Advancing Fairness
in the Marketplace for All

May 16, 2013

Chairman Debbie Matz
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Payday lending by federally-insured credit unions

Dear Chairman Matz:

We are writing to urge the National Credit Union Administration (NCUA) to stop federally-insured credit unions from making triple-digit payday loans that trap borrowers in a cycle of debt. By manipulating the APR, using third parties, or flying under the radar of enforcement, a few federal credit unions that have a legal 18% usury cap, as well as some federally-insured state-chartered credit unions, are making balloon-payment, short-term loans with a true APR approaching 300%.

The vast majority of credit unions offer responsible loans to their members, as NCLC's 2010 report on payday alternatives showed.[1] NCUA has worked to encourage even more credit unions to offer affordable small dollar loans by permitting a slightly higher 28% interest rate to be charged on a limited number of small dollar loans each year.[2] NCUA should take pride in the innovative efforts that some credit unions have developed specifically to provide responsible products and services to underserved communities in their fields of membership.

Unfortunately, a few credit unions threaten to taint the rest of the industry by offering predatory loans to their members. We thank NCUA for its work to date to address abusive lending by credit unions. Since

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[1] *See* National Consumer Law Center, "Stopping the Payday Loan Trap: Alternatives that Work, Ones that Don't" (June 2010), available at http://www.nclc.org/issues/stopping-the-payday-loan-trap.html.

[2] In November 2012, our groups each submitted comments (CRL's comments were filed jointly with our affiliate Self-Help Credit Union) urging NCUA to prevent these loans from operating like a series of high-cost payday loans. We urged that the application fee be limited to one per year to reflect the one-time cost of qualifying a borrower for a loan and that the maximum allowable application fee not be increased. We also emphasized that the existing limit of six loans per year is a critical restraint on the program. We continue to emphasize these points today, particularly in light of the actions other regulators have recently taken to address payday lending by financial institutions.

NCLC's 2010 report, 52 of the 58 credit unions that were identified as offering triple-digit loans no longer do so. But a few persist, and others have entered the business.

We are aware of nine federal credit unions (FCUs) in Alabama, California, Florida, Louisiana and Oregon that currently offer triple-digit payday loans. We list these credit unions and the terms of their loans in the attachment to this letter. A few federally-insured state-chartered credit unions also offer triple-digit payday loans.

The largest credit union making payday loans of which we are aware is Kinecta Federal Credit Union in California, which has been directly offering payday loans at its Nix Check Cashing locations. Kinecta discloses a 15% APR for its two-week loans, but it adds an "application fee" on each loan that brings the true APR on a $400 loan to 223%.[3] Kinecta may not legally charge more than 18% APR. Other credit unions use a similar ruse.

Alternatively, some credit unions partner with credit union service organization (CUSOs). The CUSOs make explicit triple-digit APR loans to the credit union's members, using the credit union's name in the web materials. The credit union likely gets a kickback (a "finder's fee") for a loan made by the CUSO that the credit union might not be able to legally offer directly.

All four federal bank regulators acted last month to address payday lending by financial institutions. The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation issued proposed guidance setting out requirements to help ensure that their banks are not making small dollar loans that consumers cannot repay without repeat usage. The Federal Reserve Board also warned its institutions about the significant risks and potential for consumer harm associated with such products. And the CFPB's research report set out in stark terms the serious problems posed by high-priced, short-term payday loans, whether made by financial institutions or traditional payday lenders.

The credit union loans we have identified have all of the same hallmarks of predatory lending as do traditional payday loans and bank deposit advance products. In 2001, NCUA warned credit unions that payday loans "normally have high fees, are rolled over frequently and can result in offensive lending practices."[4] Yet the NCUA's 12-year old letter has not stopped a handful of credit unions from offering abusive payday loans to their members. More needs to be done.

NCUA has clear authority to stop predatory lending by credit unions. When manipulation of the APR by federal credit unions (FCUs) is the problem, NCUA should use its authority under the Federal Credit Union Act (FCUA) and the Federal Trade Commission Act (FTC Act) to forbid FCUs from evading the

[3] Regulation Z, which governs the calculation of the APR, is written by the CFPB. But NCUA can enforce Regulation Z to ensure that FCUs do not use application fees to cover items that, under Regulation Z, must be included in the finance charge, including overhead, profits, loan losses, cost of funds, customer service, collection expenses, and other expenses. And even if Regulation Z permitted disclosure of a 15% APR on a 223% loan, NCUA has separate authority under FCUA and the FTC Act to ensure the integrity of its 18% usury cap.

[4] Payday Lending and Title Loans, NCUA Letter to Federal Credit Unions No. 01-FCU-03 (Apr. 2001).

FCUA 18% usury cap by charging fees that vastly outstrip the finance charge and that manipulate the APR. When FCUs offer their name to CUSOs, NCUA should tighten up its finder's fee rule to ensure that FCUs are not incurring third party risk and profiting off of loans that are illegal for them to make directly.

For all federally-insured state-chartered credit unions, which are not subject to the 18% usury cap, NCUA should use its safety and soundness authority to address failures in fundamental and prudent banking practices needed to determine the customer's ability to repay the loan and meet other necessary financial obligations. NCUA may also use its FTC Act authority to address unfair practices.

Credit unions are nonprofit organizations that exist to serve their members. Most credit unions are working to get their members out of payday loans, not to put their members into them. We appreciate the work that the NCUA has already done to address predatory payday loans, and we urge you to address the few credit unions that are engaged in the same business.

Thank you for your consideration.

Yours very truly,

Lauren K. Saunders
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