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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[DOD-2013-OS-0133]

RIN 0790-AJ10

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

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (“Department”) proposes to amend its regulation that implements the Military Lending Act, herein referred to as the “MLA”. Among other protections for Service members, the MLA limits the amount of interest that a creditor may charge on “consumer credit” to a maximum annual percentage rate of 36 percent. The Department is proposing to amend its existing regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products currently defined as consumer credit. In addition, the Department is proposing to amend its existing regulation to amend the provisions governing a tool a creditor may use in assessing whether a consumer is a “covered borrower,” modify the disclosures that a creditor must provide to a covered borrower, implement the enforcement provisions of the MLA, as amended, and for other purposes.

DATES: Comments must be submitted not later than [INSERT DATE SIXTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) and title, by any of the following methods;

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Marcus Beauregard, 571-372-5357.

SUPPLEMENTARY INFORMATION:

Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at:

<http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036>.

I. Executive Summary

A. Purpose of the Regulatory Action

The Department is proposing to amend its existing regulation primarily for the purpose of extending the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products, rather than the limited credit products currently defined as consumer credit. More specifically, the Department proposes to amend its regulation so that, in general, consumer credit covered under the MLA¹ would be defined consistently with credit that for decades has been subject to the protections under the Truth in Lending Act (TILA), namely: 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.²

After observing the effects of its existing regulation during the past six years and based on its review of information provided by a wide variety of persons and entities, the Department believes that this proposal to amend the regulation is appropriate in order to address a wider range of credit products that currently fall outside the scope of the regulation implementing the MLA, streamline the information that a creditor would be required to provide to a covered borrower when consummating a transaction involving consumer credit, and provide a more straightforward mechanism for a creditor to assess whether a consumer-applicant is a covered borrower. In this regard, the Department is aware of misuses of the covered borrower identification statement whereby a Service

¹ The forms of “consumer credit” that may be covered by the MLA are subject to certain exceptions, notably for a residential mortgage. 10 U.S.C. 987(i)(6)(A) and 987(i)(6)(B).

² See 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

member (or covered dependent) falsely declares that he or she is not a covered borrower. The Department believes that, if a creditor unilaterally conducts a covered-borrower check by using the MLA Database, a Service member or his or her dependent would be relieved from making any statement regarding his or her status as a covered borrower.

The Department is provided authority in 10 U.S.C 987(h) to establish regulations to implement the MLA. As described in 10 U.S.C. 987(h)(3) the Department, at a minimum, must consult with other Federal agencies “not less often than once every two years” with a view towards revising the regulation implementing the MLA.

B. Summary of the Major Provisions of the Department’s Regulatory Action

The MLA, as implemented by the Department’s regulation as well as under this proposed regulation, provides two broad classes of requirements applicable to a creditor: first, the creditor may not impose a Military Annual Percentage Rate (MAPR) greater than 36 percent in connection with an extension of consumer credit to a covered borrower (“interest-rate limit”); second, when extending consumer credit, the creditor must satisfy certain other terms and conditions, such as providing certain information (e.g., a statement of the MAPR), both orally and in a form the borrower can keep, before or at the time the borrower becomes obligated on the transaction or establishes the account, by refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit, and by refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit (collectively, “other MLA conditions”).

C. Costs and Benefits

The Department anticipates that its regulation, if adopted as proposed, might impose costs of approximately \$96 million during the first year, as creditors adapt their systems to comply with the requirements of the MLA and the Department’s regulation. However, after the first year and on an ongoing basis, the annual effect on the economy is expected to be between approximately \$13 to \$137 million. The Department has estimated the potential savings that could result if the rule reduces the involuntary separations of Service members due to financial distress in sensitivity analyses; at some points in the range of estimates the Department has used to assess the proposal, these savings are estimated to exceed the compliance costs that would be borne by creditors.

Figure 1: Summary of Estimated Effects of Proposed Rule (2013 dollars in millions)

		First Year	Annual, ongoing	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Sensitivity Analysis: Benefits to the Department	Low	\$0	\$13	\$96	\$128
	High	\$0	\$137	\$970	\$1,304
Primary Analysis: Costs to Creditors of Compliance		\$96	\$20	\$144	\$194
Primary Analysis: Transfer Payments	Low	NA	\$101	\$717	\$958
	High	NA	\$120	\$856	\$1,139