MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

October 7, 2016

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

RE: Consumer Financial Protection CFPB (CFPB) Payday, Vehicle Title and Certain High-Cost Installment Loans – RIN 3170-AA40

Submitted via: www.regulations.gov

Dear Ms. Jackson

The Michigan Credit Union League (MCUL), the statewide trade association representing 100% of the 248 credit unions located in Michigan and their 4.9 million members appreciates the opportunity to comment on the Consumer Financial Protection CFPB's (CFPB) proposal concerning Payday, Vehicle Title and Certain High-Cost Installment Loans. The MCUL understands and appreciates the CFPB's efforts in protecting and looking out for the best interest of consumers. However, we believe the CFPB is again applying a one-size-fits-all approach to regulation. By not appropriately tailoring the applicability of the scope of the rule to exempt credit unions, the CFPB is unnecessarily increasing the regulatory burden on credit unions.

The MCUL would like to take the opportunity to express our concerns with the CFPB's proposal as we feel as though this particular proposal reaches well beyond the CFPB's intent to curb the predatory lending practices of payday lenders envelopes credit unions into the fold. This reach results in unnecessary regulation on the credit union industry that is in business to serve its member owners.

Background

The Federal Credit Union Act (FCUA) of June 26, 1934 was created to, "establish a Federal Credit Union System, to establish a further market for securities of the United States, and to make more available to people of small means credit for provident purposes through a national system of cooperative credit, thereby helping to stabilize the credit structure of the United States." [1]

Credit unions are the only consumer-owned cooperatives in the financial marketplace with more than 100 million credit union members across the country. Cooperatives are voluntary,

[1] Pub. L. No. 73-467 Sect. 2. *Available at: http://legisworks.org/congress/73/publaw-467.pdf*

Headquarters: 110 W. Michigan Avenue, Suite 400, Lansing, MI 48933 • Livonia Office: 38695 W. Seven Mile Road, Suite 200, Livonia, MI 48152
Mailing Address: P.O. Box 8054, Livonia, MI 48170
Toll-Free: 800.262.6285 • www.mcul.org

self-governed associations of people that work together for a common goal. As such, credit unions have a longstanding tradition of protecting their members' interests.

Short-term, small dollar loans are only a small part of credit union lending in part due to constraints already placed on their ability to operate in this market by credit union prudential state and federal regulators. This proposal hits too close to home for credit unions because this type of lending is essentially why credit unions were created. In the early part of the twentieth century, the founders of the American credit union movement, Alphonse Dejardins and Edward Filene, organized a system of cooperative credit for two primary reasons: loan sharks were charging borrowers usurious rates on small consumers loans and banks demonstrated little interest in serving working class families.[2] Credit unions still serve this need, as credit union members often do not receive the same level of service from large national and regional banks.

Congress shared the founders' aspirations with respect to the potential for credit unions to bring safe and affordable financial services to consumers abused by predatory and illegal lenders, at the height of a time in which the working class was in dire straits. As a result, Congress enacted the FCUA in 1934.

CFPB's Mission and Responsible Providers

The CFPB's Strategic Plan FY 2013 – FY 2017 opens with an overview of the CFPB and its intended mission.

The Consumer Financial Protection CFPB ("CFPB" or "CFPB") was established under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). To create a single point of accountability in the federal government for consumer financial protection, the Dodd-Frank Act consolidated many of the consumer financial protection authorities previously shared by seven federal agencies into the CFPB and provided the CFPB with additional authorities to:

- *Conduct rulemaking, supervision and enforcement with respect to the Federal consumer financial laws;*
- *Handle consumer complaints and inquiries;*
- *Promote financial education;*
- *Research consumer behavior; and,*
- *Monitor financial markets for risks to consumers.*

OUR MISSION

The CFPB is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.

---

[2] National Credit Union Administration, *A Brief History of Credit Unions, available at https://www.ncua.gov/About/Pages/history.aspx*

OUR VISION

If we achieve our mission, then we will have encouraged the development of a consumer finance marketplace

- *Where customers can see prices and risks up front and where they can easily make product comparisons;*
- *In which no one can build a business model around unfair, deceptive, or abusive practices;*
- *That works for American consumers, responsible providers, [emphasis added] and the economy as a whole.* [3]

The MCUL would like to express our frustration with the CFPB's proposal as we feel that it contradicts exactly what the CFPB is striving to achieve. Credit unions are the responsible providers the CFPB touts in its vision statement and yet the CFPB has included the responsible providers it has set out to support. At the same time, this proposal would exclude some of the worst predatory lenders in the marketplace.

Michigan's Payday Lending Market

Michigan's credit unions have seen firsthand how their members have been taken advantage of by predatory lenders claiming to offer loans at a "safe and convenient way to stretch your buying power to help cover small, unplanned expenses."[4] Unbeknownst to borrowers when obtaining such a loan are the astronomical costs associated with the loan. The speed and convenience that storefront and online payday lenders offer comes with high costs and little regulation. Lenders that offer this type of credit prey on consumers, including credit union members. In some cases they are completely unregulated offshore and online lenders. These lenders operate in states where this type of lending is illegal and are the groups that should have been the primary focus of the proposed rule.

The Michigan Attorney General has issued a Consumer Alert[5] addressing payday loans in order to inform the public of unfair, misleading, or deceptive business practices. The alert describes the requirements under the Michigan Deferred Presentment Service Transaction Act (DPSTA), which governs payday loans as well as details how much consumers will really pay for a payday loan as detailed below.

---

[3] http://www.consumerfinance.gov/strategic-plan/
[4] https://checkintocash.com/loan-products/
[5] http://www.michigan.gov/ag/0,4534,7-164-17337_20942-171016--,00.html

HOW MUCH AM I PAYING FOR A PAYDAY LOAN?

The limits on the service fees for payday loans are based on the amount of the loan. The payday lender may charge up to 15% on the first $100, 14% on the second $100, 13% on the third $100, 12% on the fourth $100, and 11% on the fifth and sixth $100. Therefore, the following service fee limits apply:

Payday Loan Amount	Total Service Fee Limit
$ 50	$ 7.50
$100	$15
$250	$35.50
$200	$29
$300	$42
$400	$54
$475	$62.25
$500	$65
$600	$76

Payday loans can be very expensive. For example, a customer who borrows $100 will be charged up to $15 for a two-week loan (the payday lender may provide for a shorter or longer period -- up to 31 days). The customer writes a check for $115 and receives an immediate $100 in cash.

