Credit Union National Association
CUNA

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May 16, 2019

The Honorable Elijah E. Cummings
Chairman
House Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
House Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Cummings and Ranking Member Jordan:

On behalf of America's credit unions, I am writing regarding the Committee's hearing on "CFPB's Role in Empowering Predatory Lenders: Examining the Proposed Repeal of the Payday Lending Rule." The Credit Union National Association represents America's credit unions and their 115 million members. I respectfully request that this letter be made part of the official hearing record.

Credit unions were established, in part, to provide consumers with access to small dollar credit on safe and affordable terms. As was the case when credit unions were established, some unsavory lenders occupy the small dollar credit market. We support curbing abuses in the market while maintaining credit availability to meet consumer demand.

Unfortunately, the overly-broad 2017 Payday Rule does not strike an appropriate balance between enhancing consumer protection while still ensuring credit unions are able to continue serving their members. In particular, the rule would impose burdensome requirements on credit unions' covered small dollar loans, despite no data suggesting these programs have any pattern of harm to consumers. To the contrary, consumers have stated that credit union loans are often their safest and best option for credit.[1]

The recent federal government shutdown served as the latest and most visible example of how credit unions focus on consumers' needs above all else and provide the safest and affordable options for members in need of short-term and emergency credit. America's credit unions embodied their structure and mission by ensuring that impacted members had access to low- or no-interest loans with generous repayment terms. These loan programs might not have been available – or only available in limited numbers – had the 2017 Payday Rule been in effect at the time.

In general, individual credit unions have created short-term, small dollar lending programs specifically designed to meet the financial needs of their members. These loans often have terms based on the member's pay schedule and other features tailored to ensure the member is set up to succeed.

During the rulemaking process, CUNA has strongly urged the Consumer Financial Protection Bureau (CFPB) to amend the 2017 Payday Rule to avoid causing any negative effects on credit unions' loan programs and, instead, refocus the rule on appropriately reining in unregulated and underregulated non-depository online, payday, and title lenders, particularly entities with a history of bad behavior. To achieve this goal, CUNA has recommended the Bureau use its broad exemption authority under Section

[1] Peace, Elizabeth. "Consumers Prefer Credit Unions to Payday Lenders," Credit Union Times, available at: http://www.cutimes.com/2015/07/28/consumers-prefer-credit-unions-to-payday-lenders (July 28, 2015).

1022(b)(3)(A) of the Dodd-Frank Act to exempt all small dollar loans offered by credit unions from the 2017 Payday Rule, as credit unions have set themselves apart from other actors in this market.

To be clear, credit unions believe the best path forward for regulating payday lending is to maintain the current rule with the addition of an unequivocal, express exemption for small dollar loans offered by credit unions. The 2017 Payday Rule is inappropriate as applied to credit unions based on our structure, history, and pro-consumer offerings. The case is clear how credit unions deserve different treatment than online, payday, and title lenders.

However, if the CFPB chooses not to entirely exempt credit unions from the rule, then CUNA has stated its support for the proposed rescission of the mandatory underwriting requirements. In that instance, finalizing the proposed rescission would reduce regulatory burden on credit unions currently offering small dollar loans covered by the rule – but only an express exemption of all credit union small dollar programs would guarantee all credit unions are able to effectively provide their members with access to small dollar credit.

On behalf of America's credit unions and their 115 million members, thank you for the opportunity to share our thoughts.

Sincerely,

Jim Nussle
President & CEO

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CUNA

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May 15, 2019

Office of Regulations
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

Re: Payday, Vehicle Title, and Certain High-Cost Installment Loans; Docket No. CFPB-2019-0006; RIN 3170-AA80

Dear Sir or Madam:

The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. On behalf of our members, we are writing regarding the Consumer Financial Protection Bureau's (CFPB) proposal to rescind the mandatory underwriting provisions within its rule governing Payday, Vehicle Title, and Certain High-Cost Installment Loans[1] (2017 Payday Rule).

