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January 27, 2009

Michael E. Fryzel, Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Credit Union Payday Lending

Dear Chairman Fryzel:

On behalf of our low income clients, we are writing to request the National Credit Union Administration to take appropriate action to halt the involvement of credit unions and credit union subsidiaries in high cost payday lending. The OCC, OTS and FDIC have all issued guidance and taken other actions that, after a several year struggle, have finally succeeded in ending bank and thrift involvement in high cost payday lending. Until recently, credit unions were not involved in high cost payday lending.

That has changed. NCUA needs to take action to go beyond the short guidance letter it issued to federal credit unions in 2001.[1] It would be truly a tragedy if the mantle of payday lending that has been relinquished by banks and thrifts were to be taken up by the credit union industry. Many credit unions have developed responsible alternatives to payday lending that have significantly lower rates, longer repayment periods, and other features for those in need of short term credit. Yet the accomplishments of these credit unions and the reputation of the industry risk being tarred by a growing number of credit union payday loans that differ little or not at all from predatory, destructive traditional payday products.

Credit unions, both state and federal, have developed a number of different mechanisms to enable them to offer, or profit from, payday lending. NCUA has a variety of legal tools and regulatory responsibilities at its disposal. Through rules, interpretations, guidance, and enforcement actions, NCUA should ensure that credit unions are only offering responsible alternatives to payday loans.

Specifically, NCUA should:

- Direct federal credit unions that they may have no involvement, directly or indirectly through credit union services organizations (CUSOs) or other third parties, with payday loans that have rates above 18% and more than a single, annual application or participation fee that merely covers origination costs and does not multiply or substitute for the cost of credit.

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

- Issue a stern warning to all federally insured credit unions that NCUA will examine closely, and may charge an extra examination fee to, any credit union and CUSO involved directly or indirectly in payday lending in light of the significant compliance, reputation and other risks, and that the better course is to avoid those risks completely.

- Issue small loan guidelines outlining the features of responsible small loans and make clear that credit unions should only be involved with small loan programs that meet those guidelines.

I. Payday Loans Are Destructive and Do Not Serve the Underserved

Payday loans are extremely expensive short-term cash loans based on the borrower's post-dated personal check or share draft or deferred electronic debit authorization. These loans cost 400% APR or more and are typically due in full on the borrower's next payday. Because lenders do not determine ability to repay prior to extending credit, many borrowers cannot repay in full on the due date and become trapped in repeat borrowing. The renewals add fees and extend the balloon payment due date, without enabling the borrower to make any progress in reducing the principal on the loan.

The average payday loan user has eight loans per year at the same lender, paying far more in finance charges than originally borrowed. Recent academic research demonstrates the high risk and harm attributable to payday loan design. Borrowers are twice as likely to file for bankruptcy in the two years after first getting a payday loan as applicants who are turned down for a loan.[2] One in two payday loan borrowers eventually defaults in the first year, but only after paying repeatedly to renew the same loan, ratcheting up the debt.[3]

Use of payday loans increases the incidence of involuntary closure of bank accounts.[4] Consumers who use payday loans encounter more hardship and have trouble paying other bills, getting health care, and staying in their home or apartment.[5] Failure to make good on a payday loan also often leads to coercive debt collection tactics. Some payday lenders and their debt collectors threaten delinquent borrowers with criminal sanctions for failure to "make good on the check" required to get the loan.

Thus, payday loans are destructive products that only worsen the situation of an already distressed borrower. Payday loans prey on, and do not serve, those who are underserved by or unable to access mainstream financial products. Payday loans do not help families to address

[2] Paige Marta Skiba and Jeremy Tobacman, "Do Payday Loans Cause Bankruptcy?" (Oct. 10, 2008) http://www.law.vanderbilt.edu/faculty/faculty-personal-sites/paige-skiba/publication/download.aspx?id=2221
[3] *Id.*
[4] Dennis Campbell, Asis Martinez Jerez, and Peter Tufano, "Bouncing Out of the Banking System: An Empirical Analysis of Involuntary Bank Account Closures" (June 6, 2008), www.box.frb.org/economic/eprg/conferences/payments2008/campbell_jerez_tufano.pdf.
[5] *See* Bart J. Wilson, David W. Findlay, James W. Meehan, Jr., Charissa P. Wellford, and Karl Schurter, "An Experimental Analysis of the Demand for Payday Loans" (April 1, 2008) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1083796; Brian T. Melzer, "The Real Costs of Credit Access: Evidence from the Payday Lending Market" (Nov. 15, 2007), http://home.uchicago.edu/%7Ebmelzer/RealCosts_Melzer.pdf.

emergencies. They are a short term fix to a financial shortfall that creates bigger, long run problems. In the end, borrowers can only solve their financial problems by resorting to measures available before their debt was multiplied: addressing their expenses and income, turning to family or friends, or declaring bankruptcy.

Some have justified the high cost of payday loans by arguing that they are not excessively profitable. The extent of any profits, however, is beside the point. Whether or not payday lenders make profits, their loans harm the borrowers.

Payday loans were having such a destructive effect on the finances and military readiness of service members that Congress banned them.[6] Though Congress did not exempt depositories, the Department of Defense did in its regulations, out of concern that legitimate credit products would be reduced.[7] DOD undoubtedly had no idea that credit unions were entering the payday loan business.

In just the last couple of years, Arizona, Arkansas, Georgia, New Hampshire, North Carolina, Ohio, and Oregon have joined the growing number of states to impose or reaffirm usury caps on payday loans, showing the growing public awareness of the destructive nature of these loans.

II. Problematic Credit Union Participation in Payday Lending

A. Manipulations of the APR to Avoid the 18% Usury Cap

Federal credit unions (FCUs) are governed by an 18% usury cap in the Federal Credit Union Act (FCUA). However, some FCUs are attempting to avoid this cap by manipulating the disclosed annual percentage rate (APR). Some state credit unions also understate the APR by using excessive fees.

1. *Excessive Application Fee*

The Nevada Federal Credit Union purports to charge no interest and discloses a 0% APR on its 7 to 14 day loans of $200 to $500, but charges a $40 to $50 "application fee."[8] These fees amount to an annual rate of 206% to 650%.