Because the payday loan is short term, the service fee translates into a triple-digit annual percentage rate (APR). The following illustrates the calculation of the APR on this payday loan.

1. The daily interest charged ($15/14 days) is $1.071429.
2. Convert the daily interest charged into an APR: $1.071429 x 365 days in a year = 391%

While the actual cost of this two-week loan is $15, the annual percentage rate of that $15 is 391%. The payday lender may charge an additional database verification fee of 45 cents per transaction.

The CFPB's proposal reaches payday lenders such as the example provided above, there are also state requirements such lenders must comply with under Michigan's DPSTA. As concerns of being shut down by the CFPB's proposal looms, such lenders are looking for a workaround to continue operating in Michigan. As recently as March, 2016, the payday lenders sought to amend Michigan's Regulatory Loan Act that would have provided an "escape hatch" by which Michigan payday lenders could structure transactions outside of the DPSTA, thereby evading effective regulation by Michigan's Department of Insurance and Financial Services (DIFS). Limitations on fees and other consumer-friendly provisions contained in Michigan's current law would be eliminated if this legislation were to pass. By amending the Regulatory

Loan Act (RLA) and the Credit Services Protection Act (CSPA) instead of the DPSTA, payday lenders sought to have all of the benefits of operating as a legitimate consumer finance provider in Michigan, without effective regulation or consumer protections, as they have done in Ohio and other states.

If the state of Ohio's experience is any indication, allowing payday lenders to utilize the Credit Service Organization (CSO) model to eliminate fee caps would have exposed Michigan consumers to interest rates in excess of 400 – 500%. The CSO model acts ultimately as an unregulated third party.

The MCUL led the effort opposing the payday lenders' proposal. Ultimately this legislation did not move, however the payday lenders will continue to look for a workaround. We strongly encourage the CFPB to re-evaluate who they are targeting within this proposed rule and look for these bad actors. It is also important to note that Congress has also recognized the problems caused by unregulated and less-regulated lenders. Accordingly, Section 1024 of the Dodd-Frank Act provides the CFPB with the authority to supervise and write rules for the payday lending industry for the first time ever at the federal level. [6]

As a data-driven agency with the charge of protecting consumers, and as touted in their mission statement, the CFPB has been given a tremendous opportunity to identify predatory lending behavior in the payday and title loan market. This opportunity should selectively focused to target these bad actors. Unfortunately, this proposed rule falls well short of the goal of protecting consumers. Credit unions are in the financial market to ensure their members have access to safe and affordable credit. Unfortunately this proposal pulls credit unions under the CFPB's umbrella and will adversely impact credit union members.

Given the overwhelming evidence that the abuse in the payday lending market is perpetrated by other actors and because Congress gave the CFPB clear authority to tailor its rules to the abusers of consumers, it is incredibly disappointing to see the CFPB proposing such sweeping regulation that will have a material impact on good actors such as credit unions. What's even worse is the proposed rule misses the mark of enhancing consumer protections because it fails to consider consumers' needs and provide lenders a clear and concise path to viable market alternatives.

This is an important point to address because it is likely the predatory lenders will be apt to seek out loopholes in an attempt to evade the regulation as they have already attempted in Michigan.

Michigan Credit Union Financial Literacy Initiatives

A key component of the credit union mission is a quality approach to service and the concept of "People Helping People." One way credit unions achieve this is through numerous financial literacy programs and initiatives to assist credit union members in managing their finances allowing them to break away from and avoid being caught in a vicious debt cycle.

The Michigan Credit Union Foundation (MCUF) assists credit unions in their efforts in a number of ways. Interactive Financial Education events are an excellent way to inform and

[6] 12 U.S.C 5514(a)(1)(E)

guide credit members towards a comfortable and manageable financial future. The MCUF offers financial education events for credit unions and their members which include a Teen Financial Reality Fair as well as a Route Your Retirement Fair.

The MCUF provides materials and training to help credit unions, chapters, and groups hold fun and fast-paced interactive sessions that can make a lasting impact on the financial understanding of teen participants. The active financial learning experience simulates one month of independent adult living where high school students make hard choices to obtain the goods and services they need and learn to balance their budgets with the assistance of credit union services.

Not only are the Financial Reality Fairs a success but the Foundation also assists credit unions in providing materials and training to credit unions, MCUL chapters and community groups so they can assist adults of all ages to better prepare for retirement. This interactive fair is designed to assist people in learning to think more carefully about the type of lifestyle they would like to pursue in retirement and then link it to their financial plan.

Financial education is a core mission of Michigan credit unions. As part of this mission, the MCUL together with our national trade Credit Union National Association (CUNA) provides a variety of financial counseling resources and partners with other agencies in the community to assist members. One of the CFPB's key initiatives is financial education and the promotion of such.

Helping Members with Small Dollar Loans

Credit unions recognize they can play an important role in meeting the needs of distressed members. Credit union members come to the credit union when they need a small loan to manage a financial emergency or unplanned situation. It is also common for credit union members to turn to a credit union after they have fallen prey to a predatory lender and are in need of help. A number of credit unions have programs specifically designed to meet these members' needs. Even those credit unions without formal programs do their best to help their members exit the debt spiral created by predatory lenders.

For years, federal credit unions have offered this type of credit under the most stringent regulatory requirements: a statutory federal usury ceiling[7] to which no other lenders are subject. Despite this restriction, the National Credit Union Administration (NCUA), at credit unions' urging, has provided credit unions with more flexibility to step in when consumers turn to them through the Payday Alternative Loan (PAL)[8] program for federal credit unions.

Of the 248 credit unions in Michigan over 140 offer a PAL product or similar loans to assist their members. Many state chartered credit unions in Michigan have developed their own programs in conjunction with applicable state law and statutory usury rates.[9] Two Michigan

[7] 12 U.S.C. § 1757(5) (A)(v).
[8] https://www.gpo.gov/fdsys/pkg/CFR-2011-title12-vol6/pdf/CFR-2011-title12-vol6-sec701-21.pdf
[9] https://www.michigan.gov/documents/cis_ofis_ceilings_24956_7.pdf

state chartered credit unions in particular have very unique programs that have assisted hundreds of their credit union members.

