Talent Amendment: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

Background

Department of Defense (DoD) regulations implementing the consumer protection provisions of the John Warner National Defense Authorization Act for Fiscal Year 2007[1] contain limitations and requirements for certain types of consumer credit extended to active duty service members and their spouses, children, and other dependents ("covered borrowers"). The regulation covers "payday loans," "vehicle title loans," and "tax refund anticipation loans," as defined by the DoD rule ("covered transactions"), and applies to all persons that meet the definition of creditor in Regulation Z[2] who are engaged in the business of extending such credit and their assignees.

For covered transactions, the DoD rule limits the amount that a creditor can charge, including interest, fees and charges imposed for credit insurance, debt cancellation and suspension, and other credit-related ancillary products sold in connection with the transaction. The total charges must be expressed as a total dollar amount and as an annualized rate referred to as the "Military Annual Percentage Rate," or "MAPR," which may not exceed 36 percent. The MAPR includes charges that are not included in the finance charge or APR disclosed under the Truth in Lending Act (TILA), and must be separately disclosed for covered transactions. Among other provisions, the DoD rule

- provides a safe harbor and model form for creditors to use in connection with identifying covered borrowers;
- requires creditors to provide written and oral disclosures in addition to those required by TILA;
- prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses and unreasonable legal notice requirements; and
- restricts loan rollovers and refinancings.

Creditors that knowingly violate the rule may be subject to criminal penalties, and a credit agreement that is prohibited under the rule is void from inception. The final rule took effect on October 1, 2007, and applies to covered transactions that are consummated on or after that date.

Definitions (§232.3)

"Consumer Credit"

Consumer Credit means closed-end credit offered or extended to a covered borrower primarily for personal, family, or household purposes for payday loans, vehicle title loans, and tax refund anticipation loans, as defined below.

a. Payday loans – Closed-end credit

- with a term of 91 days or fewer;
- in which the amount financed does not exceed $2,000; and
- in which the covered borrower receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds
  - provides a check or other payment instrument to the creditor, who agrees not to deposit or present it for more than one day; or
  - authorizes the creditor to initiate a debit to the borrower's deposit account by electronic fund transfer or remotely created check after one or more days.

b. Motor vehicle title loans – Closed-end credit

- with a term of 181 days or fewer; and
- secured by the title to a motor vehicle that has been registered for use on public roads and is owned by the covered borrower (other than a purchase money transaction).

c. Tax refund anticipation loans – Closed-end credit in which the covered borrower expressly

- grants the creditor the right to receive all or part of the covered borrower's income tax refund; or
- agrees to repay the loan with the proceeds of the covered borrower's refund.

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1 Public Law 109–364, § 670, 120 Stat. 2266 (2006) (codified at 10 U.S.C. § 987).

2 15 U.S.C. § 1602(f). Among other things, Regulation Z, 12 C.F.R. Part 226, which implements the Truth in Lending Act (TILA), states that a creditor is one who "regularly" extends credit to consumers that is subject to a finance charge or is payable by written agreement in more than four installments and to whom the obligation is initially payable. A creditor making loans not secured by dwellings extends credit regularly if it makes more than 25 loans a year. 12 C.F.R. § 226.2(a)(17).

"Covered Borrower"

A covered borrower is a person with the following status at the time he or she becomes obligated on a covered transaction.

- A regular or reserve member of the
  - Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty or under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve Duty as that term is defined in 10 U.S.C. § 101(d)(6); or
  - the member's
    - spouse;
    - child, as defined in 38 U.S.C. § 101(4); or
    - an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding an extension of a covered transaction.

"Creditor"

A Creditor means all persons that meet the definition of creditor under Regulation Z who are engaged in the business of extending consumer credit covered by the rule.

NOTE: Instead of including assignees in the definition of "creditor," the rule specifically refers to assignees in each section of the rule that would apply to an assignee.

"Military Annual Percentage Rate"

Military annual percentage rate, or "MAPR," is the cost of the consumer credit transaction expressed as an annual rate. The MAPR for covered transactions may not exceed 36 percent, unless a lower limit applies.[3]

- Calculation of the MAPR. The MAPR shall be calculated based on the costs in this definition but, in all other respects, it shall be calculated and disclosed following the rules used for calculating the APR for closed-end credit under Regulation Z (Truth in Lending, 12 C.F.R. Part 226).

  Cost Elements. The MAPR includes the following cost elements associated with the extension of a covered transaction if they are financed, deducted from the proceeds of the covered transaction, or otherwise required to be paid as a condition of the credit:

  - interest, fees, credit service charges, and credit renewal charges;
  - credit insurance premiums, including charges for single-premium credit insurance, or fees for debt cancellation or debt-suspension agreements; and
  - fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction.