2. *Excessive Participation Fee*

Another way of lowering the APR artificially is to move the finance charge into a participation fee. This approach was pioneered by Advance America when it was attempting to circumvent Pennsylvania's 6% usury cap. Advance America charged a $150/month "participation fee" on top of 6% interest. That scam was finally shut down under state law, not federal.[9]

Following the Advance America model, both federal and state credit unions offer payday loans, through the CUSO e-Access Loan, that carry a "participation fee" on top of a purported 18%

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[6] 10 U.S.C. § 987.
[7] 72 Fed. Reg. 50580 (Aug. 31, 2007).
[8] *See* http://www.advancpay.com/about.html.
[9] *See* Pennsylvania Dept. of Banking v. NCAS of Delaware, LLC, 948 A.2d 752 (Penn. May 29, 2008).

APR on a 30 day loan.[10] The fee varies by loan amount and by the credit union, ranging from $30 to $105. With fees included, the true APRs range 138% to 378%. We understand that another federal credit union may be directly making triple-digit payday loans using this "participation fee" approach.

B. Federal Credit Unions Investing in/Owning CUSOs That Do Payday Lending (possibly without complying with state law)

Kinecta Federal Credit Union in California recently bought Nix Check Cashing, which offers payday loans. Kinecta created the CUSO Kinecta Alternative Financial Solutions, Inc, which will operate under the d.b.a. Nix Check Cashing.[11] The stores "will offer an unsecured loan that 'looks and feels' like a payday product, [Thomas Nix, the former Nix CEO and now a vice president at the credit union and president of the check-cashing subsidiary] said, but the 'critical point is we are exempt from payday advance laws' limiting such loans to $300 and the repayment period to 31 days."[12] California law requires payday lenders to be licensed and limits the size of the check written to secure the loan, including all fees, to $300 and a 31 day deferral period.[13]

According to press reports, the loans started at $45 for a two-week $255 loan (a 459% annual rate, though the disclosed APR is likely much lower). Nix plans to change the loans to $60 for a two-week $400 loan (a 390% annual rate), and will offer to rebate $20 into a savings account after six months if the borrower pays the loan back and does not bounce any checks (an unlikely prospect).[14] Even at the lower rate and even with the unlikely discount, the Nix payday loan is still a payday loan at a very high (260%) annual rate, with a short balloon payment making repayment unlikely and rollovers that multiply the fees inevitable.

C. Federal and State Credit Unions Earning a Finders Fee for a Payday Loan Made by a State CUSO

Several federal and state credit unions participate in payday lending by earning a finder's fee for loans made to their members through state CUSOs. The payday loans may be promoted through a link on the credit union website and/or by using the credit union's name on the CUSO website.

To the best of our knowledge, this is the structure that various state and federal credit unions use to attach their names to payday loans offered by the following state-owned CUSOs:

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[10] Seven federal credit unions -- American First Credit Union (Utah), Family First Federal Credit Union (Utah), Community One Federal Credit Union (Nevada), Chemcel Federal Credit Union (Texas), The Local Federal Credit Union (Texas), Crossroads Financial Credit Union (IN), -- and two state-chartered credit unions -- HAPO Community Credit Union (Washington State) and Pocahy Family Credit Union (Idaho) -- participate in e-Accessloan.com and purport to offer 18% payday loans with significant fees. *See* http://www.e-accessloan.com.

[11] *See* Kinecta Federal Credit Union Announces Expansion into Alternative Financial Services by Agreeing to Acquire Navicert Financial Inc., d.b.a. Nix Check Cashing, Business Wire (Aug. 1, 2007) *available at* http://findarticles.com/p/articles/mi_m0EIN/is_2007_August_1/ai_n27329808.

[12] William Launder, "California CU: Check Casher Buy Means Better Prices," American Banker (Aug. 24, 2007); *See also* http://nixcheckcashing.com/paydaytoday/index.html.

[13] Calif. Fin. Code § 23000 *et seq.*

[14] See Douglas McGray, "Check Cashers: Redeemed," New York Times MM36 (Nov. 7, 2008), available at http://www.nytimes.com/2008/11/09/magazine/09nix-t.html?partner=rssnyt&emc=rss –.

- CUonPayday.com offers loans from 141% to 876% APR.
- E-accessloan.com offers loans at a purported APR of 18% with fees that bring the true APR up to 138% to 450%.

D. State Credit Unions Directly Making Triple Digit Payday Loans

Prospera Credit Union has developed the GoodMoney loan, which it offers at its own branches as well as at GoodMoney Stores, a limited service branch of the credit union at GoodWill stores. News articles report that the loans cost $9.90 per $100 borrowed for a two-week loan, which translates to an annual interest rate of 252%.[15]

Prospera recently worked with CU*Answers, a credit union technology CUSO, to develop a turnkey payday lending program that it sells to other credit unions for $3,750, including the GoodMoney name. So far, Superior Choice Credit Union, headquartered in Superior, Wisconsin, and Delta Country Credit Union, headquartered in Escanaba, Michigan, have taken it on.[16]

E. Credit Unions Funding and/or Selling Triple-Digit CUSO Payday Loans, Possibly for the Purpose of Evading State Laws

Mazuma Credit Union in Missouri has a CUSO CU Holdings that has a payday lending division, XtraCa$h. XtraCa$h loans are made in Missouri, Kansas and Florida at $9 to $15 per $100 for a two-week loan at APRs from 213.79% to 391.07%.[17] It appears that Mazuma makes the loans and then sells them to the CUSO, though the loans do not appear on NCUA's 5300 Report. It appears unlikely that XtraCa$h is registered as payday lender with any state. At a minimum, with the credit union based in Missouri, the CUSO office in Kansas, and loans going to three states, it is unclear whether any regulator has effective supervision of the operation.

It is possible that Kinecta Federal Credit Union is also using this model with the CUSO only purchasing, not making, the loan in order to avoid state law requirements.

The Washington State Division of Credit Unions has taken the position that neither a state-chartered credit union nor the credit union's CUSO subsidiary needs to be licensed under the state payday lending licensing law if the loans are funded by the credit union, even if the CUSO processes the loans and makes loan approval decisions.[18] Credit unions that follow this approach would be assisting CUSOs in evading state law.