A Mid-Michigan Credit Union –

The program is described as:

> *If you have ever had a payday or cash advance loan, you're probably aware of the high cost of this type of loan. To give our members a better alternative, the credit union offers credit union cash, a loan that is intended to provide members with a lower-cost option to meet short-term cash needs; thus, reducing dependency on high-cost payday loans.*
>
> Credit union cash is an affordable, short-term loan that offers:
> - 60-day payback with two scheduled monthly payments
> - $200 minimum loan
> - $600 maximum loan
> - Lower annual percentage rate compared to payday lenders
> - No cost financial counseling
>
> To be eligible for Credit Union Cash, members must:
> - Be at least 18 years of age
> - Apply in person at one of the credit unions branch locations
> - Have a credit union membership open for 90 days
> - Provide pay stubs or other verification of income for the previous 30 days
> - Have a credit union membership in good standing

A Detroit Area Credit Union

> *This product has been available since 2010. During 2014 1,600 (15%) of the credit union's members used the credit union's program, collectively taking 14,026 draws at $500 each. This is below the average annual draw rate reported by the CFPB in terms of people who utilized payday lenders (7.8 for the program versus 10.7 for payday loans).*
>
> *This particular payday alternative product is designed for members that require short term financial assistance. The ultimate goal is to educate the members on financial management, and eliminate or drastically reduce member dependency on predatory payday lenders. The interest rate for this product is not based on credit score.*
>
> Product Details:
> - $500 line of credit with a one year draw period. The member must take a full advance. Partial advances are not allowed.
> - $70 annual fee collected prior to the initial advance. The fee may be taken from the initial advance (leaving $430 for the member).
> - 18% interest rate

- 60 day repayment term. 50% of the outstanding balance must be paid within the first 30 days. A $29 late fee applies if the member does not make that payment on time.
- Any outstanding balance must be paid in full prior to any additional advance
- ATM, Home Banking, and Tel-A-Phone Teller advances are not permitted

Member Eligibility:

1. Minimum 18 years of age at the time of application
2. Minimum 90 days as a credit union member
3. Minimum of $1,000 verifiable monthly net income for the initial advance and any subsequent advance.
4. Minimum 90 days of employment. Direct deposit is preferred, with automatic transfer or payroll deduction.
5. Must provide 2 complete references with full name, address and phone number.
6. Be in good standing with the credit union at the time of application and when requesting any subsequent advance. No currently delinquent accounts and has not caused a loss to the credit union.
7. Must not be in the process of filing for any chapter of bankruptcy or enrolled in a debt management program.
8. If the line is cancelled for any reason, the member must reapply and the $70 annual fee is required.[10]

Programs such as those detailed above have the potential of being impacted under the CFPB's proposal. While each loan has significantly lower rates than those of payday lenders, the shorter term, as well as any application fees could push the All-In-APR over the 36% outlined in the proposal.

Comments on Proposed Rule

As is evident to this point credit unions provide reasonable lending alternatives to their members. All credit unions are already highly regulated by the NCUA and their state regulatory authority for state chartered credit unions. Credit unions are also subject to stringent statutory caps, 28% for FCU's and 25% for Michigan state chartered credit unions.

Additionally, as the statewide trade association for all of the credit unions in Michigan, MCUL members embrace the role of helping the communities in which they serve. Whether it be through financial literacy initiatives, financial counseling, offering better products and services at lower rates, or by helping members escape a predatory debt cycle, MCUL members have shown a commitment towards combatting predatory lenders in Michigan. We respectfully request the CFPB consider the following comments.

[10] http://cedam.info/policy/payday/alternatives/

CFPB Research, Data, and Consumer Complaint Information Does Not Support the Inclusion of Credit Union Products in a Rule Addressing Abuses in the Payday and Title Loan Market

The CFPB prides itself on being a data driven organization and states they will achieve the mission and vision thorough data-driven analysis. The CFPB indicates this is achieved by taking in data, managing it, storing it, sharing it appropriately, and protecting it from unauthorized access.

> ***"Our aim is to use data purposefully, to analyze and distill data to enable informed decision-making in all internal and external functions."*** [11]

The problem with this proposal is not that the CFPB did not conduct research prior to issuing the proposal, the problem is the research, data, and the consumer complaint information do not support the inclusion of credit union products in a rule addressing abuses in the payday lending and title loan market.

The CFPB is proposing to issue regulations primarily pursuant to Unfair Deceptive Abuse Acts Practices (UDAAP) authority under section 1031 of the Dodd-Frank Act. The CFPB specifically uses its authority in identifying Unfair and Abusive acts or practices in connection with certain consumer credit transactions. The standards for Unfair and Abusive as articulated by the CFPB in the proposed rule are as follows:

An Unfair act is described as:

> Section 1031(c)(1) of the Dodd-Frank Act provides that the CFPB "**shall have no authority** under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair," unless the CFPB "**has a reasonable basis**" to conclude that: "(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and (B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition." Section 1031(c)(2) of the Dodd-Frank Act provides that, "In determining whether an act or practice is unfair, the CFPB may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination."[12] (Emphasis added.)

An Abusive Act is described as:

> Under Dodd-Frank Act section 1031(d), the CFPB "**shall have no authority** . . . to declare an act or practice abusive in connection with the provision of a consumer financial product or service" unless the act or practice qualifies under at least one of several enumerated conditions. For example, under Dodd-Frank Act section

[11] http://www.consumerfinance.gov/strategic-plan/
[12] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 81 Fed. Reg. 47864, 47900 (July 22, 2016).

> 1031(d)(2)(A), an act or practice might "take unreasonable advantage of" a consumer's "lack of understanding . . . of the material risks, costs, or conditions of the [consumer financial] product or service" (*i.e.*, the lack of understanding prong). Under Dodd-Frank Act section 1031(d)(2)(B), an act or practice might "take unreasonable advantage of" the "inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service" (*i.e.*, the inability to protect prong). The Dodd-Frank Act does not further elaborate on the meaning of these terms. Rather, the statute left it to the CFPB to interpret and apply these standards.[13] (Emphasis added).

