

Proposed Rule Summary

Prepared by NASCUS Regulatory Affairs Department
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Department of Defense

Military Lending Act

The Department of Defense (DOD) proposes amending its regulation implementing the Military Lending Act (MLA). The MLA provides consumer protections for service members and their dependents including limiting the amount of interest that a creditor may charge on “consumer credit” to a maximum 36% annual percentage rate. The DOD proposes extending the protections of the MLA to a broader range of closed-end and open-end credit products than are currently covered. Specifically, DOD would redefine the MLA definition of credit consistent with the Truth in Lending Act (TILA): 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 a written agreement in more than four installments. In addition, the DOD is proposing to amend the provisions governing tools a creditor may use in assessing whether a consumer is a “covered borrower,” and modifying the disclosures that a creditor must provide to a covered borrower.

The DOD proposal explicitly asks for comments on whether insured depository institutions should be exempted from the limitations of the MLA in whole, or in part.

The complete proposed rule may be [read here](#).

Comments on the proposed rule are due to the Department of Defense by **November 28, 2014**.

Summary

In general, the MLA, provides military personnel and their dependents protections when borrowing by applying two broad classes of requirements to a creditor. First, a creditor may not impose an annual percentage rate (APR) greater than 36% in connection with an extension of consumer credit to a covered borrower. Second, when extending consumer credit, the creditor must satisfy certain other terms and conditions related to the transaction, including:

- providing certain information both orally and in a form the borrower can keep
- refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit
- refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit

Currently, the products covered by the MLA restrictions are limited to 1) vehicle title loans; 2) refund anticipation loans; and 3) payday loans (defined as closed-end credit with a term on 91 days or fewer and in which the amount financed did not exceed \$2,000.00).

Under its proposal, DOD would expand the consumer credit products covered by the MLA to those that have been subject to the TILA protections under TILA: credit offered or extended to

a covered borrower primarily for personal, family, or household purposes, and that is 1) subject to a finance charge or 2) payable by a written agreement in more than four installments. Furthermore, DOD would include in the calculation of interest any charge that is a “finance charge” under Regulation Z as well as the fees and charges enumerated under the MLA.

DOD is also proposing streamlining the identification of a covered borrower by allowing creditors access to a DOD database to assess the status of a consumer-applicant for consumer credit. Creditors could therefore ensure covered borrowers receive the MLA protections to which they are entitled.

Exclusion of credit cards’ bona fide fees

Although the MLA includes credit cards within its protections, the proposal would exclude from the calculation of the APR a bona fide fee, so long as the fee is reasonable and customary for that type of fee. Certain charges, including credit insurance premium, charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, or any fees for credit-related ancillary products sold in connection with the credit transaction or upon account opening may not be excluded as bona fide fees. Under the proposal, bona fide fees would be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. DOD would create a “safe harbor” for creditors determining which bona fide fees may be excluded from APR. Under this provision, a creditor may compare the amount of the bona fide fee to “an average amount for a substantially similar fee charged by 5 or more creditors each with at least \$3 billion in outstanding loans on U.S. credit card accounts at any time during the 3-year period preceding the time such average is computed .If the amount of the creditor's own bona fide fee is less than or equal to the average of the amount charged by those 5 or more credit card issuers who each have the qualifying amount of outstanding credit card loans, then the creditor's bona fide fee would be reasonable for the purposes of the exclusion.

DOD also includes a specific provision in the proposal that states that a creditor’s fee is not unreasonable solely because other creditors do not charge a fee for similar services.

Covered persons

Currently, creditors provide borrowers a prescribed form on which the borrower indicates whether he or she is a covered person. DOD proposes to streamline the process for determining whether a particular borrower is a covered person by requiring creditors to access a database of covered persons currently provided by the DOD. A creditor would also be liable if the creditor has knowledge of the true status of a borrower regardless of the results of a database search.

DOD also proposes revising the definition of “covered borrower” to mean members of the armed forces on active duty or Service members on active Guard and Reserve duty.

Exclusion of certain products

Under the proposal, certain consumer transactions would continue to be exempted from the protections of the MLA:

- residential mortgage loans and any loans secured by the covered borrower's residence
- loans for the purchase of a vehicle if the loan is secured by the vehicle being purchased

Overdraft fees

Currently the MLA does not cover overdraft fees. However, under the proposal, overdraft fees assessed as a line of credit would be included while per transaction overdraft fees would continue to be exempted.

DOD specifically seeks comment on the following questions:

- 1) Should the MLA define "consumer credit" consistently with certain credit regulated under TILA? If so, should any products be exempted?
- 2) Could the proposal adversely affect the availability of consumer credit to Service members and their dependents or have other consequences?
- 3) Would the proposal cause creditors to develop separate classes of credit products; one class of products for covered borrowers and other classes for other consumers?
- 4) Should DOD create an exemption for insured depository institutions?
- 5) The proposal contains an exclusion for a credit card account that charges bona fide fees from the calculation of the maximum interest rate allowed under the MLA. DOD asks whether other fees or charges should be excluded as well.
- 6) Should DOD exempt open-end consumer credit card accounts from the MLA? Are there operational issues with extending the MLA to credit card products offered in retail sales locations, particularly at the point of sale?
- 7) With respect to the covered person database, DOD asks whether the safe harbor should extend to a creditor that uses a third party product to check the covered person status of a borrower.

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