



December 12, 2014

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

Re: Proposed Rule regarding Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.
Docket ID: DoD-2013-05-0133
RIN 0790-AJ10

Dear Mr. Secretary:

I am writing on behalf of the National Association of Consumer Credit Administrators (NACCA) in response to the Department's most recent request for comments regarding to the "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents" issued by the Department of Defense (the "Department") and published on September 29, 2014. This letter is in follow-up to a July 31, 2013 letter submitted by NACCA in response to the Department's Advanced Notice of Proposed Rulemaking.

Introduction

NACCA is an association of state regulatory officials from 49 states as well as the US territories and Canadian provinces who are authorized to enforce laws and rules relating to extensions of consumer credit, including personal loans, payday loans and vehicle title loans. As we have stated previously, state regulators have long been aware that military service-members are often targeted by high-cost lenders. When looking to the loan products offered by these non-traditional lenders, many service members and their families get trapped in an ever-increasing debt load, accepting products containing progressively higher interest rates and fees.

State regulators support the Department's efforts to increase the protections afforded to service members and their families with respect to high-cost consumer lending products and practices. Specifically, we offer the following comments to the questions posed:

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QUESTION 1: The Department solicits comment on whether an approach should be taken that would define "consumer credit" consistently with certain credit regulated under TILA, and invites suggestions on alternative approaches.

Association response: "Consumer credit" as defined in Regulation Z, 12 C.F.R. § 1026, implementing many of the requirements of the Truth-in-Lending Act (TILA) 15 U.S.C. § 1601 et seq., provides a viable approach so the Department can develop a consistent definition of consumer credit under the Military Lending Act. NACCA proposes therefore that the Department adopt a 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.

Alternative approaches may prove unnecessary if the approach were to develop a definition consistent with Regulation Z.

QUESTION 2: If the Department were to adopt a regulation as proposed, to what extent, and in what manner, would the Department's regulation affect the availability of consumer credit to Service members and their dependents or have other consequences?

Association response: The Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.

QUESTION 3: If the Department were to adopt a regulation as proposed, to what extent would a creditor, as a practical matter, need to develop separate classes of credit products, namely, one class of products for covered borrowers and other classes for other consumers?

Association response: The Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.

QUESTION 4: If the Department continues to pursue an approach that defines "consumer credit" to be generally consistent with certain credit regulated under TILA, should the Department consider a limited or complete exemption for an insured depository institution or insured credit union? What legitimate basis could there be for any exemption for an insured depository institution or insured credit union from the requirements of the MLA, particularly if under this approach other financial institutions would be subject to the Department's regulation? What other protections relating to credit products already are afforded to—or could be improved for—Service members and their dependents?

Association response: *In a June 8, 2007 letter, our Association stated:*

"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."

While our Association continues to see the importance of providing a broad scope of protection under the MLA, it also recognizes that insured depository institutions and insured credit unions are already subject to regulation under the respective federal and/or state agencies.

QUESTION 5: If the Department continues to pursue an approach that defines "consumer credit" to be generally consistent with certain credit regulated under TILA, should the Department consider including one or more exemptions for certain types of credit products, such as student loans? What legitimate basis could there be for any particular exemptions for certain credit products?

Association response: *Consideration of including one or more exemptions for certain products should be based on whether the other products are issued or administered by institutions subject to regulation by other federal or state agencies. The existence of current regulation would be the legitimate basis for determining whether an exemption is justified. In addition, exemptions should be designed to track those set out in TILA.*

QUESTION 6: Apart from the conditional exclusion proposed for a credit card account that charges bona fide fees, as discussed below, should the Department consider providing one or more exceptions from the charges that must be included in the MAPR for de minimis bona fide fees associated with an open-end credit line? If so, should that type of exception be limited to an open-end line of credit connected to a deposit account? If so, please specifically describe which fees on these accounts would be bona fide fees eligible for such an exception. What would be the appropriate cost limit of a de minimis fee? If the Department does provide for such an exception to open-end credit (other than for credit card accounts), what parameters should the Department use to limit the exception to prevent evasion of the protections under the MLA?

