



December 26, 2014

Department of Defense
Federal Docket Management System Office
4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09
Alexandria, VA 22350-3100

RE: Department of Defense: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, RIN 0790-AJ10

VIA ELECTRONIC MAIL: www.regulations.gov

To Whom It May Concern,

The Michigan Credit Union League (MCUL), the statewide trade association representing 98% of the credit unions located in Michigan and their 4.5 million members, appreciates the opportunity to comment on the Department of Defense (DOD) proposal regarding limitations on consumer credit extended to Service Members and their Dependents.

Expansion of Military Loan Act

As the DOD continues to review the existing safeguards for our military personnel and their families, the MCUL asks that the DOD bear in mind and recognize the unique nature of credit unions. As nonprofit member-owned institutions, credit unions have a strong relationship with their membership and provide financial products to address the specific needs of the communities they serve.

The MCUL strongly supports the protection of all consumers from predatory lending while ensuring they have access to affordable credit. As such, the MCUL supports appropriate protection from abusive practices for military members however, we have concerns with certain expansions of the DOD's proposal.

Among the inventory of financial products and services credit unions offer to service members are checking and savings accounts, consumer credit, short-term loan alternatives to payday lending, mortgage loans and retirement planning. Many credit union products and services, provided on and off military installations, are specifically designed for military personnel and have been developed to address the challenges associated with active deployments, military relocations, government shutdowns, furloughs, and other circumstances. The rule as proposed would expand to cover many such products offered, by specifically expanding on the definition of "consumer credit."

The DOD proposes to define "consumer credit" as "credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is: (i) Subject to a finance charge; or (ii) payable by written agreement in more than four installments." This

change in definition would be consistent with the definition under Regulation Z, 12 CFR 1026, which implements the Truth in Lending Act (TILA.) Exceptions would continue to apply for residential mortgages, vehicle purchase transactions secured by the vehicle, personal property-purchase transactions secured, and credit transaction exempt under TILA. Both currently and under the Proposed Rule, covered “consumer credit” transactions are subject to a 36 percent “military annual percentage rate” (MAPR) cap, calculated to include certain fees not included when calculating the annual percentage rate (APR) under TILA. Such fees excluded under TILA include an application fee and participation fee.¹

Payday Alternative Loans

The expansion of “consumer credit” addressed in the proposal raises additional concern in the area of Payday Alternative Loans. The National Credit Union Administration (NCUA), in 2010, issued a regulation establishing the regulatory framework for Payday Alternative Loans (PALs).² The NCUA’s program is available to federal credit unions and federally insured state chartered credit unions. In both practice and design, PALs are short-term, small dollar loans offered to credit union members at a significantly lower cost than payday loans, with no rollovers.

Specifically PAL regulation allows: (a) small loan amount of \$200 to \$1,000 to borrowers who have been members of the credit union for at least one month; (b) short terms of one to six months; (c) an application fee that reflects the *actual costs* associated with processing the application, limited to \$20; (d) no rollovers; and (e) a rate up to 1,000 basis points above the maximum rate FCUs may charge for other credit (18 percent thus a maximum of 28 percent for a PAL). Additionally, Michigan state chartered credit unions offering a PAL product may not exceed an APR of 25 percent.³

Credit Unions may not make more than three PALs in any rolling six-month period to any one borrower, may not make more than one PAL at a time to a borrower, and PALs must fully amortize. Further credit unions offering PALs must implement appropriate underwriting guidelines to minimize risk (e.g., requiring a borrower to verify employment by providing at least two most recent pay stubs, etc.).

Expanding the definition of “consumer credit” as proposed would prohibit certain PALs to covered borrowers that are permissible under the NCUA’s PAL regulation. This is wholly due to the inclusion of application fees in the MAPR⁴, whereas they are not included in applying the 28 percent cap under the NCUA regulation or the 25 percent cap under applicable Michigan statute.

¹ Application fees charged to all applicants and participations fees are among the charges currently included in the military APR even though they may be excluded from the definition of “finance charge” in Regulation Z. 1026.4(c)(1)(4) (excludes application fees if charged to all applicants and participation fees from the definition of finance charge)

² <http://www.ncua.gov/Legal/Pages/RA2010-13.aspx>

³ https://www.michigan.gov/documents/cis_ofis_ceilings_24956_7.pdf

⁴ See 10 USC 987(i)(4) (defining “annual percentage rate” for purposes of MLA)

PALs made in small dollar amounts and with short terms may have MAPRs that exceed 36 percent, depending on the amount of the application fee. As discussed the NCUA's regulation permits credit unions to charge only the actual costs associated with processing a PAL application, not to exceed \$20. This specific provision is designed to ensure credit unions earn income and address risk through a PAL's interest rate, not through an excessive application fee.

If the rule is implemented as proposed, it would prevent credit unions from providing this payday loan alternative, and have a major impact on the availability of all affordable short term credit products for service members and their families.

Compliance Burden

Although credit unions do not offer the predatory products the DOD is trying to protect service members from, they will still be forced to check the Defense Manpower Data Center (DMDC) database to ensure they are compliant with disclosure requirements as well as identify whether an applicant is a "covered borrower." The only method that offers a safe harbor from penalty is to check the DMDC Database.

If the applicant is not found within the military database, a lender must comply with an "actual knowledge" requirement by searching its own records to determine if the applicant is a covered borrower. These records include all membership account records, product specific account systems, account notes and any additional files a credit union may have on record.

Depending on the complexity of the institution, the credit union may have to review multiple record systems to comply with the "actual knowledge" requirement and will likely entail manual reviews by credit union staff to ensure records are thoroughly and accurately searched. This will cause significant delays to the loan application and underwriting processes, and increase costs for financial products and services offered – both undesirable consequences for consumers – when the intent is to protect and provide more cost effective products.

Conclusion

While the MCUL is supportive of the goals of the Proposed Rule and the Department's intent to protect service members and their dependents, for the reasons discussed in this comment letter the MCUL encourages the Department to modify the Proposed Rule. Specifically, the MCUL strongly encourages exempting credit unions and other depository institutions (as presented as a possibility by the DOD in the proposal)⁵ or providing an exemption from aspects of the proposed changes for credit unions, such as the proposed expansion of the term "consumer credit." Additionally the DOD should consider exempting certain credit unions products, including PALs. The DOD should also reconsider the

⁵ See 79 FR 58610 <http://www.federalregister.com/Browse/Document/usa/na/fr/2014/9/29/2014-22900>

proposed approach regarding use of the MLA database and related “safe harbor,” and should allow an extended implementation period to provide adequate time for credit unions and others to implement the necessary changes.

The MCUL thanks the Department for the opportunity to provide our comments on its proposed revisions to the Military Lending Act.

Sincerely,

A handwritten signature in black ink, appearing to be 'K.R.', written in a cursive style.

Ken Ross
Executive Vice President & Chief Operating Officer