



Credit Union National Association

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-638-5777 | **FAX:** 202-638-7734

cuna.org

November 26, 2012

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Comments on Advance Notice of Proposed Rulemaking for Part 701,
PAL Amendments; Payday-Alternative Loans; RIN 3133-AE08

Dear Ms. Rupp:

This comment letter represents the views of the Credit Union National Association (CUNA) regarding the National Credit Union Administration's (NCUA's) advance notice of proposed rulemaking (ANPR) regarding payday-alternative loans (PALs) that are currently authorized for federal credit unions. By way of background, CUNA is the largest credit union advocacy organization in this country, representing approximately 90% of our nation's 7,000 state and federal credit unions, which serve about 95 million members.

In September 2010, the agency authorized PALs for FCUs. As of June 2012, about 420 FCUs offered PALs with an aggregate balance of \$16.7 million on over 41,000 outstanding loans.

Under the PALs program, if certain conditions are met, loans may have higher interest rates than what is permitted for other loans that are subject to the usury ceiling under the Federal Credit Union Act.¹ Currently, the term of the loan must be from one to six months, the application fee no more than \$20, the interest rate no more than 1000 basis points above the maximum rate allowed for other loans, the amount of the loan must be between \$200 and \$1000, and no more than one such loan to a borrower may be extended at any one time nor more than three such loans during a twelve-month period. NCUA is seeking comments on all of these aspects of the PALs program. CUNA's recommendations, which are derived from our policy statement on payday loan alternatives (attached), are addressed below. We have also included a chart that illustrates the impact on borrowers of our recommendations.

¹ 12 C.F.R. § 701.21.



OFFICES: | WASHINGTON, D.C. | MADISON, WISCONSIN

Reasonable Application Fees

Credit unions generally seek to be reasonable when charging fees for loan application processing, including loans under the PALs program. Even so, additional flexibility regarding application fees would allow more credit unions to provide PALs to their members, thus giving consumers an additional alternative to predatory payday lending from other lenders.

We believe credit unions should be able to charge an application fee that is greater than \$20, as long as the fee is reasonably related to the credit union's costs, its PAL program risks, and its program losses. As NCUA has noted, credit unions may incur more than \$20 in costs per loan based on the credit union's location and its level of underwriting for PALs. In addition, a higher application fee would promote safety and soundness because it would help credit unions avoid offering these products at a loss.

While we support allowing reasonable application fees, we do not believe that a higher fee should be tied to a lower maximum interest rate. Credit unions that offer PALs should continue to be able to charge at least 1000 basis points (10 percentage points) above the maximum rate allowed on other loans. As with other loans, credit unions should have the flexibility to set interest rates on PALs that reflect the risks associated with the program. Because credit unions are member-owned, not-for-profit cooperatives, we do not believe they have any significant incentive to charge overly high rates on these or any other loans. In the absence of any record of industry-wide abuse on this subject, there is simply no need to regulate it.

Areas for Additional Flexibility

Credit unions should be able to offer PALs based on their members' needs and interests, and the policies of the credit union. While the current program is positive, the parameters of the program are very narrow. If NCUA were to allow more latitude to credit unions to tailor their programs based on their own reasonable judgment, likely more credit unions would offer PALs to their members.

In that connection, NCUA raised questions regarding six areas that could provide additional flexibility under the current PAL regulation to credit unions. Our comments on those areas are below.

1. Credit unions should be allowed to charge higher rates than the current annual percentage rate (APR) of 28%, in order to reflect the risks associated with the PALs program. As an alternative approach, credit unions should be able to choose between the 28% APR that does not include the application fee, or an APR of 36% that incorporates fees. The

second alternative is similar to the approach permitted by the Department of the Defense for payday alternative loans to service members.