The CFPB has gone even further in this rule and explicitly adopted the existing Federal Trade Commission (FTC) standard as follows:

> Courts evaluating exercise of agency rulemaking authority under the FTC Act unfairness and deception standards have held that there must be a "**reasonable relation**" between the act or practice identified as unlawful and the remedy chosen by the agency. The CFPB agrees with this approach and therefore believes that it is reasonable to interpret Dodd-Frank Act section 1031(b) to permit the imposition of requirements to prevent acts or practices that are identified by the CFPB as unfair or deceptive so long as the preventive requirements being imposed by the CFPB have a reasonable relation to the identified acts or practices.[14] (Emphasis added.)

We agree that this correctly articulates the standard by which the CFPB could use its authority under its Unfair and Abusive authority to promulgate a rule. The CFPB's error here is in the application of this standard to credit unions, when it has insufficient evidence, data, research or other complaint information to substantiate that credit unions have engaged in any act harmful to a consumer. After reviewing the five studies cited in the proposed rule, which the CFPB cites as justification for the proposal, it is abundantly clear that there is extremely limited information about credit union small dollar lending as noted below.

A. CFPB Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings (April 2013):

   - Contains data from a number of payday lenders to create a dataset of all payday loans extended by each lender for a minimum 12-month period. (No credit unions or depository institutions.)

   - Data from depository institutions for Deposit Advances from 2013. (No credit unions appear to have been included since the CFPB had likely not examined a credit union at that time and since credit unions do not engage in this product. It should also be noted that the Deposit Advance product has been largely eliminated following guidance issued by the FDIC and OCC in 2013.)

B. CFPB Data Point: Payday Lending (March 2014):

---

[13] *Id.* at 47901 - 47902.
[14] *Id.* at 47900.

- Utilizes data from a number of storefront payday lenders obtained through the supervisory process. These are the same data from which the CFPB drew a sample for use in the analysis described in the CFPB Payday Loans and Deposit Advance Products White Paper from April 2013 discussed above. (No credit unions or depository institutions.)

C. CFPB Online Payday Loan Payments (April 2016):

- Utilizes data on consumer checking at several large depository institutions obtained during the 2011 and 2012 timeframe, which likely did not include any credit unions. This data was used previously in the CFPB's research on deposit advance products; all of the depositories included in the data collection offered deposit advance products during the sample period, which spanned 18 months in 2011 and 2012. (Notably recent FDIC/OCC guidance has changed the scope of deposit advance lending at banks.)

D. CFPB Single-Payment Vehicle Title Lending (May 2016):

- Data was obtained from vehicle title lenders consisting of nearly 3.5 million loans made to over 400,000 borrowers in ten states between 2010 and 2013. The title loans in the data were originated in storefronts. (No credit unions or depository institutions were included.)

E. CFPB Supplemental Findings on Payday, Payday Installment, and Vehicle Title Loans, and Deposit Advance Products (June 2016):

- Data was obtained from seven lenders offering vehicle title and/or payday installment loans. (No indication that any depository institutions or credit unions were included. With a sample size of only seven lenders, this can hardly be considered representative of the industry.)
- Data obtained aggregate level statistics on account use and transaction history from a number of banks that previously offered deposit advance products. (No credit unions appear to have been included.)

In reviewing the data from the CFPB's five studies, there does not appear to be sufficient data on credit union lending practices to engage in *any* kind of policymaking, let alone to go so far as to include credit union lending in a rule issued using Unfair and Abusive authority. The CFPB's studies focus primarily on storefront and online payday lending and title lending companies that are not depository institutions. There is no evidence of any nationwide research conducted in the credit union small dollar lending space, and there is extremely limited information about credit union small dollar lending in general, other than anecdotally. CFPB staff has indicated that its research is based on products rather than on specific lenders. This justification is thoroughly insufficient because nonbank lending products are different, and subject to a completely different regulatory scheme than credit union small dollar loan products. Bank deposit advance products were also different, subject to different bank regulators than credit unions, and most importantly are virtually no longer in existence following the recent Federal Deposit Insurance Corporation and Office of Comptroller of Currency 2013 guidance.[15]

Based on data downloaded from the CFPB's Consumer Complaint Database, we found that only **four** of the 4,493 consumer complaints regarding payday loans filed between November 6, 2013 and September 27, 2016 involved a credit union.[16] This represents 0.088 percent of payday lending complaints. This is also approximately 0.0006 percent of all complaints the CFPB has received to date. Indeed, so little consumer complaint data exists regarding credit union small dollar lending that it did not even register with the CFPB for purposes of this proposed rule.

We strongly urge the CFPB to clarify that credit union small dollar lending is not Unfair and Abusive, and credit unions should not be swept into this rule under the CFPB's UDAAP authority. Failure to do so would stand in direct conflict with the overwhelming evidence to the contrary as well as statements made by the CFPB itself acknowledging the admirable work of credit unions in this market.[17]

Dodd-Frank Section 1022 Authority to Exempt Credit Unions

Countless letters with bipartisan support have been sent urging the CFPB to exercise its exemption authority under Section 1022 of the Dodd-Frank Act. As recently as August 10, 2016 the Credit Union National Association, with the support of all state credit union leagues submitted another request urging the CFPB to exercise its exemption authority. The MCUL would like to add emphasis to one particular section of this letter:

> *We believe that Congress was very clear in the enactment of the Dodd-Frank Act that the CFPB has the ability to exempt any class of entity from its rulemaking. Where there is no evidence of harm to or abuse of consumers, the CFPB should exercise this authority so that providers that have been serving consumers in a safe and affordable manner can continue to do so efficiently. The CFPB's resistance to the plain language of the statute and the subsequent bipartisan message of more than three-quarters of the elected representatives in the federal government is baffling and disrespects the consumers who elected the Congress. We strongly encourage the CFPB to reconsider its perspective on Section 1022 and finalize rules that allow credit unions to continue to offer services to consumers under the current regulatory scheme.*[18]

---

[15] Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 Fed. Reg. 228 (Nov. 26, 2013).
[16] CFPB's Consumer Complaint Database, *available at* http://www.consumerfinance.gov/data-research/consumer-complaints/#download-the-data (based on data downloaded on Sept. 29, 2016).
[17] *Prepared remarks of CFPB Director Richard Cordray at the Credit Union National Association, available at* http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-credit-union-national-association/ (Feb. 23, 2016).
[18] http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Removing-Barriers-Blog/Removing-Barriers-Blog/We-are-Dissapointed-in-CFPB-s-Rejection-of-Bipartisan-Calls-for-Expanding-Exemption-Authority/

