August 01, 2018

National Credit Union Administration
Gerald Poliquin, Secretary of the Board
1775 Duke Street
Alexandria, VA 22314-3428

RE: Comments on Proposed Rulemaking - PALs II

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 250 credit unions and their approximately 10.5 million members.

The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on their notice of proposed rulemaking for payday alternative loans (PALs). Currently, only 9 percent of federal credit unions (FCUs) use the PALs program. The Leagues commend the NCUA Board for their efforts to increase interest and participation by FCUs in the PALs program.

As the NCUA notes in the proposal, some payday loan borrowers use these loans sparingly; however, many other borrowers find themselves in cycles where their loans “roll over” repeatedly, incurring excessively high fees. Often, these borrowers are unable to break free from their dependence on payday loans. According to a study conducted by the Pew Charitable Trusts, the average payday loan borrower is in debt for five months of the year, spending an average of $520 in interest to repeatedly borrow $375.[1] Credit unions could provide the same $375 for five months for roughly six times less than what the payday lenders charge. Clearly credit unions offer a better alternative, and we support efforts to make consumer-friendly payday alternative loans available to more consumers.

The Pew study also shows that most payday loan borrowers use the loans to deal with regular, ongoing living expenses. The first time people take out a payday loan, 69 percent use the funds to cover ordinary living expenses, such as utilities, credit card bills, rent or mortgage payments, or food, while 16 percent use the funds for an unexpected expense, such as a car repair or emergency medical expense. Credit unions, whose mission is to help people of modest means, should have the flexibility to offer these consumers a safe and affordable alternative that meets their needs.

The NCUA proposes to retain the current PALs rule (PALs I) and provide an additional option with different terms and conditions, a PALs II loan. The Leagues support a different approach; specifically, a single PALs program that provides ranges under which FCUs may offer short-term, small-dollar loans. This parameters-based approach provides credit unions with flexibility to tailor their loan products to meet the needs of the consumers in their communities. We respectfully offer the following comments in hopes that we can assist the NCUA in developing a payday lending alternative that truly meets the needs of consumers, allows more FCUs to offer PALs, and meets the NCUA’s safety and soundness objectives.

Relation to CFPB Payday Loan Rule

Safe Harbor

The Bureau of Consumer Financial Protection’s (Bureau) Payday, Vehicle Title, and Certain High-Cost Installment Loans final rule (Payday Loan Rule) explicitly provides legal safe harbor from the requirements of those rules for loans made in compliance with NCUA’s Payday Alternative Loan standards under 12 CFR 701.21(c)(7)(iii)[2].

Therefore, we recommend the NCUA avoid naming its products separately, e.g., PALs I, PALs II, and PALs III, and simply maintain one PALs Program that encompasses all available loan options available to FCUs. Changing the names makes the application of the Bureau’s safe harbor ambiguous and unclear, while a single

PALs program under Part 701.21(c)(7)(iii) maintains clarity that the entire PALs program receives the safe harbor from the Bureau's rules.

Partial Exemption

Under the Bureau's Payday Loan Rule, the Bureau provided a partial exemption for "alternative loans."[3] Under the NCUA's proposed rule the Bureau's "alternative loans" exemption would be lost as the conditions for this exemption closely track the current PAL loan conditions, including maximum loan term of 6 months and maximum loan amount of $1,000.

However, loans made by credit unions that fall outside of the PALs safe harbor would likely be exempted from the Bureau's rule anyway. That is, a loan with a term greater than 45 days that is fully amortized with regular payments and at a rate of less than 36% would not be covered by the Bureau's Payday Loan Rule.[4]

Interest Rate

Perhaps one of the biggest hinderances for FCUs to offer PAL loans is the interest rate cap. The current 28% annual percentage rate (APR) does not yield enough revenue to invest in, promote, and maintain a safe payday lending alternative loan program.

The Leagues recommend the NCUA increase the allowable interest rate to a maximum 36% APR. A 36% APR is in line with the Bureau's Payday Loan Rule carve out for "longer-term" loans. Under that rule, loans are considered covered "longer term" loans if the interest rate is greater than 36% and the lender obtains a leveraged payment mechanism.[5] Likewise, the Federal Deposit Insurance Corporation's (FDIC) small-dollar pilot program and the Department of Defense's Military Lending Act (MLA) also permit a 36% APR.

Allowing a maximum 36% APR creates a level playing field and provides consistency across the various regulatory agencies. Moreover, permitting a 36% APR on PALs could potentially make the PALs program more profitable and sustainable for FCUs, which should increase interest and participation.

Application Fee

The current PALs rule permits an application fee that reflects the actual costs associated with processing the application,up to a maximum of $20. The Leagues recommend the Board consider increasing the application fee to a maximum of $50 and clarify that the "actual costs associated with processing the application" includes staff and technology costs, investing in loan processing automation, third-party service provider costs, and promoting the program so consumers know they can turn to their credit union in times of need.