Notwithstanding the proposed changes to the 2017 Payday Rule, we believe the Bureau has clear legal authority under Section 1022 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to entirely exempt small dollar loan products offered by credit unions. Further, we maintain that credit unions' history of consumer protection when offering these services warrant the Bureau providing this accommodation. However, if the Bureau declines to provide credit unions' small dollar programs with an appropriate, justified exemption, then CUNA supports the proposed rescission of the 2017 Payday Rule's mandatory underwriting requirements as an alternative.

General Comments

Credit unions were established, in part, to provide consumers with access to small dollar credit on safe and affordable terms. As was the case when credit unions were established, some unsavory lenders occupy the small dollar credit market. We support curbing abuses in the market while maintaining credit availability to meet consumer demand.

Credit unions are unique in the financial services marketplace because their not-for-profit structure provides built-in consumer protections to members. Credit unions can and should play a key role as providers of small dollar credit, as they have demonstrated

[1] 82 Fed. Reg. 54472 (Nov. 17, 2017).

throughout their history a calling to assist members facing financial distress and other emergencies.

Unfortunately, the overly-broad 2017 Payday Rule does not strike an appropriate balance between enhancing consumer protection while still ensuring credit unions are able to continue serving their members. In particular, the rule would impose burdensome requirements on credit unions' covered small dollar loans, despite no data suggesting these programs have any pattern of harm to consumers. To the contrary, consumers have stated that credit union loans are often their safest and best option for credit.[2]

Recently, the federal government shutdown served as the latest and most visible example of how credit unions focus on consumers' needs above all else and provide the safest and affordable options for members in need of short-term and emergency credit. For example, an estimated 800,000 families in the United States experienced financial insecurity during the government shutdown earlier this year. America's credit unions embodied their structure and mission by ensuring that impacted members had access to low- or no-interest loans with generous repayment terms. These loan programs might not have been available – or only available in limited numbers – had the 2017 Payday Rule been in effect at the time.

In general, individual credit unions have created short-term, small dollar lending programs specifically designed to meet the financial needs of their members. These loans often have terms based on the member's pay schedule and other features tailored to ensure the member is set up to succeed.

As the CFPB reconsiders its approach to payday lending, CUNA strongly urges the Bureau to amend the rule to avoid causing any negative effects on credit unions' loan programs and, instead, refocus the rule on appropriately reining in unregulated and underregulated non-depository online, payday, and title lenders, particularly entities with a history of bad behavior. To achieve this goal, CUNA recommends the Bureau use its broad exemption authority under Section 1022(b)(3)(A) of the Dodd-Frank Act to exempt all small dollar loans offered by credit unions from the 2017 Payday Rule, as credit unions have set themselves apart from other actors in this market.

However, if the CFPB chooses not to provide an exemption for all credit union small dollar loans, then the Bureau should:

1. Adopt the proposed rescission of the 2017 Payday Rule's mandatory underwriting requirement for covered loans, *and*
2. Substantially expand the "alternative loan" exemption to cover additional Payday Alternative Loan (PAL) options developed by the National Credit Union Administration (NCUA), including the proposed PAL II program[3]

[2] Peace, Elizabeth. "Consumers Prefer Credit Unions to Payday Lenders," Credit Union Times, available at: http://www.cutimes.com/2015/07/28/consumers-prefer-credit-unions-to-payday-lenders (July 28, 2015).
[3] Proposed Rule on Payday Alternative Loans, 83 Fed. Reg. 25583 (June 4, 2018).

To be clear, credit unions believe the best path forward for regulating payday lending is to maintain the current rule with the addition of an unequivocal, express exemption for small dollar loans offered by credit unions. For the reasons outlined in our letter, the 2017 Payday Rule is inappropriate as applied to credit unions based on our structure, history, and pro-consumer offerings. The case is clear how credit unions deserve different treatment than online, payday, and title lenders.

However, CUNA supports the proposed rescission of the mandatory underwriting requirements should the Bureau decline to expressly exempt all credit union small dollar loan programs. In that instance, finalizing the proposed rescission would reduce regulatory burden on credit unions currently offering small dollar loans covered by the rule – but only an express exemption of all credit union small dollar programs would guarantee all credit unions are able to effectively provide their members with access to small dollar credit.