The Washington regulator also issued an opinion letter allowing licensed CUSOs to make payday loans in the credit union lobby and allowing credit unions to charge a fee for cashing the

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[15] John Leland, "Non Profit Payday Loans, Yes to Mixed Reviews," The New York Times (Aug. 28, 2007) *available* at *http://www.nytimes.com/2007/08/28/us/28payday.html?pagewanted=1&_r=1&sq=prospera%20credit%20union%20%20%20goodmoney%20payday%20loans&st=cse&scp=1.*

[16] *See* David Morrison, "Prospera CU Is Rolling Out National Payday Lending Program," Credit Union Times (Nov. 26, 2008), available at http://www.cutimes.com/Issues/2008/November%2026%202008/Pages/Prospera-CU-Is-Rolling-Out-National-Payday-Lending-Program.aspx#.

[17] *See* http://www.xtracashllc.com.

[18] *See* Payday Lending by Credit Unions, Division of Credit Unions Interpretive Letter I-05-06, Division of Credit Unions, Department of Financial Institutions, State of Washington (June 13, 2005), available at http://www.dfi.wa.gov/cu/I-05-06%20Credit%20union%20payday%20lending.pdf.

CUSO's payday checks.[19] Such a symbiotic relationship blurs the distinction between the credit union and the payday lender and creates another venue for adding fees to the payday loan.

Washington State credit unions and CUSOs have indeed entered into partnerships. The CUSO One Washington Financial offers payday loans to members of Washington State Employees Credit Union, Group Health Credit Union and Spokane City Credit Union through Q-Cash.com and the credit union websites. The loans have a 45-day term and the fees vary from $12 per $100 at an APR of 97.33 % (GHCU) to $10 per $100 and an APR of 87.11% (SCCU). Though these fees are lower and the repayment term is longer than a typical payday loan, it is still a very expensive loan and appear to have a single balloon payment that makes repayment unlikely. The relationship between the credit unions and Q-cash and the structure of the loans is not clear, though it appears that the credit unions are funding the loans. It is not clear whether One Washington Financial is registered as a payday lender under state law.

III. Legal Tools to Restrict Credit Union Payday Lending

A. APR Manipulations

As discussed above, in order to avoid the FCUA's 18% usury cap, or to understate the advertised APR, some credit unions have imposed inordinately large application or participation fees. TILA excludes certain application and participation fees from the finance charges used in calculating the APR.

However, the label on a fee is not determinative. NCUA should make clear that fees that exceed the cost of credit and are intended to substitute for and cover the cost of credit, or to avoid usury limitations, are finance charges that must be included within the APR.

NCUA has several sources of authority to prevent APR manipulations by credit unions: its jurisdiction to enforce TILA; its jurisdiction to interpret and enforce the FCUA usury provision; its regulation prohibiting deceptive advertising and representations by insured credit unions; and its authority to enforce Section 5 of the Federal Trade Commission (FTC) Act.

1. Application Fees

The TILA Commentary imposes limitations on the type of application fees that are excluded from the finance charge:

> An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans.[20]

Excessive application fees do not fit the definition of an application fee. Payday lenders do not use credit reports, credit investigations, or appraisals. Indeed, payday lending, promoted for being fast and needing no credit check, has minimal processing costs. It is the very antithesis of

[19] *See* Payday Lending by Credit Union Service Organizations (CUSOs), Division of Credit Unions, Interpretive Letter I-05-07 , Department of Financial Institutions, State of Washington (June, 13, 2005), available at http://www.dfi.wa.gov/cu/I-05-07%20CUSO%20payday%20lending.pdf.
[20] OSC § 226.4(c)(1)-1.

an underwritten mortgage loan. Payday loans should be considered one of the loan programs described in the Commentary for which application fees may not be imposed (or at least not excluded from the APR).

Moreover, an application fee that varies with the amount of the loan, or that exceeds the cost of the interest charge, clearly is designed to do more than cover application processing costs. Those costs do not vary based on loan size.

In addition, an application fee must be charged to all applicants.[21] It is unlikely that the excessive application fees described above were actually charged to all applicants, including those denied credit.

Consistent with the TILA Commentary and in order to prevent APR manipulations and deceptive practices, NCUA should ban application fees for payday loans. At a minimum, it should warn credit unions that application fees:

- Can be no greater than needed to cover actual application costs such as credit reports, credit investigations, and appraisals;
- Cannot vary with the size of the loan;
- Cannot cover and should not exceed the cost of credit;
- Must be charged to all applicants, including those denied credit.

2. *Participation Fees*

Under TILA, the APR does not include "fees charged for participating in a credit plan, whether assessed on an annual or other periodic basis."[22] A participation fee is a fee imposed as "a condition of access to the [credit] plan itself, but it does not apply to fees imposed separately on individual closed-end transactions."[23] It must be imposed on a "periodic basis; a one-time, non-recurring fee imposed at the time an account is opened in not a fee that is charged on a periodic basis, and may not be treated as a participation fee."[24] Charges "based on either account activity or the amount of credit available under the plan are not excluded from the finance charge …."[25]

The participation fees described above do not meet these conditions. Payday loans are not a "credit plan"; they are a closed-end loan.[26] The fees are imposed separately on an individual, 30-day loan on a one-time, nonrecurring basis. Though the fee is described as a monthly fee, the loans have only a 30-day term. A new fee would be imposed if the loan is renewed. The loans also are based on the amount of credit: a $45 fee for a $300 loan, a $60 fee for a $500 loan, and a $105 fee for a $700 loan. Thus, under the TILA Commentary, they may not be treated as a participation fee.

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[21] 12 C.F.R. § 226.4(c)(1).
[22] 12 C.F.R. § 226.4(c)(4).
[23] OSC § 226.4(c)(4)-1.
[24] *Id.*
[25] OSC § 226.4(c)(4)-2.
[26] Some payday lenders have begun restructuring their loans as open-end loans, but they should be considered to be in reality closed-end loans due to the short payment periods and other aspects of the loans.

A true participation fee is merely the flip side of an application fee: it is a fee designed to cover the cost of opening and maintaining a file for a borrower whose application has been granted – the cost solely of "access to the plan itself," not the cost of credit . Those costs do not vary with the amount of the loan, and an application fee must be a nominal fee that is not designed to cover the cost of credit. Certainly, a participation fee that is more than the interest charges is designed to cover more than access to the plan.

