



3138 10th Street North  
Arlington, VA 22201-2149  
703.522.4770 | 800.336.4644  
f: 703.524.1082  
nafcu@nafcu.org | nafcu.org

**National Association of Federally-Insured Credit Unions**

May 14, 2019

Comment Intake  
Bureau of Consumer Financial Protection  
1700 G Street NW  
Washington, DC 20552

**RE: Payday, Vehicle Title, and Certain High-Cost Installment Loans  
(RIN 3170-AA80)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection's (Bureau or CFPB) notice of proposed rulemaking amending the Payday, Vehicle Title, and Certain High-Cost Installment Loan rule (Payday Rule). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 116 million consumers with personal and small business financial service products. We appreciate the opportunity to share our members' feedback and are supportive of the Bureau's efforts to curtail predatory lenders in the traditional, high-cost payday lending industry. NAFCU is supportive of the proposed rule's rescission of the mandatory ability-to-repay (ATR) underwriting requirements, allowing credit unions and other responsible lenders the opportunity to provide short-term, small-dollar lending with flexible underwriting parameters. However, NAFCU recommends the Bureau tailor regulations to include consumer protections from traditional, high-cost lenders. Above all else, NAFCU recommends that the Bureau expand the safe harbor exemption to include all future iterations of the National Credit Union Administration's (NCUA) payday alternative loan (PAL) program to afford credit unions the opportunity to offer additional safe and affordable loans.

**General Comments**

On October 5, 2017, the Bureau issued a final Payday Rule pursuant to its authority under Title X of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank). The Bureau's goal was to thwart unscrupulous actors operating on the fringe of regulatory purview and to increase access to credit and competition in the marketplace. The Bureau noted in the proposed rule that the final Payday Rule has restricted access to credit for those consumers that cannot satisfy the ATR underwriting requirements. Consequently, those individuals may be forced to incur higher costs associated with delayed payments and accrued interest, or seek out other means of credit from sources that are more expensive or otherwise less desirable.

Despite the unfavorable characteristics of traditional payday loans, there is a persistent demand for short-term, small-dollar lending. In a recent survey, 40 percent of adults reported they would need

to borrow money or sell something in order to cover an unexpected emergency expense of \$400 dollars or more.<sup>1</sup> Furthermore, research shows that most consumers use payday loans to cover ordinary living expenses, such as rent or utility bills.<sup>2</sup> When a consumer struggles to cover basic living expenses, lending is obtained out of necessity, and consumers need better options than those currently available to make a wiser financial decision.

Credit unions are able to meet their members' demands for short-term, small dollar loans, while ensuring accessibility, safety, and affordability. In addition, credit unions are not-for-profit cooperatives that focus on the needs of their members. Often times, credit unions offer short-term, small-dollar loans as a service to members with the associated fees solely covering the expenses of loan servicing. Regulations should be tailored to eradicate bad actors in the market without inhibiting credit unions from providing safe and affordable loans. Accordingly, the Bureau should expand the safe harbor exemption in its Payday Rule to include all future PALs programs.

In addition to this proposal, the Bureau issued a concurrent notice of proposed rulemaking to delay the compliance date for the mandatory ATR underwriting requirements from August 19, 2019 to November 20, 2020. NAFCU appreciates the Bureau's proposed delay as it contemplates this proposed rule, and is supportive of a delay of the entire Payday Rule until the Bureau finalize this proposed rule. First, the delay allows the Bureau ample time to review compliance obstacles not originally anticipated in the final Payday Rule, such as future iterations of PALs. Next, a delay of the compliance date for the entire rule is necessary given the pending litigation regarding the final Payday Rule. This litigation has caused confusion for lenders and potential lenders that wish to enter the marketplace. Significant time and costs associated with becoming compliant will be incurred, and the outcome of the proceeding could change the compliance landscape. We implore the Bureau to resolve the pending litigation expeditiously. For these reasons, NAFCU is supportive of a delay of the entire Payday Rule.

### **Rescission of ATR Requirements**

NAFCU is generally supportive of the proposed rule's rescission of the mandatory ATR underwriting requirements to allow credit unions flexibility in underwriting, but recommends the Bureau tailor regulations to protect consumers against the egregious practices of traditional, high-cost payday lenders in the marketplace, while also encouraging responsible lenders to offer additional short-term, small-dollar loans. The adoption of flexible underwriting requirements would likely encourage responsible lenders to adopt short-term, small-dollar lending programs, thereby increasing consumers' choices when faced with emergency financing needs. Although NAFCU understands and advocates for consumer protections regarding lending products, we support the rescission of the ATR underwriting requirements as they are problematic to lenders that provide safe financing, so more tailored regulations are necessary.

---

<sup>1</sup> Report on the Economic Well-Being of U.S. Households in 2017, (May 2018), *available at* <https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf>.

