasantly surprised to find out that where she originated home mortgages was considered underserved and rural under the newly expanded zone; which was a change from 2014 zoning.

Committee members will be on the lookout for deceptive advertisement from local competitors. They will keep the Bureau informed regarding any questionable online, radio, TV or newspaper commercials that might be in direct violation of the UDAAP statute.

During HMDA conversations, members provided feedback regarding HMDA implementation updates, including vendor interaction updates. Members continue to proactively prepare for these new requirements and avoid making similar vendor communication mistakes which took place during the KBYO implementation process. Members expressed some frustration regarding the HMDA requirements, as it will dramatically increase operational costs and could impact their lending activity. A member expressed some concerns regarding the new HMDA tolerance levels; specifically due to the fact that, under the rule, the data points are now doubled. Members noted that this will dramatically increase the institution's error rate and potentially cause burdensome regulatory corrective disciplines or even fines. A member praised the Bureau's online resources; as being very useful as Credit Unions prepare to comply with these new HMDA requirements. She stated, "so far these tools have been very helpful during this period and members look forward to more CFPB tools and HMDA training in the near future".

From June 2016 to September 2016, the committee met four times and focused on the Bureau's Future of Loss Mitigation Principles, Small Creditor-Rural Rule, Mortgage Servicing, HMDA and Know Before You Owe. Several members praised the Bureau's recent expansion of balloon loans in certain rural and underserved areas. The Helping Expand Lending Practices in Rural Communities (HELP) Act, allowed more small creditors operating in rural or underserved areas to take advantage of these balloon loan provisions and other benefits. It also allowed other institutions to originate balloon loans as long as they comply with certain flexible rural guidelines.

Members continued the discussion on KBYO, including committee questions to staff regarding the KBYO follow up rule released in July 2016. Committee Chair reminded committee members to access all the online educational and regulatory compliance resources that the CFPB creates for the industry. The chair stated that “these tools are extremely helpful given the current regulatory environment and also highlighted that the Bureau has done a good job when it comes to providing these user-friendly resources for the community bank industry. Members praised the Bureau’s proposal to separate the buyer and seller transaction information in the final closing disclosure. Members have socialized this proposal with their stakeholders, including the Title companies and they have only heard positive remarks about this. A member thanked the Bureau for offering more clarity regarding the “Black Hole” issue that was not “explained well” during the October 2015 rule release. Members felt that this proposal will help industry understand better most rule requirements and avoid consumer issues and or closing delays. A member did emphasize that the Bureau should provide more guidance on construction loan disclosure requirements.

In September 2016, the committee met in person for its last time during the reporting period and provided substantive feedback regarding HMDA implementation and institutional readiness. Bureau staff provided a brief demonstration of how financial institutions will submit their HMDA data, provided brief rule updates and also asked members to share their current experiences with vendors. The Bureau would like to engage with vendors in the coming months and confirm that they are aware of upcoming changes and clarify any questions they may have. Committee members also shared their thoughts about the year’s work and ended the meeting with appreciations for past committee members which terms expired earlier in the month and also welcomed newly appointed CUAC members.

4. Conclusion

In closing, in its third year, the Credit Union Advisory Council has continued to share vital advice, expertise, and technical information with the Bureau and its staff. CUAC members would like to thank the Consumer Financial Protection Bureau for the chance to help further the Bureau's mission of helping to make markets for consumer financial products and services work for Americans. This joint report and attached individual remarks are presented in the spirit of cooperation and collaboration.

APPENDIX A:

Credit Union Advisory Council Biographies[4]

Chairperson, Kevin Foster-Keddie currently serves as President and CEO of Washington State Employees Credit Union in Olympia, WA. The Credit Union serves over 170,000 members through eighteen retail offices. Mr. Foster-Keddie has been CEO of a number of prominent credit unions during his career, including credit unions serving the employees of Farmers Insurance, Xerox, IBM, American Express, and Direct TV.

Vice Chair, Robin Romano currently serves as Chief Operating Officer of MariSol Federal Credit Union, a CDFI in Phoenix Arizona. She has been at MFCU for over 15 years. Previously Ms. Romano served as a Principal Examiner for NCUA for over 7 years. Prior to NCUA was the Loan Manager for Western Horizons Federal Credit Union in Mesa, Az. In addition to over 25 years in the Credit Union movement, Ms. Romano has worked in the banking and real estate industry. Ms. Romano also currently serves as a Board member of the Federation of Community Development Credit Unions.

Gail DeBoer is President and CEO of SAC Federal Credit Union, the largest credit union in Nebraska. She began her credit union career at SAC FCU in 1988, holding several positons before becoming President/CEO in 2007. Under her leadership SAC FCU has seen assets grow from $312 million to over $775 million and total membership growth to over 90,000. DeBoer currently serves on the NAFCU Legislative Committee, Boards of the Women's Fund of Greater Omaha, the Greater Omaha Chamber of Commerce, and the Omaha Ethics Alliance, to name a few. She has been honored with many awards and recognitions over her career such as NAFCU's CEO of the Year Award and most recently a 2015 Women's Center for Advancement (WCA) Tribute to Women Honoree. Gail's community involvement represents both her commitment to the community and to the credit union philosophy of "People Helping People."

[4] Credit Union Advisory Council biographies reflect the membership of the CUAC between September 2015 and September 2016.

Robert "Bob" Donley has been the Executive Vice President of Members Credit Union since July 1, 1995 and has been a member of the Board of Directors of Members Credit Union since March 1996. As the Executive Vice President, Mr. Donley has direct supervision of Branch Operations, Collections, Human Resources, Information Technology, Member Services, Lending and is Chairman of the Asset & Liabilities Committee. Members Credit Union has 18 North Carolina branches, has total assets of approximately $273 million and serves over 52,000 members located all across the United States.

Robert Falk is the president and CEO of the Purdue Federal Credit Union. Purdue Federal serves the financial needs of over 60,000 members worldwide and holds over $825 million in assets. Prior to joining Purdue Federal Credit Union in 2002, Bob held leadership positions with Elevations CU and CUNA Mutual Group. Bob is also very involved in several credit union industry organizations including the Filene Research Council, CUNA and the Indiana Credit Union League. Involvement in the community he serves is also very important as he holds leadership positions with local community organizations including the United Way, Greater Lafayette Commerce, Purdue University, Junior Achievement, and the NCAA/Purdue Athletics Affairs Committee.