While not all credit unions charge an application fee, having the ability to do so can provide non-interest revenue that helps offset the costs of operating a payday alternative loan program. Again, allowing a $50 application fee could help make the PALs program more profitable and sustainable for FCUs and increase participation.

Loan Terms and Amounts

The current PALs loan allows terms from 1 to 6 months and loan amounts from $200 to $1,000. The NCUA's proposed rule for PALs II would double that with loan terms from 1 to 12 months and loan amounts up to $2,000 (eliminating the minimum loan amount).

The Leagues support offering members larger loan amounts with longer terms that fully amortize with affordable payments. We believe doing so will more effectively transition borrowers from predatory products in the market place to consumer-friendly, lower-cost credit union products. Additionally, having a broader range of options will allow FCUs to tailor their loan products to meet their members' needs.

The maximum loan term should correspond with the increased maximum loan amount, ensuring the loan fully amortizes with an affordable monthly payment.

In considering the maximum loan amount, we look to the consumer uses of payday lending for everyday living expenses, as well as for unexpected medical and automobile expenses. We believe the proposed $2,000 maximum loan amount may be inadequate, especially in higher cost-of-living areas like California. We encourage the Board to carefully consider the maximum loan amount and suggest the Board include a mechanism in the final rule that will require a periodic review of the maximum loan amount to ensure it remains relevant to what constitutes a small-dollar loan.

Membership Requirement

The Leagues fully support eliminating the current one-month membership requirement. Allowing FCUs to make loans without a minimum length of membership requirement will permit FCUs to assess their own risk tolerances and make loans to borrowers who need access to funds immediately and would otherwise turn to traditional payday lenders. In the spirit of people-helping-people, when a consumer is in need they should be able to turn to any credit union for which they qualify for membership and find immediate help.

Number of Loans

The current rule limits the number of PAL loans to no more than three PAL loans in any rolling six-month period to any one borrower and no more than one PALs loan at a time to a borrower.

The Leagues support abolishing the limit on the number of PAL loans to a member within a certain amount of time. Removing this limit provides maximum flexibility to FCUs to help meet the needs of their members in a safe and sound manner. We also support retaining the restriction of making only one PAL loan at a time to any one borrower.

Aggregate Lending Cap

The proposed rule retains the limit on the aggregate dollar amount under the PALs program to a maximum of 20% of a credit union's net worth.

The Leagues support this aggregate loan lending cap for all FCUs except those that are low-income designated or Community Development Financial Institutions. Providing an exemption for these credit unions is appropriate and in alignment with the exemption provided under the Member Business Lending rule for aggregate member business loan limits.

Conclusion

The Leagues commend the NCUA Board for their efforts to increase FCUs participation in the PALs program. The Leagues recommend the Board adopt a single PALs program that provides ranges under which FCUs may offer short-term, small-dollar loans. Doing so will provide credit unions flexibility in developing payday alternative loan products tailored to their members' needs and will help to maintain the Bureau's existing safe harbor for NCUA PAL loans.

The Leagues recommend a single PAL program that includes:

- Maximum interest rate of 36% APR
- No minimum loan amount and a maximum loan amount of $2,000 or greater;
- Minimum maturity term of one month and a maximum maturity term of 36 months;
- No limit on the number of PAL loans to a member within a certain amount of time;
- No more than one payday alternative loan at a time to a borrower;
- No PAL loan roll-overs (This prohibition against roll-overs does not apply to an extension of the loan term within the maximum loan terms allowed, provided the FCU does not charge any additional fees or extend any new credit.);
- The loan fully amortizes;

- No minimum length of membership requirement;
- The FCU may charge an application fee to all members applying for a new loan that reflects the actual costs associated with processing the application, up to a maximum of $50;
- Except for FCUs with a low-income designation and Community Development Financial Institutions, the FCU includes in its written lending policies a limit on the aggregate dollar amount of PAL loans of a maximum of 20% of net worth; and
- The FCU implements appropriate underwriting guidelines to minimize risk.

Thank you for the opportunity to comment on the proposed rule for payday alternative loans and for considering our views and recommendations. If you have any questions regarding our comments, please contact me.

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[1] Payday Loan Facts and the CFPB's Impact; http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2016/01/payday-loan-facts-and-the-cfpbs-impact

[2] Payday, Vehicle Title, And Certain High-Cost Installment Loans; 12 CFR 1041.3(e)(4)

[3] *Id.* at 1041.3(e)

[4] *Id.* at 1041.3(b)(3)

[5] *Id.* at 1041.3(b)(3)

Sincerely,

Diana Dykstra
President and CEO
California and Nevada Credit Union Leagues

cc: CCUL