



August 3, 2018

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

Re: Payday Alternative Loans, Proposed Rule, 12 CFR Part 701, RIN 3133-AE84

Dear Secretary Poliquin:

The National Federation of Community Development Credit Unions (the “Federation”) appreciates the opportunity to share our thoughts on NCUA proposed rulemaking on Payday Alternative Loans.

The Federation is a mission driven CDFI intermediary and association of credit unions dedicated to increasing financial health and independence of low-income people and communities. The Federation provides capital, training and technical assistance and programmatic support to help credit unions can expand access to safe and responsible financial products and services. Community development credit unions (CDCUs) have a long history in building strong and inclusive economies providing access to credit and financial services for individuals and communities historically underserved or ill-served by the financial services industry.

As financial cooperatives, our institutional interests align with the success and well-being of our members. Predatory lenders undermine the financial and economic security of community development credit union members, borrowers and communities. CDCU members are healthier and stronger when rational, consistent and durable consumer protections are in place. As a result, the Federation advocates for policies that strengthen our member *institutions*, their *members* and the *communities* they serve.

After thorough review of NCUA’s proposed PALs II rule and questions elaborated for a future PALs III rule, the Federation respectfully submits its strong opposition to these proposals. The Federation does not believe that NCUA has engaged in a thorough enough analysis of consumer credit needs, the existing breadth in which credit unions are meeting and can continue to meet these needs and the reasons for the limited take-up of the PAL program.

Justification for Proposed Rule

The Federation respectfully challenges the assumptions inherent in the Board’s justification for the proposed rule and urges NCUA not to proceed with these changes without more thorough research and input from stakeholders throughout the industry.

- The Board does not provide sufficient documentation or analysis that these changes will increase access to responsible credit. In its proposed rulemaking, the Board cites data



showing an increase in the PALs loans outstanding but only a modest increase in the number of FCUs offering these loans as the rationale for the proposed rule. It fails to provide any data or information that would suggest that the adoption of this rule and PALs II program would significantly expand or grow this lending to consumers. There is little evidence supporting the assumption that this would in any way address the harmful effects of predatory payday lending on consumers. It simply offers a mechanism for credit unions to charge more for credit to those same consumer segments. We urge NCUA to study this market gap more thoroughly and carefully before proceeding.

- The existing PAL product vastly undercounts small dollar consumer lending from credit unions. Because the PALs program was established as a separate and specific product, NCUA has been undercounting the number and volume of small dollar loans originated by credit unions. Community development credit unions are already meeting this market need through their traditional consumer lending. Many of these CDCUs have chosen not to offer or report on the specific PAL product for reasons other than pricing, preferring instead to continue to offer small loans as a typically underwritten credit union loan. The success of CDCUs in serving this market well can serve as a guide for the rest of the industry on how to meet the demand for small dollar credit responsibly and sustainably.
 - CDCUs alone had \$2,493,897,499 in traditional consumer lending (< 18% APR) in 2018 with an average loan size of all \$2,475.57. This demonstrates they are already regularly making loans at or below the proposed increased threshold.
 - CDCUs outperform their peers in every asset category. The Federation’s annual analysis of financial performance patterns and trends shows CDCUs consistently outperforming peer institutions in loan deployment, loan performance and return on average assets. The model already exists for credit unions to meet these market gaps responsibly within the current regulatory framework.

Proposed PAL II Rule

The NCUA proposed rule that establishes a PALs II program increases the maximum loan amount to \$2,000, increases the maximum loan term to 12 months and eliminates the provision that limits a federal credit union to only three loans to a member in a six-month period.

The Federation believes this proposal would jeopardize the financial security of credit union members and negatively impact the credit union’s ability to serve those members well. Furthermore, the proposed rule will roll back essential protections to consumers and open the credit union movement up to practices that not only negatively impact their members but place the credit union brand and “differentiator” in jeopardy. By creating products modeled on the payday lending industry we are slowly eroding the strong brand equity of credit unions reducing our ability to justify the many benefits of being socially responsible institutions.

