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National Association of Federally-Insured Credit Unions

March 15, 2019

Kristine M. Andreassen
Senior Counsel, Office of Regulations
Bureau of Consumer Financial Protection
1700 G Street NW
Washington, DC 20552

RE: Delay of Compliance Date – Payday, Vehicle Title, and Certain High-Cost Installment Loans (RIN 3170-AA95)

Dear Ms. Andreassen:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Bureau of Consumer Financial Protection’s (Bureau’s) proposed rulemaking to delay the compliance date of the Payday, Vehicle Title, and Certain High-Cost Installment Loan final rule (Payday Rule). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 115 million consumers with personal and small business financial service products. NAFCU appreciates the Bureau’s proposed delay of the August 19, 2019 compliance date in light of the concurrent proposed rulemaking to rescind provisions of the Payday Rule (“Revised Rule”). NAFCU supports the fifteen-month delay until November 20, 2020, because it would allow the Bureau ample time to review compliance obstacles not originally anticipated in the final Payday Rule, including additional Payday Alternative Loan (PAL) programs for credit unions. More importantly, NAFCU supports a delay of the compliance date to allow the Bureau time to expand the Payday Rule’s safe harbor exemption to encompass all future iterations of PALs finalized by the National Credit Union Administration (NCUA). NAFCU cannot fully support a Revised Rule that refuses to exclude all future PALs programs.

General Comments

A delay of the compliance date is appropriate due to the proposed Revised Rule that, if finalized, would substantially affect previously required compliance under the Payday Rule. If the compliance date is not delayed, then credit unions would expend significant time and money to become compliant by August, which would prove to be a waste if the Revised Rule is finalized as proposed with the rescission of the mandatory underwriting requirements for an ability-to-repay (ATR) determination. Credit unions would mitigate costs and save valuable time and resources with a delay of the compliance date. In addition, the Bureau needs adequate time to review comments received.

NAFCU agrees with the Bureau’s analysis that a delay would allow credit unions additional time to build or invest in technology and products to assist with compliance of the Payday Rule. Further,

the delay would allow vendors to become fully operational by the compliance date. Additional time would provide an opportunity for more vendors to offer compliance products, which would, in turn, benefit the industry with the introduction of more options and competitive pricing. NAFCU agrees that the delay would avoid injuries from any temporary industry disruptions as the Bureau contemplates the Revised Rule. At this time, NAFCU does not anticipate the delay would likely cause any unforeseen circumstances on members who utilize covered loans.

Obstacle to Compliance Not Originally Anticipated by the Bureau

NAFCU agrees with the Bureau's analysis that a delay would allow the agency time to resolve obstacles to compliance that were not originally anticipated. One such obstacle is the NCUA's proposed rulemaking, published on June 4, 2018, that would allow credit unions to offer a second PAL option – PALs II (PALs II Rule). Under the Revised Rule, the definition of a "covered loan" remains unchanged, encompassing short-term loans with maturity dates of less than 45 days. The PALs II Rule would allow small-dollar loans with a minimum maturity of 30-days, therefore, PALs II loans would be deemed "covered loans" under the Revised Rule. The PALs II rule also sought commentary on a future, third iteration of PALs. Although the Payday Rule created a safe harbor exemption for PALs I, it did not contemplate future iterations and neither does the Revised Rule.

The NCUA may very well finalize the PALs II Rule prior to August, especially considering that the agency's Fall 2018 Rulemaking Agenda indicated a final rule would be released in December 2018. Should the PALs II rule be finalized before August, and the compliance date is not delayed, only PALs I will fall within the safe harbor exemption. Thus, all PALs II would be required to comply with the current Payday Rule requirements, including the ATR calculation. Ultimately, credit unions would need to expend significant time and resources to ensure compliance with the ATR requirements that very well may be rescinded the following year. This would impact credit unions' bottom lines and impede member's access to short-term, small-dollar lending.

Credit unions would also be limited in their ability to offer their members a helpful new product. Some credit unions may delay offering PALs II products because they currently fall within the purview of a "covered loan" under the Payday Rule. Others may decide not to offer PALs II products altogether because they would have to comply with the burdensome ATR requirements in order to offer a PALs II product with a maturity date of 30 days. This would disenfranchise credit union members who are in need of short-term, small-dollar loans.

Above all, NAFCU supports the compliance date delay to allow the Bureau to contemplate this unforeseen obstacle that, if not delayed, could greatly impact credit union members. A delay of the compliance date would afford the Bureau ample time to expand the safe harbor exemption to include PALs II, which would provide safer short-term, small-dollar options for credit union members. The availability of additional short-term, small-dollar loan options would help curtail the predatory practices of bad actors in the traditional, high-cost payday loan market. Expanding the safe harbor exemption to encompass loans compliant with all of NCUA's PALs programs would assist in widespread adoption of the PALs program amongst credit unions. An expansion of the safe harbor exemption would give credit unions peace of mind knowing that they are

compliant with both the NCUA's and the Bureau's rules. As a result, credit unions would 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 could lead to greater innovation that would ultimately force high-cost, traditional payday lenders to improve their product offerings, leading to safer products for all consumers. Therefore, NAFCU supports a delay of the compliance date to allow the Bureau time to expand the Payday Rule's safe harbor exemption to encompass all future iterations of PALs finalized by the NCUA.

Conclusion

NAFCU appreciates the opportunity to provide comments on the proposed rule. 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,

A handwritten signature in black ink, appearing to read 'Kaley Schafer', written in a cursive style.

Kaley Schafer
Regulatory Affairs Counsel