Gregory W. Higgins is Senior Vice President/Chief Administration Officer/General Counsel of Wings Financial Credit Union, a $4.1 billion institution headquartered in Apple Valley, Minnesota. Prior to joining the credit union, Mr. Higgins was a partner in a Fort Worth, Texas law firm, where he represented clients in real estate, lending, and corporate matters. Prior to his tenure with the law firm, Mr. Higgins was general counsel for a financial institution in Fort Worth, Texas.

Maria A. LaVelle is the Chief Executive Officer of Westmoreland Community Federal Credit Union. She has been the CEO of the credit union for the past fourteen years. The credit union currently serves over 14,000 members with $66 million in assets. Mrs. LaVelle is currently serving as the Chairman of the Pennsylvania Credit Union Foundation. She served as Chairman of the Pennsylvania Credit Union Association from 2013-2015 and the Vice-Chairman from 2011-2013. Mrs. LaVelle has also served as the President of the Greensburg Chapter of Credit Unions.

Jason Lee currently serves as EVP / CFO for Orion Federal Credit Union. Orion is $550 million in assets with over 55,000 members and 9 branch locations serving the Memphis metropolitan area. Prior to joining Orion in late 2010, he was the EVP and then the President and CEO of TexasOne Community Credit Union in Houston, TX for over 6 years. Additionally, prior to working in credit unions he served as a State of Texas senior credit union examiner.

Robin Loftus is the Chief Operating Officer of Heartland Credit Union in Springfield, Illinois, a credit union which is $240 million in assets. Prior to joining Heartland, Robin was Executive V.P./Chief Operating Officer of Security Bank in Springfield, Illinois, a $150 million Mutual Savings Bank. Robin also held positions of 1st VP or Mortgage Lending for First of America Mortgage Company and 1st VP of Retail Banking for Germania Bank, an $800 million Savings and Loan.

James McDaniel currently serves as the President/CEO of Heritage Trust Federal Credit Union in Charleston, SC which has $484 million in assets and serves 44,000 members. Previously he was the President/CEO of Carolina Trust Federal Credit Union from 1996 to 2005 where in 2004 he was chosen by the National Association of Federal Credit Unions as its 'Professional of the Year" for that asset category. He started his credit union career in 1988 at

Heritage Trust FCU where he held numerous senior management positions until 1996. Mr. McDaniel currently serves on the Board of Directors for the First Carolina Corporate Credit Union, the Greater Summerville/Dorchester Chamber of Commerce, and The Citadel Alumni Association where he is a Life Member and its current Treasurer.

Carrie O'Connor currently serves as the Chief Lending Officer for CommunityAmerica Credit Union, a community credit union based in Lenexa, KS and serving the Kansas City metro area, where she is responsible for developing and driving the strategic vision for all areas of lending, credit/debit cards, and collections. The Credit Union serves more than 190,000 members and offers financial solutions for both individuals and businesses within its field of membership. Ms. O'Connor has been with CommunityAmerica for 3 years and previously served at Summit Credit Union in Madison, WI for nearly 20 years. Additionally, she has served on a variety of boards and advisory councils throughout her career, including her service as President of Center for Families, a high-impact nonprofit committed to partnering with parents to strengthen families, Member of WWBIC's Advisory Board, a CDFI focused on helping women and minorities achieve their financial goals and dreams through entrepreneurship, and Vice President of the Madison Area Chapter of Credit Unions.

Thomas O'Shea currently serves as President/CEO of Aspire FCU based in Clark, NJ. Mr. O'Shea has been at Aspire since 2005. Aspire serves the employees of over 200 companies and has more than 25,000 members located in all fifty states. Previously Mr. O'Shea was President/CEO of Raritan Bay FCU for 17 years. Raritan Bay is a community-charted credit union in central New Jersey. He was awarded the New Jersey Credit Union League "CEO of the Year" award in 2008, and the Leagues "Distinguished Service Award" in 1998. He was also the Sayreville, NJ Chamber of Commerce Business Leader of the Year in 1997. He received his Certified CU Executive designation in 1988. Mr. O'Shea is also a former board member of the NJ Credit Union League. His credit union career began in 1982.

Katey Proefke has been the Assistant Vice President, Compliance Officer for Chevron Federal Credit Union in Oakland, CA since 2008. Chevron serves over 103,000 members worldwide and holds over $2.65 billion in assets. With over 30 years of experience in the industry, Ms. Proefke has been responsible for compliance for a number of financial institutions including San Francisco Federal Savings and World Savings. She currently serves as the Vice President of the Credit Union Compliance Professionals, an educational and networking organization for credit union compliance officers in southern California.

Ronald Scott has served as the President/CEO of Appalachian Community Federal Credit Union since 2010. Mr. Scott has18 years of experience in Credit Union management. He currently serves on the TN Credit Union League Board of Directors as well as the Washington County Economic Development Council in TN. Previously, Mr. Scott served as a board member of the following on the boards of the Bay Area American Red Cross, Marcus A. Foster Educational Institute and was a member of Government Relations & Education Committees-San Mateo Chamber Commerce. Appointments held include: 2010 California/Nevada Credit Union League Government Relations Committee, 2008 Congresswoman Speier's Finance Services Advisory Comm.

David Seely has served as President and CEO of Kirtland Federal Credit Union, Albuquerque, New Mexico since 1990. His industry and community activities include serving as chairman of CU Anytime, LLC and CU ATM Services, LLC, and on the boards of Kirtland Partnership Committee, the Greater Albuquerque Chamber of Commerce, United Way of Central New Mexico, DataPrint Services, LLC as well as the Association for Commerce and

Industry, and as the past president of the Rotary Club of Albuquerque del Sol.