Once again, in order to avoid participation fee abuses, NCUA should consider a rule banning or severely limiting participation fees for payday loans.[27] At a minimum, it should warn credit unions that participation fees:

- Are allowed only for credit "plans";
- May not be imposed on closed-end loans, including spurious open-end credit;
- May not be imposed on separate transactions or on a one-time, nonrecurring basis;
- Must be imposed "periodically" – on multiple, regular intervals;
- Cannot be based on account activity or lack thereof;
- Cannot vary based on the amount of credit;
- Cannot cover and should not exceed the cost of credit in the finance charge.

3. *Overall Fee Load*

APR manipulations do not merely violate TILA. They also violate both the FCUA's usury cap for FCUs and the ban, applicable to all federally insured credit unions, against deceptive advertising and misrepresentations. They are also an unfair and deceptive practice in violation of Section 5 of the FTC Act. Even if a fee arguably can be excluded from the APR under TILA, NCUA can and should declare that credit unions may not manipulate the structure of a loan in order to avoid the usury cap or to minimize APR disclosures.

An April 2001 NCUA letter described the typical payday model of a $15 per $100 two week loan and stated that, for federal credit unions subject to the 18% interest cap, "structuring a loan in this way is impermissible."[28] NCUA should reiterate and strengthen this guidance to encompass all fees, regardless of the label, and to cover deceptive APR representations by all insured credit unions.

NCUA should declare that any fees that exceed the interest charge will be presumed to be finance charges designed to cover the cost of credit that must be included in the APR and must fit within the usury cap. For FCUs, NCUA should permit a single, annual application or participation fee as long as the fee covers all renewals, extensions or new loans over the course of the year and does not exceed the APR for 12 months of credit.

B. FCUA's Restrictions on the Federal Credit Union Charter

1. *Payday Lending Violates the Purposes of the FCU Charter*

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[27] NCUA has the authority to prescribe requirements "for the purposes of preventing [unfair or deceptive] acts or practices," even if not every banned act is in fact unfair or deceptive. 15 U.S.C. 57a(f)(1).

[28] Letter from National Credit Union Administration to Federal Credit Union Officials re Payday Lending and Title Loans at 1 n.1, Letter No. 01-FC-03 (Apr. 2001), available at www.ncua.gov/letters/2001/01-FCU-03.pdf (hereinafter, "NCUA 2001 Payday Letter").

High cost, predatory lending made without regard to ability to pay is inconsistent with the purposes of the federal credit union charter. Indeed, both the NCUA and the Eighth Circuit have taken the position that payday lending is inconsistent with a FCU charter. In *Oiciyapi Federal Credit Union v. National Credit Union Admin.*, 936 F.2d 1007 (8th Cir. 1991), the court affirmed the NCUA's decision to dissolve a FCU on the grounds, *inter alia*, that it failed to promote thrift as required by the credit union charter:

> The NCUA argues in response that Oiciyapi is not serving any purpose relevant to the goals of the FCUA, and that the very things that keep Oiciyapi solvent and profitable demonstrate that it fulfills no useful function as a federal credit union. Oiciyapi's primary activity, according to testimony and documents in the record, is granting payday loans…. Payday loans are not "credit for provident or productive purposes," [12 U.S.C. § 1752(1),] as they are not used for investment.[29]

NCUA should tell credit unions firmly that payday loans are not "credit for provident or productive purposes" and that such loans violate their charter. The only small loans that FCUs should be allowed to make are those with rates within the FCUA usury cap, with total fees that do not exceed the interest charges, and that meet the other guidelines for small loans discussed below.

2. *The FCU Charter May Not be Abused to Enable CUSOs or Other Third Parties to Avoid State Law*

Even if a FCU is not directly making payday loans, NCUA should make clear that other arrangements with CUSOs that enable the CUSO to avoid state law are an abuse of the purposes of the credit union charter. NCUA should give credit unions a warning similar to the one OCC gave national banks:

> National banks should be extremely cautious before entering into any third-party relationship in which the third party offers products or services through the bank with fees, interest rates, or other terms that cannot be offered by the third party directly. *Such arrangements may constitute an abuse of the national bank charter*.[30]

NCUA should make clear that licensing and other state law requirements also should not be avoided through arrangements with credit unions.

C. CUSO Rule

1. *FCU Investments in or Loans to CUSOs*

Under NCUA's CUSO Rule, 12 C.F.R. Part 712, the activities of CUSOs owned by FCUs or in which FCUs invest are limited. (These CUSOs are referred to as "federal CUSOs.") The only consumer lending these federal CUSOs are allowed to do is mortgage, student, and now credit

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[29] 936 F.2d at 1011.

[30] OCC Bulletin 2001-47, Third Party Relationship Ships, Risk Management Principles at 4 (Nov. 1, 2001), available at http://www.ffiec.gov/ffiecinfobase/resources/outsourcing/occ-bul_2001_47_third_party_relationships.pdf.

card lending.[31] Thus, federal CUSOs are not allowed to make payday loans or payday alternative loans at any interest rate, and certainly not at triple digit rates.

Though this has long been the law, some FCUs apparently need it reiterated. Kinecta Federal Credit Union, for example, announced when it bought Nix Check Cashing that it intended to continue making payday loans. Thus, NCUA should remind FCUs clearly that FCUs may not own or invest in CUSOs that do any type of payday loan or any other consumer lending besides mortgage, student and credit card lending.

Recent amendments to the CUSO Rule also authorize federal CUSOs "to buy and sell participations *in loans they are authorized to make*"[32] – business, mortgage and student loans.[33] NCUA should remind FCUs and federal CUSOs that these CUSOs are not authorized to buy participations in loans they are not permitted to originate, such as payday loans.

In order to avoid any problems with or manipulation of federal CUSO's new authority to engage in credit card lending, NCUA should also make clear that all lending by a federal CUSO must comply with the FCUA usury cap. It is possible that some CUSOs may attempt to push the envelope either by restructuring their payday loans as credit cards or by offering high cost credit cards as an alternative. For example, abusive fee harvester credit cards function similarly to payday loans in that the borrower is given immediate access to cash in exchange for a commitment to pay exorbitant fees.[34] NCUA should head these problems off before they start.

