



*League of Southeastern  
Credit Unions & Affiliates*

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Gerard Poliquin  
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Re: Payday Alternative Loans - 12 CFR Part 701 [RIN 3133-AE84]

7/26/2018

Mr. Poliquin,

The League of Southeastern Credit Unions & Affiliates (LSCU) appreciates the opportunity to comment on the topic of Payday Alternative Loans (PAL). LSCU has made it a priority to find affordable solutions to consumers' needs for small dollar loans. This includes our regulatory and legislative advocacy efforts and developing commercial solutions for our credit unions to offer small dollar loans to communities in a sustainable, safe-and-sound manner. Our fundamental goal regarding PALs is to ensure credit union members' access to credit (specifically subprime borrowers) while providing an opportunity to educate them on financial issues and by providing an offramp to high-cost borrowing and opening the door to a more secure financial future. We think the proposed rule, and those to follow, can assist credit unions in this goal resulting in better opportunities for the American consumer.

The LSCU is a trade association that represents 244 credit unions in Alabama and Florida. Our mission is "to create an environment that enables credit unions to grow and succeed." We believe it is an important part of the credit union mission to serve the financial needs of all

members of the community, particularly those who find it difficult to access credit because of their higher risk profiles. To achieve this goal, the PAL program must balance two competing interests, making credit available to subprime borrowers (this includes accommodating when and how the consumer access the credit) while allowing credit unions to offer the products in a profitable manner and satisfy the examiners' expectations. Below are our thoughts on specific questions laid out in the Request for Comment:

1. Should the Board propose a third alternative PALs rule and why?

*Yes, one element the board should include in the third PAL iteration is a methodology to allow capitalization of these loans through funds provided by community groups. There are many community groups whose goal is to improve the condition of low-income Americans. Some of them have capital funds available for various projects, and one such use could be to capitalize the PAL loans in their communities through a partnership with the credit union. Allowing this would serve the interests of the community and the credit union by assisting with the financial burden of consumers while keeping a satisfactory portfolio for examiners.*

*We note with interest that the Board is considering the possibility of a "third option" for PALs. While LSCU welcomes and supports any aspects of an enhanced PALs program that increases its usage, our organization would also caution against creating an overly complex, multi-layered product that could discourage credit unions from participation. An important element of PALs, in addition to it helping solve short-term consumer financial difficulties, is widespread availability and ease of use by all parties concerned. If a new and improved PALs is not embraced and deployed by credit unions, members will not benefit, no matter how beneficial it may be.*

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?

*Yes, the permissible rate should be set higher so the PALs can be sustainable products for those credit unions that engage in them. Before advocating for a specific percentage, more data will be needed from credit unions to work out what minimum fee structure should be in place so credit unions can offer these products without it taking a toll on the credit unions assets.*

*However, we think the APR should be set to no less than 36%, as in the MLA.*

*On the legal side, it would seem that to do this, the Board would need to follow the procedure from the Federal Credit Union Act<sup>1</sup> and consult with Congress, Treasury, and the other financial regulators, specifically the CFPB. These other stakeholders understand the nature of the payday lending industry and should cooperate in approving a higher interest rate for PALs that would promote a more consumer friendly product in a sustainable way.*

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?

*Yes. Input from our credit unions suggests that the permitted fee is insufficient to cover the underwriting costs. This is often because such borrowers lack a sufficient credit score to generate automated underwriting. Because the underwriting must be calculated manually or with specialized software, it increases the cost to provide the*

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<sup>1</sup> 12 USC 1757(5)(A)(vi)(I) (2013).

*loan, therefore a higher fee should be permitted to include the costs of underwriting a loan for a member who has very little data as a basis to analyze the risk of the loan.*

4. Should the Board allow FCUs to make more than one kind of PALs loan at a time to a borrower?

*It is not the number of the kind of loans that a member receives but their ability to pay for it that really should be determinative. LSCU also commends NCUA for contemplating the elimination of the provision in the existing regulation that allows a federal credit union to make a maximum of three PAL loans to a member in a given six-month period. We believe this is an unnecessary limitation on the member's ability to manage their own usage of the program and diminishes the flexibility and usefulness that are otherwise inherent in the PALs product.*

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?

