NAFCU
3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org
National Association of Federally-Insured Credit Unions

August 6, 2018

The Honorable Mick Mulvaney
Acting Director
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Payday Lending Rule Safe Harbor Exemption

Dear Acting Director Mulvaney:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing in regard to the Bureau of Consumer Financial Protection's (Bureau) payday lending rule exemptions. NAFCU would like to provide the Bureau with a recommendation to strengthen an important lending option for credit unions and consumers. Credit unions are responsible lenders that provide safe, accessible, and low cost loans to meet the demands of their members' short-term, small-dollar needs. The Bureau previously recognized this responsible lending by granting an exemption from the Bureau's payday lending rule to those payday alternative loans (PALs) offered by credit unions under the National Credit Union Administration's (NCUA) regulations.[1] On June 4, 2018, the NCUA published a proposed rulemaking which would allow credit unions to offer a second PALs option – PALs II. NAFCU believes that additional short-term, small-dollar loan options available in the marketplace will help curtail the predatory practices of bad actors in the traditional, high-cost payday loan market. The Bureau should grant an exemption for PALs II as was granted for PALs I in the Bureau's final payday lending rule.

Historically, the marketplace for short-term, small-dollar loans has been dominated by less-regulated entities, such as traditional payday lenders and check cashers. These lenders charge consumers unfathomable rates of interest. In fact, as stated on the Bureau's website, the average annual percentage rate (APR) for a payday loan is upwards of 400%. These high-cost loans create a "snowball effect" where consumers continually renew loans and are unable to get out of debt. Despite the unfavorable characteristics of traditional payday loans, there is a persistent demand for short-term, small-dollar lending. In a recent survey, 40 percent of adults reported they would need to borrow money or sell something in order to cover an unexpected emergency expense of $400 dollars or more.[2] Furthermore, research shows that most consumers use payday loans to cover

[1] 12 C.F.R. 1041(e)(4)
[2] Report on the Economic Well-Being of U.S. Households in 2017, (2018), https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf (last visited Jul 17, 2018).

ordinary living expenses, such as rent or utility bills.[3] Consumers need better options than those currently available in the marketplace.

NAFCU members remain concerned about the proposed PALs II complying with the Bureau's payday lending rule. According to NCUA’s proposed rule, PALs II may fall within the Bureau's alternative loan exemption; however, any future PALs programs are afforded no protection from the rule. Expanding the safe harbor exemption to encompass loans compliant with any of NCUA’s PALs programs will assist in widespread adoption of the PALs program amongst credit unions. Expansion of the safe harbor exemption will give credit unions peace of mind knowing that they are in compliance with both the NCUA and the Bureau's rules. Credit unions will be more apt to begin PALs programs if they have not already done so, or to expand their PALs programs to include additional PALs options. Greater competition in the marketplace will lead to greater innovation, and will ultimately force high-cost, traditional payday lenders to improve their product offerings, leading to safer products for consumers. Alternatively, NAFCU recommends that at a minimum, the Bureau expand the safe harbor exemption to encompass PALs II when finalized by the NCUA. NAFCU respectfully requests that the Bureau work with the NCUA in expanding the safe harbor exemption.

Additionally, state-chartered, federally-insured NAFCU members have voiced their concerns regarding the effects of the Bureau’s payday lending rule. These credit unions offer substantially similar short-term, small-dollar loans as the NCUA PALs, but do not explicitly fall under the Bureau’s payday lending exemptions. All credit unions recognize the importance of offering small-dollar, short-terms loans to their financially distressed members. Given the different situations between state and federal credit unions, NAFCU suggests that the Bureau consider exercising its section 1022 exemption authority. The expansion of the safe harbor to all PALs loans provides relief in the interim and encourages responsible small-dollar lending, but all credit unions should be exempted from the Bureau’s payday lending rule.

NAFCU appreciates the opportunity to share its members' views on this matter. Please see the attached comment letter sent to the NCUA regarding the payday alternative loan proposed rulemaking. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,

Kaley Schafer
Regulatory Affairs Counsel

Enclosure

---

[3] Payday Lending in America: Who Borrows, Where to Borrow, and Why, (2012), http://www.pewtrusts.org/en/research-and-analysis/reports/2012/07/19/who-borrows-where-they-borrow-and-why (last visited July 17, 2018).