Additionally, earlier this year Congress sent letters to the CFPB, with 329 Members of the House of Representatives and 70 Senators – bipartisan supermajorities of both chambers – urging the CFPB to use its exemption authority to protect credit unions and their members from burdensome regulations.[19]

In their letter, the Representatives state:

> When Congress passed the Dodd-Frank Act, it specifically recognized the need to tailor regulations to fit the diversity of the financial marketplace. Section 1022(b)(3) gives the CFPB authority to adapt regulations by allowing it to exempt "any class" of covered persons from its rulemakings. As you undertake this and other rulemakings, we urge you to consider the benefits credit unions and community banks provide and ensure that regulations do not have the unintended consequences of limiting services or increasing costs for credit union members.[20]

The Senators are just as unequivocal:

> Dodd-Frank explicitly granted the CFPB the authority to tailor regulations in Section 1022(b)(3)(A) by allowing the CFPB to "exempt any class" of entity from its regulatory requirements. We believe the CFPB has robust tailoring authority and ask that you act accordingly to prevent any unintended consequences that negatively impact community banks and credit unions or unnecessarily limit their ability to serve consumers.[21]

Section 1022(b)(3) of the Dodd-Frank Act gives the authority to adapt regulations by allowing it to exempt 'any class' of covered persons from its rulemakings.

> *(3) Exemptions –*
>
> *(A) In general – The CFPB, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the CFPB determines necessary or appropriate to carry out the purposes and objectives of this title in subparagraph (B).*
>
> *(B) Factors – In issuing an exemption, as permitted under subparagraph (A), the CFPB shall, as appropriate, take into consideration –*
>
> *(i) the total assets of the class of covered persons;*

---

[19] Letter from 329 U.S. Members of the House of Representatives to CFPB Director Richard Cordray, *available at* http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-and-Testimony/Letters/2016/Stivers-Schiff-Letter-w-signatures/ (Mar. 14, 2016).

[20] *Id.*

[21] Letter from 70 U.S. Senators to CFPB Director Richard Cordray, *available at* http://www.cuna.org/Legislative-And-Regulatory-Advocacy/Legislative-Advocacy/Letters-and-Testimony/Letters/2016/160718-Letter-to-CFPB-on-Tailoring-Regulations/ (July 2016).

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.[22]

It is also important to address Section 1022(b)(2)(A)(ii) of Dodd-Frank that requires the CFPB to specifically consider the impact of its rulemakings on depository institutions under $10 billion in assets. The section explicitly states:

"(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the CFPB shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; and

(ii) ***the impact of proposed rules on covered persons, as described in section 1026****, and the impact on consumers in rural areas;"*

Section 1026 covers; other banks, savings associations and **credit unions.**

(a) Scope of coverage.—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of $10,000,000,000 or less; or

(2) an insured credit union with total assets of $10,000,000,000 or less."[23]

This means the Consumer Financial Protection CFPB *must* consider the impact of their new regulations (or changes to existing regulations) on credit unions below $10 billion in assets. This is a statutory requirement.

Director Cordray, on numerous occasions, including prepared remarks February 23, 2016 at CUNA, stated; "credit unions provide enormous value to millions of people around the country and are consistent stewards of consumer interests." "…*We recognize that smaller creditors, including most credit unions, operate differently from larger institutions. And we continue to look at, learn about, and act upon the challenges faced by smaller creditors that are striving to maintain their traditions…" "It is an invaluable service to consumers…So when you raise concerns, we will listen."* [24]

[22] https://www.gpo.gov/fdsys/pkg/PLAW-111publ203/html/PLAW-111publ203.htm
[23] Id.
[24] http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-of-cfpb-director-richard-cordray-at-the-credit-union-national-association/

The MCUL is asking the CFPB to follow what is in statute and recognize the difference from other financial service providers as discussed throughout this letter and strongly consider utilizing their exemption authority in this case.

In Lieu of a Section 1022 Exemption for Credit Unions, the CFPB should consider the following

While the MCUL strongly encourages the CFPB to consider an exemption for credit unions, we acknowledge the CPFB has expressed an "inability" or "unwillingness" to exercise its clear authority to exempt credit unions as a class. Accordingly, we ask the CFPB to consider the following comments in an effort to ensure continued member access to credit from not-for-profit credit unions and subsequently issue a revised proposal for comment.

Ability to Repay Test, All-In APR Calculation, is and Military Lending Act APR

Ability to Repay and All-In APR Calculation

Credit unions that offer any covered longer-term loans that do not meet the requirements for one of the exemptions have to perform the extremely burdensome and complex Ability-to-Repay test. This will have the potential to limit the number of credit union programs detailed earlier in this letter. Covered loans subject to this test include loans that are longer than 46 days, have an all-in APR greater than 36 percent, and either are repaid directly from the consumer's account, or income, or are secured by the consumer's vehicle within 72 hours of disbursing the loan funds.

Further complicating the issue, the CFPB has proposed a new definition to determine the "all-in" measure of the cost of credit rather than using the well-established calculation of APR under Regulation Z. Under the CFPB's proposed definition, "all-in" would include the total amount of charges imposed in connection with the loan. These costs include charges for credit insurance, ancillary products, and finance charges as set forth in Regulation Z, application fees and fees for "participation in any plan or arrangement for a covered loan."

Due to the unique cooperative structure of credit unions, the number of credit unions that have loans that exceed the "All-In APR" as proposed by the CFPB is limited. However, the burden of determining applicability and developing new policies and procedures, training, and updating forms, so soon after TRID and the Department of Defense (DoD) Military Lending Act, will extend beyond covered loans. Even if a credit union is unlikely to have an "All-in-APR" greater than 36 percent, it may need to have compliance procedures in place if there is any chance a loan could be covered, which could reduce the incentive many credit unions have to offer this type of lending.

