

December 22, 2014

Federal Docket Management Systems Office
4800 Mark Center Drive
Second Floor, East Tower
Suite 02G09
Alexandria, VA 22350-3100

Re: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents (RIN 0790-AJ10)

Dear Sir or Madam:

On behalf of the African-American Credit Union Coalition (AACUC), Credit Union National Association (CUNA), Defense Credit Union Council (DCUC), National Association of Federal Credit Unions (NAFCU), and National Association of State Credit Union Supervisors (NASCUS), referred to collectively as the credit union system,¹ we are writing to you regarding the Department of Defense (DoD or Department) proposal to amend the rules on Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, which implement the Military Lending Act (MLA).

As an industry that prides itself on serving consumers, including those who serve our country, the credit union system has significant concerns with the proposal. The increased costs and unintended consequences of the proposal, especially on smaller credit unions, could negatively impact the delivery of high quality reasonably priced financial products and services to our troops, their families, and their dependents. From our perspective as credit unions' advocates, any changes to the current rules should curtail and eliminate the unscrupulous business practices of organizations targeting our military personnel—and not harm credit unions that are dedicated to the financial well-being of their member-owners.

The existing DoD rule on consumer credit for service members and their dependents, which we have supported since issued in 2007, has been an effective tool in protecting military consumers and curbing many abusive practices involving those who serve in our Armed Forces. We appreciate the continued relationship with the Department and its support for

¹ AACUC's mission is to increase the global credit union movement's strength by adding the focused perspective and energy of credit union volunteers and professionals of African-American and African descent. CUNA is the nation's largest trade association representing state and federal credit unions, which serve over 100 million memberships. DCUC represents a total membership of nearly 200 military affiliated credit unions, the vast majority of which operate on military bases worldwide and all of which support the military and civilian personnel of the DoD. NAFCU is the only trade association that exclusively represents federal credit unions. NASCUS represents 46 state and territorial governmental agencies and the state-chartered credit unions that they charter, regulate, and examine.

credit unions' efforts to meet our troops' everyday financial needs in a most effective and beneficial manner.

We take very seriously remarks by DoD and others that certain types of lenders continue to alter their products and services in order to evade the important protections of the MLA. However, because credit unions are not predatory lenders, they should be exempt from any modifications to DoD's rule concerning limitations on terms of consumer credit extended to service members and their dependents.

Credit Unions Provide the Best Financial Services and Do Not Engage in Predatory Practices

As member-owned cooperatives, credit unions continue to provide the best financial products and services for their members, including for servicemembers and their families. These services are beneficial alternatives against predatory lenders, particularly those that exploit military personnel. Credit unions provide a backstop for their members to obtain the best terms and service for short-term, small-dollar lending or related services.

Most importantly, the financial services and products that are cited as the need for broader coverage of the MLA's protections are generally not offered by credit unions and the lenders cited are not credit unions.

In addition, credit unions often work directly with their members, including service members, and DoD to provide financial literacy and education resources as well as other assistance. During times of special needs, such as last year's sequestration and government shutdown, credit unions—on-base and off—serving the DoD establishment work “above and beyond” what others provide to ensure the quality of life of our military and defense personnel is supported.²

Credit unions already have very high compliance burdens, including with the DoD's current MLA rule, the Dodd-Frank Act, and numerous rules from the National Credit Union Administration (NCUA), Consumer Financial Protection Bureau (CFPB), and state regulators.

In addition to complying with the rules mentioned above, credit unions operating on DoD installations must comply with the DoD Financial Management Regulation (which establishes significant policies for financial institutions to operate on-base), DoD's Personal Commercial Solicitation Regulation, DoD's Military Family Readiness policy, DoD's Financial Education guidance, the DoD Ethics regulation, and others.

² For example, a credit union offered a “Special 0% Sequestration Loan,” which included an interest free loan up to \$6,000 with repayment over 18 months available to any member that was a furloughed federal government civilian employee that utilized direct deposit and auto pay at the credit union.

Credit Unions Should be Exempt from the Proposed Changes

We appreciate DoD's implicit recognition that credit unions are not the problem by asking for input on whether a credit union exemption from the proposal would be appropriate. The credit union industry strongly urges DoD to exempt credit unions completely from the proposed changes, including new coverage under an expanded definition of "consumer credit," which would apply to certain open-end credit products. In this case, credit unions would remain covered by the existing MLA rule.

The DoD should exempt credit unions because our institutions are not the perpetrators for which DoD has proposed to expand its MLA rule. In addition, credit unions should be exempt due to the highly regulated and relatively limited nature of their operations. Whether state or federally chartered, each credit union is closely scrutinized and regularly examined by NCUA and/or the credit union's State Supervisory Authority.

Changes Needed to Minimize Regulatory Burdens on Credit Unions

Any changes to DoD's rules are likely to increase compliance costs for credit unions, which could in-turn negatively impact the military personnel and families who are member-owners of credit unions. These additional compliance costs are felt directly by member-owners in the form of higher loan rates and lower share saving rates. This ultimately may reduce the ability of credit unions to provide certain much-needed products and services to service members and their families.