*This is another area where the credit union should have the flexibility to determine the aggregate amount of loans for their members and their portfolio.*

6. Should the Board eliminate for PALs III the requirement that FCUs implement appropriate underwriting guidelines?

*No. Credit unions should always have appropriate underwriting guidelines for its loans; perhaps the better term would be they should have reasonable underwriting guidelines. The point is that a credit union will assess the risk of the loan to the member along with the amount of risky loans presently on the books to determine the level of tolerance for the specific area of risk.*

7. Should the Board set for PALs III the maximum loan amount above that permitted for other PALs loans?

*NCUA should give credit unions the flexibility to meet the needs of their members. Considering the circumstance many low-income borrowers will find themselves in, it is best to let the credit union address the maximum loan amount based on their own risk tolerance while balancing the risk of the member defaulting.*

8. Should the maturities for PALs III loans be longer than those permitted for other PALs loans?

*Mirroring the point above, credit unions should have the flexibility to determine the appropriate maturities for their members' specific needs.*

9. Should the Board permit PALs III to include an open-end loan product?

*If a credit union can develop a payday loan product as an open-end product, they should be able to do so, though this would seem to be akin to a credit card product, and they would likely already have something in this space, so it would seem superfluous.*

- a. If the Board permits an open-end product, should the Board allow FCUs to charge participation fees, provided the fees are not considered a finance charge under Regulation Z? *Yes.*
- b. If the Board permits participation fees on an open-end PALs product, should the Board set a maximum cap on that fee, and, if so, what should the maximum amount be? *No.*

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?

*There should not be a separate ability to repay calculation, but rather the underwriting should consider the ability to repay in the risk of the loan. If the theory is that most payday lenders trap people in debt they cannot pay back and the ability to repay is to prevent this, it is not relevant because credit unions do not systematically loan money when a member cannot afford to repay them. Naturally, there may be an incidence when it is appropriate to loan money in that circumstance, but it should be a unique case and not a routine practice, meaning the credit union should have the flexibility to create underwriting criteria that evaluate the risk of the borrower defaulting and allow an appropriate fee to perform the evaluation.*

11. Should the Board prohibit FCUs from charging overdraft fees for PALs loan payments drawn against a member's account?

*It would seem superfluous to allow overdraft to repay a small dollar loan because it would be additional borrowing from the same source to pay that source back. But it is best to leave the policing of the member's accounts to the credit unions, rather than setting out a prohibition that may not serve the members' or credit unions' interests.*

In a previous letter to NCUA's General Counsel,<sup>2</sup> we highlighted a number of issues that would impact the ability of credit unions to serve those members:

- Eliminate the waiting period: We often hear this is an issue because when people are looking for these short-term loans, they need the money immediately. The waiting period discourages this and causes consumers to look elsewhere.
- Look at the interest rate that can be charged: While credit unions do not have a desire to offer the triple-digit interest rates that payday lenders charge, present rates make it very difficult to sustain this type of program.
- Stop including PAL participation test in exams: Regulators want credit unions to participate in payday alternative programs, however, they tend to admonish the institution when the program has a less than desirable yield. This seems to be a Catch-22 and causes many credit unions to not want to participate.
- Re-assess application fee to better reflect risk: These are high-risk loans and currently have very little reward. The application fee should be more reflective of the risk a credit union assumes in offering this product.
- Include a savings component: Some of the credit unions currently offering these programs require the borrower to put funds into a savings account. This helps them to build a better financial situation and is intended to lead them away from the debt trap cycle.

In conclusion, we want to emphasize the need to give credit unions the flexibility to serve low income/sub-prime borrowers while maintaining a healthy growth strategy. A large part to fulfilling these criteria is to provide the regulatory framework to allow credit unions to experiment with fee structures, underwriting, marketing, and other factors to fulfill the needs of the community and the credit union. There should be a point of caution that while credit unions

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<sup>2</sup> Letter from Patrick La Pine, President of LSCU, to Michael J. McKenna, General Counsel, National Credit Union Administration (May 18, 2018) (on file with LSCU).

will generally use these programs to educate consumers on financial health, it will not be a panacea for consumers who get stuck in bad financial straits. Credit unions are the most consumer-friendly financial institutions in the country, and our industry will continue to find innovative solutions to serve all members of the community. We appreciate NCUA's efforts to be our partners in strengthening the credit union industry and serving American consumers.

Sincerely,



Mike Lee

Director of Regulatory Advocacy

The League of Southeastern Credit Unions