James "Jim" Spradlin is the President and CEO of Park Community Credit Union in Louisville, Kentucky. He has been with Park for over 20 years, previously holding several leadership positions in the organization including oversight of Lending, IT, and Finance. Park has over $750 million in assets and is a progressive leader in innovative services to over 70,000 members. Mr. Spradlin currently serves as the Chairman of the Kentucky Credit Union Leagues PAC and is a member of the League's Governmental Affairs Committee and Emerging Leaders Committees. In addition, he is a committee vice-chair with the local Red Cross and has been involved in multiple local civic groups.

John "Bernie" Winne has been the President and CEO of the Boston Firefighters Credit Union since 2002. Prior to that he served as the Executive V.P. of Members Plus Credit Union for twelve years. He is a director and past Chairman of the Board of the Massachusetts Credit Union League and a member of the CUNA Government Affairs Committee. He has been employed in the credit union industry for more than 30 years.

APPENDIX B:

Credit Union Advisory Council written statements

The following statements were submitted by CUAC members per section 9 (c) of the CUAC Charter:

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September 15, 2016

Director Richard Cordray
Consumer Financial Protection Bureau
Washington, D.C.

Dear Director Cordray,

It has been my privilege to serve as a member of the Credit Union Advisory Council (CUAC) for the past two years. I have been fortunate to be reappointed for another two-year term to serve as Vice Chair and then Chair of the Council. I am confident that the next two years will be as educational and productive as the first two.

During my first term on the CUAC, I have been very impressed with the professionalism and passion of everyone who works for the CFPB. As a new federal agency with a new mission, it can be a real challenge to get everything right the first time, without a long history and established culture. You as the Director can be very proud of the team you have built and the impressive work that has been done in five short years.

Congress was right to respond to the latest financial crisis by passing legislation to protect the consumer. Too often legislation is passedto protect an industry or a special interest and consumers are left to fend for themselves and struggle to understand very complex financial products and the risks involved. Consumers now have a long overdue advocate in the CFPB.

Over the past two years, I have been educated on regulatory issues involving mortgages, consumer loans, and payment systems. During this time I've learned to look at financial products from the consumers' perspective rather than the viewpoint from the credit union. I've also learned that the CFPB staff is eager to learn from credit unions and understand how we now serve members and the challenges we face in doing so even better in the future. The willingness to listen and learn by both the CFPB and the CUAC makes serving on the Council extremely beneficial.

Best regards,

David R. Seely
President/CEO

Your Wingman

MariSol
Federal Credit Union
Solutions

September 21, 2016

Director Richard Cordray
Consumer Financial Protection Bureau
1700 G Street NW
Washington DC 20552

Director Cordray,

Thank you for the opportunity to serve on the Credit Union Advisory Council and be a part of the ongoing conversations regarding consumer protections and regulations. I just completed my second year on the Council and served as Vice Chairman.

It has been my experience that all of the council members have come to the meetings ready to fully engage. The honest conversations have been worthwhile for Council members and the CFPB staff. I appreciate the opportunity to be heard about proposed and current regulators. I also appreciate the opportunity to answer questions and educate CFPB staff on how those rules impact my credit union's operations as well as our members. It is important to understand the operational difference between a $35 million credit union and a $25 billion bank or credit union.

I continue to be impressed by the excellent web tools and materials created by CFPB to educate the consumer on a wide variety of topics. MariSol has used some of these educational tools such as the guidance on Senior Abuse for staff training. We routinely hand out the "Your Home Tool Kit" to our members looking to purchase a home. It is a good resource.

I have truly enjoyed meeting the various CUAC members. Their experiences, backgrounds and discussions have been a positive influence for me. I am honored to serve another year as Chairman for the upcoming year and continue the dialogue.

Sincerely,

Robin L. Romano
CEO

APPENDIX C:

CUAC Consumer Lending Committee's summary document on small dollar lending

The following summary document is submitted by the CUAC Consumer Lending Committee and reflects their range of varying views on the CFPB's small dollar lending SBREFA proposals. The summary document does not reflect the views of the CFPB.

4.1 **MEMORANDUM**

DOCKET:	Federal Register Citation: 81 FR 47863 Document Number: 2016-13490 Docket ID: CFPB-2016-0025; RIN: 3170-AA40
DATE OF EX PARTE COMMUNICATION:	August 9,2016
SUBJECT:	Summary of Oral Ex Parte Presentation by members of the CFPB's Credit Union Advisory Council (CUAC) about the CFPB's proposed rule on Payday, Vehicle, Title and Certain High-Cost Installment Loans.
PARTICIPANTS:	Members of the CUAC: - Consumer Lending Chairperson: David Seely, President and CEO, Kirtland Federal Credit Union, Albuquerque, NM - Carrie O'Connor, Chief Lending Officer, Community America Credit Union, Lenexa, KS - Gail DeBoer, President and CEO, SAC Federal Credit Union, Papillion, NE - Maria LaVelle, CEO, Westmoreland Community Federal Credit Union, Greensburg, PA - Robin Loftus, COO, Heartland Credit Union, Springfield, IL - Thomas O'Shea, President and CEO, Aspire Federal Credit Union, Clark, NJ - James Spradlin, President and CEO, Park Community Credit Union, Louisville, KY
CFPB STAFF:	Eleanor Blume, CFPB Matt Cameron, CFPB Crystal Dully, CFPB Yolanda McGill, CFPB Mark Morelli, CFPB Laura Udis, CFPB
PREPARED BY:	Matt Cameron, CFPB

On Tuesday, August 9, 2016, CFPB staff identified above participated in conference call meeting with members of the Bureau's Credit Union Advisory Council (CUAC). During this conference call meeting, CUAC members addressed the CFPB's proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans.

CUAC members were informed that CFPB’s ex parte policy would apply. Summary notes of the discussion are attached. Portions of the CUAC’s discussion unrelated to the proposed rule on payday, vehicle title, and certain high-cost installment loans are not included with this ex parte filing.