The statute authorizing FCU use of CUSOs states that the purpose is to provide "services which are associated with the routine operations of credit unions." Loans above the FCUA usury cap are not part of the routine operations of credit unions. Indeed, as noted above, both the NCUA and the Eighth Circuit have taken the position that payday lending is inconsistent with the purpose of a FCU charter. *Oiciyapi Federal Credit Union v. National Credit Union Admin.*, 936 F.2d 1007 (8th Cir. 1991). Activity that conflicts with the FCU charter is not associated with the routine operations of FCUs.

The purpose of the CUSO Rule is also to enable FCUs to take advantage of "a level of expertise that may not be attainable by individual credit unions …." But CUSOs are being used for payday loans not because they have expertise that credit unions lack, but rather to avoid the laws governing FCUs and to insulate credit unions from the taint of direct predatory lending. It is possible that these abuses could spread to credit card lending. Consequently, NCUA should make clear that FCUs may not participate in activity by CUSOs that would be unlawful for the FCU itself or that is inconsistent with the purpose of the FCU charter of "promoting thrift among its members and creating a source of credit for provident or productive purposes."

2. *Finders Fees and Other Contractual Arrangements with CUSOs*

The CUSO Rule states that "an FCU may invest in, loan to, *and/or contract with* only those CUSOs that are … engaged in the preapproved activities and services related to the routine daily

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[31] 12 C.F.R. § 712.5(c), (d), (n).
[32] 73 Fed. Reg. 79307, 79310 (Dec. 29, 2008) (emphasis added).
[33] 12 C.F.R. § 712.5(c), (d), (n).
[34] *See* National Consumer Law Center, "Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers" (Nov. 2007), available at http://www.nclc.org/issues/credit_cards/content/FEE-HarvesterFinal.pdf.

operations of credit unions."[35] Thus, the CUSO Rule does not merely restrict FCU investments in or loans to CUSOs, but also their contracts. Any FCU contract with a CUSO engaged in payday lending violates the CUSO Rule for the same reasons outlined above: payday lending is not one of the preapproved activities in the CUSO Rule, and lending at rates 20 times the legal rate for an FCU is not a service "related to the routine daily operations of credit unions."

Therefore, NCUA should inform FCUs that the CUSO Rule prohibits them from contracting with CUSOs engaged in payday lending. This includes contracts relating to finders' fees, loans to the FCU's members, use of the FCU's name on the CUSO's website, or cross listing of a link to the CUSO's website on the FCU's website. FCUs should never be involved in CUSO activities that would be unlawful for the FCU itself.

D. Incidental Powers Rule

The Incidental Powers Rule permits FCUs to engage in certain activities that are "necessary or requisite to enable [the FCU] to carry on effectively" the credit union's business.[36] Certain categories of activities are preapproved as incidental powers. One of these is "finder activities," which includes bringing together two parties, endorsing a product or service, and offering third party products or services through the FCU website, among other finder activities.[37]

Most of the FCUs that are involved in payday lending appear to be doing so through "finder activities" through which they receive payment for promoting or otherwise enabling CUSO payday loans to the FCU's members. Other preapproved categories, such as marketing activities, may also cover certain aspects of FCU involvement in payday loans.[38]

Though the general category of finder activities is preapproved as a permissible incidental power, enabling payday loans through finder activities does not meet the definition of "incidental powers activities." An activity meets the definition of an incidental power activity only if it:

> (a) Is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act;
> (b) Is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and
> (c) Involves risks similar in nature to those already assumed as part of the business of credit unions.[39]

Activities that promote or enable payday loans violate all three of these requirements. First, lending at 300% or higher is not part of the credit union mission and would violate the FCUA. For similar reasons, triple-digit payday lending is not a functional equivalent or logical outgrowth of legitimate credit union activities. Finally, payday lending inherently involves very expensive, predatory lending to individuals without regard to ability to pay, and significant compliance, reputational and other risks (discussed below). Any contractual relationship or

[35] 12 C.F.R. § 712.5 (emphasis added).
[36] 12 C.F.R. § 721.2.
[37] 12 C.F.R. § 721.3(f).
[38] 12 C.F.R. § 721.3(h).
[39] 12 C.F.R. § 721.2 (emphasis added).

involvement with entities engaged in payday lending involves risks that are radically different in nature to those assumed by a credit union as part of its regular business.

NCUA should declare that FCUs may not use their incidental powers, even those in preapproved categories, in connection with payday lending as payday lending does not meet the requirements for exercise of incidental powers.

E. Rules Against Unfair and Deceptive Acts and Practices

NCUA has jurisdiction to enforce Section 5 of the FTC Act, and payday loans are inherently unfair and deceptive. They bear many of the characteristics of abusive or predatory loans condemned by federal banking regulators:

- loans with unaffordable payments;
- lending without regard to ability to pay;
- loans based on the ability to seize collateral (in his case, a bad check) rather the ability to make scheduled payments in light of the borrower's resources and expenses;
- high fees;
- loan flipping; and
- balloon payments.[40]

It is important to remember that NCUA's authority under the FTC Act includes the authority to prescribe requirements "for the purposes of preventing [unfair or deceptive] acts or practices," even if not every banned act is in fact unfair or deceptive.[41]

Payday loans are the equivalent of the unfair trade practices prohibited under the NCUA's Credit Practices Rule:[42]

- A post-dated check or electronic debit authorization operates like a confession of judgment, allowing the lender to seize the borrower's income without judicial process.

- The ability to seize income without judicial process also operates like an exemption waiver, permitting lenders to reach Social Security and other exempt income.
- A two-week payday loan based on proof of a regular paycheck is effectively an assignment of wages.

- The threat to cash a post-dated check also serves the same terrorizing function of a nonpossessory security interest in household goods.

In addition to the FTC Act, NCUA also has jurisdiction to enforce the FCUA Advertising Rule for all federally insured credit unions. That rule prohibits any advertising or representation

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[40] *See, e.g.,* Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices, OCC Advisory Letter AL 2003-2 (Feb. 21, 2003); NCUA et al, Statement on Subprime Mortgage Lending, 72 Fed. Reg. 37569 (Jul. 10, 2007).
[41] 15 U.S.C. 57a(f)(1).
[42] 12 C.F.R. § 706.2(a)(3).

"which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts …."[43]

Beyond concerns about the loan terms, deception can occur when a credit union's name is attached to a loan that is made, underwritten, or serviced by a third party. Though the CUSO websites may disclose that the loan is not actually made by the credit union, the fact remains that the CUSO is using the credit union's name, is making loans to individuals based on their credit union membership, and may be obtaining customers based on a credit union referral on its website or otherwise. The fact or significance of the funding source is likely to be lost on the borrower, who will be upset when the credit union disclaims responsibility when things go wrong.

