

Client Alert: Extending Consumer Credit to Active-Duty Military Service Members: Department of Defense Issues Final Rule Implementing the Military Lending Act

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On July 22, 2015, the United States Department of Defense issued a final rule implementing the Military Lending Act (the MLA), a federal law that provides various protections to active-duty service members in consumer credit transactions. The MLA imposes various restrictions and disclosure requirements on a creditor who extends consumer credit to active-duty service members, their spouses and their dependents.

What types of creditors, and what types of lending, must comply with the final rule? The final rule applies to any lender that extends credit to active-duty service members (or their spouses or dependents) primarily for personal, family, or household purposes, if the loan is either (i) subject to a finance charge, or (ii) payable pursuant to a written agreement in more than four installments. This broad definition includes, but is not limited to, banks, credit unions, savings associations and finance companies. Certain types of loans are excluded: mortgages, loans to purchase automobiles that are secured by the automobile purchased, and loans to purchase personal property that are secured by the personal property purchased.

What restrictions apply to covered loans? The final rule imposes a number of restrictions and requirements on covered loans, including:

- Creditors may not charge a “military annual percentage rate” (MAPR) of greater than 36%. The MAPR is not the same as the interest rate on the loan, but includes a number of other fees and charges. The final rule contains lengthy and technical provisions for calculating the MAPR. State usury and similar laws may well provide lower rate caps.
- Creditors must provide certain disclosures to consumers, including (i) a statement of the MAPR, (ii) disclosures required by Regulation Z, and (iii) a clear description of the consumer’s payment obligations under the loan.

- Creditors may not charge a prepayment penalty.
- Creditors may not require that consumers submit to arbitration or impose “onerous legal notice provisions” in the event of a dispute.

How can I know whether I am about to lend to an active-duty service member? Although the final rule provides that creditors may use any method to assess whether a consumer is an active-duty service member (or the spouse or dependent of a service member), the rule provides a safe harbor for creditors only if the creditor (i) consults the Department of Defense’s database or a national consumer reporting agency database, and (ii) creates and maintains a record of having consulted the database.

What are the risks and penalties for noncompliance? A creditor who fails to comply with the provisions of the MLA may be subject to fines or imprisonment. Moreover, a credit agreement that fails to comply with the MLA, or that contains a provision prohibited by the MLA, is void from the inception of the contract.

When do I have to comply? Compliance with the final rule is required by October 3, 2016.

Please note: This is a brief summary of some material provisions of the final rule and is not intended to be a complete explanation of the final rule. Many provisions of the final rule are lengthy and complex and are not discussed here. If you would like to discuss the final rule, please contact your Vorys attorney.