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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[Docket ID: DOD-2013-OS-0133]

RIN 0790-ZA14

Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Interpretive rule.

SUMMARY: The Department of Defense (Department) is amending its interpretive rule for the Military Lending Act (the MLA). The MLA, as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on “consumer credit” extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). On August 26, 2016, the Department issued the first set of interpretations of that regulation in the form of questions and answers. On December 14, 2017, the Department issued a second set of interpretations of that regulation in the form of amended questions and answers. The Department is now withdrawing the amended question and answer number 2 (Q&A #2), published in the December 14, 2017 Interpretive Rule, which discussed when credit is extended for the purpose

of purchasing a motor vehicle or personal property and the creditor simultaneously extends credit in an amount greater than the purchase price of the motor vehicle or personal property. In withdrawing this amended question and answer, the Department is reverting back to the original Q&A # 2 published in the August 26, 2016 Interpretive Rule. This will allow the Department to conduct additional analysis on this matter. The Department is also adding a new question and answer to address questions about the use of Individual Taxpayer Identification Numbers to identify covered borrowers in the Department's database.

DATES: *Effective Date:* This interpretive rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrew Cohen, 703-692-5286.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In July 2015, the Department of Defense (Department) issued a final rule¹ (July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA)² primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as “consumer credit.”³ Among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a “covered borrower,” modified the disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. In an effort to assist industry in complying with the July 2015

¹ 80 FR 43560 (July 22, 2015).

² 10 U.S.C. 987.

³ 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

Final Rule, the Department elected to answer these requests through an interpretive rule in the form of questions and answers. The Department issued the first set of such interpretations on August 26, 2016 (August 26, 2016 Interpretive Rule).⁴ The Department issued a second set of such interpretations on December 14, 2017 (December 14, 2017 Interpretive Rule).⁵

The present interpretive rule amends and adds to those questions and answers. Subsequent to the publication of the December 14, 2017 Interpretive Rule, the Department received several formal requests for the Department to withdraw the amended Q&A #2 from the December 14, 2017 Interpretive Rule.⁶ One point raised in the requests for withdrawal was a concern that creditors' would be unable to technically comply with the MLA if the purchase included products not expressly related to the purchase of the vehicle as described in the amended Q&A #2 from the December 14, 2017 Interpretive Rule, because § 232.8(f) of the regulation would prohibit creditors from taking a security interest in the vehicle in those circumstances and creditors may not extend credit if they could not take a security interest in the vehicle being purchased. The Department finds merit in this concern and agrees additional analysis is warranted. In withdrawing the amended Q&A #2, published on December 14, 2017, because of unforeseen technical issues between the amended Q&A #2 and 32 CFR 232.8(f), the Department, absent of additional analysis, takes no position on any of the arguments or assertions advanced as a basis for withdrawing the amended Q&A #2 from the December 14, 2017 Interpretive Rule. In addition, the Department is adding Q&A #21 to its interpretations in

⁴ 81 FR 58840 (August 26, 2016).

⁵ 82 FR 58739 (December 14, 2017).

⁶ The Department received formal requests from the National Automobile Dealers Association/American Financial Services Association (January 18, 2018), American Bankers Association (January 19, 2018), Consumer Bankers Association (January 30, 2018), National Association of Federally-Insured Credit Unions/Defense Credit Union Council (January 31, 2018), National Independent Automobile Dealers Association (February 2, 2018), and the Guaranteed Asset Protection Alliance (February 12, 2018).

response to inquiries regarding the use of an Individual Taxpayer Identification Number when an individual does not possess a Social Security Number to conclusively determine if an individual is covered borrower in the Department's MLA database for the purpose of safe harbor.

This amended interpretive rule does not change the regulation implementing the MLA, but merely states the Department's preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the *Federal Register*.

II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p).

In order to provide further guidance to industry and the public on the Department's view of its existing regulation, the Department is amending its guidance on one question and answer, and by adding one new question and answer.

The numbering of this document follows the numbering of the questions and answers provided in the August 26, 2016 and December 14, 2017 Interpretive Rules. The text of the amended and new questions and answers follows:

2. *Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?*

Answer: No. Section 232.3(f)(1) defines “consumer credit” as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to subparagraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional “cash-out” financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

21. Does a creditor qualify for the safe harbor set forth in 32 CFR 232.5(b)(2)(i)(A) if the creditor uses an Individual Taxpayer Identification Number (ITIN) to search the Department’s database to conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of 32 CFR 232.5(b)?

Answer: Yes. The Department recognizes that while all members of the Armed Forces will have a Social Security Number (SSN), a limited population of dependents, who meet the definition of a covered borrower in 32 CFR 232.3(g), may not qualify for a SSN due to their citizenship status. An ITIN is a tax processing number issued by the Federal government in lieu of a SSN. ITINs are only available for certain nonresident and resident aliens, their spouses, and

dependents who cannot obtain a SSN and can be used in searches of the Department’s database.⁷ Since all covered borrowers will have a SSN or ITIN, the Defense Manpower Data Center (DMDC) MLA database contains ITINs for covered borrowers who are not eligible to obtain an SSN. Therefore, for purposes of 32 CFR 232.5(b)(2)(i)(A), an ITIN is a “Social Security number.”

III. Regulatory Impact

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It has been determined that this rule is a significant regulatory action under Executive Order 12866, and it has been reviewed by the Office of Management and Budget. It is not a major rule under 5 U.S.C 804.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs”

This rule is exempt from the requirements of Executive Order 13771 because it results in no more than de minimis costs.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rule does not impose reporting and record keeping requirements under the Paperwork Reduction Act of 1995.

⁷Internal Revenue Service, “Taxpayer Identification Numbers (TIN)” (last updated May 2, 2018)

Dated: February 24, 2020.

Aaron T. Siegel,

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Department of Defense.

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