- **Attachments:**

Attachment 1- CUAC Attendance Roster
Attachment 2- Ex Parte CUAC Payday, Vehicle Title, and Certain High-Cost Installment Loans NPRM notes
Attachment 3- CUAC Member Robin Loftus Additional Small Dollar Lending Comments
Attachment 4- CUAC Member Kevin Foster-Keddie Additional Small Dollar Lending Comments
Attachment 5- CUAC Consumer Lending Committee Formal Comments on the CFPB’s Small Dollar Lending NPRM

- Attachment 1

<u>EXTERNAL PARTICIPANTS – Attendance Roster</u>

Credit Union Advisory Council members

- *<u>Consumer Lending Chairperson:</u> David Seely, President and CEO, Kirtland Federal Credit Union, Albuquerque, NM*
- *Carrie O'Connor, Chief Lending Officer, Community America Credit Union, Lenexa, KS*
- *Gail DeBoer, President and CEO, SAC Federal Credit Union, Papillion, NE*
- *Maria LaVelle, CEO, Westmoreland Community Federal Credit Union, Greensburg, PA*
- *Robin Loftus, COO, Heartland Credit Union, Springfield, IL*
- *Thomas O'Shea, President and CEO, Aspire Federal Credit Union, Clark, NJ*
- *James Spradlin, President and CEO, Park Community Credit Union, Louisville, KY*

-Credit Union Advisory Council August 9, 2016
Payday, Vehicle Title, and Certain High-Cost Installment Loans NPRM Discussion Summary

On Tuesday, August 9, 2016, 7 members of the Bureau's Credit Union Advisory Council (CUAC) met via conference call with six members of the Bureau's staff: Eleanor Blume, Matt Cameron, Crystal Dully, Yolanda McGill, Mark Morelli, and Laura Udis. During the conference call meeting, CUAC members provided feedback regarding the CFPB's proposed rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans. Feedback shared by CUAC members regarding the proposal are summarized below.

- Proposed rule – Payday, Vehicle Title, and Certain High-Cost Installment Loans

Discussion Question: How might the proposal impact credit union consumers in the marketplace? How will credit unions be impacted by the proposal?

- **Chairperson of the CUAC Consumer Lending Committee, David Seely, President and CEO, Kirtland Federal Credit Union, Albuquerque, NM**
  - Credit unions and banks are aware that predatory lenders target low-income communities and cause significant harm. Mr. Seely noted that he applauds the Bureau's role in trying to regulate the marketplace and help consumers. Mr. Seely stated that credit unions believe that they are not the problem and that there is no incentive for them to get involved in predatory lending or to charge over usury limits.

- **Robin Loftus, COO, Heartland Credit Union, Springfield, IL**
  - Ms. Loftus explained that her institution refinances consumers on a regular basis. She noted that consumers would be left in worse situations if credit unions cannot refinance loan due to emergencies or unprecedented circumstances that may arise. Ms. Loftus highlighted that every situation is different and that the rule does not allow for this type of situational analysis to be made without failing to comply.

    In response to a question asking if she would keep doing those types of loans, Ms. Loftus said that her credit union would have to do an analysis to see if it makes sense. Ms. Loftus noted that although credit unions are nonprofit organizations, they are regulated to make money and maintain a high capital base; the product has to make financial sense; the human capital cost of analyzing the complexity of the rule is high as well.

- **Chairperson of the CUAC Consumer Lending Committee, David Seely, President and CEO, Kirtland Federal Credit Union, Albuquerque, NM**
  - Mentioned that his institution would have to decide if they can keep their small dollar program if the rules do not exempt the institution.

- **James Spradlin, President and CEO, Park Community Credit Union, Louisville, KY**
  - Mr. Spradlin mentioned that he heard from his credit union league that some credit unions may leave the small dollar lending marketplace if the CFPB's proposed rules go into effect. As a result, the proposed rule would have the unintended consequences of leaving consumers with no choice but to turn to payday lenders for small dollar loans.

- **Chairperson of the CUAC Consumer Lending Committee, David Seely, President and CEO, Kirtland Federal Credit Union, Albuquerque, NM**
  - In closing, Mr. Seely mentioned that the complexity of the Bureau's rule is very burdensome for credit unions. He personally, does not believe that the Bureau would regret exempting credit unions from the regulation as he is sure that credit unions will drop out of the small dollar lending market if they are not exempted.

- Discussion Question: What changes would the committee like to see incorporated into the NPRM?

- **Chairperson of the CUAC Consumer Lending Committee, David Seely, President and CEO, Kirtland Federal Credit Union, Albuquerque, NM**
  - Mr. Seely suggested that the Bureau exempt credit unions from the entire rule allow them to create innovative small-dollar lending products. He highlighted that the rules would force many credit unions to stop providing small-dollar products due to fear of falling out of compliance and being fined.
  - Regarding refinancing of auto loans, Mr. Seely believes that disclosing an all-in APR would be confusing to consumers who a refinancing their auto loan from a higher interest rate.

- **Carrie O'Connor, Chief Lending Officer, Community America Credit Union, Lenexa, KS**
  - Ms. O'Connor mentioned that the all-in APR calculation confuses credit unions. She explained that most vehicle loans are above $5,000 and said that from an operational perspective, this is a burden to the industry and that the Bureau should keep this in mind prior to releasing the rule.

- **Thomas O'Shea, President and CEO, Aspire Federal Credit Union, Clark, NJ**

- In regards to refinancing an auto loan, Mr. O'Shea highlighted that these types of loans are not providing cash back to the consumer. He explained that his credit union is cutting consumer costs and saving them money and he wouldn't consider these loans to be small dollar loans.

- **Carrie O’Connor, Chief Lending Officer, Community America Credit Union, Lenexa, KS**
  - In response to a question about add-ons to loans, Ms. O’Connor responded that her credit union usually doesn’t attach new add-ons when refinancing a loan. They typically keep coverage already sold by the dealer; they are not expanding the loan. The consumer has the ability to lower the all in APR by voluntarily electing to not buy additional services. Ms. O’Connor also mentioned that in our current economy, it’s very unlikely that auto loans will reach a 36% all-in APR, but indicated that this might change given fluctuations in the economy.

- **Robin Loftus, COO, Heartland Credit Union, Springfield, IL**
  - Ms. Loftus noted in response to a question about auto warranties that many consumers wouldn’t be able to afford to drive today without that safety net.

