

NACCA

NATIONAL ASSOCIATION OF CONSUMER CREDIT ADMINISTRATORS

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June 8, 2007

Mr. George Schaefer
Federal Docket Management Systems Office
1160 Defense Pentagon
Washington, D.C. 20301-1160
www.regulations.gov

Reference: 32 CFR Part 232
DOD-2006-OS-0216
RIN 0790-A120

Subject: **Limitations on Terms of Consumer Credit
Extended to Service Members and Dependents**

Dear Mr. Schaefer:

The following comments to the above RIN are being offered by the National Association of Consumer Credit Administrators (NACCA). The association consists of state regulators responsible for the administration of state usury and consumer credit laws. All fifty states are represented in the association in addition to Alberta, Canada, the District of Columbia and Puerto Rico.

As detailed in the Department of Defense (DOD) report to Congress on Predatory Lending Practices in August of 2006, state regulators share concerns about credit products and practices that result in lending without regard to the borrower's ability to repay; excessive fees and excessive interest rate; balloon type payments with unrealistic payment terms; wealth stripping associated with repeat rollovers/refinancing; and fraud and deception. As noted in the Federal Register, these practices can result in a debt trap for Service Members and their families who are already burdened with debt and recurring bills. State laws regulating single-pay, short-term loans like payday and title loans are currently being enforced by NACCA regulators in those states that authorize these transactions. As such, state regulators do have considerable experience in this area.

We offer the following comments to the questions posed:

1. All high-cost lending should be covered regardless of who offers the product. If there is to be an exemption for certain open-end credit plans offered by depository institutions, then the exemption should be for all state and federally chartered depository institutions. Consumers do not select credit based on whether the lender is state or federally regulated and typically do not have that information readily available.
2. The proposed definition of a payday loan is a closed-end credit transaction having a term of 91 days or less secured by a check, debit authorization or other deferred payment instrument and where the amount financed does not exceed \$2000. We note that this limited definition could result in certain providers structuring transactions to circumvent the regulations. For example, structuring a transaction as open-end, when in substance the transaction is the same as the closed-end product, or setting up the initial term just in excess of 91 days. Another way to disguise a transaction is attempting to characterize a variety of fees as something other than “interest” and therefore not subject to the proposed 36% cap. The dollar amount of \$2000 appears to be sufficient. We again note that the cost of a one-time transaction is of less concern than the repeated use of the product and the corresponding pyramiding of charges.
3. Vehicle title loans in the regulation are typically short-term, single-payment type loans similar to payday type loans that are made to people who have clear title to their auto. The proposed rule limits the coverage to loans of 180 days or less. This appears to cover potential abuses associated with a customer losing their auto due to their inability to continue making payments on the title loan since it is typically due in full every 30 days. However, we note that setting an exemption for loans of 91 days or 180 days without interest rate and other fee limits can lead to possible structuring and circumvention. An example of this would be structuring a transaction as open-end, when in substance the transaction is the same as a closed-end product.
4. Exempting transactions that have a rate of 24% military annual percentage rate (MAPR) as long as any other fees charged are bona fide, reasonable and related to the actual costs incurred for the credit product may be an option.
5. The 36% maximum MAPR excludes unanticipated late payments, default, delinquency, or similar occurrences, because such fees are imposed as a result of contingent events that may occur after the loan is consummated. We offer no additional items for exclusion except to note that state consumer credit laws detail permitted fees of these types.
6. We offer no comment on this question.
7. The DOD intends to provide access to a database to creditors to validate the status of an applicant. We offer no comment on this item except that if implemented successfully, it would seem to meet the “safe harbor” concept detailed in the proposed rule.

8. Proposed oral disclosures and inconsistencies with required Regulation Z disclosures are issues that should be reviewed in full with the goal of eliminating any inconsistencies wherever possible.
9. We offer no comment on this question.
10. Workout payment plans on short-term, single- payment type loans can be a positive for the customer if the transaction is structured with a reasonable number of payments and time frame to realistically pay the loan in full. These could be mandatory.
11. If an exception is made for workout plans as noted, it seems reasonable to require new disclosures and the rechecking of any database only when the transaction would also be considered a new transaction for Truth-In-Lending Act (TILA) disclosure purposes. The workout plan should be documented in writing and signed by the lender and the borrower. This will protect the borrower and the lender.
12. We refer to our response in item # 11.
13. Possible onerous legal terms in the contractual agreement could include: threats to use or using the criminal process to collect; making a misleading or deceptive statement; attorney fees; using a device or agreement that would circumvent the limitations of the Talent/Nelson Military Lending Act; engaging in unfair, deceptive, or fraudulent practices in the making or collecting of the loan; hold harmless clause; confession of judgment clause; wage assignment; waiver of customer's legal rights; selling insurance or similar products on single payment loans; requiring arbitration.
14. We refer to our response in item # 13.
15. An exemption for creditors making loans with an MAPR of 36% or less and that are made in compliance with Electronic Funds Transfer Act (EFTA) seems reasonable.
16. The proposed rule prohibits prepayment penalties and defers to existing state and federal law. This seems reasonable.
17. The proposed rule provides that any credit agreement which fails to comply with the regulation is void from inception. It further provides that a creditor or assignee that knowingly violates the regulation shall be subject to certain criminal penalties. These penalties should be helpful in encouraging compliance. Federal depository regulatory agencies have authority to enforce these rules. However, state regulatory agencies would not have specific authority unless the applicable state law expressly provides for the state to enforce these regulations. State regulatory agencies could assist DOD in determining the most effective way to ensure uniform implementation and enforcement. States attorneys general would

also not have specific authority to enforce the regulations as proposed. We do note that states may be able to take action under existing consumer credit protection laws including deceptive practices, unconscionability, or related statutes.

18. The proposed effective date of October 1, 2007 may be attainable on the Federal level. However, as noted, full state regulatory assistance in enforcement could require additional statutory changes in each state's laws.

We do note that military installment loans are entirely exempted from the proposal despite two provisions in the Military Lending Act regarding credit insurance fees and protection of state lending laws which cover these types of transactions. Certain types of military installment lending have been subject to no effective regulation since the lenders claim that no state law is applicable.

Sincerely,

A handwritten signature in blue ink that reads "Theresa L. Brady". The signature is written in a cursive, flowing style.

Theresa Brady, President
NACCA