America's Credit Unions Have a Proven Record of Providing Safe and Responsible Small Dollar Credit

Credit unions are not-for-profit, financial cooperatives, established "for the purpose of promoting thrift among [their] members and creating a source of credit for provident and productive purposes."[4] Credit unions operate in every state and territory in the United States, providing an array of financial services and products including the small dollar loans covered by the 2017 Payday Rule.

Credit Unions Were Established, in Part, to Provide Access to Small Dollar Credit

Short-term, small dollar lending is currently a small component of many credit unions' lending portfolio in part due to constraints already placed on their ability to operate in this market. The CFPB's 2017 Payday Rule is of substantial interest to America's credit unions because this type of lending is why credit unions were created. In the early part of the twentieth century, the founders of the American credit union movement, Alphonse Desjardins in Canada and Edward Filene in the United States, organized a system of cooperative credit for two primary reasons: loan sharks were charging borrowers usurious rates on small consumer loans and banks demonstrated little interest in serving working class families.5 Congress shared the founders' aspirations with respect to the potential of credit unions to bring safe and affordable financial services to consumers abused by predatory and illegal lenders. As enacted in 1934, the Federal Credit Union Act (FCU Act) set the maximum amount of an unsecured loan at $50, which adjusted for inflation would be just less than $900 today.6 Given that the Bureau has identified $350 as the median loan amount of a modern-day payday loan, it is clear credit unions were established, at least in part, to serve this market.

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[4] Pub. L. No. 73-467, § 2.
[5] NCUA, A Brief History of Credit Unions, available at https://www.ncua.gov/About/Pages/history.aspx.
[6] Pub. L. No. 73-467, § 11(d).

Abuses in the Small Dollar Lending Market Should Be Curbed and Responsible Lenders Should Be Held Separately from Lenders with a History of Abuses

Desjardins understood, "the working classes have the same economic needs today as in the past, are the victims of the same selfishness, and rapacity, but intensified by modern economic methods."[7] These words ring as true today as they did a century ago. The demand from consumers for small dollar, short-term credit options is high; but too often, borrowers pay an extraordinary price for the speed, convenience, and anonymity provided by storefront and online payday lenders, title lenders, pawnbrokers, and check cashers instead of approaching highly regulated depository institutions. Credit unions have experienced how their members have been taken advantage of or seen bad financial situations exacerbated further by unsavory lenders peddling an easy solution. The speed and convenience that storefront and online payday lenders offer comes with high costs and fewer regulatory protections. Lenders that offer this type of credit, and loans offered by unregulated offshore and online lenders, should be the focus of any rule on payday lending.

Congress also recognized the problems caused by unregulated and underregulated 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 at the federal level.[8] As a data-driven agency with the charge of protecting consumers, the CFPB was given the opportunity to identify predatory behavior in the payday and title loan market, find ways to target lenders operating illegally, and tailor rules to eliminate lenders that harm consumers. Unfortunately, the 2017 Payday Rule falls short of the goal of protecting consumers while maintaining a functioning, viable, safe, and affordable small dollar market occupied by traditional depository institutions.

The debate over how to address consumer abuse in the small dollar lending market divides stakeholders and other interested parties into three categories: 1) those who believe there should be no regulatory requirements for small dollar loans; 2) those who understand how highly abusive certain payday lenders have become and want to end this lending entirely; and 3) those who understand how highly-abusive certain payday lenders have become and want to curb the abuses while ensuring a safe and affordable market continues to exist. Credit unions largely align themselves with the third group. As such, CUNA recognizes that abuses in the short-term, small dollar lending market must be addressed, noting that credit unions must be allowed to operate unconstrained by one-size-fits-all regulatory requirements in recognition of their structural differences and history of consumer protection.

[7] Roy F. Bergengren, CUNA Emerges, Kingsport Press: Kingsport, Tenn., 21 (1934).
[8] 12 U.S.C. § 5514(a)(1)(E).