Credit union members who come to expect a certain level of fair treatment by their credit unions may be shocked at the escalating cost of a CUSO payday loan and the hard ball tactics that may be used to collect it. Attaching the credit union's name to a CUSO loan confuses and deceives borrowers and may violate this rule.

F. Supervisory Concerns Applicable to Federal and State Credit Unions

Through guidance letters, supervision, and enforcement actions, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation have succeeded in ending bank and thrift involvement in payday lending. Though the regulators did not directly prohibit bank and thrift involvement with payday lending, they made clear through their collective actions that such involvement posed such significant risks that it should be completely avoided. The banks and thrifts all eventually got the message and got out of the business.

1. *NCUA Should Exercise its Supervisory Power Over State as Well as Federal Credit Unions*

The concerns that motivated the banking regulators are equally relevant to credit unions, both state and federal. Credit unions that make or invest in payday loans, directly or indirectly, bear obvious risks if those loans are unsound or otherwise carry with them significant credit, transaction, reputation, compliance or other legal risks. The NCUA has the authority and duty to address these risks both for the federal credit unions it regulates and for the state credit unions that it insures.

Notably, the FDIC was able to stop state chartered banks from their involvement in payday lending though it does not regulate those banks directly. The FDIC sent a strong warning that it "believes that providing high-cost, short-term credit on a recurring basis to customers with long-term credit needs is not responsible lending; increases institutions' credit, legal, reputational, and compliance risks; and can create a serious financial hardship for the customer."[44] Like the FDIC, NCUA has broad authority to regulate members that it insures. NCUA should convey the clear message that the risks of payday lending are so great that credit unions should have no involvement whatsoever in payday lending

[43] 12 C.F.R. § 740.2.
[44] Payday Lending Programs, Revised Examination Guidance, FDIC Financial Institution Letters, FIL-14-2005 (Mar. 1, 2005).

The reputational risks to credit unions are even greater than those to banks and thrifts in light of the nonprofit status and community service purpose of credit unions. Payday lending activity by state credit unions poses a reputation risk to federal credit unions as well. The involvement of credit unions in payday lending or false payday loan "alternatives" risks muddying the efforts of other credit unions to help their members with truly helpful alternative products.

2. *Supervisory Concerns Remain and May Be Enhanced When Third Parties Are Involved in Payday Transactions*

Concerns apply to finders' fee arrangements as well as to loans in which credit unions invest. The exposure to significant risk is not eliminated if the credit union's involvement is limited to a finder's fee or other arrangement that does not directly involve the credit union's collateral.

After issuing a guidance letter in 2000 describing the risks associated with payday lending,[45] the OCC reiterated in 2001 that these concerns remained if payday lending was conducted through third parties.[46] The OCC specifically identified three types of third party relationships that pose potential risks. The first involved third parties conducting functions on the bank's behalf ("outsourcing"). The second involved products and services that the bank did not originate, including products offered on the bank's premises and made available as a finder ("finder activities"). The third involved use of the bank's name or regulated entity status ("franchising"). The OCC letter proceeded to describe in detail the risks associated with all three types of third-party relationships.

The OCC noted that "authorizing third parties to conduct business in the banks' name is potentially the most problematic of the third-part relationships and often warrants significant additional supervisory scrutiny by the OCC." The OCC observed that these franchising arrangements take a number of forms, including the one most common to credit union payday lending: "complete pass-through type arrangements, in which the bank basically receives a fee in return for the use of its name …." The OCC found that "[f]ranchising activities often involve significant reputation, strategic, transaction, and compliance risk to the bank."

Most of the credit union payday loans described above fall into both the second and third of these categories identified by the OCC, as they involve products offered by third parties to credit union members using the credit union's name, in exchange for a finders' fee or other remuneration.

As both the other regulators have emphasized, "[t]he use of third parties in no way diminishes the responsibility of the board of directors and management [of the depository] to ensure that the third-party activity is conducted in a safe and sound manner and in compliance with policies and applicable laws."[47]

3. *Risks Posed by Involvement with Payday Lending*

[45] OCC Advisory Letter AL 2000-10, Payday Lending (Nov. 27, 2000).
[46] OCC Letter to CEOs re Third-Party Relationships Risk Management Principles, OCC 2001-47 (Nov. 1, 2001).
[47] FDIC Guidelines for Payday Lending, FIL-14-2005 at 3 (Feb. 25, 2005).

The OCC, OTS and FDIC guidance letters set out in detail the various risks of involvement with payday lending. Though the guidance did not prohibit payday lending, it had the effect, combined with follow up supervision and enforcement, of convincing all banks and thrifts to exit the business. NCUA also identified payday lending risks in its less detailed 2001 letter.

Only a brief summary of the risks of payday lending and the banking regulators' response is provided below.

Strategic risk. Strategic risk is the risk arising from adverse business decisions or improper implementation of those decisions. Strategic risk exists in credit unions that engage in payday lending or, in an effort to remain competitive or boost earnings, use payday CUSOs without fully performing due diligence reviews or implementing the appropriate risk management infrastructure to oversee the activity. Strategic risk also arises if management does not possess adequate expertise and experience to properly oversee the CUSO's activities.

Reputation risk. Reputation risk is traditionally viewed as the risk to earnings or capital arising from negative public opinion. Public opinion is turning increasingly against payday loans, with a strong movement in the states to ban them. Involvement with payday lending poses obvious reputational risks to both individual credit unions and to the credit union industry.

Involvement with payday CUSOs that do not meet the expectations of credit union members can also expose the credit union to reputation risk. Poor service, disruption of service, inappropriate sales recommendations, and violations of consumer law can result in litigation, loss of business to the credit union, and adverse publicity.

In the credit union context, reputation risk also involves the risk of adverse legislative consequences. Some have questioned the appropriateness of credit unions' nonprofit status, and those attacks will grow if credit unions are seen as enabling predatory lending. In addition, several consumer and civil rights organizations opposed a provision of last Congress's credit union regulatory relief bill that would have permitted credit unions to make payday alternative loans within the field of membership. Though the groups support expansion of responsible credit union products to the underserved, they feared that the provision would have permitted wider credit union payday lending.