- **Chairperson of the CUAC Consumer Lending Committee, David Seely, President and CEO, Kirtland Federal Credit Union, Albuquerque, NM**
  - In response to an income verification question, Mr. Seely answered that if a customer is a member at their institution then he does not verify income. Mr. Seely noted that long-established members of his credit union would be insulted to have to provide income verification.

- **Robin Loftus, COO, Heartland Credit Union, Springfield, IL**
  - In regards to the payment transfer and notice requirements of the proposed rule, Ms. Loftus expressed that the CFPB’s proposed rule is putting federally insured credit unions below private companies like AT&T and Comcast that do not need to notify a customer before a payment retrieval attempt is made.

- **Carrie O’Connor, Chief Lending Officer, Community America Credit Union, Lenexa, KS**
  - Ms. O’Connor explained that consumers complain because her institution does not do multiple payment withdrawal attempts.
  - In regards to the ability to repay standards of the proposed rule, Ms. O’Connor noted that there should be some leniency for housing documents. Some consumers may not be able to track certain housing payment documents, especially for renters who pay cash.

- **Robin Loftus, COO, Heartland Credit Union, Springfield, IL**
  - In regards to record retention, Ms. Loftus mentioned that the requirement to hold documents for different regulations varies too much and is burdensome on credit unions. She said there should be consistency in retention time requirements.

RESPONSE TO CFPB PROPOSED RULE ON PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH-COST INSTALLMENT LOANS

- Credit Union Advisory Council (CUAC) Robin Loftus, COO, Heartland Credit Union, Springfield, IL

August 9, 2016

- **Does this rule impact your ability to provide consumer friendly short-term and small dollar loans?**

Although we do not currently offer the PAL-specific product, we do occasionally offer short-term loans to members needing emergency funds, such as car maintenance or home repairs. Although our rates are considerably lower for these small loans, we would reconsider our future approach to these loans based on the proposal, and if deemed too costly, will more than likely no longer offer these products

- **Are the underwriting standards in line with how credit unions are currently underwriting small dollar loans?**

For most small-dollar loans, we do not obtain VOI or evaluate monthly expenses outside of those on Credit reports and housing. We do pull Credit reports and underwrite based on willingness to repay and ability to repay by looking at standard DTI ratios and unsecured debt to income. Based on the proposal, it may end up being too burdensome and cost ineffective for us to offer the small dollar loans.

- **Are there elements of the proposed "full -payment" or ability to repay test that you believe are unnecessary for credit unions? Or, too onerous to comply with?**

Most people who need these types of small dollar/ short term loans are already in some dire financial need. If we do not believe it is a "short-term" financial situation, we do not fund the loan. That is not accomplishing anything other than putting the end result out further. For some people, though- it is a short term need and we can help them see how to work out of it. Based on the proposed rules, we don't see how we can continue to offer short-term emergency loans as the cost will just be too great. We do have a local 211 system that helps individuals determine if there are any social programs that can assist them. We currently refer a lot of members there in hope they can get some help somewhere and will continue to provide that service.

- **Do you have concerns that the NCUA PAL program has new and additional requirements?**

We do not offer the PAL program but based on conversations with institutions who do offer it, they would prefer to leave a program that is not broken as is.

- **Will these new requirements impact your participation in this program?**

As noted above, we do not participate in this program.

- **Do you believe you could offer a loan that fits into the portfolio approach (less than 5 percent default rate) exemption?**

Our current default rate is low, but we have seen an uptick in delinquencies and that is being confirmed by many publications. However, with the potential requirements on how many renewals one can have and the 1/3 pay down requirements, we believe the delinquencies may increase. If they do not have the money, we usually require a small principal payment of 10%. If they cannot come up with the 1/3, then it becomes a problem that it does not need to be. I would expect to see delinquencies rise and members credit scores impacted negatively. This is based on gut- not any factual data.

- **Do you think the conditions associated with the exemptions are reasonable for a credit union to comply with?**

As stated above, additional requirements come at a price. Employee time is not free- in reality, it is the highest expense. When you add more layers that require employee time, you take away the ability to offer small dollar products as the cost cannot be justified.

- **Do you offer any loans under 45 days that could be impacted by the short-term loan requirements?**

We often have members want to borrow for 30 days until their Tax return comes, or a bonus check, or for an emergency repair where they do not have available funds. Although our rates are much lower and we do not anticipate them falling under the covered loan criteria, we have to be mindful of the regulations and the cost to monitor for compliance.

- **Do you have concerns that an all -in APR calculation of a refinanced auto loan could sweep your loans into this rule if they are above 36 percent?**

This is the one area that could potentially impact us the most. We refinance auto loans every day. Most often, it is to reduce the rate for the member, sometimes to reduce the payment. But often times, the member requests GAP/Warranty or Credit Life/ AD&D because it is in their best interest to do so. For those who take the products for a shorter term loan, they could potentially fall under the covered loan rules. In your rules, it is easy to interpret that the CFPB thinks all of these products are bad. Daily, we see claims for both GAP and Warranty that have bailed out our members. The same for CL/AD&D. Personally, my husband was a policeman. Because of the risk in his career, to purchase a life insurance policy was more costly than to purchase the CL/AD&D policy on the loan.
For each person, the circumstance is different. Making the assumption that these products are bad or that an APR over 36% on a shorter term or lower balance loan is bad, is like any other “blanket statement” about a person, business, lifestyle etc.; it is just wrong.

We would end up turning away a good member and loan leaving them in many cases a worse situation.

- **Do you think this could be problematic for consumers if it becomes harder to refinance auto loans?**

Absolutely- for the same reasons as above.

- **What are some of the consumer benefits of refinancing auto loans, and are there consumer benefits to the products associated with them (that presumably would be included in the all-in APR)?**

See above.

- **Are there key differences the CFPB should be considering in the way depository institutions offer small dollar loans, compared to nonbanks?**

We are examined every 12 months by the NCUA and State. If we were being "predatory" in any way- they would identify it and we would be forced to make corrections and possibly restitution. Let them do their job. These rules are assuming every is GUILTY of predatory practices– without even a chance to provide our data and justifications.