  The MAPR does not include

  - fees or charges imposed for actual unanticipated late payments, default, delinquency, or similar occurrence;
  - taxes or fees prescribed by law that actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest;
  - any tax levied on security instruments or documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness; and
  - tax return preparation fees associated with a tax refund anticipation loan, whether the fees are deducted from the loan proceeds

  NOTE: The DoD's intent is to ensure the credit products covered by the regulation cannot evade the 36 percent limit by combining low interest rates with high fees associated with origination, membership, administration, or other costs that may not be captured in the TILA definition of the APR. The MAPR includes charges that are not included in the finance charge or APR disclosed under TILA. As a result, the MAPR is required to be separately disclosed and is in addition to the APR disclosures required under TILA for covered transactions.

Examination Objectives

1. Determine the institution's compliance with the provisions of 32 C.F.R. Part 232, as applicable.
2. Assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing the provisions.

3 DOD rules also prohibit an institution from imposing an MAPR except as authorized by applicable State or Federal law. Depending on the type of institution, different State or Federal laws may govern the maximum rates and fees that the institution may impose for consumer credit transactions covered by the DOD rules. However, in no instance may such rates and fees exceed the 36 percent MAPR cap specified in the DOD rules.

3. Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.

4. Determine corrective action when violations of law are identified, or when the institution's policies or internal controls are deficient.

Examination Procedures[4]

Determine Applicability of DoD Regulations and Evaluate Policies and Procedures

1. Determine if the creditor offers or purchases[5] any consumer credit products covered by 32 C.F.R. Part 232 (payday loans, motor vehicle title loans, and tax refund anticipation loans as defined in § 232.3(b)(1)).

   - If the creditor does not offer or purchase consumer credit products as described above, the regulation does not apply and no further review is necessary.

   - If the creditor offers or purchases any consumer credit products covered by 32 C.F.R. Part 232, use the procedures below to determine whether the creditor complies with the regulation.

2. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring and monitoring compliance with the regulation.

3. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the regulation and determine whether the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.

4. Determine if the institution has policies or procedures in place to

   - provide account disclosure information to covered borrowers within the appropriate time frames in accordance with § 232.6; and

   - correctly calculate and limit the MAPR as defined in § 232.3(h).

5. Review compliance reviews or audit materials, including work papers and reports, to determine if

   - the scope of any audits address all provisions of the regulation, as applicable;

   - transaction testing includes samples covering relevant product types and decision centers;

   - the work performed is accurate;

   - significant deficiencies and their causes are included in reports to management or to the Board of Directors;

   - management has taken corrective actions to follow-up on previously identified deficiencies; and

   - the frequency of review/audit is appropriate.

6. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance. Consider:

   - organization charts

   - process flowcharts

   - policies and procedures

   - account documentation

   - checklists

   - computer program documentation, including any computer program testing and validation

Transaction-Related Procedures

When transaction testing is applicable, determine the adequacy of the institution's policies and procedures to its practices. The sample size should be sufficient to cover all aspects of the institution's activities and policies subject to the regulation.

Identification of Covered Borrowers (§232.5)

1. For covered transactions, determine if the creditor provides the following "covered borrower identification

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4 These reflect the interagency examination procedures in their entirety.

5 32 C.F.R. Part 232 applies to creditors and assignees.

statement" (or a substantially similar alternate form) to identify covered borrowers.[6]

Covered Borrower Identification Statement:

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to sign one of the following statements as applicable:

I AM a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer.

I AM a dependent of a member of the Armed Forces on active duty as described above because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

OR

I AM NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).

Warning: It is important to fill out this form accurately. Knowingly making a false statement on a credit application is a crime.

Optional Verification – The rule provides suggestions for optional verification of the status of a covered borrower. Since these procedures are optional, examiners do not have to assess compliance with them. However, examiners should be aware that although the additional verification procedures are optional, if a creditor does use these optional procedures and determines that the borrower is a covered borrower, the creditor is subject to the rule (even if the borrower indicated on the covered borrower form that he or she was not a covered borrower).

The creditor may, but is not required to, verify the status of an applicant as a covered borrower by requesting the applicant to provide

- a current military leave and earning statement; or
- a military identification card (available both to service personnel and their dependents).
- Additionally, in the case of National Guard Members or Reservists, a copy of the military orders and any extensions.

Alternatively, the creditor may, but is not required to, verify the status of an applicant as a covered borrower by accessing the information available through the Internet at http://www.dmdc.osd.mil/mla/owa/home and entering the service member's full name, social security number, and date of birth.