Credit unions also risk becoming the target of a widely publicized campaign by the large community of payday loan opponents. Consumer, community and religious groups nationwide protested the involvement of banks and thrifts in payday lending until the federal regulators eventually shut it down.

Compliance risk. Compliance risk is the risk arising from violations of laws, rules, or regulations, or from nonconformance with internal policies and procedures or ethical standards.

-- *Consumer protection laws* . In addition to the range of legal and ethical standards governing any lending program, payday lending involves particular compliance risks in light of its inherently unfair and deceptive nature and the likelihood of aggressive debt collection efforts. Credit unions should be concerned about compliance with the Truth in Lending Act, the FTC Act and state equivalents, the Fair Credit Reporting Act, Electronic Fund Transfer Act, the Fair Debt Collection Practices Act, and privacy regulations, among others.

-- *Fair lending laws.* Payday lending also carries substantial risk of violating fair lending laws because it is often aimed at or concentrated in minority communities. Subprime mortgage lenders, lenders offering refund anticipation loans, and other lenders who offer predatory products to financially distressed borrowers have been accused of violating fair lending laws.

-- *Laws governing the credit union charter.* Credit unions also bear compliance risk, in addition to reputation risk, if their arrangements with third parties permit those third parties to avoid state law. As discussed above, arrangements that enable a third party to avoid state law may be an abuse of the state or federal credit union charter.

Transaction risk. Transaction risk is the risk from problems with service or product delivery. Transaction risk is evident in every payday loan offered. Payday lending, a volume business due to the small scale of payday loans, poses significant transaction risks whether arising from fraud, error, inadequate capacity, or technology failure.

Credit risk. Credit risk is the risk arising from a payday borrower's inability to repay the loan. Payday loans are targeted at borrowers facing credit problems. Severe credit risk is inherent in every payday loan program. Loans with high costs, due in a short period of time, or structured with a single balloon payment instead of affordable installments set credit union members up for failure and for rollovers that merely exacerbate the problem. A loan that is repaid out of current earnings and then remade to supplement a new lack of cash flow is a credit risk. Even if the credit risk is initially borne by a third party, it may be shifted back to the credit union if the third party does not fulfill its responsibilities or have the financial capacity to fulfill its obligations.

NCUA should consider guidelines similar to those the FDIC adopted in light of the serious credit risk posed to credit unions that fund or invest in payday lending:

- *Capital adequacy.* The FDIC noted that "payday lending is among the highest risk subsets of subprime lending" and that institutions "need significantly higher levels of capital, perhaps as high as 100% of the loans outstanding."

- *Allowance for Loan Lease Losses (ALLL) Adequacy.* ALLL must be adequate to absorb estimated credit losses within a payday loan portfolio.

- *Classification Guidelines.* In light of the obvious weakness of payday loans, the FDIC directed that payday loan portfolios be classified as Substandard.

Notably, the credit risk posed by payday lending is considerably higher in today's distressed economy than it was in 2005 when the FDIC issued its guidance.

Other risk. Involvement with payday lending and payday CUSOs may also subject the credit union to liquidity, interest rate, price, foreign currency translation, or country risk.[48]

4. ***Steps to Address Risk***

In light of all of the significant risks associated with payday lending and use of third parties, the OCC, OTS and the FDIC put banks and thrifts on notice that they must engage in a number of

[48] *See* OCC Third-Party Relationships Letter.

steps to address those risks. But NCUA should make clear that the better course is to avoid these risks completely by staying out of payday lending.

The steps the other banking regulars required are set out in detail in their guidance letters and will not be repeated here, but they include:

- Being aware of and evaluating each risk;
- Conducting due diligence reviews of both internal and third party operations;
- Acquiring sufficient expertise and management infrastructure to conduct intensified oversight and management of the risk;
- Submitting to additional supervision, including concurrent risk management and consumer protection examinations;
- Potentially paying a special examination or investigation fee for review of third party operations that present heightened risks;
- Analyzing whether the potential costs of a payday lending program are worth the benefits;
- Contacting state supervisors before becoming involved with payday lending.

The FDIC also provided guidelines on treatment of accrued fees and finance charges, recovery practices, and concentrations of payday lending.

NCUA should give credit unions a similar warning and require similar steps.

Another tool that the FDIC used to address the abusive aspects of payday loans is the Federal Financial Institutions Examination Council's Uniform Retail Credit Classification and Account Management Policy.[49] That policy addresses the proper handling of loans that the borrower cannot satisfy when due. One of the most abusive aspects of payday lending is the cycle of escalating debt caused when unaffordable loans are renewed with added fees and little or no reduction of principal. Keeping such loans in current status by renewing them gives a false impression of the quality of the debt and also exacerbates the problems of the borrower. Though NCUA was not a party to the *Retail Classification Policy*, it should adopt its own guidelines.

The FDIC's classification policy,[50] among other items:

- Required borrowers to show a renewed ability to repay the loan before obtaining an extension or renewal, and

- prohibited additional advances to finance unpaid interest and fees and simultaneous loans to the same customer.

Strict adherence to this policy would prevent any payday loan rollovers. The policy should not be used as a fig leaf, however, such as payday loan "best practices" that merely attempt to deflate efforts at real reform.

G. Warning to CUSOs on Compliance with State Law and Supervisory Risks

[49] 65 Fed. Reg. 36903 (June 12, 2000).
[50] FDIC Guidelines for Payday Lending, FIL-14-2005 at 3 (Feb. 25, 2005).

At least one federal credit union is under the erroneous impression that its subsidiary CUSO does not need to comply with state law. Whether this is because of preemption or because the transaction is structured to avoid state law definitions is unclear.

If other CUSOs believe that they can ignore state law, they will undoubtedly seize on the opportunity to move into states that have worked hard to eliminate payday lending through state law. This is no idle speculation, as some CUSOs specialize in payday lending and are growing their operations in several states.

NCUA should remind credit unions clearly that neither it nor any other banking agency has ever extended the preemptive effect of federal banking laws to subsidiaries of credit unions, state or federal. For CUSOs subject to the FCUA CUSO Rule, this should already be clear, as the rule specifies: "A CUSO must comply with applicable Federal, state and local laws."[51] The same is true for state CUSOs, as no federal law preempts applicable state law. Accordingly, CUSOs must comply with licensing, usury, and other state laws that apply to other payday lenders, and NCUA should remind all credit unions and CUSOs of this fact.