Federal Credit Unions are already subject to the FCUA and the Truth in Lending Act's (TILA) Regulation Z, which conflict with the CFPB's new "All-in APR" calculation. Currently, federal credit unions typically view their loans under the Regulation Z definition of cost of credit to determine what fees are finance charges. These costs do NOT include application fees,[25] insurance or other ancillary products within the cost of credit. Notably, federal credit unions are

[25] http://www.consumerfinance.gov/eregulations/1026-4/2015-18239

subject to an 18 percent interest rate cap, with the exception for PAL loans that have a 28 percent interest rate cap and allow a $20 application fee that is not included in the cost of credit. State-chartered credit unions in Michigan also offer small dollar and other credit products in compliance with all applicable federal and state law.

Federal and state chartered credit unions are closely monitored by their prudential regulators. NCUA's examination manual requires loan-level reviews to ensure that the credit union has not engaged in risky lending behavior and to ensure the quality of the credit union's loan originations. The MCUL hosts meetings with Michigan's regional supervisors from the NCUA as well as state's Director and Assistant Director of the DIFS, Office of Credit Unions, who oversee state chartered credit unions. These meetings are held twice a year to discuss the examination process as a whole, what the examiners are seeing, and address pain points of credit unions and the examiners.

Military Lending Act

Credit unions have faced significant burden in conforming their compliance programs to adhere to the new Military Annual Percentage Rate (MAPR) calculation under the Department of Defense (DoD) Military Lending Act (MLA) Regulation, which shares some similarities to the CFPB's new "All-in-APR" calculation. The lack of clarity about what types of products and fees are included in the MAPR calculation has made it extremely difficult for lenders, including credit unions, to prepare for the implementation of the new MLA rules which took effect October 3, 2016. The CFPB's proposal shares many of the same confusing traits. For example, "application fees and fees for participation in any plan or arrangement for a covered loan," could be interpreted in different ways. Further, should a credit union's membership fee be included in this calculation? Additionally, what types of ancillary products are included? Should a credit union assume that insurance products are not included? The proposal does not address these questions.

The "All-in-APR" calculation proposed by the CFPB would add a third method for financial institutions to use when calculating the APR. This is confusing and adds additional burden on financial institutions and will without a doubt make it more difficult for them to serve both military and civilian borrowers in need of small dollar credit. Since credit unions are often the safest and most affordable option for these consumers, and credit unions have no pattern of abusing their borrowers, it is difficult for the MCUL to fathom what public policy reason the CFPB has for making it more difficult for financial institutions to serve these consumers.

MCUL Position

The MCUL together with our national association CUNA, encourages the CFPB to use Regulation Z's definition of finance charge, rather than the proposed definition of "All-in-APR," so as not to unfairly burden financial institutions. This would also cause fewer credit unions to be covered by this rule if ancillary products and other one-time costs, that are not appropriate to be considered as part of the annual rate for a small dollar loan, were not a factor in the APR calculation. It is also important for the CFPB to understand that a credit union offering small dollar credit that is unlikely to offer a covered loan may still need to have the training, system updates and new forms for this new APR calculation.

Loan Underwriting Standards

The CFPB's proposal, as well as comments to CUNA and the MCUL during a September 28, 2016 meeting with the CFPB, appears to assume that all credit union loans will fall under one of the two exemptions and therefore credit unions' cost of complying with the stringent ATR requirements will not be overly burdensome. The CFPB has indicated that they believe since credit unions could be conditionally exempt from complying with the ATR requirements, thus reducing the compliance costs associated with this proposed rule. The MCUL agrees with CUNA and cautions the CFPB to further analyze this assumption for several reasons, not the least of which is that not all loans will fall into one of the exemption categories. Even for those loans that do qualify for a conditional exemption, there are compliance burdens associated with all covered loans including new requirements for payment transfers, notice requirements, compliance programs and record retention.

There are aspects of the ATR analysis that MCUL fears are not consumer friendly. For example, pulling a member's credit report several times a year for a loan that could be as small as $300 could, to the member's detriment, impact their credit score. If the same member's credit score is lowered because of hard inquiries on their credit for a few small dollar loans, this could end up costing the member thousands of dollars later on if the member is not able to receive as favorable of an interest rate on a mortgage or vehicle loan. This would likely be an unintended consequence increasing costs to consumers brought upon by this proposal, if finalized in its current form.

A credit union would also be prohibited from making a covered longer-term loan while the member has a safe-harbor, short-term loan from that lender or its affiliate that is outstanding. The proposed rule also requires a 30-day cooling off period before making a covered longer-term loan to a member after they pay off a covered short-term loan or a longer-term balloon payment loan.

On top of these requirements there are several complex requirements regarding extending additional credit. Prohibiting a credit union from assisting members in need due to overreaching requirements imposed upon them does not make sense. Again, we wish to stress the "People-Helping-People" concept. Credit unions are in the market to help consumers. The stringent requirements would push them back to predatory lenders, exactly the opposite of the CFPB's intent in the proposal.

NCUA's PAL Program

The CFPB has also put forward in this proposal language in relation to NCUA's PAL program. Since the NCUA is the prudential regulator examining all Federal credit unions and a large number of state chartered federally insured credit unions, it seems that a program developed through careful deliberation by the NCUA would be sufficient to provide necessary protections to credit union members. Furthermore, if the PAL program was not sufficiently protecting credit union members, the NCUA likely would have addressed this and not instead sought an exemption for this program from the MLA rule.

We understand that the CFPB has proposed an exemption to this rule as it relates to the NCUA's PAL program with the intention that banks and nonbank lenders as well as state-chartered credit unions, also be able to offer loans under the modified PAL program. Our concern is that federal credit unions, unlike other lenders, would then be subject to duplicative and conflicting requirements when offering PALs, while other lenders may not be.

The CFPB notes that the proposed conditional exemption of the PAL program is designed to facilitate access to credit by providing lenders an alternative option for making covered longer-term loans subject to structural, cost and borrowing authority limitations. This simply does not make sense because the PAL program has been in existence for years and the proposed rule actually adds new compliance burdens to it, making it more difficult to offer these loans.

The CFPB's proposal actually adds the following NEW requirements:

- PAL loans do not require specific debt collection requirements. The proposed rule provides some exemptions for collection of loans made under this section, but also adds that credit unions cannot exercise the right to set-off to collect from a consumer's deposit account.
- Under the PAL program, credit unions may make only one loan at a time to a member and no more than three loans in any rolling six-month period. Under the proposed rule, the CFPB is seeking feedback but has not required that credit unions also check with a credit reporting agency or the new tracking system to see what other loans borrowers have. Under the proposed rule, credit unions can only make three outstanding loans, including the loans of its affiliates, within a period of 180 days.
- An NCUA PAL minimum length is 30 days; the proposed rule is a minimum of 46 days. Therefore, all loans under 46 days will face considerably more compliance burdens under the "short-term" loan section of the proposal.
- The proposed rule adds new requirements for reporting to credit reporting agencies or the new tracking system.

