



May 11, 2015

Marcus Beauregard, Colonel, USAF (Retired)  
Chief of the DoD-State Liaison Office  
Office of the Deputy Assistant Secretary of Defense for Military  
Community and Family Policy

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

Dear Col. Beauregard:

The American Financial Services Association (“AFSA”)<sup>1</sup> respectfully requests that you consider these additional comments on the Department of Defense’s (“Department”) proposed rule (“Proposed Rule”) amending the regulation that implements the Military Lending Act (“MLA”). As you know, we submitted comments on the Proposed Rule on December 22, 2014.<sup>2</sup> We know the official comment period on the Proposed Rule has closed, but as our members continue to reflect on the Proposed Rules and begin preparing for a final rule, they have some additional thoughts that we hope you will consider.

Before we discuss our additional thoughts, we want to reiterate the concerns we expressed in our December comment letter. Instead of helping Service members and their families, the Proposed Rule will cut off access to fair and affordable small-dollar loans for many Service members and their families. Moreover, the safe harbor in the Proposed Rule has the potential to seriously disrupt consumer credit throughout the country. There is scant evidence to justify a rule with these consequences and no reason to expand the policy so drastically. If change is needed, it should be small and targeted. Policymakers should ensure that access to safe and responsible credit is maintained and not swept away by grouping it with less-desirable loans. Service members and their families need access to safe and responsible credit because, according to a survey conducted by the Financial Industry Regulatory Authority (“FINRA”), over 40% of military survey respondents reported at least some difficulties in covering monthly expenses. Moreover, when asked if they would be able to come up with \$2,000 if an unexpected need arose in the next month, one in five respondents said they probably or certainly could not. Lastly, over 40% of respondents lack emergency savings or “rainy” day funds.<sup>3</sup>

---

<sup>1</sup> AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its more than 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers. AFSA members are not payday lenders, auto title lenders, or pawn shops.

<sup>2</sup> AFSA’s comments on the Proposed Rule are available at [http://www.afsaonline.org/library/files/legal/comment\\_letters/AFSA-LimitationsOnTermsOfCredit-DOD-2013-OS-0133.pdf](http://www.afsaonline.org/library/files/legal/comment_letters/AFSA-LimitationsOnTermsOfCredit-DOD-2013-OS-0133.pdf)

<sup>3</sup> “Financial Capability in the United States – 2012 Report of Military Findings.” FINRA Investor Education Foundation. December 2013. Available at: [http://www.usfinancialcapability.org/downloads/NFCS\\_2012\\_Report\\_Military\\_Findings.pdf](http://www.usfinancialcapability.org/downloads/NFCS_2012_Report_Military_Findings.pdf) (Accessed April 29, 2015)

To the extent that the Department continues to believe that changes to the regulation still need to be made, the Department should seek to only limit those high-cost credit products that contain features that are not present in Traditional Installment Loans or credit cards. Traditional Installment Loans are a type of consumer credit transaction. Traditional Installment Loans are fixed rate, fully-amortized, closed-end extensions of direct consumer credit. Fully-amortized means that the Amount Financed under the Truth in Lending Act (“TILA”) and the Finance Charge under TILA are repaid in substantially equal installments at fixed intervals to fulfill the consumer’s obligation.

A transaction is not a Traditional Installment Loan if any of the following is true: (1) the transaction has a repayment term of 181 days or fewer AND is secured by the title to the borrower’s motor vehicle or automobile [commonly referred to as “title loans,” “title secured loans,” “title pawn” or “vehicle title loans”]; (2) the transaction requires that the amount of credit extended together with all fees and charges for the credit be repaid in full in 91 days or fewer [commonly referred to as a “payday loan”]; (3) the transaction’s scheduled repayment plan contains one or more interest-only payments and/or a balloon payment due at maturity; (4) the transaction, at origination, requires the borrower to (a) agree to a pre-authorized automatic withdrawal in the form of a bank draft, a preapproved Automated Clearing House or its equivalent; (b) agree to an allotment or an agreement to defer presentment of one or more contemporaneously-dated or postdated checks; or (c) repay the loan in full at the borrower’s payday or other recurring deposit cycle, where the repayment is connected with a bank account [commonly referred to as a “bank payday loan”]; (5) the lender did not make a reasonable attempt under the circumstances to determine the borrower’s ability to repay the loan; or (6) the transaction is a credit sale, retail installment sale, or lease, or the forbearance of debt arising from a credit sale, retail installment sale, or lease.

For almost 100 years, AFSA members have been offering safe and affordable financial products and services to Americans. AFSA shares the concerns expressed by the Department that Service members and their families have access to affordable credit and are protected from abusive lending practices. However, there is no reason to expand the current MLA regulations so drastically. The Department has failed to demonstrate any problem with Traditional Installment Loans or credit card services used by Service members and their families.

In fact, complaints about installment loans, vehicle loans and leases, personal lines of credit, and pawn and title loans *combined* only made up 5% of the complaints the Consumer Financial Protection Bureau (“CFPB”) received from Service members, veterans, and their families between July 2011 and December 2014.<sup>4</sup>

In this letter, we further explain why the safe harbor in the Proposed Rule would seriously disrupt consumer credit in this country. To take advantage of the safe harbor in the Proposed Rule, the creditor must verify the status of a consumer by accessing the information relating to

---

<sup>4</sup> “A Snapshot of Complaints Received from Servicemembers, Veterans, and Their Families.” CFPB Office of Servicemember Affairs. April 2015. Available at: [http://www.consumerfinance.gov/f/201504\\_cfpb\\_snapshot-of-complaints-received-from-servicemembers-veterans-and-their-families.pdf](http://www.consumerfinance.gov/f/201504_cfpb_snapshot-of-complaints-received-from-servicemembers-veterans-and-their-families.pdf) (Accessed April 29, 2015)

that consumer, if any, in the database maintained by the Department available at <http://www.dmdc.osd.mil/mla/owa/home> (“MLA Database”). This means that creditors nationwide will have to check the MLA Database before making any loans to any consumers. According to the data cited in the Proposed Rule, creditors would have to check the database over 300 million times a year.<sup>5</sup> Thus, the Proposed Rule will affect every single American applying for credit—not just Service members.

### **I. Changes to the MLA Database are not sufficient.**

One of the points we raised in our letter is that the MLA Database in its present form is inadequate to serve the needs of the U.S. credit industry. When the Proposed Rule was issued, the MLA Database did not support scripted queries and instead required manual entries from a website.

The Department’s Defense Manpower Data Center (“DMDC”) has informed us that in December 2014, the MLA Database website completed a redesign and now has similar capabilities to the Servicemembers Civil Relief Act website, offering users the ability to not only look up a single individual for confirmation of protections under the Military Lending Act, but also the submission of Multiple Record Requests in order to research the MLA protections of thousands of individuals at once.

While this change may seem like an improvement, it really does not help creditors for the purposes of the safe harbor. The redesigned MLA Database website now mirrors the Servicemembers Civil Relief Act (“SCRA”) website. The user may upload a formatted file and eventually get a response back with information on whether the applicants are covered by the MLA. While this process may sometimes work for the purposes of the SCRA, it is not very helpful in the MLA context. It’s all about the timing.

In the SCRA context, the creditor is assessing whether the customer is entitled to benefits, sometimes retroactively, or protections under the statute and needs to determine whether the customer is on active duty (and the dates on which active duty status began and ended). While it is important for the creditor to be able to obtain that information in a timely fashion, the need is not as pressing as in the MLA context. With the MLA, the creditor is involved in a potential lending transaction with a consumer and must know *before* the lending documents are prepared whether the applicant is covered under the MLA. The timeliness of this information is critical. In this day and age, consumers expect immediate credit decisions and closure of transactions. The MLA Database, in its present form, is simply inadequate to meet this need.

For the MLA information to be useful and practical, it must be easily and immediately obtainable by every lender and credit card issuer. Keying in individual queries is impractical; uploading multiple queries is both impractical and untimely. For the safe harbor to work, the data must be made available to the credit reporting agencies (“CRAs”) and included in the credit reports obtained by creditors. Creditors will then have the information as part of their normal (already existing) credit processes.