<sup>2</sup> Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where to Borrow, and Why*, (Jul. 2012), *available at* <https://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why>.

The existing mandatory ATR underwriting requirements were designed to protect consumers from triple-digit interest rates and remaining in a cycle of debt. However, the existing underwriting requirements inhibit credit unions and other financial institutions from offering safe and affordable short-term, small-dollar lending options. Instead, consumers continue to seek out non-bank lending options which still have an annual percentage rate (APR) upwards of 400 percent.<sup>3</sup> Currently, we are seeing support from financial regulators for the establishment of safe and accessible short-term, small-dollar loans from financial institutions. The Office of the Comptroller of the Currency (OCC) issued a bulletin in May 2018 clarifying guidance on short-term, small-dollar lending encouraging banks to offer responsible alternatives to traditional high-cost loans. Subsequently, the Federal Deposit Insurance Corporation (FDIC) issued a request for information seeking commentary on short-term, small-dollar lending. The FDIC recognized the importance of short-term, small-dollar lending, and noted that banks are well-positioned to provide credit responsibly. Due to the existing regulatory framework, financial institutions were hesitant to offer these products.

With the rescission of the ATR underwriting requirements, more financial service providers may be apt to build short-term, small-dollar lending programs that are responsible and do not threaten the safety and soundness of the institution. Traditional financial services providers have the ability to offer safe and affordable options, while maintaining important consumer protections. Further, over 80 percent of short-term, small-dollar consumers stated that they would prefer to borrow from their credit union or bank, if a product was offered.<sup>4</sup> The availability of additional short-term, small-dollar loan options in the marketplace will likely help curtail the predatory practices of bad actors in the traditional, high-cost payday loan market. Also, more competition in the marketplace has the potential to lead to greater innovation of products.

In addition to more market participants, the removal of the ATR underwriting requirements also allows credit unions the flexibility for alternative means of underwriting. Credit unions manage lending in a way that minimizes losses and charge-offs. Alternative means of underwriting can be based on the member's pre-existing relationship with the credit union, the member's employment history, and the member's regular deposit history. Federally-insured, state chartered credit unions may implement short-term, small-dollar lending programs beyond the NCUA's PAL program, pursuant to applicable state laws and the Bureau's Payday Rule. These credit unions take measures to ensure their members can pay back a short-term, small-dollar loan. These measures include: proof of income, account in good standing, and bankruptcy history. Flexible underwriting standards bolster the Bureau's goal of increasing credit to underbanked and unbanked consumers.

For the above reasons, NAFCU is supportive of the rescission of the ATR requirements to allow credit unions flexibility for underwriting short-term, small-dollar loans. In addition, NAFCU urges the Bureau to encourage more credit unions and financial institutions to offer safer, more

---

<sup>3</sup> What is a payday loan? (2017), <https://www.consumerfinance.gov/ask-cfpb/what-is-a-payday-loan-en-1567/> (last visited Jul 17, 2018).

<sup>4</sup> Pew Charitable Trusts, *Standards Needed for Safe Small Installment Loans From Banks, Credit Unions*, (Feb. 2018), available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/02/standards-needed-for-safe-small-installment-loans-from-banks-credit-unions>.

consumer-friendly, and affordable products that detract consumers from turning to a non-bank lender and ultimately falling into a cycle of debt.

### **NAFCU Recommends the Bureau Expand the Safe Harbor Exemption for all NCUA PALs**

NAFCU recommends that the Bureau expand the safe harbor to encompass all future iterations of NCUA's PAL program to strengthen an important lending option for credit union members. NAFCU appreciates the Bureau's proposal to retain the final Payday Rule exemptions in § 1041.3, including the accommodation and alternative loan exemptions. These exemptions are vital to ensuring industry participation in providing short-term, small-dollar loans. In addition, the proposed rule retains the alternative loan exemption which creates a safe harbor for NCUA's PALs. The Bureau recognized the need for better options in the marketplace and extended safe harbor protections over those short-term, small-dollar loans adhering to NCUA's PAL I rule.

Specifically, the Bureau limited this safe harbor to those loans as defined in 12 CFR 701.21 (c)(7)(iii). It is possible that the Bureau did not contemplate that the NCUA would provide for future iterations of PALs. Although the NCUA intended the PAL framework to be viable alternative to traditional, high-cost payday lenders, the NCUA's data confirms that the total dollar amount of outstanding PALs is increasing, but there has only been a modest increase in the number of federal credit unions (FCUs) offering PALs. In order to provide credit unions with additional flexibility, the NCUA proposed an additional PAL options to serve members' needs.