In its letter to the CFPB dated October 5, 2016, NCUA Chairman Rick Metsger, specifically requests the NCUA's PAL program be fully exempt from the CFPB's proposal.

> *"We respectfully request the CFPB 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 CFPB itself acknowledges, it "has not observed evidence that lenders making loans under the NCUA [PALs] program participate in widespread questionable payment practices." The CFPB 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 CFPB 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."[26]

The MCUL strongly encourages the NCUA to consider the Chairman's comments, as the prudential regulator of all Federal credit unions.

Prohibiting the Right to Set-Off

The MCUL would also like to express our concerns with some other specific issues within this proposal. The right to set-off payments, as the CFPB notes, is a contractual right. Furthermore, the CFPB notes that federal credit unions are permitted under section 1757(11) of the FCUA 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." This is one of the protections a credit union has for the resources of its membership, and to assure the safety and soundness of the credit union. The CFPB states that its reasoning for this change is because those offering PAL-like loans,

> *"would be exempt from the proposed ability-to-repay and payment notice requirements, the CFPB is concerned that in the event that a lender holds a consumer's funds on deposit and the loan turns out to be unaffordable to the consumer, the potential injury to a consumer could be exacerbated if the lender takes actions that cause the consumer's account to go to a negative balance or closes the consumer's account."*

This reasoning is flawed for several reasons. This broad statement assumes that setting-off an account would lead to an account closure or a negative balance. Credit unions would be unlikely to close a member's account in a situation like this. Prior to taking such extreme steps, the credit union would likely work with the member to provide debt counseling and seek to create a payment plan that would work for their unique situation. The member would have many opportunities to work with the credit union to come to the best possible solution for them. This is approach is consistent as previously addressed in this letter. MCUL members work to improve the financial well-being of their members as illustrated through the broad financial literacy efforts discussed above.

The right to set-off could allow a credit union to collect on funds already within the members' deposit account. This may be more than enough to pay off the debt. Importantly, the CFPB should understand that most credit unions would engage in extensive outreach and loss mitigation prior to exercising a right to set-off.

The CFPB has failed to provide sufficient data, research, or complaint information to show that credit unions offering PAL loans have been exercising this statutory right in a harmful way. If available funds are in a member's deposit account to pay back the small dollar loan, credit unions should be able to work with the member on a set-off. The CFPB proposal would not allow credit unions to provide this valuable member service. Essentially the CFPB is saying credit unions have to provide this service for free.

---

[26] https://www.ncua.gov/newsroom/Documents/comment-letter-2016-oct-metsger-payday-rule.pdf

This is dangerous public policy that will reduce the amount of affordable credit that credit unions will be able to offer to their members. Accordingly, the MCUL asks that institutions such as credit unions regulated by a prudential regulator be exempt from this mandate.

Multiple Loans - Limitations on the Ability to Provide Loans

The MCUL is extremely concerned with the limitations on the ability to provide a loan if multiple loans are outstanding. The CFPB's proposal would require a credit union determine from its records that a new covered loan would not result in the consumer being indebted on more than two outstanding loans. The CFPB is also seeking feedback on whether it should require lenders to pull a credit report or use the new tracking system addressed in the proposed rule. These proposals would, as with much of this proposal, add significant and completely unnecessary compliance burdens to credit unions and provides no clear benefits to consumers.

The MCUL's primary concern lies with the potential limitation on credit to a member. As discussed throughout our comments on this proposal, credit unions are in the financial marketplace to HELP members. One way credit unions help members is provide assistance in getting them out of a vicious payday lending cycle, or help them out in the time of an emergency. If a member came to the credit union seeking a covered loan, and the credit union identifies they already have two outstanding, we have significant concerns that the credit union could not consolidate the two outstanding loans into one loan. This could provide the member with a much lower payment and interest rate. Unfortunately, because of the way the CFPB's proposal is written, the two outstanding loans would prohibit any similar program and eliminate the credit union as a potential lender. A member may come to the credit union because their refrigerator broke or they need groceries and will not get paid for another week. Under this proposal, the credit union may have to turn their member away. This seems to be the complete opposite of "consumer protection."

As previously outlined, requiring the credit union to pull multiple credit reports for a small dollar, short-term loan could detrimentally impact a member's credit score. The MCUL also encourages the CFPB to reconsider the proposal by not requiring the use of a credit report or the use of the proposed tracking system a condition of a small-dollar short term loan. Further, the CFPB should eliminate the two loan cap until it has the opportunity to reevaluate the consumer friendly loan practices of credit unions.

The Requirements Outlined in the Ability to Repay Test and the Exemptions to the Ability to Repay Conflict with NCUA Guidance to Low Income Credit Unions

Michigan has 119 low income designated credit unions. [27]In a supervisory letter, the NCUA outlined guidance to NCUA examiners when supervising and examining low income credit unions (LICU) and self-designated community development credit unions (CDCU).[28] The NCUA in this guidance notes that all credit unions have an obligation to meet financial services

[27] NCUA Financial Performance Report Data – As of June 30, 2016

[28] NCUA, Supervising Low Income Credit Unions and Community Development Credit Unions, *available at* https://www.ncua.gov/Resources/Documents/LCU2010-01Encl.pdf (2010).

needs of people of modest means. The guidance further notes that LICUs and CDCUs may have a higher concentration of loans made to people with lower credit scores. This often increases the credit risk at the credit union. So, it is necessary for the credit union to manage the additional risk at a sound level for both the member and the credit union over the long term, while maintaining an acceptable level of strategic risk commensurate with the credit union's business plan. The NCUA then notes:

- LICUs and CDCUs generally make credit available to their members by offering nontraditional lending products. These credit unions adapt their operations to fit the unique needs of their membership. Non-traditional products, procedures, and services that some credit unions use to better serve low income members include: Non-traditional loan underwriting, such as:
  - Explaining limited, negative, or no credit history;
  - Requiring payroll deduction for loan payments;
  - Documenting history of making timely rent and utility payments;
  - Using a qualified co-signor who sufficiently offsets credit risk;
  - Loan restructuring; and
  - Financial literacy programs.
- When offering non-traditional lending products, it is essential credit unions maintain strong collection programs to mitigate increased credit risk.
- Moreover, examiners should recognize that LICUs and CDCUs systematically show higher operating costs than other credit unions because of the nature of the field of membership they serve. Similarly, delinquency rates at LICUs and CDCUs, while often higher than other credit unions, do not automatically translate proportionally into charge-offs. Examiners need to look beyond the financial ratios to analyze the credit union's financial condition accurately**.**

This guidance very clearly outlines that the mission of credit unions to serve low income consumers must be considered by regulators and examiners when looking at approaches to serve these needs. As the NCUA clearly outlines, strict underwriting requirements and rigid restrictions are not appropriate for credit unions serving low income consumers and others in need. This guidance also clearly outlines that safety and soundness requirements must also be given unique consideration by credit unions to protect the resources of the membership as a whole, which may include the resources of other low income consumers. As you will note, many of the suggestions in this guidance directly conflict with new requirements found in the CFPB's proposed rule.

Again, the MCUL strongly urges the CFPB to consult further with the NCUA to better understand the different structure of credit unions. Specifically, we urge the CFPB to not force credit unions to comply with the inappropriate and stringent requirements outlined in the proposal, specifically as it relates to the population served by the structure of LICUs and CDCUs structure, and particularly low income consumers.

The Payments Provisions of § 1041.14 are Cumbersome

The CFPB is proposing to limit a lender's ability to withdraw payment from a consumer's account after the lender's second consecutive attempt to withdraw payment has failed due to non-sufficient funds (NSF). The CFPB states that further attempts to withdraw payment would be an unfair and abusive act or practice, unless the lender obtains the consumer's new and specific authorization to make further withdrawals. The MCUL strongly disagrees with this restriction.

The payment provisions in § 1041.14, while attempting to address problems arising from non-depository institutions, make no sense when transfers are originated from the institution that also holds the loan. Credit unions often transfer funds from another existing account for purposes of making a payment. Often times this is done manually or automatically pursuant to an agreement with the consumer/member. A credit union would not impose multiple overdraft fees or other transfer charges, or even attempt collections on an account when they are aware there are no funds in the account. The payment provisions should not apply when payments are coming from an account that exists with the same loan holder.

Additionally, once two payment attempts have occurred the proposal would require an institution to provide the borrower with the Consumer Rights Notice and obtain an authorization to make withdrawals prior to collecting on the loan. The prescriptive outline of how authorization can be obtained is unnecessary for credit unions, which are contacting their own members. For a credit union, much of the information provided on both notices is already included on the monthly periodic statement provided to the member. While these proposed protections might be appropriate for a borrower using a predatory storefront lender that does not provide periodic statements, it creates conflicting and duplicative requirements for depository institutions. The periodic statement requirements should be considered and the payment provisions should exempt financial institutions that are already providing this information to consumers.

The timelines for disclosure of a payment attempt could create safety and soundness concerns for a credit union by creating loopholes for those seeking to avoid payment. While we understand the CFPB's desire to provide protections from predatory lenders abusing the payments process, the CFPB should not place unreasonable barriers on depository institutions requiring consumers to fulfill their contractual obligations. Doing so could ultimately limit the amount of credit available to credit union members.

In addition to the requirements related to the prohibition on further payment withdrawal attempts, a lender would be required to provide a written notice at least three business days before each attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account under the ATR test. The requirements for the notice are as follows: by mail no earlier than ten business days and no later than six business days prior to the transfer; by electronic delivery no earlier than seven business days and no later than three business days; in person no earlier than seven business days and no later than three business days. There are also very specific requirements for what should be contained in the notice.

These requirements harm the credit union membership as a whole when they impede the legal right to contractually make the credit union whole.

To reiterate, the MCUL encourages the CFPB to reconsider the proposed payment authorization provisions as the provisions are duplicative as well as overly burdensome.

CFPB Should Clarify that Membership Fees to Join a Credit Union are Not Included in the All-in APR Calculation

The proposed definition of "Charges included in the total cost of credit" includes membership fees or virtually any fee charged in connection with a covered loan. We urge the CFPB to make explicit that charges to become a member of a credit union should not be included in the calculation of "Charges included in the total cost of credit."

The commentary to Regulation Z[29] makes this distinction, noting that this is not an "other charge" for Regulation Z purposes. Membership fees, while required to become a member of a credit union (and ergo to obtain the many benefits and services of the credit union), are not correlated with the finance cost itself. Many other rights and privileges flow from the membership fee, such as the right to vote in elections of credit union leadership, ownership in the credit union, access to services, etc. Membership fees should not be used as a trigger for compliance with the proposed, rule, doing so would undermine the very foundation of the member-owner structure of credit unions.

The MCUL urges CFPB to follow the Regulation Z treatment of credit union membership fees as it considers comments to this proposal.

Conclusion

While the MCUL understands and appreciates the CFPB's intent behind the proposal. It is incredibly complex and overreaching and yet does not reach those predatory lenders in which we believe the CFPB intends to reach. We ask the CFPB to consider the impact this proposal, if finalized in its present form, will have on credit unions, as institutions who are in the market to help consumers avoid payday lending debt traps.

The MCUL shares the CFPB's concern with the predatory nature of the payday lending industry. This concern is illustrated in the MCUL's advocacy efforts before the Michigan Legislature. Unfortunately, the provisions contained within this proposal go far beyond what is necessary. By covering well-regulated entities such as credit unions and other depository institutions, the benefits currently enjoyed by credit union members will be diminished. This includes a strong history of credit unions helping all consumer avoid the debt trap created by predatory lenders.

While the MCUL has offered some suggested improvements, we believe the CFPB should take this opportunity to utilize its exemption authority for the first time. In the alternative, we

[29] *See* Commentary 12 C.F.R. pt. 1026 (Regulation Z).

urge you to withdraw this proposal until a more complete dialogue can be held with the NCUA and the credit union community as a whole.

Sincerely,

K.R

Ken Ross
Executive Vice President and Chief Operating Officer