



National Association of Consumer Credit Administrators

July 31, 2013

The Honorable Charles Timothy Hagel
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-3010

Re: Department of Defense Rules Implementing the Military Lending Act
(Docket ID: DoD-2013-0S-0133)

Dear Mr. Secretary:

I am writing on behalf of the National Association of Consumer Credit Administrators (NACCA) in response to the Advanced Notice of Proposed Rulemaking concerning "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents" issued by the Department of Defense (the "Department") and published in the Federal Register on June 17, 2013.

Introduction

NACCA is an association of state regulatory officials from 49 states as well as the District of Columbia, Puerto Rico, and the Canadian province of Alberta who are authorized to enforce laws and rules relating to extensions of consumer credit, including personal loans, payday loans and vehicle title loans. State regulators have long been aware that military service-members are often targeted by high-cost lenders, and are in many cases charged excessively high rates and fees. Instead of seeking financial advice and assistance from programs available to the military, some service members look to products offered by non-traditional lenders. As a result of the foregoing, service members and their families often get trapped in an ever-increasing debt load, accepting loan products containing progressively higher interest rates and fees.

While state regulators credit the Department for the 2007 adoption of rules implementing consumer protections found under the Military Lending Act ("MLA"), we would encourage the Department to expand these protections to guard against future proliferation of high-cost consumer lending products and practices.

Limited Scope of the Definition of Consumer Credit

Currently, 32 C.F.R. § 232.3(b) defines "consumer credit" to include:

1. Payday Loans - limited to closed-end loans of up to \$2,000, for a term of 91 days or less;
2. Vehicle Title Loans - limited to closed-end loans secured by a motor vehicle title, for a term of 181 days or less (except to purchase the car); and
3. Tax Refund Anticipation Loans - limited to closed-end loans.

For those products that fall into one of these three categories, lenders are prohibited from various activities including charging interest and fees that exceed 36% annually, securing loans with personal checks or automatic bank account authorizations, or requiring mandatory arbitration clauses or other language waiving legal rights.

While the current rules have undoubtedly had a positive effect in addressing abusive lending practices aimed at service members and their families, the narrow definition of “consumer credit” has exposed limitations within the rule. High-cost lenders have in many instances tailored their lending products in such a way to circumvent the regulations. One way lenders can avoid being subject to the current rules would be to offer loans within one of the three listed categories under terms which would not be covered under the definition of “consumer credit.” For example, a lender can offer closed-end payday loans exclusively over \$2,000 or structure closed-end vehicle title loans with periods in excess of 181 days. Alternatively, lenders can avoid the effects of the current rules by offering financial products not included within the three above referenced categories. Some examples would include open-ended payday loans, overdraft loans, and rent-to-own transactions.

NACCA urges the Department to adopt a broader definition of “consumer credit” under 32 C.F.R. § 232.3(b) to include any transaction whereby a lender would offer or extend credit to a covered borrower primarily for personal, family, or household purposes (subject to exclusions currently found under the Military Lending Act). Specifically, we propose that the Department adopt the definition of “consumer credit” contained in Regulation Z of the federal Truth in Lending Act, 12 C.F.R. 1026.2(a)(12), incorporating the exceptions contained in 10 U.S.C. § 987(i)(6):

“The term ‘consumer credit’ means credit offered or extended to a covered borrower primarily for personal, family, or household purposes, except that the term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.”

Simplifying and expanding the definition of “consumer credit” to (1) include both open and closed ended loans, and (2) remove reference to the three specific categories of loans, may limit the ability for high-cost lenders to tailor their products in order to circumvent the rules.

Conclusion

It is NACCA’s sincere belief that service members and their families should be entitled to receive the maximum amount of protection that our government can provide while ensuring continued access to credit. Again, we would encourage the Department to consider expanding the applicability of the protections currently available to our service members and their families.

Thank you for the opportunity to engage in this very important matter. Please feel free to contact me at soshields@sml.texas.gov with any questions.

Sincerely,

Steven O’Shields
NACCA, President