



September 26, 2023

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Dear Leader Schumer and Leader McConnell:

On behalf of America's credit unions, we are writing in opposition to Senate Amendment 1285 to H.R. 4366, the legislative vehicle for the "Minibus" Appropriations bill. The amendment, sponsored by Senator Jack Reed, would place an arbitrary interest rate cap on certain consumer credit products offered by credit unions and other financial institutions. Representing not-for-profit and member-owned credit unions, we oppose this amendment as it would impose government price controls by capping the annual percentage rate (APR) of these credit products at 36 percent. The Credit Union National Association (CUNA) and National Association of Federally-Insured Credit Unions (NAFCU) represent America's credit unions and their more than 138 million members.

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

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).

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. In that spirit, our associations have directly supported efforts to end “rent-a-bank” loopholes, called on the Consumer Financial Protection Bureau (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 amendment being considered would extend the Military Lending Act (MLA) 36 percent all-in rate cap to all consumers. In doing so, the amendment 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 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:

	<u>All-In APR with Max (\$20) Fee and 23.44% Nominal APR</u>			
	Avg CU PAL Loan (\$791)	Min PAL Loan (\$200)	Mid PAL Loan (\$500)	Max PAL Loan (\$1,000)
30 Days	54.2%	145.1%	72.1%	47.8%
60 Days	38.8%	84.3%	47.8%	35.6%
90 Days	33.7%	64.0%	39.7%	31.6%
120 Days	31.1%	53.9%	35.6%	29.5%
150 Days	29.6%	47.8%	33.2%	28.3%
180 Days	28.6%	43.7%	31.6%	27.5%

** Based on a June 2023 Average PAL Loan Amount/Nominal Interest Rate of \$791/23.44%*

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

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 15.4 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 this amendment.

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 amendment only exempts federal credit unions subject to the usury cap administered by the NCUA. Any exemption should include all insured credit unions – regardless of charter type.

Credit unions offering credit cards do so at lower interest rates than banks. As of June 2023, credit unions’ average interest rate for classic credit cards stood at 13.2 percent compared to banks’ average interest rate of 17.3 percent (Source: Datatrac, CUNA). This trend holds true for most credit cards, including niche credit cards associated with special rewards programs. This difference serves as further evidence that credit unions are the best financial option for America’s consumers.

Innovation in the financial services sector has made credit more available, cheaper, and convenient than at any time in history. The credit card is one such innovation. However, credit cards are rarely collateralized, so the risk of borrower default rises with this type of credit line. This forces credit card issuing financial institutions to impose relatively higher costs, fees, and re-pricing practices on credit cards.

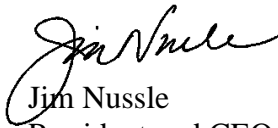
Small dollar loans, credit cards, and other forms of short-term credit are critical to help people meet emergency expenses, disruptions in pay, and misalignments in the timing of their expenses and income. This amendment’s proposed 36 percent fee and interest cap would make it more difficult for many consumers to obtain credit, thereby harming the very consumers the legislation seeks to protect. Congress should reject these legislative measures.

We recognize that there are legitimate concerns about abusive credit practices, and we applaud efforts to end discriminatory, predatory, deceptive, and abusive lending practices. However, even well-intentioned legislation, like this amendment, would have unintended consequences which would ultimately harm credit union members by making credit more expensive and less available. Many credit unions and their industry partners offer credit counseling, debt restructuring, loan consolidation, and general consumer financial education. This is what credit unions do every day – people helping people!

The Honorable Charles Schumer
The Honorable Mitch McConnell
September 26, 2023
Page 4 of 4

As responsible and well-regulated financial institutions, we urge you to work with us to address excessive consumer debt. This is a goal that can be achieved without creating barriers in accessing safe and affordable credit products, pushing people with marred credit histories and those on the financial fringe to unscrupulous and unregulated lenders, and discouraging future innovation and new products. On behalf of America's credit unions and their more than 138 million members, thank you for considering our views on this important issue.

Sincerely,



Jim Nussle
President and CEO
Credit Union National Association



Dan Berger
President and CEO
National Association of Federally-Insured Credit Unions

cc: Members of the United States Senate