The Credit Union Structure Is Unique in the Financial Services Market and Provides Substantial Consumer Financial Protection to Members

The founders of the American credit union system believed that "the people's welfare can best be secured by institutions organized by the people themselves."[9] That remains the case today. America's credit unions stand as a unique example of consumer protection in practice in the financial services sector. In contrast to for-profit banks and non-depository lenders, credit unions are structured as not-for-profit cooperatives. Instead of being owned by shareholders who may never step foot in the institution or use its services, credit unions are owned and controlled by their members. As a result of this structure, credit unions have a different raison d'être: they are not trying to make money for shareholders; they exist only to serve their members. This purpose translates into lower interest rates on loans, lower fees on services, and higher returns on deposits. The existence of credit unions in the financial marketplace translates into substantial savings for credit union members—to the tune of approximately $11.7 billion in 2018 alone.[10] As part of this structure, credit union members can rely on fair and equitable treatment by their credit union, while this is not necessarily true with other lenders and providers.

These reasons are why consumers rate credit union services highly. In 2018, Consumer Reports reported credit unions are among the highest rated services they had ever rated, with 96% of members highly satisfied.[11] Credit unions' philosophical foundation, mission to promote thrift and provide access to credit for provident purposes, and impact on other market participants make them unique financial institutions. We believe if credit unions did not exist today, many of the same groups that support the 2017 Payday Rule would encourage Congress to create a system of cooperative finance in which consumers control the institutions with which they do business.

Credit Unions Help Distressed Members through Access to Small Dollar Credit and the Promotion of Financial Literacy

Credit unions recognize that they play an important role in meeting the needs of distressed members. Credit union members come to credit unions when they need a small loan to manage a financial emergency or unplanned situation. In these instances, a credit union does its best to help the member, whether the member needs a loan to purchase school supplies for their children or a refrigerator to keep food from spoiling. The range of reasons for which credit union members come to their credit union in times of need is extensive. It is also common for credit union members to turn to their credit union for help after they have fallen victim to payday lenders.

Some credit unions have programs specifically designed to meet members' needs. Even those credit unions without formal programs do their best to help their members, often

[9] Alphonse Desjardins, The Cooperative People's Bank: La Caisse Populaire, Russell Sage Foundation: N.Y., 3 (1914).
[10] CUNA, National Member Benefits Report – Year End 2018, available at https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/National-MemberBenefitsD18.pdf.
[11] Consumer Report. "Best and Worst Banks According to Consumer Reports Members." Mar. 24, 2018. Available at: https://www.consumerreports.org/banks/best-and-worst-banks-and-credit-unions/

offering small dollar, short-term credit that results in little or no income to the institution. Sometimes, credit unions help members in need, at a small loss. This approach to service is referred to as "People Helping People," and is the essence of the credit union philosophy. Aspects of the 2017 Payday Rule put this approach in jeopardy, and present credit unions with the dilemma of either increasing the cost of these loan options in order to comply with the rule, or being forced to end these credit options and turn away a borrower that the credit union otherwise has the capacity to help.

For years, federal credit unions have offered short term, small dollar credit under the most stringent regulatory requirements: a statutory federal usury ceiling[12] to which no other lenders are subject. Despite this restriction, the NCUA, at credit unions' urging, has provided them with more flexibility to lend to consumers through the Payday Alternative Loan (PAL) program.[13] While this program is helpful in allowing some credit unions to more fully serve this market, credit unions have sought additional flexibility from NCUA to further assist members. In addition, many state-chartered credit unions tailor small dollar lending programs to meet the needs of their members, complying with state and federal laws as appropriate. These lending programs vary widely and are flexible to work for a specific membership or geographic location.[14]

Credit unions have not only been the stewards of their members' hard-earned savings and providers of safe and affordable credit, but they have consistently and thoroughly supported the betterment of members' financial literacy. Engrained in the credit union mission is the cooperative principle of member education that manifests itself in financial counseling to help members better understand and manage their personal finances.

As part of this work, credit unions are active in providing financial literacy resources to their communities, covering the entire life cycle of a member from introductory information for youths to information combatting the financial abuse of seniors. These efforts have improved the lives and financial health of many consumers.

Credit unions understand the correlation between the need for small dollar credit and financial education. As such, credit union small dollar lending is offered for the purpose of working with members to make them financially healthy enough to move away from short-term loans and toward more traditional products and services, which is a major distinction from nonbank lenders.