Association response: *The Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.*

QUESTION 7: If the Department continues to pursue an approach that defines "consumer credit" to be generally consistent with certain credit regulated under TILA, should the Department consider including an exemption specifically for a credit card account under an open-end (not home-secured) consumer credit plan? Would the consumer protection under TILA be sufficient to be consistent with the requirements of MLA? How would an exemption for consumer credit offered through a credit card account be articulated?

Association response: *Consistent with the answer in number 4, above, a limited or complete exemption for an insured depository institution or insured credit union should be considered for the reason that those institutions are already subject to regulation under the respective federal and/or state agencies including the TILA.*

QUESTION 8: The Department solicits comment on potential operational issues with applying the regulation under the MLA to credit card products offered in retail sales locations, particularly at the point of sale. How should the Department address any such potential issues in a final rule that may cover some or all credit card products extended to covered borrowers?

Association response: *The Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.*

QUESTION 9: Do the proposed standards appropriately describe whether a bona fide fee may be excluded from the calculation of the MAPR as "reasonable and customary?" If not, please specifically describe the language the Department should use to clarify when a bona fide fee is not required to be included in the MAPR.

Association response: *The Association believes that the exclusion for "reasonable and customary" bona fide fees, as proposed by the rule, would provide a sufficient level of flexibility allowing the Department to apply the standard on a case-by case basis. In determining whether the fees qualify as reasonable and customary, the like-kind fee standard allows for a comparison with products and services offered by other creditors and the safe harbor provision outlines a practical test that the creditor can apply. It is likely that implementation of these standards will require some level of litigation, including administrative and judicial review.*

QUESTION 10: Does the threshold of \$3 billion in outstanding credit card loans on U.S. credit card accounts appropriately allow an assessment of whether a bona fide fee is "reasonable," in light of the fees charged by credit card issuers whose credit card products are typical in the marketplace? If not, what measure(s) should be used to facilitate a creditor's own assessment of its bona fide fees, for the purposes of complying with conditions proposed in § 232.4(d)(1), while also preventing other creditors who offer credit card products that carry unreasonable fees from benefitting from the safe harbor? Is a pool of 5 or more creditors reasonably large for computing an average fee for the purposes of § 232.4(d)(1)? Does a period of 3 years provide sufficient stability for measuring whether a credit card issuer meets the asset-size standard? If not, what period should be used?

Association response: *The Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation. This being said, it appears that the proposed measures would be adequate in order to provide a comparison to fees charged by other creditors within the marketplace.*

QUESTION 11: If the Department makes appropriate adjustments to the MLA Database, should the Department modify the language of § 232.5 to clarify that a creditor may take advantage of the safe harbor by conducting a covered-borrower check using a commercially provided information product whose underlying data is derived from the MLA Database? If so, please specifically describe the language the Department should use to clarify this aspect of § 232.5.

Association response: Our Association supports the creation of a safe harbor for creditors which conduct covered-borrower checks using a product supported by the MLA Database. As indicated by the Department, this would address issues relating to intentional and unintentional false representations by service members and their families as well as providing a more straightforward mechanism by which creditors would ensure compliance with the MLA.

QUESTION 12: If the Department were to adopt a framework for a creditor to conduct a covered-borrower check as proposed in § 232.5, should the Department also adopt an exception from the safe harbor that addresses the situation when the creditor has actual knowledge that a consumer is a covered borrower? What are the likely costs associated with conducting covered-borrower checks as proposed in § 232.5? What alternatives should the Department consider for creditors to conduct covered-borrower checks? Should the Department consider alternative safe harbor provisions for certain types of creditors or certain types of consumer credit, such as credit extended at retail sales locations? Please provide specific language for provisions that would implement these alternatives.

