

August 1, 2018

Gerard Poliquin
Secretary of the Board
National Credit Union Administration
1755 Duke Street
Alexandria, VA 22314-3428
RE: WSECU Comments on Notice of Proposed Rulemaking (PALs II)

Dear Mr. Poliquin,

On behalf of QCash Financial LLC, a wholly owned Credit Union Service Origination, delivering short-term, small dollar loan origination technology to credit unions since 2015, I respectfully submit our comments on the Administration's Notice of Proposed Rulemaking related to the NCUA PAL program located in 12 CFR part 701.21(c).

There are more than 50,000 non-depository locations in the U.S. that provide costly alternative financial services. It is estimated that 12 million borrowers spend more than \$9 billion on payday loans each year. Consumers rely on payday loans to meet everyday expenses for food, utilities, rent, or daycare, borrowing at annual percentage rates that typically exceed 300 percent. Most of these consumers have low credit scores, but they do have both regular income and an active checking account, the two requirements to get a payday loan. Those customers are not among the 7% of households that are unbanked; rather they are among the 20% of households that are underbanked, meaning they hold an account at a credit union or bank, but they also meet some of their needs by going to alternative financial services providers.

QCash Financial would like to offer an alternate suggestion to the NCUA as a formal comment on the most recent NCUA PAL proposal for federal credit unions. It is our belief that these programs, when responsibly marketed, priced, and managed can effectively meet the short term borrowing needs of consumers, at an affordable and risk-focused price, while steering vulnerable consumers away from debt traps and providing necessary financial wellness resources. Our recommendation would bring the NCUA PAL program in line with existing regulatory requirements from the DOD and CFPB, and preserve the exemption the PAL program enjoys under the newly issued CFPB Payday loan rule. We have seen, first-hand through our clients, the benefit of a thoughtfully designed and tailored program can bring to consumers and credit unions and we respectfully request adequate consideration to our thoughts below.

As is stands, the PAL program has low adoption and we applaud the Board's attempts to offer additional options to FCUs to enter this space and offer payday alternative loans to meet the short term liquidity needs of their members. The alternatives contemplated, which if promulgated as proposed will modify loan amounts, terms, frequency, and membership requirements, are a good step forward for America's

FCUs. However, the rule construction is unnecessarily complex. Our recommendations, as outlined herein, shore up what we have observed as problems in the proposed rule and will serve to meet your stated objectives, while enhancing regulatory certainty and bringing parity to the short-term lending industry at large.

- **28% APR is a significant barrier to market entrance.** An Annual Percentage Rate limitation of 1000 basis points above usury doesn't provide adequate operating margin for FCUs to enter the short-term small dollar lending space and participate in the PAL program. There is low adoption of the PAL loan program amongst FCUs. Only 18% of FCUs offer a PAL loan to their membership (<https://vimeo.com/254918153>) for a few reasons, but a significant one is margin and the ability of the program to steer clear of safety and soundness concerns in that segment of the loan portfolio. The program needs to be profitable enough to stand on its own (not subsidized by the membership), while maintaining a competitive pricing position and non-predatory feature set. We feel an APR of 36% would greatly improve adoption, profitability, and entrance into this space. Currently, FCU members are turning to other, alternative, higher-cost options.
- **28% APR perpetuates regulatory inconsistency.** The primary reason we feel this is crucial however is it levels the playing field and creates parity with the DOD's Military Lending Act limit of 36% APR, as well as the CFPB Payday Lending Rule's 36% carve-out.. If 36% is considered consumer friendly for all consumers under the CFPB's rule, and is allowable for covered borrowers under the Military Lending Act, then why are FCUs limited to 28%, arguably the most responsible and most consumer-friendly lenders? See reference graphic illustrating the opportunity in the marketplace for parity with existing consumer protection laws related to short term loans and the existing landscape with no consistent regulatory regime or rule-set.
- **Creating a new naming convention creates regulatory ambiguity.** We recommend the NCUA avoid naming its products separately, e.g. PALs I, PALs II, and PALs III and simply maintain one PAL Program that encompasses the available loan options available to Federal credit unions. The CFPB's recently enacted Payday, Vehicle Title, and Certain High-Cost Installment Loans final rule explicitly provides legal safe harbor and a conditional exemption from the requirements of those rules for loans made in accordance with PAL standards as they are currently referred. Changing the names makes the application of that standard ambiguous and unclear. Our recommendation reduces confusion and also adds clarity as to whether the entire PAL Program still receives the safe harbor and conditional exemption from the new CFPB rules. Less ambiguity in the rules creates for a more clear understanding and consistent application and evaluation of compliance.
- **Loan Term and Loan Amount limits are unreasonable.** It has been demonstrated that the ability to offer longer loan terms and larger loan amounts more effectively serves to off-board consumers from predatory products and into sustainable, lower cost, consumer friendly credit union products. This aids in meeting the program objective of helping consumers get out of debt traps. Additionally, FCUs need more flexibility in the design of their programs, to ensure the final product meets consumer needs today and in the future. At a minimum, the Board should consider longer terms of at least 36 months and loan amounts up to \$4,000. This ensures borrowers can cover large unexpected expenses with an affordable monthly payment. Our client data has proved these limits allow products to be designed to meet the various needs of member's indifferent markets.

- **Proposed rule language amendments are recommended.** Specifically, we recommend editing §701.21(c) as follows:
 1. Strike the proposed edits to §701.21(c)(7)(iii) that rename the program *PALs I* entirely. It is important that the program name not change.
 2. Strike the new section under proposal to be added to 12 CFR 701.21 (701.21(c)(7)(iv)) for the description of *PALs II*.
 3. Alternatively, revise §701.21(c)(7)(iii) by adding 701.21(c)(7)(iii)(B) and renumbering 701.21(c)(7)(iii)(B) as 701.21(c)(7)(iii)(C). This way it defines a longer term option of a permissible small dollar loan under the *overall* PAL program section name, instead of being called out and named separately. Example regulatory language below:

701.21(c)(7)(iii)(B) *Small Dollar Installment Loan (SDIL loans).* Notwithstanding the provisions in § 701.21(c)(7)(ii), a Federal credit union may charge an interest rate of 1800 basis points above the maximum interest rate as established by the Board, provided the Federal credit union is making a closed-end loan in accordance with the following conditions:

- (1)** *The principal of the loan is not more than \$4000;*
- (2)** *The loan has a minimum maturity term of one month and a maximum maturity term of thirty-six months;*
- (3)** *The Federal credit union makes no more than one small dollar installment loan at a time to a borrower;*
- (4)** *The Federal credit union fully amortizes the loan;*
- (5)** *The Federal credit union may charge an application fee to all members applying for a new loan that reflects the actual costs associated with processing the application, but in no case may the application fee exceed \$20; and*
- (6)** *The Federal Credit Union includes, in its written lending policies a limit on the aggregate dollar amount of loans made under this section of a maximum of 20% of net worth and implements appropriate underwriting guidelines to minimize risk.*

Our review and comments stem from more than a decade of experience incubating our technology platform at WSECU, offering payday loan alternatives to credit union members. WSECU has made over 300,000 of these type short term loans for over \$200mm. This experience, including years of research and development, technology enhancements, financial modeling and, above all, member service uniquely positions us to identify elements of the rule that merit reconsideration, modification, deletion, or reconstruction.

We appreciate the opportunity to provide comment on this pending rulemaking and respectfully ask that you give our recommendations due attention and consideration. Thank you.

Sincerely,

Ben Morales
CEO QCash Financial

References:

