



August 6, 2015

## DEPARTMENT OF DEFENSE EXPANDS MILITARY LENDING ACT COVERAGE

On July 22, 2015, the Department of Defense ("DoD") published its Final Rule implementing expansive changes to the Military Lending Act ("MLA") regulations. The changes are effective October 1, 2015, but will apply only to transactions consummated or established after October 3, 2016 for credit products subject to the Final Rule other than credit cards and after October 3, 2017 for credit cards.

Previously, the MLA regulations applied only to (i) payday loans with a term of 91 days or less and an amount financed that does not exceed \$2,000, (ii) vehicle title loans with a term of 181 days or less and (iii) refund anticipation loans. See our Alert of October 6, 2014, PROPOSED RULE TO EXPAND CREDIT PRODUCTS SUBJECT TO MILITARY LENDING ACT. The Final Rule has expanded MLA coverage to additional products, including credit cards, private student loans and federal student loans not made under Title IV of the Higher Education Act, installment loans, deposit advance loans, refund anticipation loans, payday loans and vehicle title loans. The Final Rule does exclude certain credit products, notably residential mortgages and motor vehicle loans secured by the vehicle being purchased.

Under the Final Rule, a creditor can use any method to determine whether a consumer is on military active duty or otherwise covered by the Final Rule, but there is a specific "safe harbor" if the creditor uses information from the DoD database or a nationwide credit reporting agency.

The Final Rule limits the amount of interest a creditor may charge on a covered credit product to a maximum military annual percentage rate ("MAPR") of 36%. The MAPR is distinct from the APR calculation under the Truth in Lending Act and Regulation Z. For example, unlike the APR, the MAPR includes participation fees charged by any lender.

The Final Rule does not contain a direct prohibition against credit "add-on" products, but the Final Rule effectively limits "add-on" products such as credit insurance, debt cancellation contracts and debt suspension by requiring the cost of these items to be included in the MAPR calculation. The DoD rejected requests by commentators to exclude from the MAPR non-required debt-cancellation and credit insurance consistent with Regulation Z. The MAPR excludes reasonable "bona fide" fees charged to credit card accounts. In order

to determine whether a "bona fide" fee is reasonable, the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar service. A creditor can prove that a fee is reasonable by comparing the amount of the bona fide fee to an average amount for a substantially similar fee charged by 5 or more creditors each with at least \$3 billion in outstanding loans on U.S. credit card accounts at any time during the 3-year period preceding the time such average is permitted.

The Final Rule also contains modified disclosure obligations. The Final Rule requires three types of disclosures: (i) a statement of the MAPR (this does not require a dollar amount, but rather a statement describing the fees included in the MAPR and other information); (ii) Regulation Z disclosures, as applicable, and (iii) a description of the consumer's payment obligation.

Failure to comply with the Final Rule triggers severe penalties. Credit agreements that violate the MLA are void from inception. A knowing violation of the MLA constitutes a misdemeanor. Additionally, private plaintiffs may recover actual and punitive damages and attorneys' fees, among other remedies.

This expansion of the MLA raises issues of indirect rate regulation that may have serious implications on the availability of credit for subprime and other non-prime consumers. □

✧ *Elizabeth Anstaett and Emily Barlage*

Darrell L. Dreher  
ddreher@dtlaw.com

Elizabeth L. Anstaett  
eansaett@dtlaw.com

Margaret M. Stolar  
mstolar@dtlaw.com

Robin R. De Leo  
robin@dreher-la.com

Susan M. Manship  
smanship@dtlaw.com

2750 HUNTINGTON CENTER  
41 S. HIGH STREET  
COLUMBUS, OHIO 43215  
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600  
WWW.DTLAW.COM

To see previously sent ALERTS, visit our website at [www.dtlaw.com](http://www.dtlaw.com)

To decline future ALERTS, please contact us at [ALERTS@DLTLAW.COM](mailto:ALERTS@DLTLAW.COM). This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies  
mtomkies@dtlaw.com

Charles V. Gall  
cgall@dtlaw.com

Judith M. Scheiderer  
jscheiderer@dtlaw.com

Susan L. Ostrander  
sostrander@dtlaw.com

Emily C. Barlage  
ebarlage@dtlaw.com