NCUA should also put CUSOs and other third parties on notice that they may be subject to examination. The recent revisions to the CUSO rule extend to all federally insured credit unions the provisions of the CUSO Rule ensuring that credit union regulators have access to the CUSO's books and records.[52] The OCC notified the payday lenders partnering with national banks that it "will use its supervisory authority to examine the operations of service providers who seek out national banks to deliver potentially abusive, unfair and deceptive, or predatory products." Examination is also appropriate if the CUSO's arrangements with a credit union present any of the safety and soundness considerations discussed above.

IV. Good Credit Union Small Loans

The reputational risk to the credit union industry posed by payday lending is of particular concern because tarnishes the efforts of other credit unions to develop positive small loan products. NCUA should direct the industry towards these loans and away from payday loans or false alternatives.

A. Small Loan Guidelines

The Federal Deposit Insurance Corporation is the only federal agency so far to adopt guidelines to encourage banks to provide responsible small dollar loan products to consumers. After Congress enacted the Military Lending Act in 2006, the FDIC convened a meeting of military banks to discuss ways banks on or near military bases could better serve the small dollar loan needs of service members. Credit union officials participated in that meeting, as well.

NCUA should issue small loan guidelines and should urge credit unions to make only helpful payday loan alternatives that meet those guidelines. The essential elements of a helpful small loan identified in the FDIC Small Loan Guidelines are:

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[51] 12 C.F.R. § 712.3(e).
[52] 12 C.F.R.712.3(d)(3)(i).

- *Affordable pricing of 36% APR or less, including fees.* Federal credit unions of course are limited to 18% APR, but they should not add fees that bring the total cost above an annual rate of 36%. State credit unions should limit themselves to 36%.

- *Minimize or eliminate charges such as annual fees, membership fees, advance fees, and prepayment penalties.* A single, small origination fee that bears a direct relationship to origination costs is acceptable, as long as it covers all renewals throughout the year and does not multiply. No other fees should be allowed unless they keep the total cost under 36% APR.

- *Affordable, amortizing payments without the need for renewals.* Though the FDIC did not specify payment periods, a 90-day or longer term and multiple installments, not a single balloon payment, are important elements that give credit union members a reasonable chance of paying off the loan without renewals.

- *An automatic savings component and access to financial education.*

The most essential of these elements is of course the price. Loans that, with fees included, are substantially over 36% are not payday loan "alternatives"; they are payday loans. But repayment period and multiple installments are also important to breaking the rollover cycle. Though the 30- or 45-days offered by some credit unions is longer than the typical two-week payday loan, it is still too short to ensure repayment without rollovers. Longer term loans with affordable installment payments are needed for members to retire the loan in a reasonable length of time. Similarly, automatic savings components and financial education also help to break the payday habit.

NCUA should make clear that only loans that meet small loan guidelines are consistent with the credit union charter.

B. Examples of Good Credit Union Products

A growing number of credit unions are offering true payday loan alternatives that meet the guidelines above. The fact that these loans are being offered shows that it is possible to offer truly affordable loans, not ones that are only a minimal improvement over traditional payday loans.

Veridian Credit Union in Iowa offers a Payday Alternative Loan (PAL) up to $1,000 with a $20 application fee and a 19% APR with automatic payment and 21% APR without Automatic Payment. The repayment term is six months. Half of the loan amount requested is deposited into a savings account.[53]

Eglin Federal Credit Union in Florida has a SAFE Loan of $500 for 90 days at 16.9% APR and apparently no fees.[54] Payments are due on each payday. Minimum payment is $25 weekly or $50 bi-weekly/semi-monthly or $100 monthly. Members who have had two SAFE Loans are required to complete the Balance Budget Counseling course prior to receiving their third SAFE Loan.

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[53] Veridian Credit Union, http://www.veridiancu.org/loans/pal.asp.
[54] http://www.eglinfcu.org/rt.asp?rt=22.

Unitus Community Credit Union in Oregon has an Advance Loan of $100 - $600, repaid in installments (one month for every $100 borrowed) with no application fee and an 18% APR.[55]

A number of other credit unions have affordable payday loan alternatives. Though some of these loans could be improved with longer repayment periods, they are all under 36% with only a single, annual application or participation fee that does not cause rollover problems. These credit unions include OnPoint Community Credit Union (Oregon)'s Payday Advantage Loan[56]; Watermark Credit Union (Washington)'s Payday Freedom Loan;[57] Unitus Community Credit Union (Oregon)'s Advance Loan,[58] and St. Mary's Bank MyPay loan.[59]

Of course, some banks and thrifts also offer reasonable small loans. In early 2008, the FDIC announced a pilot project with thirty-one banks selected to experiment with small-dollar loan products and services. At the end of the two year program, the FDIC will evaluate the economics of bank lending as an alternative to abusive payday lending. In the first quarter of the pilot, 3,100 loans with principal balance of about $3.7 million were extended.

V. Conclusion

The credit union industry was founded in an effort to supply its members with less expensive, reasonably priced products. Credit unions are also being looked to as institutions that can reach out to the unbanked or underbanked. Many credit unions have been at the forefront of serving the underserved with affordable financial services.

But a payday loan "alternative" is not a true alternative merely because it is a minimal improvement over a traditional high cost payday loan. NCUA should issue rules, interpretations and guidelines and take any appropriate enforcement actions to ensure that credit unions are only helping to break, not perpetuate, the payday loan cycle.

Thank you for your time to consider our views. We would be happy to meet with you to discuss them further.

Yours very truly,

Lauren K. Saunders
Managing Attorney

[55] *See* http://www.unitusccu.com/loans/additional.php and http://www.unitusccu.com/rates.php#add_rates.
[56] http://www.onpointcu.com/htm/loans_otherrates.html and http://www.onpointcu.com/pdf/05POR199_Payday.pdf.
[57] *See* http://www.watermarkcu.org/html/cc_ml_pdf.htm.
[58] *See* http://www.unitusccu.com/loans/additional.php and http://www.unitusccu.com/rates.php#add_rates.
[59] St. Mary's Bank, MyPay Loan, http://www.stmarysbank.com/personal/consumer-loans/mypayloan.asp.