From: Mary Sroufe (WCUL)
To: _Regulatory Comments
Subject: Washington Credit Union League Comments on Notice of Proposed Rulemaking (Short-Term Small-Amount Loans)
Date: Thursday, June 10, 2010 6:28:31 PM
Attachments: image003.png

June 10, 2010

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re.: Washington Credit Union League Comments on Notice of Proposed Rulemaking (Short-term, Small-amount Loans)

Dear Ms. Rupp,

As the trade association for Washington's 122 state and federally chartered credit unions, who have a total of more than 2.4 million members, the League is pleased to have the opportunity to comment on the NCUA's proposed rule 12 CFR part 701 regarding short term, small amount loans. These efforts are commendable but some of the provisions are not practicable.[1]

Credit unions need to provide short-term, small-amount loans.

Credit union members are using and need short-term, small amount loans (STS loans). While some users of STS loans are people living from pay check to pay check, others have steady incomes and active checking accounts.[2] In fact, twenty percent of collateral checks used to secure such loans are written on credit union checking accounts.[3] Credit unions have found that 15%-25% of the members have or are using payday loans.[4] In states that have entirely eliminated STS loans, consumers have reported higher incidents of checks returned for non-sufficient funds and Chapter 7 bankruptcy than states where payday lending is permitted.[5] To compensate for the influx of consumers from STS loan prohibiting states, there are nearly "twenty percent more payday lending stores…within 25 miles of payday-prohibiting states.[6] While Mr. Barkdell, CEO of American Southwest Credit Union, suggested in his comment that STS loans are inherently problematic, research clearly shows that Americans need safe STS lending sources.[7] There are several examples of credit unions providing STS loans resulting in high repayments rates while providing for members' needs.[8]

Washington credit unions are using STS loans to improve their members' financial stability.

Persons using payday loans are not without access to financial institutions. Rather, these consumers are the under-banked, people "lack[ing] the savings, credit history, or financial know-how" to create financial stability.[9] In Washington, credit unions are using STS loans to assist members in developing better financial habits. Washington Employee Credit Union's Q-Cash product provides free counseling and education programs.[10] Express Credit Union, in order to encourage members to save, deposits one-third of the loan fee into the member's account when payments are timely made.[11] These products provide a way for members to improve their credit, meet immediate needs, improve their credit history by timely paying off loans, and improve their money management skills.

Washington State law already highly regulates small term, small amount loans.

Washington lawmakers have already seen fit to regulate STS loans to reduce their predatory nature. As of January 1, 2010, Washington businesses are required to obtain a license in order to cash or sell checks or provide payday loans.[12] Changes include prohibiting: (1) lending of amounts exceeding seven hundred dollars or thirty percent of a borrower's gross monthly incomes, whichever is lower[13]; (2) fees or interest in excess of 15% of the first five hundred dollars and 10% for amounts over five hundred dollars[14]; and (3) providing more than eight loans to a barrower in any twelve-month period.[15] The proposed rule would create contradiction between Washington and Federal law.[16] In light of the regulatory burden that already exists for Washington credit unions that provide STS loans, additional federal regulation would prove to be unduly burdensome and costly.

Credit unions need to be able to exercise their discretion when making STS loans.

The suggested APR and application fee do not account for the risky nature of STS loans. The proposed rule allows for a maximum application fee of $20 and an APR of 1000 basis points above the maximum established interest rate.[17] Credit unions cannot practicably offer STS loans to their members with such a low APR. As Mr. Barkdell detailed in his comment letter, his credit union suffered "disastrous" results when they provided a maximum APR of 18% for STS loans.[18] Washington Employees and Express credit unions are providing STS loans to their members and are seeing great success—with APRs of 73% and 87.93% respectively. As compared to the 390% to 780% average APR that is associated with payday loans nationally, the loans offered by Washington credit unions accurately represent the risk associated with these loans without subjecting the barrower to undue harm.[19] There is a very real risk associated with STS loans and fees and APRs are the best way to account for that risk. Credit unions need to be able to charge fees and APRs that accurately represent the risk associated with each individual barrower.

Furthermore, the proposed rule provides limited methods of underwriting. The rule suggests credit unions require two recent paycheck stubs and "focus on the member's relationship with the FCU and barrower's ability to repay the loan" rather than use credit checks.[20] As mentioned by Ms. Kitsch, pay stubs are not always the best way to prove income.[21] Credit unions need a full picture of a barrower's finances in order to provide the best service possible. Credit unions should be free to use their own traditional methods of verifying income and repayment ability.

Thank you for your time and consideration. Please contact me if you have any questions or concerns.

Regards,

Mary Sroufe
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[1] *See generally* 12 CFR Part 701.