- **For example, if you are transferring payments, do you charge fees for this?**

I am not 100% sure what this question is asking- but we do internal transfers at no cost and members can set up origination at no cost. If they want a 1 time payment from a deposit account at another institution it is a $7 fee and if it is from a debit card or credit card it is a $12 fee to cover our costs.

- **Do you have concerns with the enhanced payment transfer/collection requirements? Do you think these are necessary for first-party creditors?**

Yes, I have concerns. In collections, you have to realize that we are most often not the only person trying to collect from the borrower. BY these standards, you are placing the Federally insured financial institution at the "bottom" of the access to funds. Comcast, AT & T or Verizon, and other like vendors are the abusers, yet by these rules you are putting them before us in collection. Is that your intent?

- **Is it reasonable to require a lender to provide three business days' notice before each attempt to withdraw payment?**

My answer to that is a question: If you owe money to someone or more than 1 person, and they tell you "3 days from now I am going to try and get the money from your account" and you want that money for other things- what would you do? Answer that question honestly, and you have your answer.

- **Do you have concerns about the impact on a consumer's credit score, or increased costs for the credit union associated with requirements to pull credit reports regularly on borrowers?**

Yes. There is a cost to pull a report and an impact on their scores. As an underwriter, I look at how many inquires an applicant has had on their account as an indicator of potential debt. This would impact cost, credit scores and future access to loans.

- **Do you have any concerns about record retention requirements?**

Yes- we would have to have enhanced software to accomplish this- but once again, employee time. When you increase cost to us, you either increase cost to the member or put us in a position of not offering the products due to cost constraint.

- **Do you think the CFPB has attempted to set a *defacto* 36 percent rate cap?**

  Yes.

- **How costly will it be to comply with the tracking and reporting requirements? Will your core systems need to be modified to track for the newly required tracking fields?**

  Costs are difficult to determine at this time. But our core system and other systems would need to be modified to comply. Plus we would need to consider: Staffing needs, storage needs (whether imaged or file room). All of this comes at a cost to us.

- **Will you have the ability to provide the required loan data tracking information in a tabular format?**

  No.

- **Will 15 months be sufficient time to comply with the new rule?**

  Doubtful- we would need to rely on vendors.

- **Would this proposed rule affect the availability of credit to consumers?**

  I believe it would. Many institutions that currently offer these products will quit offering or amend their pricing to cover the costs to comply, both hurting the consumer.

- **Would you be less likely to consider new products or ways to innovate in the small dollar loan market as a result of this proposed rule?**

  Yes.

- **Are there any parts of this proposed rule that you believe would be effective in curtailing predatory lending? Should these parts be tailored to focus only on predatory lenders?**

  As with all of the CFPB mandates, the intent is good. But unfortunately they take a wide brush and include those of us who have never been involved in the unscrupulous activities and burden us. The non- bank entities needed to be regulated and examined, so we are all for that. But placing undue burden on those of us who work in the best interest of the consumer is harmful to the entities who have followed the rules and to those who currently benefit from the "good guys."

Overall CFPB small dollar lending proposal – general comments

Credit Union Advisory Council Chairperson: Kevin Foster-Keddie, President and CEO, Washington State Employees Credit Union, Olympia, WA

August 9, 2016

- **Too Complex.** The sheer complexity of the proposal, especially the turgid, legalese language in which it is written, is needlessly complex and difficult to interpret. The practical effect of this will be an overwhelming compliance burden for most credit unions, especially smaller institutions that lack dedicated compliance resources or counsel. Any finalized rule should be accompanied by plain language interpretive guidance, such as the CFPB resources available for the Integrated Mortgage Disclosure Rule implementation.

- **Needs long implementation period.** We recommend an implementation period of 18- 24 months to allow time for research, system, and policy and procedure adjustments.

- **Will reduce consumer access and discourage consumer-friendly institutions.** As proposed, we believe access to non-predatory small dollar loan alternatives will be significantly reduced because consumer-friendly financial institutions will exit the industry or reduce available options due to the overwhelming compliance burden presented by this proposal. The rule, if finalized in its current form, would disrupt safe, responsible, relationship-based lending by credit unions.

- **Needs clarity for what proposed rules apply to.** Other consumer loan products not considered predatory or at risk for creating UDAAP risk, such as automobile refinance loans with ancillary add-on products, are seemingly included in the scope of the proposal. This is very possible with smaller dollar loans that include GAP, warranty, credit insurance, etc. We don't believe this was the intention when the rules were promulgated, and these should be expressly excluded, not existentially so.

- **Credit unions are not the problem; should be exempt.** The proposal doesn't take into account the diverse and relationship-based structures of small dollar loans offered by state chartered CUs. CUs are known for service to their members and should not be included with the many bad actors in the small dollar lending space, none of which are CUs. Our products are underwritten based on verifiable member relationship data, disclosed in a clear and conspicuous manner as required by law, and always extended when in the member's best interest and by their choice in order to meet their demonstrated needs and member service. Further, if repayment issues occur, we work with members to figure out common sense solutions. The CFPB has stated that its concern is that consumers are forced into a pattern of relying on predatory lending practices to stay afloat. We share that concern, and in fact our products are predicated on our shared desire to give members a better alternative. Federally regulated institutions such as CUs serve as the anchor for runaway predatory practices perpetuated by less regulated and less member-centric institutions. We strongly recommend that CUs, already subject to usury and other safety and soundness rules and expectations, be exempted from these rules altogether.

- **Payment authorization expectations unworkable.** The requirement to acquire a new payment authorization at least three days prior to each subsequent attempt after two failed attempts is overly burdensome. This impairs an institution's ability to prudently collect on outstanding debt obligations and increases the risk of the transaction. These are legal debt instruments, and we should be afforded every right to contractually make ourselves whole, in a non-predatory way. The excessive time frames prescribed have opportunity cost, personnel and process cost, and time cost. This adds to the overall costs of origination which further will squeeze the margins on these already tight products or at minimum increase costs for the borrower. An alternative suggestion is to limit the fees we can collect related to attempts to draw payments from accounts, rather than limiting our ability to leverage this payment mechanism.