Exempting Credit Unions from the 2017 Payday Rule Would Ensure They Are Able to Provide Members with Short-Term, Small Dollar Loans in a Safe and Affordable Manner

We believe that credit unions and the CFPB share a common goal: a payday lending rule that curbs the abuses in the small dollar credit system while ensuring credit unions can

[12] 12 U.S.C. § 1757(5)(A)(v).
[13] CUNA Comment Letter to NCUA regarding payday loan alternative loans, available at http://www.cuna.org/WorkArea/DownloadAsset.aspx?id=41625 (Nov. 26, 2012).
[14] NCUF, Payday Lending: A REAL Solutions® Implementation Guide, available at https://www.ncuf.coop/media/toolkits/REAL_Solutions_Payday_Loan_Toolkit_v032309.pdf (2009).

serve members in a safe and affordable manner. Unfortunately, the CFPB's 2017 Payday Rule failed to fully execute that important balance and, instead, the rule's broad scope unjustifiably covers and curtails reasonable and safe products offered by credit unions. As it currently stands, credit unions believe the rule's flaws are significant and the Bureau should appropriately tailor the rule's coverage and exclude credit unions. Therefore, we urge the CFPB to use its authority to exempt credit unions as a class from the rule under Section 1022 of the Dodd-Frank Act.

The 2017 Payday Rule Should Not be Applied to Credit Unions as its Broad Scope and Requirements Would Have a Detrimental Impact on Credit Unions' Consumer-Friendly Loan Programs

If the 2017 Payday Rule was permitted take effect unamended, then there would be substantial disruption in the availability of small dollar credit from local credit unions. In fact, this has already begun to occur. Many credit unions are currently evaluating the rule's complexity and uncertainty as they decide whether to enter or remain in this market. The scope of the rule is especially arbitrary when considering the most direct impact of the rule would be on credit union lending programs widely recognized as consumer-friendly.

The 2017 Payday Rule's Treatment of "Short-Term" Loans under 45 Days is Arbitrary and Affects Consumer-Friendly Credit Union Programs

The 2017 Payday Rule applies to lenders that make "covered loans" as defined in the rule. One class of covered loans includes "short-term loans" that require repayment within 45 days of consummation or an advance. These short-term loans are considered covered loans regardless of the cost of credit. The CFPB's broad coverage of loans under 45 days is unjustified and would result in several consumer-friendly credit union programs being covered by the rule, which would potentially result in their elimination or reduction in availability.

For example, one credit union in the Pacific Northwest created a payday advance loan in response to member demand for the product. This program has been in place for over 10 years and is a viable alternative to traditional payday loans for members trying to make ends meet. The loan is a closed-end, 30-day term with a minimum advance of $50 and a maximum of $500. There is a 25 percent interest rate plus a $15 application fee. To qualify, consumers must satisfy the following criteria: (1) be at least 18 years of age; (2) be a member of the credit union for at least six months; (3) provide a recent paystub or proof of disability, Social Security, or pension; and (4) provide the name, address, and phone number of a personal reference. Despite the low application fee and interest rate, this loan would automatically be considered a covered loan by the CFPB's rule merely because of its 30-day term.

The credit union offering this loan would be saddled with the high costs associated with conducting the mandatory ability-to-repay (ATR) analysis merely because of the loan's term, despite its low-cost nature. While the Bureau may believe the "simple" answer would be to change the loan's maturity to avoid the rule's coverage, such a response fails to fully appreciate these loan programs are often specially designed by the credit union to satisfy their members' specific financial needs. The CFPB requiring credit unions to arbitrarily amend the terms of their loan programs regardless of their low-cost is not in the best interest of credit union members and unnecessarily places similar pro-consumer programs in jeopardy.

The Mandatory Underwriting Required for a Covered Loan is Impractical for Credit Unions to Comply with in a Sustainable Way

Under the 2017 Payday Rule, a credit union offering a covered loan must conduct mandatory underwriting unless the loan qualifies for an exemption to that requirement. Such underwriting could include verifying a consumer's financial standing—including the amount and timing of the consumer's net income receipts; the amount and timing of payments required for the consumer's major financial obligations; verifying debt obligations (using a national consumer report); and additional factors.