Given the serious burdens that could result from the proposed rule, the credit union industry strongly urges DoD, absent a credit union exemption, to make a number of changes to minimize regulatory burdens on credit unions, especially for smaller credit unions.

Exemption for NCUA's PAL Program

We believe it is critical that DoD work in close collaboration with NCUA to ensure Payday Alternative Loans (PALs) can continue to be offered by credit unions and are properly excluded from the proposed changes. NCUA's PALs program is a product offered by federal credit unions that will likely be directly affected by the proposed rule.

As noted in an NCUA release on September 26, 2014, "credit unions serving members of the military or their families could be affected by a proposed Defense Department rule that may reduce their ability to offer certain kinds of credit, including payday alternative loans," (emphasis added). NCUA Chairman Debbie Matz also noted in the release, "Before finalizing NCUA's payday lending alternative rule, we specifically considered how NCUA's rule would fit with existing Defense Department regulations and determined that they were in sync. However, the Defense Department's new proposed rule would broaden the definition of 'consumer credit' under Military Lending Act regulations in a way that would prevent federal credit unions from making payday alternative loans permitted by our rule."

Under NCUA's rule, federal credit union PALs are subject to an interest rate cap that is currently 28%, which is a special exception to the general interest rate cap. Furthermore, they may not charge an application fee of more than \$20. Rollover balances are prohibited, and loans must be fully amortizing. Also, a borrower may not have more than one such loan outstanding at a time and no more than three such loans for a rolling six-month period from his or her credit union. The maturity of these loans is minimally one month, no longer than six months, and the principal amount must be between \$200 and \$1,000.

Credit union PALs provide an NCUA-regulated quality short-term, small-dollar loan product that service members and their families have come to expect and rely on. Thus, absent an exemption for credit unions from the proposed rule, we urge DoD to exclude from the proposal's coverage loans made under NCUA's PALs program.

Exclusions from the MAPR Calculation

The proposed rule establishes a maximum "military" annual percentage rate (MAPR) of 36% that may be charged on closed-end "consumer credit" transactions based on specified fees and charges that must be included in the MAPR.

Under the proposal, creditors would have to determine which fees or charges are includable in the MAPR calculation and which fees or charges are not. The following fees or charges would need to be included in the MAPR:

- Finance charges that are "associated with" the consumer credit, even if the charge would not be considered a finance charge under CFPB's Regulation Z;
- Credit insurance premiums;
- Certain fees for "credit-related ancillary products"; and
- Application fees and "participation" fees, including annual fees.

If the Department adopts the MAPR as proposed, we ask that it strongly consider excluding certain charges from the MAPR calculation, including credit insurance, credit-related ancillary products, and other appropriate exceptions.

Service Members and Their Dependents Should Self-Identify to Determine "Covered Borrower" Status

We ask that DoD refrain from making changes to the process by which creditors determine whether a consumer is a "covered borrower" using the Defense Manpower Data Center (DMDC) database, if DoD does not exempt credit unions from the proposal. Currently, a consumer must provide the creditor an identification statement advising that he or she is a "covered borrower." Under the proposal, the burden for determining "covered borrower" status would shift from the consumer to the creditor.

We strongly oppose shifting the burden to the creditor, especially in light of the potential liability this would expose the creditor to, which in turn could jeopardize or reduce the availability of credit to service members. In addition, credit unions believe the proposed procedures for using the DMDC database will slow down their operational processes used to originate loans, which will likely result in decreased member service to all credit union members, including service members.

Thus, we urge DoD to utilize a self-disclosure process to provide a safe harbor for creditors under which the consumer would be responsible for informing the creditor of his or her “covered borrower” status. The Service Members Civil Relief Act requires self-disclosure and certain aspects of that rule could serve as a model for this regulation. The creditor may also use the DMDC database to review the information provided by the consumer.

Credit Unions Support Further Efforts to Empower and Educate Service Members

We believe additional emphasis should be placed on financial education. The DoD should re-energize their financial readiness campaign and collaborate with their partners, including the CFPB, on empowering and educating our service members and their families. In so doing, military personnel and their families will be better served in terms of financial capability, as they will have the skills and knowledge to make informed consumer finance decisions and avoid predatory lenders.

Credit unions are committed to ensuring service members and their families, as well as all other members, receive proper disclosures and substantial financial education. As you know, credit unions have consistently provided financial education to help their members, and on-base credit unions, among others, have always been prepared to provide free financial education. Given on-going deployments, time is a valued commodity, but given the potentially grave consequences of predatory lending, we must dedicate some time to educate and empower our service members—at both the field and national levels.

Conclusion

Our respective organizations urge the DoD to exempt credit unions or limit the scope and impact of the proposed changes, as recommended in this letter. Several of us will be submitting individual comment letters to address in more detail specific aspects of the proposed rule prior to the comment deadline. We would also welcome a meeting to discuss with you concerns that we are hearing from credit unions.

On behalf of the credit union system, we thank you in advance for your timely attention to our concerns.

Best regards,

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Chairman
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