



Additional Guidance Issued on the Military Lending Rule

December 20, 2017

The U.S. Department of Defense (“DOD”) has issued additional compliance guidance for lenders with respect to the Military Lending Act (“MLA”), the law that imposes certain limitations and requirements on consumer loans to active-duty service members and their dependents. The additional guidance addresses certain questions the DOD has received regarding the MLA.

Background

The MLA is implemented by a regulation issued by the DOD. That regulation was amended in 2016 primarily to extend the protections of the MLA to a broader range of closed-end and open-end credit products, to help creditors identify covered persons, and to modify the disclosures to be provided to covered borrowers.

The covered products include those aligned with the definition of “consumer credit” under the Truth in Lending Act and its implementing Regulation Z. As a result, the amended MLA applies to all forms of vehicle title loans, installment loans, unsecured open-end lines of credit, payday loans, refund anticipation loans, credit cards, deposit advance loans and overdraft lines of credit (but excludes demand deposit account overdraft protection services). The MLA still exempts residential mortgages and purchase-money vehicle-secured loans.

A covered borrower is a member of the armed forces who is serving (1) active duty as a member of the U.S. military, Coast Guard, or National Guard, under a call or order that does not specify a period of thirty days or fewer, or (2) Active Guard and Reserve duty. A covered creditor must verify whether the consumer is a “covered borrower” at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit. Creditors are granted a safe harbor in identifying a covered borrower if they use either the MLA database (maintained by the Defense Manpower Data Center under the DOD) or consumer reports from a nationwide consumer credit reporting agency.

The MLA requires a covered creditor to provide: (1) a statement of the Military Annual Percentage Rate (“MAPR”) applicable to the extension of consumer credit, (2) any disclosures required by Regulation Z, and (3) a clear description of the payment obligation of the covered borrower.

Under the MLA, covered credit transactions are capped at a 36% MAPR. The MAPR has generally calculated the same way as the Annual Percentage Rate (“APR”) is calculated under Regulation Z, but it also includes certain fees

and charges including credit default insurance, debt suspension plans, credit insurance premiums, debt cancellation fees, and certain application and annual fees.

MLA Interpretive Rule

On August 26, 2016, the DOD issued an interpretive rule (the “Interpretive Rule”) in the form of questions and answers (“QandAs”) providing guidance on the DOD’s regulation implementing the MLA. Some of the major clarifications made in the QandAs include the following:

- In providing oral disclosures, a general description of the borrower’s payment obligation is sufficient.
- Payments by check and electronic fund transfer are permitted.
- Creditors may use a single contract that limits the application of the MLA rule provisions to covered borrowers and do not need to generate special credit agreements.
- Creditors can enjoy the safe harbor for identification of a covered borrower if they make a determination of military status any time between 30 days prior to application and the time the account is established.
- Creditors are permitted to take a security interest in a covered borrower’s checking, savings, or other financial accounts in connection with a credit transaction, provided that it is not otherwise prohibited under other applicable law.
- Guidance regarding the coverage of the MLA.
- Guidance on a calculation of the MAPR, including the application of the safe harbor for creditors to exclude from MAPR reasonable and bona fide fees charged to a credit card account.

Amendment to the MLA Interpretive Rule

The DOD has now issued an amendment to the Interpretive Rule which took effect on December 14, 2017. The amendment provides additional guidance as follows:

For purchase of a motor vehicle or personal property under circumstances where the creditor simultaneously extends credit in an amount greater than the purchase price of the motor vehicle or personal property, the exemption from the MLA is available if the purpose of the credit beyond the purchase price of the motor vehicle or personal property is to finance costs related to the object securing the credit (e.g., an extended warranty or optional leather seats in that vehicle).

- The restriction on creditors using a check or other method of access to a deposit, savings, or other financial account maintained by a covered borrower does not prohibit the borrower from granting a security interest to a creditor in such an account, provided that it is not otherwise prohibited under other applicable law. Additionally, a creditor is not prohibited from exercising rights to take a security interest in funds deposited into a covered borrower’s account at any time, provided that it is not otherwise prohibited by other applicable law and the creditor complies with all other provisions of the MLA.
- A creditor satisfies the timing requirement of the safe harbor in identifying the covered borrower when either of the following conditions is met: (1) the creditor checks the consumer’s status at the time the consumer either initiates the transaction or submits an application to establish an account; or (2) the creditor checks the covered borrower status anytime during a 30-day period of time prior to such action taken by the consumer.

Further Information

The MLA Interpretive Rule can be found [here](#), and its recent amendment is available [here](#). If you have any questions regarding the MLA Interpretive Rule, its Amendment or the MLA in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, or Mandy Xu at 516-357-3850 or via email at mxu@cullenanddykman.com.

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