



Credit Union National Association

cuna.org

DANIEL A. MICA
PRESIDENT & CEO

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | **PHONE:** 202-638-5777 | **FAX:** 202-638-7734



dcuc.org

Roland A. Arteaga
President & CEO

June 11, 2007

Federal Docket Management System Office
1160 Defense Pentagon
Washington, DC 20301-1160

Re: Limitations on Terms of Consumer Credit Extended to Service members and Dependents – Docket No. DOD-2006-OS-0216

Dear Sir or Madam:

The Credit Union National Association (CUNA) and the Defense Credit Union Council (DCUC) appreciate the opportunity to comment on the proposed rule issued by the Department of Defense (DoD) that will implement the consumer credit provision of the John Warner 2007 National Defense Authorization Act (Act). This letter is a follow up to our previous letters to DoD, dated January 10, 2007 and February 5, 2007.

By way of background, CUNA represents approximately 90 percent of our nation's 8,600 state and federal credit unions, which serve nearly 87 million members. DCUC represents 245 military affiliated credit unions, the vast majority of whom operate on military bases worldwide and are also members of CUNA, and all of whom support the military and civilian personnel of the Department of Defense.

SUMMARY OF COMMENTS

- CUNA and DCUC generally support the proposed rule and applaud DoD for carefully drafting the proposal in a manner targeted to abusive lending practices that have been harming those who serve in the military, while trying to avoid unintended consequences for credit unions and some other financial institutions that are providing important, reasonably priced services to military service members and their dependents.



PO Box 431 | Madison, WI 53701-0431 | 5710 Mineral Point Road | Madison, WI 53705-4454 | **PHONE:** 608-231-4000

- Although DoD's proposal does not exclude any lenders from the definition of "creditor," as noted in the Supplementary Information, "governmental entities" would be exempt. Clarification is needed on the term "governmental agencies," and if such entities are excluded, DoD should consider whether financial institutions regulated by federal/state agencies should be afforded the same treatment in light of DoD's acknowledgement that institutions like credit unions have not engaged in predatory lending.
- We believe the rule should apply to all military service members. While that may be DoD's intent, it appears the proposed rule covers only regular and reserve members. Clarification is needed to ensure National Guard personnel on active duty, as defined in the proposed rule, would also be covered.
- We agree with the approach of the rule, which targets payday loans, vehicle title loans, and tax refund anticipation loans. We suggest the rule be clarified to clearly indicate that it only applies to these products.
- We suggest clarifications to the calculation of the military annual percentage rate (MAPR) to ensure this excludes all fees that are voluntary or are not financed or deducted from covered credit. The MAPR should also exclude all future fees that are not known at the time the credit is extended.
- The rule should clarify and specifically state that all open-end credit plans be excluded, even if additional purchases are financed for specific amounts and periods of time.
- For the required oral disclosures, we agree with the approach of providing a toll-free telephone number for mail and Internet transactions. However, the rule should clarify that notations in the credit file will be sufficient for purposes of documenting that the oral disclosures were provided.
- We support the approach of allowing creditors to rely on signed statements by the borrower that indicate if he or she is a servicemember or dependent. For Internet and telephone transactions, it should be sufficient to allow the borrower to click a statement on a webpage, and a notation in the file should be sufficient for telephone transactions.
- We request additional clarification with regard to the provision that will prohibit a creditor from renewing or refinancing credit previously extended by that same borrower, unless there is a benefit.
- We support the provision regarding refinancings and renewals in which the rule will not apply if the borrower was not a covered servicemember at the time the original loan was made. We also believe the rule should be clarified so that refinancings and renewals require new disclosures only when the transaction would also be considered a new transaction that requires Truth in Lending Act (TILA) disclosures.

- We also support the provisions that will allow creditors to use an electronic fund transfer to repay the loan, require a direct deposit of the borrower's salary, or take a security interest in the funds deposited after the extension of credit in an account established in connection with the loan.
- We are concerned about the October 1st compliance deadline, especially if the final version of this rule is not issued until September 1st, as indicated by DoD. While we believe the impact of this rule will be limited for credit unions, those that may be covered will need more time to revise disclosures, conduct staff training, and make the required processing changes. DoD should allow additional time, up to April 1, 2008, for full compliance.

CUNA and DCUC's Comments

The Talent Amendment was introduced and became law as a result of the DoD Predatory Lending Report to Congress in August 2006. While the language contained in the Act was broad, and the unintended consequences vast, in our view, DoD focused on the legislative intent and targeted those predatory lending practices most harmful to our service members and their families. The Department chose to narrowly define the term "consumer credit" and, in so doing, limited the impact of the implementing regulation to creditors which offer payday loans, vehicle title loans, and refund anticipation loans (RALs).

CUNA and DCUC generally support the proposed rule. However, we remain steadfast in our comments of January 10th and February 5th 2007, advising that credit unions are (and always have been) a part of the solution in the fight against predatory lending. The Talent Amendment was not introduced into law to regulate credit unions; it was passed into law to address the various forms of predatory lending prevalent in military communities.