Specifically, the Federation opposes:

- permitting 28% interest on loans as large as \$2,000
- elimination of the maximum number of loans, and therefore application fees, that can be charged. Already, the allowance under PAL that loans could flip three times carrying a \$20 fee in a 6 month period places a considerable burden on a financially vulnerable member and household.



Questions for PALs III

Perhaps most troubling are the questions outlined for a planned PALS III outline. Below we register concerns on each question. These questions in sum signal a change in the current credit union interest rate cap by rulemaking. We fear this has significant ramifications for our movement across the board and the Federation urges NCUA to consider this approach and its implications very carefully.

1. Should the Board propose a third alternative PALs rule and why?
No, it is our position that CUs already provide the type of consumer lending that would be anticipated in a PALS III product through traditional unsecured consumer lending channels. Credit unions must be effectively determining the risk and financial health of each borrower and make determinations about the borrowers' ability to repay. This can be done safely and profitably under the current regulatory framework of 18% APR.
2. Should the Board set the permissible interest rate for PALs III loans above that permitted for other PALs loans? If so, why and what legal justification supports a higher interest rate?
Absolutely not. This rulemaking is putting the credit union movement on a slippery slope of increasingly modeling product based upon high-cost predatory players. If there is a perception of unfair advantage from these loosely regulated players, our focus should be on leveling the playing field by increasing (not eroding) consumer protections across all fields.
3. Should the Board increase in PALs III the maximum amount an FCU can charge for an application fee above that permitted for other PALs loans?
Absolutely not. The application fees and rollovers of loans are what drive these loans to be unaffordable to consumers.
4. Should the Board allow FCUs to make more than one kind of PALs loan at a time to a borrower?
This question reflects an acknowledgment of financial insecurity in a consumer that multiple loans would be needed simultaneously. A financial institution that addresses that financial insecurity by driving the consumer to multiple fee-driven vehicles is not acting in the consumer's best interest. The Federation would not like to see the credit union movement incentivizing extraction of fees from those who can afford it least.
5. Should the Board set in PALs III the limit on the aggregate dollar amount of loans made above that permitted for other PALs loans?
The Board should not be anticipating multiple loan products that erode the current framework of lending at less than 18%.
6. Should the Board eliminate for PALs III the requirement that FCUs implement appropriate underwriting guidelines?
All credit union loans should be originated with the member's interest and financial health in mind. Loans that do not take into account a borrower's ability to repay are irresponsible and harmful.



7. Should the Board set for PALs III the maximum loan amount above that permitted for other PALs loans?
Again, the NCUA should not be using this rulemaking to be chipping away at the usury limits of credit unions.
8. Should the maturities for PALs III loans be longer than those permitted for other PALs loans?
See above responses. We disagree with the premise that new and specific loan products should be created by this rulemaking.
9. Should the Board permit PALs III to include an open-end loan product?
See above responses. We disagree with the premise that new and specific loan products should be created by this rulemaking.
10. Should the Board require FCUs to conduct an ability to repay determination in PALs III similar to that required by the CFPB's Payday Loan Rule?
Of course, NCUA should seek that credit unions assess a borrower's ability to repay a loan before making that loan.
11. Should the Board prohibit FCUs from charging overdraft fees for PALs loan payments drawn against a member's account?
The Federation believes strongly that FCUs be prohibited from charging overdraft fees for all PALs payments drawn against a member's account. Overdraft fees strip billions of dollars annually from struggling consumers, leaving them more vulnerable to predatory promises of "short-term" loans and generally financially worse off. Thus, any credit union program aiming to provide responsible credit options en route to financial stability will be far less effective when paired with a high-cost overdraft program.

I appreciate the opportunity to submit these comments and we look forward to an engaged and robust dialogue. The Federation is proud of the credit union movement's history in serving people of modest means and of the cooperative principles of people helping people. We firmly believe that as we evolve and grow we must continue to place those values at the core of our work.

Sincerely,

Cathleen A. Mahon
President & CEO