2. The range of PALs should be expanded. The range for loan amounts is currently \$200 to \$1000 but there are credit unions that currently make short-term loans (outside of the PALs program) that are below \$200 and above \$1000. This indicates there is a need for loan amounts that are not within the limits NCUA has set. As for the maximum PALs loan amount, CUNA urges the Board to consider allowing credit unions to determine this amount in conjunction with a member's capacity to repay the PAL loan, such as basing the amount on a percentage of a member's income (such as 25% of net pay), or on a fixed dollar amount of \$1000. Credit unions ought to be able to decide for themselves what the appropriate minimum and maximum loans levels should be for their PALs programs.
3. Loan maturities that are shorter than one month and longer than six months should be authorized. Allowing credit unions to provide additional maturities would provide more options to borrowers and encourage more credit unions to offer PALs to their members.
4. Credit unions should be allowed to provide more than one PAL at a time or more than three such loans in a six month period to a borrower, on a case-by-case basis. There may be times in which members need additional borrowings, and credit unions should have the authority to work with their members on this issue, along as the borrower has the capacity to repay the loans on a timely basis. Such flexibility could help to address unanticipated circumstances, such as loss of employment or when other emergency expenses arise. If NCUA does allow such flexibility, credit unions should use it on an exception basis, according to their loan policies.
5. The current membership requirement of one month should be eliminated. We do not think the benefits to consumers of this requirement have been demonstrated. Rather, this requirement is burdensome for consumers and credit union alike, since the reason borrowers obtain payday-type loans is they need the money in a hurry. Rather than including this requirement in the rule, credit unions should be able to determine if a membership requirement is necessary based on the practices of the credit union and needs of its members.
6. The 20% of net worth ceiling on total PALs should be lifted. A credit union should be able to determine for itself whether these specific limits are necessary, and credit unions that offer higher risk loans may already have such policies in place.

CUNA also encourages NCUA to work with state regulators so that state chartered credit unions will have equivalent authority to offer these types of loans to their members to the extent permissible under applicable state laws.

Finally, regarding the best practices section under the current PALs regulation, examiners should not implement these provisions as if they are part of the regulation. We urge NCUA to make sure examiners are well-aware that “best practices” are just that and credit unions may decide the extent to which they adopt them.

CUNA encourages all regulators that affect credit unions’ operations to do all they can to help alleviate regulatory burdens and provide more leeway, consistent with legal requirements, for credit unions to make their own decisions about how best to serve their members. More flexibility regarding the PALs program will not only help credit unions in that regard but also will ensure more consumers have ready access to much needed credit on better terms than what abusive payday lenders not subject to NCUA requirements offer.

Thank you for the opportunity to comment on this proposal. If you have any questions concerning our letter, please feel free to contact me at (202) 508-6736.

Sincerely,

A handwritten signature in cursive script that reads "Mary Mitchell Dunn".

Mary Mitchell Dunn
CUNA Senior Vice President and Deputy General Counsel

CUNA'S OFFICIAL POLICY ON CREDIT UNION SHORT-TERM, SMALL LOANS AS ALTERNATIVES TO PAYDAY LENDING

Position (*adopted February 2009*): CUNA supports the ability of credit unions to provide beneficial short-term, small loans as alternatives to predatory payday lending, which has no place in the financial marketplace.

In particular, CUNA strongly opposes lending policies and practices such as: Charging unconscionable interest rates; rolling over payday loans with high additional fees; granting numerous extensions of such credit over the course of a year without offering counseling or savings programs; and providing inadequate disclosures. CUNA encourages credit unions to provide members with financial education as a means to ensure that they are not the victims of this type of lending.

CUNA strongly encourages credit unions to provide reasonable alternatives to predatory payday lending and supports the following principles for credit union short-term lending to help consumers avoid a cycle of debt:

- Credit union payday loan alternatives should combine reasonable rates of interest and fees with counseling and systematic savings.
- The reasonable costs to borrowers for such alternatives should be determined based on a number of factors, such as the credit union's costs of making the loan, potential credit losses, and a reasonable return to the lender.
- Credit unions should determine whether a more appropriate credit union loan product is available to an individual before extending the payday loan alternative service to that person.
- Credit unions should generally not provide numerous payday alternative loans to an individual borrower over a short time period if additional high fees are charged for each loan.
- Credit unions are encouraged to report positive payday alternative loan payment histories to credit bureaus.
- Credit unions are encouraged to help members understand their loan terms and rates.