2 *See* Nancy Pierce, *Payday Lending: the Credit Union* Way 6 (CUNA Lending Council and National Credit Union Foundation 2008), *available at* http://www.realsolutions.coop/assets/2008/7/23/NancyPierceCUNALendingCouncilPaydayLendingWhitePaperWithNCUFAndREALSolutions.pdf.

3 *See id*. at 8–9.

4 *See id*.

5 *See* Donald P. Morgan & Michael R. Strain, *Payday Holiday: How Households Fare after Payday Credit Bans*, 2007 Federal Reserve Bank of New York November 309 (revised 2008), *available at* http://www.newyorkfed.org/research/staff_reports/sr309.html.

6 Brian Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market* 9 (2007) *available at* http://chess.uchicago.edu/ccehpe/hew_papers/Fall2007/Melzer%2010_18_07.pdf.

7 Letter from Brian J. Barkdull, President/CEO, American Southwest Credit Union, May 4, 2010, a*vailable at* http://www.ncua.gov/Resources/RegulationsOpinionsLaws/Comments/701ShortTermSmallAmtLns/5-4-10-BrianBarkdull.pdf.

8 Michael Kenneth, *Payday Lending: Can "Reputable" Banks End Cycles of Debt?*, 42 U San Francisco L. R. 659, 697 Winter 2008.

9 Michael S. Barr, *Banking the Poor*, 21 Yale J. Reg. 121, 153 (2004).

10 *Available at* http://www.wsecu.org/x405.xml.

11 *Available at* http://expresscu.org/personal-loans.php.

12 *See* WAC 208-630-120. For specific licensing requirements *see* WAC §§ 208-630-130—208-630-270.

13 *See* WAC 208-630-461.

14 *See* WAC 206-630-466. This still amounts to an APR of 390%.

15 WAC 208-630-463.

16 *See* 12 CFR Part 701 (proposing a minimum principal of $200).

17 *See* 12 CFR Part 701.

18 *See* Barkdull, *supra* note 6.

19 *Available at* http://www.affil.org/consumer_rsc/payday.php.

20 *See* 12 CFR Part 701

21 Letter from Lois Kitsch, National Program Director, National Credit Union Foundation, June 1, 2010 *available at* http://www.ncua.gov/Resources/RegulationsOpinionsLaws/Comments/701ShortTermSmallAmtLns/6-3-10-LoisKitsch.pdf.

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Compliance a burden? Go see CAL – the League's Compliance Answer Library

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[1] *See generally* 12 CFR Part 701.

[2] *See* Nancy Pierce, *Payday Lending: the Credit Union* Way 6 (CUNA Lending Council and National Credit Union Foundation 2008), *available at* http://www.realsolutions.coop/assets/2008/7/23/NancyPierceCUNALendingCouncilPaydayLendingWhitePaperWithNCUFAndREALSolutions.pdf.

[3] *See id*. at 8–9.

[4] *See id*.

[5] *See* Donald P. Morgan & Michael R. Strain, *Payday Holiday: How Households Fare after Payday Credit Bans*, 2007 Federal Reserve Bank of New York November 309 (revised 2008), *available at* http://www.newyorkfed.org/research/staff_reports/sr309.html.

[6] Brian Melzer, *The Real Costs of Credit Access: Evidence from the Payday Lending Market* 9 (2007) *available at* http://chess.uchicago.edu/ccehpe/hew_papers/Fall2007/Melzer%2010_18_07.pdf.

[7] Letter from Brian J. Barkdull, President/CEO, American Southwest Credit Union, May 4, 2010, a*vailable at* http://www.ncua.gov/Resources/RegulationsOpinionsLaws/Comments/701ShortTermSmallAmtLns/5-4-10-BrianBarkdull.pdf.

[8] Michael Kenneth, *Payday Lending: Can "Reputable" Banks End Cycles of Debt?*, 42 U San Francisco L. R. 659, 697 Winter 2008.

[9] Michael S. Barr, *Banking the Poor*, 21 Yale J. Reg. 121, 153 (2004).

[10] *Available at* http://www.wsecu.org/x405.xml.

[11] *Available at* http://expresscu.org/personal-loans.php.

[12] *See* WAC 208-630-120. For specific licensing requirements *see* WAC §§ 208-630-130—208-630-270.

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[14] *See* WAC 206-630-466. This still amounts to an APR of 390%.

[15] WAC 208-630-463.

[16] *See* 12 CFR Part 701 (proposing a minimum principal of $200).

[17] *See* 12 CFR Part 701.

[18] *See* Barkdull, *supra* note 6.

[19] *Available at* http://www.affil.org/consumer_rsc/payday.php.

[20] *See* 12 CFR Part 701

[21] Letter from Lois Kitsch, National Program Director, National Credit Union Foundation, June 1, 2010 *available at* http://www.ncua.gov/Resources/RegulationsOpinionsLaws/Comments/701ShortTermSmallAmtLns/6-3-10-LoisKitsch.pdf.