



Office of the Chairman

October 3, 2016

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Dear Ms. Jackson:

RE: Docket CFPB-2016-0025, RIN 3170-AA40
Payday, Vehicle Title, and Certain High-Cost
Installment Loans

I thank you for the opportunity to comment on the important proposed rule the Consumer Financial Protection Bureau (Bureau) has issued to regulate certain types of credit it deems harmful and abusive to consumers. The National Credit Union Administration (NCUA) fully supports the goals of the proposed rule and the federally insured credit union system strives to provide its members with beneficial credit products. However, NCUA strongly recommends that the Bureau include a blanket exemption for payday alternative loans (PALs) made by federal credit unions (FCUs) in accordance with NCUA's Regulations¹ from coverage of any final rule. Further, NCUA requests adjustments related to other exemptions discussed in connection with the proposed rule. As the prudential regulator for federal credit unions, NCUA already ensures that members receive the type of protections the Bureau is seeking to address.

NCUA, an independent federal agency within the Executive Branch, is the chartering authority for FCUs and provides federal account insurance to all FCUs as well as to state-chartered credit unions by application. As such, NCUA is the federal regulator for approximately 5,887 federally insured credit unions. NCUA works to ensure safety and soundness as well as compliance with applicable federal regulations in the credit union system.

Credit unions are not-for-profit, member-owned, democratically controlled cooperative financial institutions formed to permit groups of people to save, borrow, and obtain financial services. These characteristics make credit unions unique among financial institutions. Given this fact, NCUA has a particular interest in ensuring that members receive strong consumer financial protections while retaining access to affordable financial services.

The Federal Credit Union Act (FCU Act) and its implementing regulations contain protections that apply to all FCUs. For example, all credit extended by FCUs is subject to a rate cap of 18 percent (or 28 percent for PALs) and FCUs are prohibited from charging a penalty to any

¹ 12 C.F.R. § 701.21.

borrower who prepays an extension of credit.² Further, the NCUA Board has worked to promote responsible lending practices, in particular by establishing a regulation that permits FCUs to make PALs that are significantly less expensive for consumers than traditional payday loans. NCUA, through its own rulemaking, determined PALs provides credit union members with a safe, more affordable credit product.

We respectfully request the Bureau exempt FCUs completely from its final rule for loans made under and consistent with NCUA's PALs regulation.³ While the proposed rule included a conditional exemption for PALs compliant loans, it would nevertheless increase compliance burdens for credit unions and potentially divest NCUA of the flexibility to adjust its rule as it sees fit to reflect the unique characteristics of credit unions. As the Bureau itself acknowledges, it "has not observed evidence that lenders making loans under the NCUA [PALs] program participate in widespread questionable payment practices." The Bureau should therefore defer to determinations of the FCU prudential regulator about this product. NCUA closely supervises FCUs for compliance with the PALs regulation, ensuring credit union members receive comparable protections from predatory credit products the Bureau seeks to provide. NCUA continues to review its existing regulations and may consider enhancements to the PALs regulation. Additional rules from sister agencies will unnecessarily increase compliance burdens.

NCUA further recommends the Bureau consider a full exemption from the final rule for all creditors making fewer than a threshold number of otherwise covered transactions during the preceding year or other specified period (a Small Creditor Exemption). Many small credit unions make short term, small dollar loans to assist their members during unexpected times of need. They provide aid to members, often with the intent to improve a member's financial situation and credit standing. A Small Creditor Exemption would be consistent with the Bureau's goal of consumer financial protection because the predatory payday lending the Bureau's proposed rule is aimed at addressing typically accompanies high loan volume due to extraordinarily high default rates. In the absence of a Small Creditor Exemption, increased compliance burdens may keep small credit unions from extending such beneficial products to their members, which would counter the consumer-directed purpose of the proposed rule.

The Bureau also seeks comment on an exemption – or partial exemption – for loans made in which the total monthly payment does not exceed five percent of the borrower's gross monthly income. The proposed rule does not contain that exemption, although it was discussed as an alternative in the Small Business Review Panel Outline. The Bureau reports that credit unions and banks were generally supportive of an exemption based on a borrower's payment-to-income ratio. NCUA recommends the Bureau reconsider this as an additional exemption in the final rule. As the Bureau acknowledged, the credit unions and community banks that offer such credit do so as an accommodation to members and consumers, often at no or little profit. That credit

² NCUA, Letter to Federal Credit Unions 15-FCU-02 (June 2015), available at <https://www.ncua.gov/regulation-supervision/Pages/policy-compliance/communications/letters-to-federal-credit-unions/2015/02.aspx> (announcing the extension of the general 18 percent rate ceiling on FCU loans and the 28 percent rate ceiling on PALs through March 10, 2017); 12 CFR 701.21(b)(6) (same). The rate cap for most FCU loans has been set at 18 percent since May 1987. For purposes of the cap, the rate is "inclusive of all finance charges." 12 U.S.C. § 1757(5)(A)(vi).

³ 12 C.F.R. § 701.21(c)(7)(iii).

can shield consumers from predatory products and sometimes rehabilitate their tarnished credit standing. An additional exemption based on a payment-to-income ratio could benefit consumers who are served by well-intentioned credit unions and similar regulated and supervised institutions.

Several provisions of the proposed rule restrict the use of certain security interest procedures for covered credit. The FCU Act expressly authorizes FCUs “to impress and enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him...”⁴ NCUA recommends the Bureau clarify in the final rule that it does not intend to narrow or otherwise alter the circumstances in which a credit union can use a Congressionally-authorized statutory lien.

In addition to the conditional PALs exemption in the proposed rule, the Bureau proposes a second exemption from the ability-to-repay (ATR) requirements for longer-term loans. The availability of the second exemption depends partially on whether a creditor has a default rate of not more than five percent in the creditor’s portfolio of similar loans. NCUA recommends the Bureau consider a slightly higher default rate. Based on the most recent NCUA Call Report data, the aggregate annualized net charge-off rate as a share of average PALs was 7.63 percent in 2016Q1, up from 5.93 percent in 2015Q1. The equivalent charge-off rates for title lenders and both storefront and online payday lenders, as reported in the proposed rule’s Supplementary Information, far exceed those for PALs. NCUA believes raising the rate in the final rule will permit a greater number of credit unions and others to provide beneficial credit to consumers under the second exemption from ATR requirements.

For these reasons, NCUA recommends a blanket exemption for PALs from coverage by the proposed rule, when finalized, and that the Bureau revisit the other aspects of the proposal discussed above, to preserve viable alternatives to predatory payday, title and other installment loans and to recognize NCUA’s proactive supervisory role as a prudential regulator.

Thank you for considering these comments. If it would be helpful for Bureau staff to obtain further information regarding these recommendations, please feel free to contact Gail Laster, Director, Office of Consumer Protection, at (703) 518-1140.

Sincerely,

/S/

Rick Metsger
Chairman

OCP/JG

⁴ 12 U.S.C. 1757(11).