

N A C C A

National Association of Consumer Credit Administrators

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February 25, 2008

Mr. Marcus Beauregard
Federal Docket Management System Office
1160 Defense Pentagon
Washington, D.C. 20301-1160
Regulation Information Number (RIN #) 0790-AI20
DoD-2006-OS-0216, 32 CFR 232
www.regulations.gov

Implementation of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

Dear Mr. Beauregard:

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.

State laws regulating short-term loans like payday, title loans, and refund anticipation loans are currently being enforced by NACCA regulators in those states that authorize these transactions. As such, state regulators have considerable experience in this area. NACCA had previously responded to the DoD request for comment on June 8, 2007, prior to issuance of the final regulations and we reiterate those comments previously provided.

Regarding the present request for information, we note that certain military installment loans made by select lenders are entirely exempted from the current regulation under 32 CFR 232.3. As you know, the Talent/Nelson Amendment to the John Warner National Defense Authorization Act, Section 670 of Public Law 109-363 which created 10 U.S.C. 987 did have two provisions regarding credit insurance

fees and applying the protection of state lending laws for these types of transactions. These military installment loans were also referenced in the Department of Defense (DoD), Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents (August 9, 2006). There are concerns about the correctness of credit insurance on loans to service members who are otherwise covered with substantial life insurance as a service member. There are also concerns regarding loan flipping and a resulting debt treadmill for short-term transactions. Additionally, there continues to be state jurisdictional issues that may need to be addressed on loans made by certain lenders on the theory that the military personnel are not permanent residents of the state where the loan is made and that the laws of that state do not apply on loans to military personnel.

State regulators are certainly aware of the possibility that any regulation of consumer credit, whether it is the DoD regulations or state laws, may be circumvented by the structuring of transactions to fall outside the specific scope of the Act. For example, lenders may structure the contractual term of the transaction as an open-end credit transaction rather than closed-end or to exceed the covered term of 91 days for payday type loans or 181 days for title loans. Although the contractual term exceeds the regulation, certain lenders may continue to service these loans as short-term advances and encourage the customer to extend or renew the loan on a continuous basis. The regulation is relatively new and this area of concern will need to continue to be monitored.

As to the applicability of the Act to Internet-based lenders offering credit covered by the definitions in 32 CFR 232.3, some states have consumer credit laws whose applicability extends to Internet lenders or others who offer consumer credit to residents of their state, regardless of the physical location of the lender. The current Act does not make specific reference to Internet lenders who are offering covered transactions. The DoD regulations could be more specific on the applicability of the Act to these transactions.

Under the Act, a creditor may, but is not required to, verify the status of an applicant as a covered borrower by requesting the applicant to provide a current military leave and earning statement or a military identification card or by accessing the information available through the Internet at www.dmdc.osd.mil/mla/owa//home and entering the service member's full name, social security number, and date of birth. Some or all of these identification provisions could be made mandatory rather than voluntary for covered transactions.

Enforcement provisions of the Act are under 10 U.S.C. 987 as implemented by the rule. Violations may be subject to imprisonment and/or fines. Any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with 10 U.S.C. 987 as implemented by the rule is void from inception. These provisions certainly impose a high penalty for failure to comply.

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There are no specific statutory authorizations in the Act as to the ability of states to enforce these provisions and/or to otherwise refer information to the DoD. Such authorizing language would be helpful to states who want to cooperate with the DoD. States may also be able to use a Memorandum of Understanding (MOU) or changes to their specific statutory authority to enforce violations of the DoD statutes and/or refer information to DoD. This area seems to call for on-going cooperation among the states and DoD as to implementation and to ensure compliance.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph L. Mulberry". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Joseph Mulberry, President
NACCA