Association response: Our Association would take the position that actual knowledge that a consumer is a covered borrower should result in an exception from the protections of the safe harbor provision. As for the costs associated with conducting covered-borrower checks or the need for alternative safe harbor provisions for certain creditors or types of consumer credit, the Association believes these questions would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.

QUESTION 13: Should the Department retain a safe harbor for use of the covered borrower identification statement? The Department solicits comment on whether the use of the statement would be unduly cumbersome if the Department expands coverage of the regulation to additional types of credit products?

Association response: The Association would merely point out that retaining a safe harbor for use of the covered borrower identification statement could result in the continued problem of intentional or unintentional false representations by service members and their families. As for whether application of the statement to additional types of credit would be unduly cumbersome, the Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.

QUESTION 14: Should the Department provide a fallback provision to protect a creditor from liability in the case that the creditor is temporarily or permanently unable to access the internet at the time of conducting a transaction or establishing an account for consumer credit? Should the Department provide protection from liability from the MLA in the case that a creditor can demonstrate that the MLA

Database was not operational at the time the creditor attempted to search the database? If so, should the Department address how the creditor may establish that the MLA Database was not operational at the time the creditor attempted the search?

Association response: Since companies may experience temporary or permanent loss of internet access, it would make sense for the Department to account for this contingency. While the Department may want to discontinue use of the covered borrower identification statement for those reasons outlined in the proposed rules, the Department may want to consider allowing creditors to use these statements in times where the creditor is unable to access information on the database.

QUESTION 15: Does the revised definition of covered borrower appropriately cover active duty Service members and their dependents?

Association response: The Association believes this question is more appropriately answered by persons and entities with knowledge in the subject matter, such as the Department of Defense.

QUESTION 16: Should the Department consider eliminating the timing condition of §232.4(c)(1)(ii) to require the inclusion in the MAPR of any fees for credit-related ancillary products sold either upon account opening or at any time during the existence of an account for open-end consumer credit? If so, please specifically describe the scope of an amended § 232.4(c)(1)(ii). For example, how should the Department define a "credit related ancillary product?" How should the Department define the seller whose charge for a credit-related ancillary product would be subject to inclusion in the MAPR (i.e., "sold by the creditor" or "sold by the creditor or any affiliate of the creditor")?

Association response: The Association takes the position that fees for credit-related ancillary products should be included, regardless of when the ancillary product is sold in connection with open-end consumer credit transactions. Absent such inclusion, creditors and affiliates may delay sales of certain credit-related ancillary products with excessive fees until after account opening, thereby frustrating the purpose of the regulation and its consumer protections.

QUESTION 17: Would this approach to include any application fee or participation fee in the calculation of the MAPR be reasonable to implement the statutory provision of "interest," which covers "any other charge or premium with respect to the extension of consumer credit?"

Association response: The Association believes the approach to include application and participation fees in "interest" appears reasonable for consumer protection reasons, subject to exclusion if it is determined to be a "bona fide" fee.

QUESTION 18: Are there operational issues with the use of the effective APR methodology for open-end credit products that the Department should consider? If so, are there alternative methods for calculating the MAPR for these products that would be consistent with 10 U.S.C. 987 and that would address the operational issues?

Association response: The Association believes this question is more appropriately answered by industry representatives familiar with the business practices and procedures affected by the proposed revision.

QUESTION 19: What alternatives should the Department consider for the evidentiary standard articulated in proposed § 232.5(c)(2)? Please provide specific language for provisions that would implement these alternatives.

Association response: The Association believes this question is more appropriately answered by industry representatives familiar with the business practices and procedures affected by the proposed revision.

QUESTION 20: If the Department were to adopt a regulation as proposed, to what extent, and in what manner, would the elimination of the clear-and-conspicuous requirement affect the presentation of the categories of information required under 10 U.S.C. 987(c)(1)(A) and 987(c)(1)(C)?