As DoD's 2006 report on predatory lending to military personnel indicated, credit unions provide consumers, including military personnel and their families, with important alternatives to abusive credit programs and practices. In light of that fact, DCUC and CUNA strongly supported appropriate legislation to address predatory lending practices.

We appreciate the DoD's balanced approach to implement the law and appreciate DoD's carefully worded proposal targeting those abusive lending practices that have negatively impacted the financial readiness of our troops. To further support the financial position of our military, CUNA and DCUC recommend a number of suggestions that will further improve this rule:

1. Although the Department advised there were no exclusions from the definition of "creditor," the Supplemental Information describing the proposed regulation clearly excludes "governmental entities." The term, "governmental entities," should be defined and which organizations and/or institutions they include should be addressed. In particular, is the Department referring to Military Banking Facilities (MBF), such as the Overseas Military Banking Program? or is it referring to DoD and/or Treasury supported programs that are piloted and implemented by Treasury agent (contracted) banks? If the intent of the statute applies to all creditors, then clearly the rule should include governmental entities as well. That being said, if governmental agencies are excluded from the rule, we submit DoD should consider whether federal and state chartered credit unions regulated by their respective agencies should also be excluded. The oversight provided by the credit union regulatory agencies is undoubtedly at least equal to that provided to "governmental entities." Also, credit unions have a proven tradition of providing valuable and reasonably priced financial products and services to our military personnel. We strongly recommend the final rule address these concerns in a fair and consistent manner.
2. As for the scope of this rule, we believe it should apply to all military service members, including National Guard personnel. While we believe that is your intent, to ensure clarity and eliminate any confusion, we would ask that you expand your definition of "covered borrower" to include regular, reserve, and National Guard members. The abusive practices of payday lenders and others have been inflicted on all military service members, not just the Active component and Reserves, and therefore, we believe it would be appropriate for all service members to receive the protections that are provided under this rule.
3. We would also appreciate clarification regarding the fees included in the MAPR. The definition of the MAPR lists specific fees that, if they are financed, deducted from the proceeds of the credit, or otherwise required, would be included in the MAPR. However, a number of the specific fees listed are generally not financed, deducted from the credit, or required. This includes fees for single premium credit insurance, other types of credit insurance, and debt cancellation products. We request clarification with the final rule to indicate that no fee would be included if it is not financed, deducted from the credit, or otherwise required. This clarification should clearly indicate that all voluntary fees, insurance premiums, warranties, or charges for credit related products are excluded from the MAPR. We also suggest that

the rule specifically exclude all future fees that are unknown at the time the credit is extended, as this would further complicate the MAPR calculation. For simplification purposes, we ask you again to consider using the APR calculation noted in Regulation Z and the Truth in Lending Act (TILA) as this would eliminate the need to develop a separate and confusing MAPR calculation.

4. The credit restrictions in the proposed rule will cover certain payday loans, vehicle title loans, and tax refund anticipation funds, as specifically described in the rule. The definitions for these types of credits refer to closed-end credit. This reference to closed-end credit may cause confusion because some credit unions offer open-end plans that also extend credit with fixed payment periods and amounts that are used to purchase specific "big ticket" items. Under these open-end credit plans, members can apply once for a loan and then finance additional purchases, either by way of a telephone call or visit to the credit union's website, without the need for additional paperwork. This type of open-end lending anticipates repeat activity by providing members with the convenience of adding new purchases with minimal effort. Once the account is established, subaccounts are created for additional purchases, such as automobiles, computers, vacations, debt consolidations, as well as cash advances. Each of these subaccounts has its own interest rate and payment terms, and the member usually pays off each account separately. To the extent these subaccounts may include credit that would be covered under the proposed rule, they would still be considered within the overall open-end plan. For this reason, we recommend clarifying guidance to ensure these subaccounts would not be covered under the rule. Adding a statement to the definition of consumer credit that in effect excludes any and all open-end plans would eliminate confusion for credit unions that offer these open-end credit plans.
5. The definition of "payday loans" and established criteria of 91-days and a \$2,000 limit appear to be well-researched. As noted within the Department's explanation, the definition is not intended to impede credit unions from providing payday loan alternatives. That being the case, we request further clarification to ensure credit unions (and other regulated institutions) that offer small loans of 91 days or less, with a TILA APR no greater than 18%, and a flat fee, are not impacted by the proposed rule. Some credit unions' alternative payday loan programs, and the valuable service they offer, could be jeopardized without some reasonable flexibility and limitations, as we suggest.