---

<sup>5</sup> 79 Federal Register 58627, Footnote 179.

## **II. Delays in updating the MLA Database can have serious consequences.**

We have expressed concerns to the DMDC that the SCRA and MLA Databases are not updated as frequently as necessary. The DMDC responded that the data is updated through submissions the DMDC receives from the service components. Despite mandates for daily updates, the timeliness with which each Service component makes their submissions can vary.

The varying updates by the Service branches cause problems for finance companies trying to comply with SCRA, and could be even more problematic for creditors trying to comply with the MLA. For example, one AFSA member told us that they recently started procedures to repossess a vehicle after checking the SCRA website. The website showed that the customer was not on active duty. However, the creditor found out that the customer was on active duty. The website was updated more than 15 days later and had been back-dated. Luckily, the AFSA member was able to stop the sale of the vehicle and return it to the customer. This example demonstrates the delays in the website information and the harm those delays can do.

## **III. The safe harbor could significantly limit prescreened offers.**

It is also important that CRAs have access to the data within the MLA database for prescreened offers.<sup>6</sup> CRAs need access to the data because prescreened offers must, by law, be firm offers of credit. The vast number of prescreened offers made in today's marketplace will not comply with the requirements of the MLA. Therefore, "covered borrowers" under the MLA would have to be excluded from such offers.

The creditor could not check the prescreened list against the MLA Database before making the offers. The Fair Credit Reporting Act and its implementing Regulation V<sup>7</sup> do not permit creditors to sift through and filter out prescreened lists provided by CRAs before making the offers of credit.

If the CRAs do not have access to the data within the MLA Database, they would have to pull millions upon millions of records in thousands of batches for hundreds of different finance companies. Many finance companies, even ones that operate in less than a dozen states, send out millions of prescreened offers. Running these offers through the DMDC's MLA website, with its batch limits, is impractical and would slow down searches for creditors nationwide.

Based on the number of prescreened offers accepted, we know that these are popular with consumers. However, if the safe harbor remains as proposed, and goes into effect as is, creditors may have to severely curtail these popular offers. As the Service members number around 3 million and the population 300 million, this is the tail wagging the dog.

---

<sup>6</sup> Prescreened offers are based on information in a consumer's credit report that indicates the consumer meets criteria set by the offeror. Prescreening works in one of two ways: (1) a creditor establishes criteria, like a minimum credit score, and asks a consumer reporting agency for a list of people in the company's database who meet the criteria; or (2) a creditor provides a list of potential customers to a consumer reporting agency and asks the company to identify people on the list who meet certain criteria.

<sup>7</sup> 16 USC § 1681a, et seq., 12 CFR Part 1022.

**IV. The effective date of the rule should be a year after the final rule is published.**

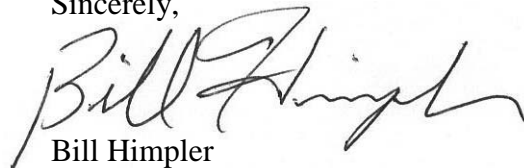
In AFSA's December 22 letter, we asked that the Department give creditors at least a year to comply with the final regulations because they need time to change their systems, develop new disclosures, and train employees. Now that AFSA's members have had more time to review the rule, we have more details on what these changes will entail.

Even though creditors do not have to disclose the Military Annual Percentage Rate ("MAPR"), they still have to calculate it to be sure that they are making loans that are compliant with the MLA. In order to calculate the MAPR, creditors must reprogram their entire loan system. Currently, their loan systems cannot calculate or compute MAPR. This reprogramming effort requires different fields of information (additions to the database, which is a structural change) since they would still be required to provide the TILA Annual Percentage Rate to non-covered borrowers. This is a change that would be required for every state in which the lender operates – and would take at least twelve months to implement.

**V. Conclusion**

We thank the Department for considering our additional comments and look forward to continuing to work with the Department on this Proposed Rule. Please contact me by phone, 202-466-8616, or e-mail, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive, flowing style.

Bill Himpler  
Executive Vice President  
American Financial Services Association