- Underwriting
  - The underwriting requirements are overly burdensome, considering the size and duration of the loans contemplated.

  - **UDAAP problems.** The ability to repay requirements of §§ 1041.5 and 1041.9 present the closest definition we've seen for what positively qualifies as a UDAAP issue. This means our current processes, under the rule as proposed, would be UDAAP violations. This is moving the UDAAP definition into inappropriate territory.

  - **Relationship-based lending needs to be better considered and reflected.** Underwriting loans is a risk exercise, the guidelines of which depend on the many variables of the transaction. These are small dollar loans that mature in short time periods. Based on demonstrated repayment performance on these loan types over time, the relationship approach now used by credit unions is effective in evaluating risk and providing consumers with cost-effective non-predatory solutions. The amount of diligence required by the proposal goes well beyond the risk presented for small dollar loans. Verifying income, debt obligations, and housing costs, and forecasting reasonable amounts of basic living expenses for the consumer is excessive, expensive, and unnecessary. Additionally, projecting the consumer's net income, debt obligations, and housing costs into the future presents a level of diligence exceeding even that of requirements for underwriting mortgage loans which can last up to 30 years and are often hundreds of thousands of dollars in amount.

  - Adhering to the strict underwriting expectations outlined in §§ 1041.5 and 1041.9 will severely limit our ability to continue to offer these options in expediently to members, the result of which will be members seeking funds from less consumer-friendly sources.

- **Manual processes will drive up costs, move lenders out.** Leveraging technology and automation, credit unions can help consumers handle financial emergencies with short-term, small-dollar loans at a low operating cost, which will translate to reasonable consumer rates. Automation is crucial to a successful and sustainable small-dollar lending program. By having to revert back to inefficient manual processes, the program becomes too cost-prohibitive for financial institutions to adopt. We request a clear pathway for automation (safe harbor) of the ability-to-repay requirements. If the CFPB can provide a viable option that includes automation and compliance, the bureau can inspire the innovative efforts in credit unions that are needed to compete and seize market share from the predatory lenders the CFPB is targeting.

- We recommend a review of CFSI's compass guide to small-dollar credit, to help define a clear path for well-intentioned lenders. http://www.cfsinnovation.com/Document- Library/The-Compass-Guide-to-Small-Dollar-Credit

- **Proposed rules don't reflect all use cases of these products.** The rules around frequency are inconsistent with the demonstrated demand and need for these products. The goal of these proposed rules is to get consumers out of the cycle of debt, or debt trap, but credit unions' small dollar loan products don't lend themselves to contributing to that issue. A significant portion of these loans are made to members with 700 FICO scores with short-term liquidity needs, not financially vulnerable consumers with no other options. The demand demonstrated isn't due to a lingering debt that grows and grows and compounds upon itself. Using regulation to control frequency limits our ability to effectively provide the short-term financial support need by our members.

- **Credit Reviews.** Requiring national credit reviews undermines and defeats the purpose of relationship-based lending and underwriting programs and it limits the ability to serve less financially savvy and creditworthy members. Pulling credit on every borrower for underwriting verification purposes has a negative effect on consumer credit scores, increases lender costs, and invites additional compliance burden related to FCRA (Risk Based Pricing notices) and FACTA (Red Flag tracking on every credit report).

- NCUA PAL alternative
  - The NCUA PAL program has proven to be a reliable and safe option for members of FCUs. We have concerns regarding the additional requirements presented in the proposal related to the time-frames of covered loans being extended to 46 days or more from the current PAL standard of 30 days. Even increments of 30 days make sense and easily align with standard payment frequencies, interest calculations, and APR accuracy expectations. Qualifying these at 46 days or more will force most lenders to only offer these loans at 60 days or more for simplicity. This will eliminate the single pay option for most consumers and lenders.

- **Inequity in approach for FCUs.** Although the CFPB has attempted to create parity and consistency with the existing NCUA PAL program, the practical effect is that FCUs are being punished by only allowing 28%, as opposed to the current 36% limitation placed on all others, inclusive of predatory payday lenders. FCUs, arguably the most highly regulated credit unions, are given the smallest amount of flexibility with this proposal. This contradicts previous statements acknowledging the safe and consumer-friendly efforts made by credit unions in this lending space. We strongly suggest that the CFPB rule, at a minimum, provides a blanket exemption to the NCUA PAL rule.

- **Income verification requirements too prescriptive.** The prescriptive income verification requirements remove needed flexibility in the underwriting expectations for PAL programs. The current rules require that underwriting risk be effectively evaluated, but not in a specific way. That determination is left to the FCUs to make based on the scope, complexity, and needs of the members requesting loans. Each borrower is different and imposing a prescriptive boilerplate underwriting standard regarding income for all borrowers will slow the process, reduce access to needed credit to some members, and limit an institution's ability to effectively serve its members' needs.

- The frequency limitations that include consideration of affiliate lending will in some cases limit FCU members from taking full advantage of PAL offerings over time.

- **Right of offset.** Right of offset, where allowed by applicable state law, is an important risk mitigation and collections remedy for institutions. CUs don't exercise these rights in a predatory way, rather as an added layer of protection for our members' deposits. Rarely does offset occur without extensive outreach and loss mitigation efforts being exhausted. We recommend that regulated institutions be exempt from this prohibition.

- **Credit reviews.** Requiring national credit reviews undermines and defeats the purpose of relationship-based lending and underwriting programs and limits our ability to serve less financially savvy and creditworthy members. Pulling credit on every borrower for underwriting verification purposes has a negative effect on consumer credit scores, increases lender costs, and invites additional compliance burden on lenders related to FCRA (Risk Based Pricing notices) and FACTA (Red Flag tracking on every credit report).

