



July 28, 2021

The Honorable Sherrod Brown
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20515

The Honorable Patrick Toomey
Ranking Member
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, DC 20515

Chairman Brown and Ranking Member Toomey,

The Credit Union National Association (CUNA) and National Association of Federally-Insured Credit Unions (NAFCU) represent America's credit unions and their more than 125 million members. We are writing regarding the Committee's hearing entitled, "Protecting Americans from Debt Traps by Extending the Military's 36% Interest Rate Cap to Everyone."

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."¹ Their presence can be found in every state and territory providing an array of credit products to their members, including credit cards and short-term, small dollar loans. As federally insured financial institutions, their operations are subject to rigorous regulatory oversight, regular examinations, and public reporting.

Pursuant to the Federal Credit Union Act, federally chartered credit unions comply with a usury cap administered by the National Credit Union Administration (NCUA or agency) Board.² The current 18 percent annual percentage rate (APR) cap applies to all loans except those made under NCUA's consumer-friendly Payday Alternative Loan (PAL) program, which are capped at 28 percent.³ The agency's long held practice is to follow the definition of "finance charge" found in section 1026.4(a) of Regulation Z, rather than an all-in APR methodology, to determine compliance with the interest rate cap.⁴ State chartered credit unions comply with the usury laws set by their respective jurisdictions.

Credit unions, embodying their structure and mission, are often the safest and most affordable options for consumers in need of small dollar credit. They regularly provide loan options precisely tailored to meet the financial needs of their field-of-membership. In many cases, these loan products are designed to be a direct response to the harms caused by high-cost payday lenders and intended to put members back on the path to financial health. In fact, these products are often paired with other features intended to ensure the member is being set up to succeed, including – but not limited to – flexible repayment options, financial education resources, savings incentives, and credit counseling.

As community-based lenders, credit unions have seen firsthand the serious harms caused by high-cost payday loans and the unscrupulous evasion of state usury laws. We too are concerned about the presence of disreputable, underregulated lenders in the credit market and support sensible efforts to curb these abuses.

¹ Pub. L. No. 73-467, § 2.

² 12 U.S.C §1757(5)(A)(vi)(I).

³ 12 CFR 701.21(c)(7)(A).

⁴ See NCUA Legal Opinion Letter, 91-0412 available at <https://www.ncua.gov/files/legal-opinions/OL1991-0412.pdf>; see also 12 CFR 226.4 (2010).

In that spirit, our associations have directly supported efforts to end ‘rent-a-bank’ loopholes, called on the CFPB to focus its Payday Rule on high-cost lenders, and encouraged the effective enforcement of state and federal laws. However, we must caution Congress against placing broad restrictions on lending that reduce members’ access to sensible loan options from local credit unions.

The legislation being considered in this hearing proposes to extend the Military Lending Act (MLA) 36 percent all-in rate cap to all consumers. In doing so, the legislation would not only establish a nation-wide rate cap but also completely change the methodology used to calculate interest rates for non-servicemember consumers. While seemingly an innocuous technical change, the broad impact of an all-in APR cap on credit cards and small dollar loans would be seismic.

The all-in APR for a short-term, small dollar loan depends heavily on the duration and amount of the loan. For example, the NCUA’s PAL regulation permits principal amounts between \$200-1,000 and loan terms of 1-6 months with an application fee up to \$20 and APR up to 28 percent. The CFPB under Director Richard Cordray determined loans made within roughly these parameters could be considered a consumer-friendly alternative to high-cost payday loans and exempted loans generally conforming with these characteristics from the Bureau’s 2017 Payday Rulemaking.⁵ But even a loan with the Bureau’s “stamp of approval” can easily run afoul of a 36 percent all-in cap:

All-In APR with Max (\$20) Fee and 22.5% Nominal APR				
	Avg CU PAL Loan (\$888)	Min PAL Loan (\$200)	Mid PAL Loan (\$500)	Max PAL Loan (\$1,000)
30 Days	50.3%	144.5%	71.5%	47.2%
60 Days	36.6%	83.7%	47.2%	35.0%
90 Days	32.0%	63.4%	39.1%	31.0%
120 Days	29.7%	53.3%	35.0%	28.9%
150 Days	28.3%	47.2%	32.6%	27.7%
180 Days	27.4%	43.1%	31.0%	26.9%
<i>* Based on a December 2020 Average PAL Loan Amount/Nominal Interest Rate of \$888/22.5%</i>				

As you can see, the adoption of a 36 percent all-in cap will essentially require lenders to offer larger, longer duration loans because these loans are “easier” to fit under the cap precisely due to their increased size and duration. This effectively encourages borrowers to take on more debt or, for many borrowers with lower creditworthiness, push them out of the market for small dollar credit altogether. In addition, while PALs are offered by 13.4 percent of federally chartered credit unions, they are merely one type of loan offered and do not reflect the diverse range of small dollar loan products offered at both state and federally chartered credit unions. Because credit unions tailor products to meet the unique needs of their members, there are many other consumer-friendly credit union products that would also be affected or eliminated by a 36 percent all-in rate cap as proposed in the legislation.

⁵ Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472 (Nov. 17, 2017).

Credit unions' propensity for transparency and fairness is reinforced by their not-for-profit, democratically controlled structure. This accountability culture and member-first ethos are the reasons why credit unions – both state and federal charters – are widely considered to be pro-consumer alternatives to high-cost payday lenders. Yet, the legislation only exempts federal credit unions subject to the usury cap administered by the NCUA. Any exemption should include all federally-insured credit unions – regardless of charter type.

On behalf of our nation's credit unions and their 125 million members, thank you for the opportunity to share our thoughts ahead of the Committee's hearing.

Sincerely,

Credit Union National Association (CUNA)
National Association of Federally-Insured Credit Unions (NAFCU)