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Military Lending Act Amendments: A Year in Review

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Agenda

- Background and Requirements
- Inconsistencies and Ambiguities
- Future of Military Lending



Background and Requirements



Timeline (main events)

- Congress passed the MLA in 2006
- MLA Regulation became effective in 2007
- Rule to amend MLA Regulation was finalized in 2015
- Department of Defense (DoD) issued its Interpretive Rule in August 2016
- Amended MLA Regulation became effective on October 3, 2016 (for most types of covered credit)



Scope and Exemptions

- “Consumer credit”
 - Tracks TILA/Regulation Z definition
 - EXCEPT residential mortgages and certain vehicle- or personal property-secured purchase money transactions
- “Covered borrower”
- “Creditor”



Main Requirements

- Military Annual Percentage Rate (MAPR) cap
- Written and oral consumer disclosures
- Prohibited contract terms
- Restrictions on creditor practices



Creditor Liability & Consumer Remedies

- Misdemeanor criminal penalties
- Unenforceable arbitration agreements
- Voided non-compliant contracts
- State, Federal and civil liability remedies
- Reg. Z and MLA consequences of noncompliance
- Prudential regulator enforcement



Inconsistencies and Ambiguities



Industry Efforts to Ensure Greater Clarity & Consistency

- Prior collaboration and meetings with the DoD
- Driving force behind the August 2016 interpretive guidance
- Efforts to exempt credit card account issuers
- June 2017 letter to the DoD



Trade Groups' June 2017 Request for an Interim Final Rule

- Call to address ambiguities and inconsistencies via Interim Final Rule
 - Covered transactions
 - Covered borrower determination
 - Consumer disclosure methods
 - MAPR calculation
 - Restrictions on account access
 - Contract voidance and cure provisions
 - Exemption for credit card accounts
- Request to postpone compliance date for credit card accounts until October 3, 2018



Purchase Money Exemption

- Transactions expressly intended to finance the purchase of, and secured by, a motor vehicle or personal property being purchased are exempt from the MLA
- Purchase money vehicle and personal property financing exemption requires clarity
 - DoD motor vehicle guidance is lacking
 - Exemption does not extend to transactions that finance typical costs, which could impede common lending practices



Covered Transactions (lot loans)

- Residential mortgage (that is, dwelling-secured) transactions are exempt from the MLA
- MLA regulation is silent on the treatment of transactions secured by vacant land (a/k/a “lot loans”)
- Lot loans are likely not among the intended covered transaction types under the MLA and should be exempt



Covered Borrower Determination (timing)

- Safe harbor applies if the covered borrower determination is timely
 - When the consumer initiates the transaction (or 30 days prior)
 - At application (or 30 days prior)
 - When the creditor develops or processes a firm offer of credit (if the consumer responds within 60 days)
- Current timeframes for the covered borrower determination pose issues
- Additional safe harbor options would facilitate compliance



Consumer Disclosures *(toll-free number)*

- Required disclosures must be provided orally (as well as in writing) at the time or before the consumer becomes obligated or establishes an account
- Oral disclosures may be provided in person or via a toll-free number (included in the application or a written disclosure)
- Lenders find current toll-free number requirements to be overly restrictive
 - More-flexible requirements would facilitate compliance when covered borrowers are deployed overseas



MAPR Calculation

(cost of ancillary products)

- MAPR must include the cost of credit-related ancillary products, among others
- MLA Regulation does not define “credit-related ancillary products”
- Defining relevant ancillary products would alleviate confusion and allow creditors to offer optional features to consumers



MAPR Calculation

(zero-balance open-end accounts)

- MAPR is calculated for each billing cycle of an open-end account
- Lenders may not impose any MAPR-affecting fees during a zero-balance billing cycle **except** for a \$100 account participation/arrangement fee
- Additional clarity is needed to help create consistent requirements for accounts with small- and zero-dollar balances



MAPR Calculation

(bona fide & reasonable fees)

- Certain bona fide and reasonable fees may be excluded from MAPR for credit card accounts
 - EXCEPT all fees are included in MAPR when a fee that is **not** bona fide and reasonable is imposed
- MLA regulation offers a safe harbor method for “bona fide and reasonable” determination
- Credit card issuers are concerned with their ability to apply safe harbor methodology



Restrictions on Access to Covered Borrower's Account

- MLA regulation generally prohibits access to a deposit, savings, or other financial account of the covered borrower using a check or another method (with exceptions)
- Per DoD interpretive guidance, this restriction targets remotely created checks/payments
- MLA regulation continues to lack clarity as to whether and when
 - A lender could access a consumer's financial account
 - A covered transaction could be secured by the deposit, savings, or other financial account of a covered borrower



Contract Voidance & Cure Provisions

- A contract with a covered borrower is void from inception, if it fails to comply with the MLA or includes a prohibited provision
 - Risk of inadvertent errors discourages lending to covered borrowers
 - Less-drastic voidance remedies could facilitate lending to servicemembers
- Current MLA regulation does not allow creditors to cure inadvertent errors
 - TILA-like provisions would provide a mechanism for curing a violation



Requests for Credit Card Exemption and/or Compliance Date Delay

- Industry requested that CARD Act-compliant credit card accounts be exempt from the MLA coverage
 - CARD Act protections are already available to covered borrowers
- Industry urged the DoD to delay mandatory compliance for credit card account issuers until October 3, 2018



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Future of Military Lending



Proposed Transparency in Military Lending Act of 2017

- Introduced in Congress
- Would amend the Military Lending Act
- Would impose several additional disclosure requirements
 - Financial counseling services statement
 - Disclosure about available financing options
 - Contact information for the nearest financial counseling office
 - Cost-of-credit disclosure



Proposed Transparency in Military Lending Act of 2017, cont'd

- Would impose formatting and procedural requirements
- Department of Defense is expected to issue clarifying regulations
- Proposal includes a separate provision relative to payday and vehicle title loans



Proposed Military Consumer Protection Act

- Introduced in Congress
- Would give the CFPB enforcement authority over the Servicemembers Civil Relief Act (SCRA)
- If enacted, the CFPB will enforce compliance with specific SCRA provisions



CFPB's Commitment to Servicemember Protections

- Office of Servicemember Affairs
 - Financial education
 - Complaint management
 - Coordinated efforts with State and Federal agencies
- Navigating the Military Financial Lifecycle guide
- CFPB enforcement actions



Minimizing MLA Compliance Risks

- Compliance culture and procedures
- Operational and technology considerations
- Reputational risk management