MICHIGAN CREDIT UNION LEAGUE & AFFILIATES

August 3, 2018

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

Re: Notice of Proposed Rulemaking, Part 701, Payday Alternative Loans II (RIN 3133-AE84)

Dear Mr. Poliquin,

The Michigan Credit Union League (MCUL), the statewide trade association representing 100% of the 227 credit unions located in the state of Michigan and their 5.3 million members, appreciates the opportunity to comment on the National Credit Union Administration's (NCUA) proposed Payday Alternative Loan (PAL) II rule.

MCUL recently conducted a survey of Michigan credit unions seeking input on the payday lending environment and alternatives they provide their membership. Responses to the following question shed light on the extent of the payday lending "crisis". When asked if credit unions had seen an increase in members facing a recurring cycle of debt from payday loans of the 55 credit unions who responded 46 of respondents or 83.4% indicated they had seen an increase in this debt cycle. Approximately 35 respondents indicated they offer some type of payday loan alternative product, with those institutions indicating their membership needs a better alternative to payday lender debt traps.

Michigan is no stranger to payday lenders. With the enactment of the Deferred Presentment Services Transactions Act (DPSTA) in 2005, the payday lending industry was permitted to operate in Michigan in exchange for regulations by the Department of Insurance and Financial Services (DIFS). The legislation included several consumer protections designed to curb practices that put borrowers at the highest risk of financial abuse. These protections include licensing by DIFS, fee limits and prohibitions on interest, as well as a ban on rollovers and a maximum advance of $600 and a term up to 31 days. Unfortunately, this still equates to excessively high interest rates up to 391 percent due to associated fees.

Credit union participation in the existing PAL program leads us to believe that, under the current environment, the program does not fully address the needs of the consumer nor does it afford the flexibility for credit unions to develop a tailored payday alternative that meets the need of the communities they serve.

According to PEW Charitable Trust's "Payday Lending in America" series of studies, approximately 12 million Americans use payday loans annually. The series also identified that most individuals who utilize a payday lender take out such loans to cover ordinary living expenses over the course of months, with the average borrower indebted about five months of the year. When presented with a hypothetical situation in which payday loans were unavailable from a payday lender, 81 percent of those who used a storefront payday lender would cut back on expenses such as food and clothing with the majority also delaying payment of bills; 44 percent report they would take a loan from a bank or credit union.

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MCUL appreciates the NCUA Board's efforts to provide credit union members with affordable and responsible alternatives to payday loans. However, there are certainly opportunities for the PAL program to better meet the needs of members during times of financial hardship. While this proposal is a step in the right direction, MCUL submits the following comments.

PALS II Proposal

We echo the comments of a group of credit unions who submitted a joint letter to the NCUA, and believe when payday alternative loans are responsibly marketed, priced and managed they can and will meet the short-term borrowing needs of consumers while providing for longer-term financial wellness.

We recommend the Board view a payday alternative lending program holistically and create one unified PAL program to simplify understanding and compliance for credit unions. The unified PAL program should then encompass the available options to federal credit unions. Having multiple options under one program would allow credit unions to provide solutions that reach members who need them most. Below is an example of principles and conditions under which credit unions can structure their own payday alternative loan programs.

NCUA lending principles for payday lending alternative loans:

- All lending products, disclosures and practices comply with applicable laws and regulations;
- Contain underwriting or qualifying criteria based on proof of recurring income or employment;
- Contain or encourage the use of saving features or financial planning/counseling;
- Reports borrower's repayment history to the credit bureaus.

Should the lending product meet these principles, the credit union will be allowed to charge 1800 basis points over the Board-established interest rate cap, provided that the loan meets the following conditions.

1. Loan amount is no more than $4,000;
2. Term is 1 to 36 months;
3. APR does not exceed 36 percent (1800 basis points over rate cap);
4. Application fee does not exceed $50 for closed-end loans;
5. Annual participation fee does not exceed $50 for open-end loans;
6. No more than one loan at a time per borrower;
7. Rollovers are prohibited;
8. Loans amortize fully to a zero balance;
9. Loans repaid in substantially equal installments;
10. Aggregate dollar amount of loans does not exceed 20 percent of net worth. Low-income designated credit unions or those that participate in Community Development Financial Institutions program are exempt.

We believe that this approach would allow credit unions greater flexibility to devise tailored alternative payday lending products that meet and address the needs of their communities and incite innovation, while preserving safety and soundness objectives.

Permissible Interest Rate

To elaborate on the APR of 36 percent noted above, MCUL recognizes that the Bureau of Consumer Financial Protection (Bureau) small-dollar payday lending rule, issued in 2017, the Federal Deposit Insurance Corporation (FDIC) small-dollar pilot program and the Department of Defense Military Lending Act (MLA) permit a 36 percent APR, while the proposed NCUA rule would cap the rate at 28 percent. We believe a 28 percent ceiling is overly conservative and would continue to hinder market participation and innovation in these products and services. To the extent regulatory agencies with supervisory and/or issue overlap can follow aligned thresholds, the more the industry can effectively comply with competing rules and regulations.

Application Fee and Ability to Repay

In terms of an application fee, credit unions have differing approaches to how they may elect to provide small-dollar loans. We believe a $50 application fee limit would ensure sufficient range for institutions to develop pricing options that would permit new market entrants by supporting the actual costs involved.

Similarly, ability to repay requirements should be determined by individual credit unions. The Bureau's 2017 payday lending rule addressed high-cost, high-risk loans, not of the type expected under NCUA's proposal. Imposition of Bureau-style requirements would disproportionately increase compliance and origination costs, without reducing financial risk. Unlike payday lenders, credit unions would be better positioned for access to a member applicant's employment, direct deposits, revolving loans, assets and/or overall credit, and should have discretion to make their own ability to repay determinations. Given the nature of how credit unions are and would like to operate in the small-dollar lending space, we do not believe overdraft fees/charges would be appropriate for consideration, nor would such be a preferred option.

Aggregate Dollar Amount

MCUL believes the Board should exempt a federally-insured credit union that has a low-income designation or participates in the Community Development Financial Institutions (CDFI) program from the 20 percent net worth provision. This exemption is aligned with the existing exemption under NCUA rule 723.8.

Conclusion

MCUL thanks the NCUA Board for its efforts to address the needs of members, particularly in times of financial need—the reason why credit unions were formed. We urge the NCUA Board to continue to pursue regulatory alignment with the Bureau and banking agencies to ensure NCUA oversight of credit unions and their small-dollar lending programs remains exempt from additional and duplicative regulatory burden.

Sincerely,

Dave Adams
CEO, Michigan Credit Union League and Affiliates