NEW YORK creditunion ASSOCIATION

strength in members.

October 5, 2016

Consumer Financial Protection Bureau
Monica Jackson, Office of the Executive Secretary
1700 G Street NW., Washington, DC 20552

Dear Ms. Jackson,

I am writing this letter on behalf of the new York Credit Union Association to comment on the CFPB's proposed Pay Day, Vehicle Title, and High Cost Installment Loan Proposal. While many credit unions share the goals of the CFPB, they are justifiably concerned that, as drafted, this proposal will intrude on their efforts to help struggling members. They are also concerned that it adds yet another layer of complexity to a compliance framework that has exploded since the inception of the CFPB. The Association agrees that it is wrong to have a business model predicated on entrapping consumers in ever increasing debt. We should all work to deter predatory practices. The problem is that this proposal does not distinguish between short-term loans and predatory short-term loans.

In preparation for this letter, the Association surveyed its membership and held discussions with its Governmental Affairs Committee. Based on this feedback, it is clear that credit unions in New York not only want to discourage Pay Day Lending, but also actively assist members who are experiencing financial difficulty. For example, when one CEO was asked whether he provides alternatives to Pay Day Loans, he explained that he knows his members well enough to help them on a case-by-case basis, and would never provide someone with a loan that he didn't think they could repay.

Unfortunately, this type of flexible, member-driven approach will be harmed if this proposal is finalized as drafted. Before making a short term loan, the credit union would have to determine if it is a covered loan, and then demonstrate why it feels a member has the ability to repay the loan based on unique underwriting requirements. In finalizing this regulation, the CFPB should create a structure that not only defines what a pay day loan is but also distinguishes between those businesses that systematically take advantage of people in financial straits and those for which predatory lending is not part of their business model.

This can be accomplished in one of two ways. First, the CFPB can use the powers given to it by Congress in section 1022 of the Dodd Frank Act and exempt credit unions as a class from this regulation. There is no evidence that the credit union industry systematically engages in

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predatory Pay Day Lending practices. Nevertheless, all credit unions will have to develop policies and procedures specifically designed to comply with this new regulation. This is not what Congress intended when it created the Bureau, in large part to curtail the lending practices of the larger banking industry.

If the Bureau is not willing to exempt credit unions, then a second approach would be to establish a threshold number of payday loans an institution would have to make before being subject to these requirements. For example, allowing an institution to make up to 500 "covered loans" would ensure that credit unions continue to have the flexibility to meet the unique needs of members in trouble without permitting institutions that make a high volume of loans to avoid additional scrutiny. The CFPB has adopted compliance thresholds for mortgage lending and remittances. A similar approach should be used for short term loans.

The Association also has concerns regarding specific provisions of this proposal. Most importantly, over 700 credit unions provide Pay Day Loan alternatives. NCUA has regulations specifically designed to encourage Federally Chartered Credit Unions to offer alternatives to Pay Day Loans. As currently drafted, these PAL loans would be subject to parts of this regulation because they amortize over 45 days as opposed to a 30 day period. (12 CFR 701.21) To the extent that the CFPB wants to encourage the continued use of PAL loans and defer to the judgement of NCUA, it should clarify that credit unions are able to make PAL loans, providing that they comply with NCUA's PAL regulations.

The core of this proposal is that creditors making covered loans be required to document a borrower's ability to repay a covered loan. A consumer would have the ability to repay a covered loan based on a reasonable finding that the consumer's residual income will be sufficient for the consumer to make all payments under the loan and meet basic living expenses. The CFPB is proposing to use a principles based approach, which will give lenders discretion as to what goods and services are basic living expenses. Some credit unions expressed concern that this term is too broad and provides inadequate guidance for institutions which ultimately must comply with these underwriting standards. For example, is internet service now a basic living expense? In making this determination, does the CFPB anticipate that it will be based on what a member would need to maintain the standard of living to which he or she is accustomed to, or some lesser standard? While the Association generally supports flexible regulations, this is one aspect of the proposal where additional guidance is needed.

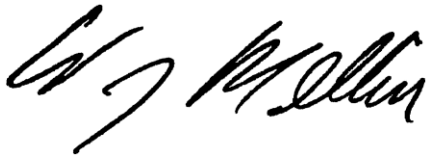
This regulation not only applies to short term loans but to loans in excess of 45 days that, among other attributes, have an have an "all in" APR greater than 36% and are either repaid directly from the consumers account, or secured by the borrowers vehicle. It excludes "Credit extended for the sole and express purpose of financing a consumer's initial purchase of a good when the credit is secured by the property being purchased, whether or not the security interest is perfected or recorded." This carve out is inadequate for two reasons: First since many credit union loans are cross collateralized, an argument can be made that the credit being extended

isn't for the "sole and express" purpose of financing an initial purchase.[1] In addition, the language would potentially include most automobile refinances under its provisions. As a matter of policy it doesn't help consumers to make it more difficult for them to keep their cars.

Finally, the CFPB should reconsider the mandate that covered loans be calculated based on an "all in" calculation which includes expenses excluded from traditional loans subject to Regulation Z. Implementation of this standard will mean that financial institutions will have to have the ability to calculate a Military APR, the traditional APR as defined by Reg. Z, and an APR subject to these provisions. Regulators need to recognize that the cumulative burden of complying with nuanced distinctions out- weighs the value of these requirements. Simply put, only larger institutions will be able to have the lending staff and training necessary to comply with the increasingly broad scope of regulations, each with their own unique underwriting requirements.

These and other suggestions being made by the industry would ensure that, in cracking down on Pay Day Lending, the CFPB does not throw out the proverbial baby with the bath water. Many credit unions have been working to deter the use of Pay Day Loans long before the CFPB was created. This regulation should be amended so that credit unions continue to have flexibility to offer alternatives to predatory lending practices with solutions that reflect the unique circumstances of each member.

Sincerely,



William Mellin
President/CEO
New York Credit Union Association

[1] In addition, credit unions are unique among financial institutions in that they often have accounts in which "The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multi featured plan."
Official Interpretation 12 C.F.R. § Pt. 1026,2a(20).