2. If the creditor does not use the above Covered Borrower Identification Statement or similar form, describe the method that the creditor uses to determine compliance with the rule so that the creditor does not make covered loans to covered borrowers on prohibited terms.

Notice and Disclosure Requirements (§ 232.6)

1. Determine whether covered transaction disclosures are made clearly and conspicuously in writing and in a form the covered borrower may keep.

2. If the covered transaction disclosures are combined with other account disclosures, determine whether it is clear which disclosures are applicable to the covered borrower's account, including those disclosures:

   - Related to the MAPR and the total dollar amount of all charges included in the MAPR; and
   - Required by Regulation Z

3. Determine if the disclosures reflect a clear description of the payment obligation of the covered borrower as applicable. A payment schedule provided pursuant to Regulation Z disclosure requirements will satisfy this requirement.

6 Limitations exist on the use of the identification form prescribed by the regulation as a safe harbor. According to the preamble to 32 C.F.R. Part 232, if the loan applicant signs a declaration of denial about being a covered borrower, but the creditor obtains information as part of the credit transaction reflecting that the applicant is a covered borrower (such as a current military leave and earning statement as proof of employment), the applicant's declaration would not create a safe harbor for the creditor. In such cases, the creditors should seek to resolve the inconsistency. However, if they are unable to do so, they may only avoid any risk of noncompliance by treating the applicant as a covered borrower based on the documentation or by declining to extend the credit due to the inability to verify the information provided in the borrower's signed declaration. This caveat prevents creditors from using the declaration to allow covered borrowers to waive their right to the protections provided by the regulation. Refer to 32 C.F.R. Part 232, 72 Fed. Reg. 50580, 50588 (August 31, 2007).

4. Verify that the following required statement (federal notice) is provided:

   "Federal law provides important protections to regular or reserve members of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, and their dependents. Members of the Armed Forces and their dependents may be able to obtain financial assistance from Army Emergency Relief, Navy and Marine Corps Relief Society, the Air Force Aid Society, or Coast Guard Mutual Aid. Members of the Armed Forces and their dependents may request free legal advice regarding an application for credit from a service legal assistance office or financial counseling from a consumer credit counselor."

5. For oral disclosure, determine whether the creditor provides oral disclosure of the MAPR, the payment obligation, and required federal notice (as discussed above) before consummation.

6. In the case of mail and Internet transactions, determine whether the creditor provides

   - a toll-free telephone number on or with the written disclosures that consumers may use to obtain oral disclosure and
   - oral disclosures when the covered borrower contacts the creditor for this purpose.

7. For renewal and refinancing of covered transactions, determine if new disclosures are provided when the transaction would be considered a new transaction that would require disclosures under Regulation Z. (Refer to 12 C.F.R. § 226.20)

   NOTE: Creditors need not provide new disclosures unless the transaction is considered a new transaction under Regulation Z (Refer to 12 C.F.R. § 226.20). However, regardless of whether new disclosures are required in a particular transaction, when a creditor refinances or renews an extension of consumer credit to a covered borrower, the limitations on rates and terms apply in the same manner as they would for the original transaction.

Prohibitions and Restrictions (§ 232.4 and § 232.8)

1. Determine whether the creditor, as part of any covered transaction

   - imposed an MAPR that is not authorized by applicable State or Federal law;
   - imposed an MAPR greater than 36 percent;
   - rolled over, renewed, repaid, refinanced, or consolidated any covered transaction with the proceeds of a covered transaction to the same covered borrower unless the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR;
   - required the covered borrower to waive his or her right to legal recourse under any applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. § 527 et seq.);
   - required the covered borrower to submit to arbitration or imposed any other onerous legal notice provision in the case of a dispute;
   - demanded unreasonable notice from the covered borrower as a condition for legal action;
   - required use of a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower;
     - EXCEPT THAT, in a transaction with an MAPR consistent with the rule (that is, not greater than 36 percent), the creditor may
   - require an electronic fund transfer to repay the obligation, unless prohibited by Regulation E (Electronic Fund Transfers), 12 C.F.R. Part 205;
   - require direct deposit of the consumer's salary as a condition of eligibility, unless otherwise prohibited by law; or
   - if not otherwise prohibited by law, take a security interest in funds deposited after the extension of the covered transaction in an account established in connection with the covered transaction;
   - required the covered borrower to establish an allotment to repay the obligation; or
   - prohibited the covered borrower from prepaying the credit or being charged a penalty fee for prepaying all or part of the credit.