The CFPB's current rule assumes that all credit union loans will fall under an existing exemption and therefore credit unions' cost of complying with the restrictive mandatory underwriting requirements would not be overly burdensome. However, CUNA cautions the CFPB to further analyze this presumption, not the least of which is that not all consumer-friendly credit union loans would qualify for an exemption.

Since credit unions usually break even, make very little income, or even lose money from their small dollar lending programs, it may be necessary for each credit union to reevaluate the decision of offering these loans to preserve the resources of the entire membership. Credit unions may spend as much time and resources underwriting a traditional loan product as could be required to underwrite a small dollar loan under the payday rule's ATR requirements. There is a point at which the strain on resources needed to offer these loans become a significant toll on the membership as a whole, making it difficult to justify the existence of a program, no matter how much the credit union would like to continue to serve its members in need.

Beyond the resource drain, we are concerned that the CFPB's ATR analysis in some instances would be nearly impossible for a credit union to comply with. For example, credit union underwriters have stated that projecting net income, debt obligations and living expenses is impossible in some circumstances, especially when lending to financially distressed borrowers who may be underemployed, living in rental properties, or facing any number of financial challenges.

The pending proposal to rescind the ATR requirements in the 2017 Payday Rule would go a long way towards resolving this burden. However, unless credit unions are fully exempted, merely removing the mandatory underwriting requirement would only provide relief for part of the rule. The payments, record retention, and additional compliance requirements in the rulemaking, which would remain, still present a burden on covered small dollar loans offered by credit unions. While the mandatory underwriting provisions are undeniably the costliest component of the 2017 Payday Rule, these other provisions would also have material costs associated with their implementation. Given the small margins associated with credit unions' small dollar lending, even a small increase in compliance costs could result in these programs being eliminated or substantially reduced in availability.

If Credit Unions are Not Fully Exempted, then the Conditional Exemption for Alternative Loans should be expanded to include NCUA's Proposed PAL II

The 2017 Payday Rule includes a conditional exemption for "alternative loans," which the Bureau defines as loans that generally conform to the NCUA's PAL program. Credit unions appreciate that the CFPB recognizes loans offered pursuant to NCUA's PAL program are a model for consumer protection. They also appreciate that the CFPB recognizes its authority to wholly exempt consumer-friendly products offered by responsible financial service providers.

To qualify for the alternative loan exemption, and be exempt from the 2017 Payday Rule's requirements, the loan must meet the following requirements:

a. The loan is not structured as open-end credit.
b. The loan's term is not less than one month and not more than six months.
c. The loan's principal is not less than $200 and not more than $1000.
d. The loan is repayable in two or more payments.
e. All scheduled payments are substantially equal in amount and fall in substantially equal intervals.
f. The loan amortizes completely during its term.
g. The lender does not impose any charges other than the rate and the application fees permissible for federal credit unions under the NCUA's regulations at 12 CFR 701.21(c)(7)(iii).
h. An application fee must reflect the actual costs associated with processing the application and must not exceed $20.

These requirements align with the current PAL program's regulatory framework as defined by NCUA's rules and regulations. Since the PAL program's adoption in 2010, the NCUA has closely examined and regulated credit unions participation in the program and has clearly determined that credit union members benefit from the program's existence. The PAL regulation reflects NCUA's careful deliberation regarding how to develop a product that would enable federal credit unions to offer their members a reasonable *alternative* to high-cost payday loans.

However, in recent years, the NCUA has engaged in a thorough examination of the efficacy of the PAL program with an eye toward increasing participation and creating additional loan options for credit unions to meet the emergency credit needs of their members. NCUA's initiative culminated in a proposed rule issued by the NCUA Board in May 2018 that would build upon the PAL program by creating a second option for credit unions. The proposed loan offering has been named "PAL II." The PAL II program would be treated as a distinct product and not merely a replacement for the original PAL, instead both options would exist simultaneous and credit unions would be permitted to offer whichever program is best suited to meet the needs of their membership. Credit unions would also have the option to offer both types of PAL.

