

Consumer Credit Extended to Service Members and Dependents

This Handbook Section contains background information, definitions, and references for 32 CFR Part 232 – Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.

BACKGROUND AND SUMMARY

Department of Defense (DoD) regulations implementing the consumer protection provisions of the John Warner National Defense Authorization Act for Fiscal Year 2007¹ 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 DoD (covered transactions), and applies to all persons that meet the definition of creditor in Regulation Z² and their assignees who are engaged in the business of extending such credit.

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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 model form for creditors to use in identifying covered borrowers and a safe harbor for use of the form for that purpose.
- Requires creditors to provide written and oral disclosures in addition to those required by TILA.

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

² 15 USC § 1602(f). Among other things, Regulation Z, 12 CFR 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 CFR § 226.2(a)(17)).

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- Prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses and unreasonable legal notice requirements.
- 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)

The FFIEC Interagency Examination Procedures for 32 CFR Part 232 use a number of definitions. Key definitions include the following:

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.

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.

Motor vehicle title loans – Closed-end credit:

- with a term of 181 days or fewer; and
- that is 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).

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

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- 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.

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 USC § 101(d)(6); or
 - the member's
 - ✓ spouse;
 - ✓ child, as defined in 38 USC § 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 Z³ 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.⁴

³ Id.

⁴ DoD rules also prohibit an institution from imposing an MAPR except as authorized by applicable State or Federal law. Depending upon 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, but in no instances may such rates and fees exceed the 36 percent MAPR cap contained in the DoD rules.

- *Calculation of the MAPR.* The MAPR must be calculated based on the costs in this definition but, in all other respects, it must be calculated and disclosed following the rules used for calculating the APR for closed-end credit under Regulation Z (Truth in Lending, 12 CFR 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.
 - 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 any of the following:

- 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.
- Tax return preparation fees associated with a tax refund anticipation loan, whether or not the fees are deducted from the loan proceeds.

Note: The DoD's intent is to ensure that 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 APR. Because the MAPR includes charges that are not included in the finance charge or APR disclosed under TILA, the MAPR is required to be separately disclosed and is in addition to the APR disclosures required under TILA for covered transactions.

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REFERENCES

Code of Federal Regulations (CFR)

32 CFR Part 232 – Limitations on Terms of Consumer Credit Extended to Service Members and Dependents.

12 CFR Part 226 – Truth in Lending

12 CFR Part 205 – Electronic Fund Transfers