Examination Conclusions

Conclude the examination after the following actions have been taken:

- Fully address identified deficiencies and violations, if any

- Attach appropriate supporting work-paper documentation
- Discuss findings with management and board of directors
- Write comments, as applicable, in the Report of Examination
- Include appropriate violation write-ups
- Discuss proposed enforcement action, if needed

References

32 C.F.R. Part 232 - Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.

12 C.F.R. Part 226 - Truth in Lending

12 C.F.R. Part 205 - Electronic Fund Transfers

Examination Checklist – Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents			
	Yes	**No**	**NA**
Section 232.3 - Defined Consumer Credit			
1. Does the creditor offer or extend or purchase closed-end credit primarily for personal, family, or household purposes in the following categories: a. Payday loans, b. Vehicle title loans, or c. Tax refund anticipation loans. **If Yes, determine if the loans meet the definitions found in (§ 232.3(b) (1)). If Yes, proceed. If No or NA, conclu**de the review.			
Section 232.4 - Account Terms			
1. Did the creditor impose a military annual percentage rate (MAPR) that is not authorized by applicable State or Federal law? (§ 232.4(a))?			
2. Did the creditor impose an MAPR greater than 36 percent in connection with extensions of consumer credit to covered borrowers? (§ 232.4(b)). **If the answer to either question is Yes, cite a violation of § 232.4.**			
Section 232.5 - Covered Borrower Identification Statement			
1. Prior to consummation of the consumer credit transaction, a. did the creditor provide each applicant a clear and conspicuous "covered borrower identification statement" or an alternate identification form that was substantially similar? b. did each applicant sign the statement indicating that he or she is or is not a covered borrower? (§ 232.5(a)(1)) c. If the creditor did not use the "covered borrower identification statement" or similar form, did the creditor use procedures that comply with the rule so that the creditor did not make covered loans to covered borrowers on prohibited terms? (§ 232.4)			
Section 232.6 - Loan Disclosures			
Delivery of Account Disclosures			
1. Does the creditor provide to a covered borrower clearly and conspicuously the initial disclosures before consummation? (§ 232.6(a))			
2. Does the creditor provide the disclosures in writing in a form the covered borrower can keep? (§ 232.6(b)(1))			
3. Does the creditor provide the initial disclosures orally before consummation (other than in mail or Internet transactions)? (§ 232.6(b)(2))			
4. For mail or Internet transactions, does the creditor provide a toll-free number on or with the written disclosures? (§ 232.6(b)(2))			
5. For refinancing or renewal of a covered loan, does the creditor provide new disclosures when the transaction would be considered a new transaction that requires disclosures under the Truth in Lending Act? (§ 232.6(c))			

Examination Checklist – Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents			
	Yes	**No**	**NA**
Content of Disclosures			
6. Do the disclosures include a. the "military annual percentage rate" (MAPR) applicable to the extension of consumer credit, and the total dollar amount of all charges included in the MAPR? (§ 232.6(a)(1)) b. any disclosures required by Regulation Z (Truth in Lending)? (§ 232.6(a)(2)) c. a clear description of the payment obligation of the covered borrower, as applicable, such as a payment schedule? (§ 232.6(a)(3)) d. the required federal notice? (§ 232.6(a)(4))			
Section 232.8 - Limitations			
1. Does the creditor, as part of any covered transaction, a. roll over, renew, repay, refinance, or consolidate any covered transaction with the proceeds of a covered transaction to the same covered borrower on the same or less favorable terms to the covered borrower, unless the new transaction results in more favorable terms to the covered borrower? (§ 232.8(a) (1)). b. require the covered borrower to waive his or her right to legal recourse under any applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. §527 et seq.)? (§ 232.8(a) (2)) c. require the covered borrower to submit to arbitration or impose any other onerous legal notice provision in the case of a dispute? (§ 232.8(a) (3)). d. demand unreasonable notice from the covered borrower as a condition for legal action? (§ 232.8(a) (4)). e. require use of a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a transaction with an MAPR consistent with the rule (that is, not greater than 36 percent), the creditor may: 1. require an electronic fund transfer to repay the obligation, unless prohibited by Regulation E, 12 C.F.R. Part 205; 2. require direct deposit of the consumer's salary as a condition of eligibility, unless otherwise prohibited by law; or 3. if not otherwise prohibited by law, take a security interest in funds deposited after the extension of the covered transaction in an account established in connection with the covered transaction. (§ 232.8(a)(5)) f. require the covered borrower to establish an allotment to repay the obligation? (§ 232.8(a)(6)) g. prohibit the covered borrower from prepaying the credit charges or charge the covered borrower a penalty fee for prepaying all or part of the credit? (§ 232.8(a)(7))			