6. The proposed rule lists specific products that are excluded from coverage, such as mortgage loans, loans to finance purchases of personal property when secured by the purchased property, credit secured by a qualified retirement account, as well as other credit that is not secured by the TILA disclosure requirements. Although we support these exclusions, and understand the statutory requirement to exclude the aforementioned products, the specific references listed have caused confusion. Some have questioned whether the rule would cover products that are neither specifically included nor excluded under the rule. Such examples would include credit cards and signature loans that credit unions offer. Our interpretation of these provisions indicates that any product that is not a payday loan, vehicle title loan, or a tax refund anticipation loan, as defined in the rule, would not be included, regardless of whether it is listed as a specific exclusion. However, the rule would be clearer if the exclusions were simply omitted from the rule, as this would clearly indicate that only three credit products are included under this rule. Barring such an approach, we recommend DoD clearly indicate that the above products are excluded by law, and that all other financial products and services, except closed-end payday loans, closed-end vehicle title loans, and closed-end RALs, as specified in the proposed rule, are excluded.
7. Regarding oral disclosures, we support the proposed approach for mail and Internet transactions in which the creditor may comply with the oral disclosure requirement by providing a toll-free telephone number that the borrower may use to obtain these disclosures. Under this approach, the creditor must then provide the oral disclosures when the borrower contacts the creditor for this purpose. However, we have a general concern as to how credit unions and other financial institutions would document that these oral disclosures were provided to the servicemember. One means to address this concern would be for the rule to clearly indicate that appropriate documentation in the file would be sufficient for purposes of evidencing compliance with the oral disclosure requirements.
8. The proposal provides a "safe harbor" process for identifying service members or their dependents who may be eligible for the protections under this rule. Under this process, the creditor will not be subject to the requirements of this proposal if the borrower signs a statement indicating that he or she is not a servicemember or dependent. We agree with this approach; however, it could be problematic. The issue arises as to how to obtain the borrowers signature when the loan

application is made by way of the Internet or telephone. For the Internet, the rule should allow the borrower to click an acknowledgment, which will substitute for the signature, as permitted under the Electronic Signatures in Global and National Commerce Act (E-Sign Act). For telephone applications, we suggest that the financial institution be allowed to note in the appropriate file that the borrower orally acknowledged that he or she is not a servicemember or dependent.

9. The proposed rule will prohibit a creditor from renewing or refinancing credit previously extended by that same creditor, but it provides an exception if there is a benefit to the borrower. We request additional clarification as to what would be considered a benefit. For example, a lender may extend the terms of the credit as a means to lower the monthly payment, but may also increase the interest rate to the current market interest rate, which may be higher than the original rate. The borrower could view this as beneficial, even though the interest rate is higher.
10. Refinancings and renewals if the borrower was not a covered servicemember at the time the original loan was made will not be covered. We support this approach, and urge it be included in the final version of this rule. We also believe the rule should be clarified so that such refinancings and renewals require new disclosures only when the transaction would be considered a new transaction that requires the TILA disclosures.
11. We also support the provisions that will allow creditors to use an electronic fund transfer to repay the loan, require a direct deposit of the borrower's salary, or take a security interest in the funds deposited after the extension of credit in an account established in connection with the loan. In addition, we strongly support the exception regarding the separate account as we believe this is an excellent means in which to encourage consumers to save and, therefore, avoid any future need to use high-cost credit.
12. Although the rule is limited in scope, we are still concerned about the October 1st compliance deadline and the pressing timetable that this presents for compliance purposes, especially if a final rule is not issued until September 1st, as DoD has indicated. Institutions offering covered products will need to revise disclosures, conduct staff training, and make and test the required data processing changes. And given there are only 19 working days between September 1st and October 1st, this presents a major challenge. Unlike for other financial

institution rules, noncompliance with this rule may result in criminal penalties and the possible voiding of contracts. Institutions providing these products will be extremely concerned about the consequences if they are not able to comply by the October 1st deadline. For these reasons, we believe establishing a later date for the mandatory compliance date would facilitate compliance with this rule, such as six months after the effective date (April 1, 2008). This is the approach the Federal Reserve Board has in the past adopted for numerous consumer protection rules, and we believe this would address the compliance concerns, as described above.

In closing, we would again like to take this opportunity to thank you for your efforts to date to implement the new law reasonably, and your support of credit unions over the years. As you noted in your report to Congress, credit unions (and other financial institutions), especially those on military installations, understand the financial plight and needs of our troops. Throughout their history, credit unions have provided financial products and services that are beneficial, not detrimental, to those who proudly serve our Nation. Credit unions are the answer...not the issue. Working collectively, we have made and will continue to make a marked difference in the financial quality of life of our service members and their families, and working with you, we will strive to eliminate predatory lending practices around military installations and worldwide.

Thank you for the opportunity to comment as you continue the process of developing the rule to implement this new military lending law. If you or your staff have questions about our comments, please give us or Senior Vice President and Deputy General Counsel Mary Mitchell Dunn or Senior Assistant General Counsel Jeffrey Bloch a call at (202) 638-5777.

Sincerely,

Daniel A. Mica
CUNA President and CEO

Roland A. Arteaga
DCUC President and CEO