- 5% default rate alternative
    - **5% default rate unrealistic measure of success.** The $50 fee allowance comes with overly burdensome conditions, e.g. default rate-driven underwriting guidelines, portfolio evaluation, etc... If a CU charges a fee in addition to the 36% all-in APR, they have to set it aside in case the loans don't perform to the 5% default rate as proposed. If an institution doesn't hit the 5% mark, these have to be paid back to consumers. This is a moving target and hard to control. The best risk models available can't account for the many global variables beyond any one entity's control. Economic

factors and life events can skew things quickly. When economic events occur that impact household finances, the demand for these products goes up. Simultaneously, those same economic events will cause defaults to rise for existing obligors under these programs. There will be a contraction in the loan availability as lenders either adjust their criteria and tighten standards to try to hit the elusive 5% default rate, or they will stop making those loans altogether due to this requirement. The focus on a single default rate metric is not a realistic measure of success of reducing consumer harm. The consumer experience with product and lender is not considered at all, and that should be at the heart of the effort.

- **Third party loan performance oversight untenable.** The requirement to include the performance of loans sold to third parties is in direct contradiction to known privacy laws. We have no right to private financial information of consumers on obligations we don't service. That information is non-public and private, accessible only with the consumer's permission through credit report procured with permissible purpose or consent to share provided by the consumer to the owner of the obligation, whoever that may be at any given time in the life cycle of the loan. This is a contradiction that needs to be addressed with guidance and outlined expectations.

- The frequency limitations are limiting and don't represent the demonstrated demand for these products.

- **Right of offset.** Right of offset, where allowed by applicable state law, is an important risk mitigation and collections remedy for institutions. CUs don't exercise these rights in a predatory way, rather as an added layer of protection for our members' deposits. Rarely does offset occur without extensive outreach and loss mitigation efforts being exhausted. We recommend that regulated institutions be exempt from this prohibition.

- 36% APR all-in alternative
    - The 36% all-in APR exclusion referenced in 1041.3(b)(2)(i) is beneficial. We support it and applaud the Bureau for its consideration. However, many small dollar credit union lenders will struggle to cover costs of origination and other expenses at 36% APR on these products though, due to their inherent risk profile in terms of quicker approvals, less stringent underwriting standards, and diminished or unknown probability of repayment. Due to the quick nature of the need for and approval of these loan requests, thorough evaluation of the applicant's creditworthiness is impractical, thus substantiating the need for higher pricing to account for unknown repayment and credit risk. To do otherwise would be considered unsafe and unsound by prudential regulators.

CFPB's Credit Union Advisory Council Consumer Lending Committee

Comments submitted for the Public Record

August 9, 2016

The Credit Union Advisory Committee's Consumer Lending Committee (CUAC-CCL) has met on several occasions by telephone conference call and in person to discuss the CFPB Small Dollar and Other Covered Loans Proposed Rule, released on June 2, 2016. The rule addresses Payday, Vehicle Title, and Certain High-Cost Installment Loans. The CUAC-CCL has requested that all CUAC members submit comments for the public record to be discussed on August 9. The following is a summary of the comments received by the Chair of the CCL to date:

1. The CCL applauds the efforts of the CFPB to increase scrutiny over predatory and abusive lending practices that exist in the marketplace, and protect the rights of consumers. The proposed rule addresses the need to eliminate payday debt traps and bad behavior in payday lending, title loans and deposit advance products. The CFPB's research has found that many consumers who may need only a small loans to cover an emergency end up with high-cost loans which they find very difficult to repay in full, subsequently leading to long- term cycles of debt. Once caught in this type of expensive debt trap, consumers find it more difficult to pay for essentials such as rent and groceries.

2. The CCL agrees with the CFPB's proposal to exempt credit unions (and other lenders) from certain requirements of the rule if they participate in the National Credit Union Administration's Payday Alternative Loan (PAL) program. However, the exemption may actually discourage credit unions from participating in the PAL program due to the additional regulatory and compliance burdens the rule includes.

3. The CCL strongly believes that member-owned credit unions have a long and proud history of making short-term low-cost small dollar loans to members. Credit unions operate as cooperatives and have every incentive to act in the best interest of all members. There is no evidence of abusive or predatory lending practices at credit unions, and there currently exists an effective oversight regulatory framework at both the federal and state levels. Therefore, the CCL believes that credit unions should be exempt from the entire rule for Payday, Vehicle Title and Certain High-Cost Installment Loans. The Committee believes that a full exemption, as allowed under Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, will encourage more credit unions to enter or re-enter the small dollar lending market. While NCUA data indicates that federal credit unions originated $123 million in PAL loans in 2015, this is only a small percentage of the total payday loan and title loan markets. Credit unions have the capacity to originate much higher amounts of small dollar loans under rules that make granting such loans less complex rather than more difficult.

4. If the CFPB does not feel compelled to broaden the credit union exemption, there are other suggestions the CCL would like to make. Credit unions have developed a high level of competence in making consumer loans to members. This is reflected in NCUA data showing low delinquency and loss ratios as well as favorable market share trends. Underwriting practices and policies are reviewed on a regular basis by both federal and state examiners. The CFPB rules would add unnecessary complexity and costs to credit unions that want to continue to meet member demands by making small dollar loans. The rule may force many credit unions out of this market which would further harm consumers who then won't have a low-cost alternative source.

5. Subpart C of the rule that covers longer term loans will require credit unions to compute a new all-in APR when they refinance automobile loans for members. Many credit unions operate automobile loan recapture programs as a mechanism that allows members to reduce their interest rate and lower their payments. Members may have purchased a car at a dealership and obtained financing from an indirect source. When the automobile is first purchased, the member may have also purchased ancillary products which are not included in the calculation of the APR on the initial loan. If the member then chooses to immediately refinance the loan with their credit union, or later respond to a recapture solicitation, the APR must be calculated using the "all-in" method which cannot exceed 36%. Credit unions refinance automobile loans for members to save them money. Typically the refinancing activity does not involve cash-out because there is rarely excess equity in the vehicle. Members comparing the initial loan Truth in Lending APR calculation, to the all-in APR from the credit union (even with lower payments and the same duration) are going to be unnecessarily confused. Furthermore, in those cases when the credit-related ancillary products are high cost, the credit union may be prohibited from refinancing the loan, even if doing so would benefit the consumer. The CFPB should modify this section of the rule, or exempt credit unions.