Association response: The Association is of the opinion that the negative effects would be minimal, and likely to be outweighed by the benefits of avoiding duplication and ensuring consistency with other regulatory disclosure.

QUESTION 21: If the Department were to adopt a regulation as proposed, to what extent, and in what manner, would the requirement to provide a description of "the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement relating to the consumer credit to calculate the MAPR," instead of a definitive figure for the "annual percentage rate" of interest applicable to the consumer credit, affect the offering or provision of that credit to a covered borrower?

Association response: The Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.

QUESTION 22: Please specifically describe the benefits currently provided to a covered borrower by requiring a creditor to provide a specific statement describing the protections afforded to Service members and their dependents under the MLA, as set forth in § 232.6(a)(4). What would be the likely costs or benefits of eliminating the requirement in § 232.6(a)(4) to provide this specific statement?

Association response: The Association agrees with the Department that there is not any clear benefit to providing duplicative and overlapping information and that the proposal to eliminate disclosure under § 232.6(a)(4) would reduce the burden upon creditors. Importantly, this approach would also simplify the offering of consumer credit to service members and their dependents and reduce the potential for confusion on behalf of the borrower. However, as to the costs of eliminating the requirement in § 232.6(a)(4), the Association believes this question would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation.

QUESTION 23: The Department solicits comment on whether the proposal adequately addresses compliance challenges involving the provision of oral disclosures required by the MLA. The Department invites comment on alternatives that would balance the informational needs of covered borrowers with the compliance burden of creditors.

Association response: The Association believes the proposal does adequately address the compliance challenges involved in the provision of the oral disclosures required by the MLA. The Association does not have any suggested alternatives regarding this issue.

QUESTION 24: What would be the likely costs or benefits of revising the refinancing prohibition in 10 U.S.C. 987(e)(1) to apply only to a specific type of creditor who is "engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law)," and to not include a creditor that is "chartered or licensed under Federal or State law as a bank, savings association, or credit union?"

Association response: The Association believes the question, as it relates to the costs, would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation. However, the Association believes that the Department should consider the wide range of non-depository lenders before narrowing the prohibition regarding refinancing. Many non-depository creditors, that offer products other than deferred presentment or payday loans to members of the public and military, frequently refinance consumer credit transactions.

QUESTION 25: What would be the likely costs or benefits of amending the prohibition in 10 U.S.C. 987(e)(5) to apply to creditors other than a creditor who is "chartered or licensed under Federal or State law as a bank, savings association, or credit union?"

Association response: The Association believes the question, as it relates to the costs, would be better suited for an industry representative familiar with business operations and products offered by those companies which would be subject to the regulation. However, the Association believes that the benefits of amending the prohibition in 10 U.S.C. 987(e)(5) would address concerns regarding creditors that may offer products other than deferred presentment or payday loans to members of the public and military.

QUESTION 26: Should the Department consider a broader exemption from the term "creditor" for the military welfare societies and the service Relief Societies specified in 10 U.S.C. 1033(b)(2) and 37 U.S.C. 1007(h)(4)?

Association response: The Association does not take a position regarding the adoption of a broader exemption regarding military welfare societies and the service Relief Societies specified in 10 U.S.C. 1033(b)(2) and 37 U.S.C. 1007(h)(4) and we would defer to the expertise of the Department of Defense on this matter.

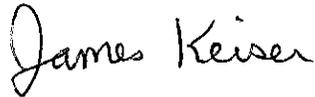
Conclusion

NACCA continues to believe that service members and their families should be entitled to receive the maximum amount of protections that our government can provide while insuring continued access to

credit. We commend the Department for its continued efforts in addressing high-cost consumer lending products and practices.

Thank you for the opportunity to engage in this very important issue. Please feel free to contact our association with any questions.

Sincerely,

A handwritten signature in cursive script that reads "James Keiser".

James Keiser

President, National Association of Consumer Credit Administrators