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ICBA Summary of the Military Lending Act Rule

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BACKGROUND

On July 21, 2015, the Department of Defense (DoD) issued its final rule amending the Military Lending Act (MLA) regulations. The rule became effective on October 3, 2016, for all consumer extensions of credit, except credit cards which went into effect on October 3, 2017.

On August 26, 2016, the DoD issued an ICBA-advocated interpretative rule addressing certain questions regarding the final rule. The interpretative rule did not make substantive amendments to the final rule but provided DoD's interpretations of the existing regulation. The DoD amended its August 2016 interpretive rule on December 14, 2017. This most recent amended guidance made clear that certain products previously considered excluded from coverage are in fact covered.

APPLICABILITY TO COMMUNITY BANKS

Community banks, are not subject to the final rule's prohibition of rolling over, renewing, repaying, refinancing, or consolidating any consumer credit a creditor extended to the same covered borrower; or of using a vehicle's title a security for the consumer credit obligation.

SCOPE

The final rule extends the types of closed-end and open-end consumer credit products covered under the MLA to generally align with the definition of credit under the Truth in Lending Act (TILA) and Regulation Z. This includes 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.

The final rule preserves exemptions for residential mortgages and vehicle-secured purchase loans. However, the December 2017 guidance clarifies that the inclusion of financing credit-related costs, such as GAP insurance, disqualifies the entire loan from exemption under MLA.

MILITARY APR

Under the MLA, covered credit transactions are capped at a 36 percent annual percentage rate (APR). This rate is referred to as the MAPR and includes the following items when applicable to an extension of credit:

1. Credit insurance premium or fee;
2. Debt cancellation or debt suspension fee;
3. Fees for ancillary products sold in connection with the credit transaction (e.g. credit default insurance and debt suspension plans);
4. Finance charges; and
5. Application fee.

If there is no balance in a billing cycle, a creditor may not charge any fee except for a participation fee. The participation fee cannot exceed $100 per year regardless of the billing cycle in which the fee is imposed. This limitation does not apply to a bona fide participation fee which is excluded from the MAPR for credit card accounts.

WAIVING FEES OR CHARGES

While a creditor may not impose a MAPR greater than 36 percent in connection with an extension of credit that is closed-end credit or in any billing cycle that is for open-end credit, a creditor may waive fees or finance charges, either in whole or in part, in order to reduce the MAPR to 36 percent or below in a given billing cycle.

COVERED BORROWER

Under the final rule, a covered borrower is a consumer who at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is an active duty member of the armed services, or his or her spouse and dependents.

COVERED BORROWER CHECK

Under the final rule, a creditor may conclusively determine the borrower's status and thereby obtain a safe harbor only by electing one of the following two methods:

- Using information obtained directly or indirectly from the MLA Database; or
- Relying on information contained in a consumer report obtained from a nationwide consumer reporting agency.

If community banks plan to pursue option two, they should contact their consumer reporting agency representatives for more information.

To benefit from the safe harbor provision, a creditor must determine a consumer's covered borrower status at or before the time of the transaction or the time an account is established and make a record of the determination. Note, there is no safe harbor for a consumer's statement that they are not a covered borrower.

TIMING OF THE COVERED BORROWER CHECK

The creditor may only rely on an initial determination of a covered borrower:

1. When a consumer initiates the transaction or 30 days prior;
2. When a consumer applies to establish an account or 30 days prior; or
3. When the creditor develops or processes a firm offer of credit and the covered borrower responds within 60 days.

If the covered borrower does not respond within 60 days, the creditor may no longer rely on the initial determination.

REQUIRED DISCLOSURES

The creditor must also provide a clear description of the payment obligation, which can be satisfied by using a payment schedule or account-opening disclosure as required by Regulation Z. In addition to the written disclosures required, the creditor must provide: 1) the statement of the MAPR; and 2) a description of the payment obligation orally.

If two or more creditors are involved in a transaction, disclosures are only required by one of them. The creditors are permitted to agree which creditor will provide the information required by the MLA.

ORAL DISCLOSURES

A creditor may provide the oral disclosures either in person or by providing a toll-free number the borrower may use to obtain the disclosures. If the creditor elects to provide a toll-free number, it must include that number on the application form or with the statement of the MAPR.

According to DoD, the requirement of a clear, oral payment obligation disclosure has sufficient breadth that creditors may choose a variety of acceptable oral disclosure compliance strategies. Thus, a generic oral description of the payment obligation may be provided, even though the disclosure is the same for borrowers with a variety of consumer credit transactions or accounts.

CONSUMER PAYMENTS

The final rule imposes strict requirements on creditors for collecting payments from covered borrowers. A creditor is prohibited from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower. Similarly, a creditor may not use a post-dated check provided at or around the time credit is extended that deprives the borrower of control over payment decisions, as is common in certain payday lending transactions.