On June 4, 2018, the NCUA published a proposed rulemaking which would allow credit unions to offer a second PAL option, PAL II, and potentially offer a third PAL option, PAL III.<sup>5</sup> When comparing the existing PAL I option and the proposed PAL II option, the changes allow credit unions some additional flexibility while protecting members and offering a second affordable and accessible option. Differences between the PAL options include an increased maturity term and principal amount, and the removal of a minimum length of membership requirement. Consumer protections are included in the PAL II option such as capped fees and a limitation on the number of outstanding loans. Under the proposed PAL II rule, a member must pay off the balance of the outstanding PAL before a new PAL can be initiated, preventing members from rolling over short-term, small-dollar loans and entrapping themselves in a cycle of debt.

Moreover, the APR of both PAL I and II is capped at the statutory limit allowable, although NAFCU members that offer PALs often set the APR below the statutory threshold. The *Federal Credit Union Act* (FCU Act) establishes an interest rate ceiling cap of 15 percent on loans, and provides the NCUA with flexibility to establish a higher interest rate for up to 18 months after considering certain statutory criteria.<sup>6</sup> Additionally, the FCU Act establishes the interest rate ceiling for PALs at an additional 1000 basis points above the prevailing interest rate. The current interest rate is set at 18 percent and has been in place since 1987. Therefore, the current maximum

---

<sup>5</sup> 83 F.R 25583 (June 4, 2018).

<sup>6</sup> 12 U.S.C. § 1757 (5)(A)(vi)(I).

allowable interest rate for a PAL is 28 percent. Depending on the market conditions, this interest rate could increase.

NAFCU members remain concerned about the proposed PAL II compliance with the Bureau's Payday Rule. According to the current rule, PAL II loans may fall within the alternative loan exemption depending on how the loan is structured; however, they are not afforded a safe harbor. The proposed PAL III iteration has not been fully developed and there are no articulated elements, but it also will not have a safe harbor. The lack of a safe harbor for future iterations of PALs deters credit unions from providing the safe, short-term, small-dollar lending they have been providing to members. Over time, credit unions have adopted and built PAL programs catering to their members' needs, and expansion of the safe harbor to include all future iterations of PALs will encourage credit unions to begin or expand their PAL programs. As of December 31, 2018, there were 5,375 federally-insured credit unions (FICUs) with \$145.2 million in PAL originations. Also, there were 3,376 FCUs with \$48 million in outstanding PALs. This is a 24 percent increase in outstanding PALs from 2017. Approximately 495 FCUs had an outstanding PAL, equating to 14 percent of all FCUs. Overall, there has been a steady, year over year increase of total outstanding PAL originations since the inception of the PALs program in 2010.

Given the Bureau's continued recognition of credit unions' responsible lending practices, and consumers' preference for obtaining a short-term, small-dollar loan from their credit union, it would be in the best interests of all consumers to expand the safe harbor to encompass all future iterations of PALs. As the prudential regulator of all FCUs, the NCUA has the expertise of operating a short-term, small-dollar lending program that is safe and affordable for members. The NCUA is the appropriate regulator for the purpose of administering and prescribing regulations for the PAL program, and the Bureau should ensure that the NCUA is given the flexibility required to adjust the PAL program as credit union members' needs change and industry products fluctuate. By not expanding the safe harbor provision to encompass all future iterations of PALs, credit unions will incur additional compliance costs and burdens. NAFCU recommends that the Bureau work with the NCUA to ensure the safe harbor is expanded to include all future iterations of PALs. NAFCU recommends the Bureau adopt the follow language:

*Safe harbor.* Loans made by Federal credit unions in compliance with the conditions set forth by the National Credit Union Administration for Payday Alternative Loans at 12 CFR 701.21(c)(7) are deemed to be in compliance with the requirements and conditions of paragraphs (e)(1), (2), and (3) of this section.

The above suggested language differs from the current safe harbor language by referring to the paragraph that PAL provisions are located versus the sub-paragraph detailing the parameters of the PAL I iteration. Generally referring to this paragraph provides the NCUA with the ability to adjust the PAL program in the future. NAFCU encourages the Bureau to adopt this language to extend the safe harbor to all PALs programs as it reconsiders the various elements of its Payday Rule.

Bureau of Consumer Financial Protection

May 14, 2019

Page 6 of 6

## Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU supports the proposed rule's rescission of mandatory ATR underwriting requirements, allowing credit unions the ability to develop responsible lending programs with flexible underwriting parameters. NAFCU recommends the Bureau tailor regulations to include consumer protections from traditional, high-cost lenders. NAFCU recommends that the Bureau expand the safe harbor exemption to include all future iterations of the NCUA's PAL program, which has proven to be a safe and affordable short-term, small-dollar lending option. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or [kschafer@nafcu.org](mailto:kschafer@nafcu.org).

Sincerely,



Kaley Schafer  
Regulatory Affairs Counsel