In general, the proposed PAL II would include nearly all the features of the original PAL program but offer four additional areas of flexibility:

a. A maximum loan term of 12 months.
b. A maximum loan amount of $2,000 and elimination of the minimum loan amount.
c. The loan does not require a minimum length of credit union membership.
d. The loan does not include a restriction on the number of loans a federal credit union may make to the borrower in a six-month period, provided the borrower has only one outstanding loan at a time.

While the NCUA Board has not finalized the PAL II program, CUNA recommends the CFPB coordinate with the NCUA to ensure subsequent PAL amendments are covered by the alternative loan exemption. If the CFPB fails to amend the alternative loan exemption to account for the PAL II program, then CUNA is concerned that federal credit unions participating in NCUA's PAL program would be subjected to several confusing, duplicative and conflicting requirements when offering PAL loans to their members. Such complexity would arguably disadvantage credit unions that choose to participate in the PAL program or similar loan programs developed in the future. If the Bureau declines to expand the conditional exemption to cover the PAL II program, then credit unions would be required to evaluate whether to offer a conditionally exempt PAL or a PAL II that offers more term flexibility, but also requires the credit union comply with the CFPB's payments, record retention, and compliance provisions. CUNA is concerned the CFPB's rule could negatively impact participation in both PAL programs by adding an unnecessary layer of complexity to the loan portfolio decision-making process.

It would also be concerning that credit unions willing to provide consumer-friendly payday alternatives for members are punished by duplicative, additional regulatory burden as a result. If the CFPB wants more credit unions to serve the small dollar market, then the Bureau should be creating more room for flexibility and innovation, not less. The best way for the CFPB to ensure greater access to responsible credit is to use its exemption authority to ensure that the NCUA PAL program, including any subsequent versions created by the agency, are conditionally exempt from this rule. Expanding the conditional exemption to cover PAL II or any other payday alternative program developed under Part 701.21(c)(7) would go a long way toward guaranteeing consumers have access to short-term, small dollar loan options from their local credit union.

Conclusion

We hope our comments clearly convey the detrimental impact the 2017 Payday Rule, if implemented unchanged, would likely have on access to consumer-friendly products and services from credit unions. We are disappointed that the CFPB, under prior leadership, promulgated a rule negatively impacting credit unions' small dollar loan programs despite evidence that consumers rely on credit unions as one of their safest and most affordable options for short-term, small dollar credit.

The Bureau should have avoided creating an equivalency between credit unions and the payday, online, and title lenders that are the basis for this rule's existence. Credit unions' not-for-profit, cooperative structure and their regulatory structure, which includes supervision by a prudential regulator, is substantially different than non-bank lenders, which have never been supervised at the federal level before the Dodd-Frank Act. There is simply no comparison. Attempting to fit these two completely different types of lenders—with such different histories and missions—under one regulation makes little sense and would ultimately result in harm to consumers.

Therefore, we urge the CFPB to revise the 2017 Payday Rule to avoid disrupting credit unions' small dollar lending. The most effective way to move forward, which provides the greatest opportunity for credit unions to remain active and innovate in the small dollar loan market, is for the CFPB to use its Section 1022 exemption authority to entirely exempt credit unions from this rule. The CFPB has the clear authority to do this.

Ultimately, the best solution for all consumers is rule focused on preventing consumer abuse from payday, online, and title loan providers that allows consumer-friendly actors, like credit unions, to continue to operate unburdened. If the CFPB were to narrow its rule to better focus on eliminating consumer harm, credit unions –the original consumer protectors in the financial services marketplace– would without question be among the rule's strongest supporters.

However, as we have stated above, should the Bureau chooses not to adopt our recommendation to amend the 2017 Payday Rule to include an full, express credit union exemption, then CUNA would like to state our support for, as an alternative, the proposed rescission of the rule's mandatory underwriting requirements, and request that the Bureau further broaden the alternative loan exemption to cover more credit union small dollar programs.

We look forward to working with the CFPB on our shared goal of consumer protection and for the availability of safe and affordable financial products and services. On behalf of America's credit unions and their more than 115 million members, thank you for your consideration.

Sincerely,

Alexander Monterrubio
Senior Director of Advocacy & Counsel