November 28, 2014

Federal Docket Management System Office
4800 Mark Center Drive, 22nd Floor, East Tower, Suite 02G09
Alexandria, VA 22350-3100

Re: Indiana Credit Union League Comments on Department of Defense Proposed Rule – Military Lending Act, RIN 0790-AJ10

To Whom It May Concern:

The Indiana Credit Union League (ICUL) appreciates the opportunity to submit comments on the Department of Defense's ("the Department") proposed rule amending its regulation implementing the Military Lending Act. The ICUL member credit unions represent 97% of assets and members of Indiana's credit unions, with those memberships totaling more than two million consumers.

ICUL supports the existing regulations implementing the Military Lending Act. Our service members deserve protection from predatory lending practices, such as those addressed in the current regulation. We agree with the Department that payday loans, vehicle title loans, and refund anticipation loans present the most severe risks to service members and their families.[1] We believe the current rule's targeted approach properly focuses on the predatory practices of certain lenders offering those loan products. The existing rule has helped reduce the availability of these products to service members.

Currently, in addition to protections provided by existing Military Lending Act regulations, the Servicemembers' Civil Relief Act, and general consumer lending regulations, federal regulators have the ability to enforce laws prohibiting unfair, deceptive, and abusive acts and practices when lenders take advantage of our country's service members. We believe these existing statutes and regulations are sufficient to address the Department's concerns expressed in its proposal.

Exemption for Credit Unions and Other Depository Institutions

Since we believe the proposal expanding the coverage of the Military Lending Act is unnecessary in light of existing statutes and regulations, we urge the Department to refrain from implementing it. However, if the Department does finalize the proposal, it should exempt credit unions and other depository institutions - entities which would generally face duplicative regulation over the credit products they offer. The proposal may reduce these institutions' ability to offer certain kinds of credit.

For example, the National Credit Union Administration (NCUA), which regulates federal credit unions, already imposes an 18% annual percentage rate (APR) ceiling on loans. In limited situations, NCUA regulations allow federal credit unions to offer a payday loan

[1] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 79 Fed. Reg. 58602, 58607 (Sept. 29, 2014).

alternative with a maximum APR of 28%. Payday alternative loans are limited loan products with the goal of helping members get out of the payday lending cycle of debt. Because the military APR (MAPR) in the proposed regulation is a more restrictive calculation than the APR, a federal credit union's payday alternative loan could violate the MAPR cap even though it complies with NCUA's regulations. Imposing duplicative regulation requiring additional calculations to ensure loans do not violate the MAPR is unfair to credit unions that are already required by regulation – and their missions as not-for-profit financial cooperatives – to provide credit to members at reasonable rates of interest.

Depository institutions such as credit unions should also be exempt from the proposal because of the difficulties – which the Department acknowledges in its proposal – with applying MAPR to credit cards without reducing the availability of credit to service members. As with payday alternative loans, a credit card's MAPR could exceed the allowed cap even if the card's actual APR is below the NCUA's 18% cap. Further, the MAPR calculation for credit cards would likely be difficult for small credit unions because it requires the credit union to research the fees of large financial institutions and calculate an average for each type of fee (balance transfer fees, cash advance fees, ATM fees, etc.) charged to ensure the credit union remains within the MAPR limit. To extend credit to service members, this may require manual research and calculation for small credit unions, which often lack the resources to invest in additional technology at a point in time when resources are stretched thinner with each new federal lending regulation.

Even if a credit union does not offer covered loan products with interest rates and fees that would approach the MAPR limit, it would still face a compliance and operational burden. Under the proposal, each time a member applies for consumer credit, the credit union faces a two-step borrower verification process. The institution must check the Defense Manpower Data Center (DMDC) database to determine whether the member is listed as a service member or dependent *and* it must ensure the credit union does not have any records indicating the member is a service member or dependent of a service member.[2] For example, a service member who opened an account at the credit union with a spouse or dependent during Year 1 may apply for covered credit in Year 10; the proposal essentially requires the credit union to check all records it has for the entire 10-year membership to determine whether the credit union has knowledge that the member is a service member or a dependent of a service member. While such technology may be available in the future, this is not something credit unions must track currently and may present a challenge for credit unions with limited technology budgets.

Unfortunately, this two-step verification requirement would apply to all credit unions - even ones without a field of membership that specifically includes service members - because the proposed regulation shifts responsibility from the service member to the

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[2] While this is identified as a "safe harbor" in the proposal, a credit union that did not perform this double verification and failed to provide the required disclosures or exceeded the MAPR cap when granting credit to a service member or dependent would be in violation and face very serious penalties. Therefore, we do not see the two-step verification as optional.

credit union. Simply put, under the proposed rule, a lender is not allowed to trust borrowers who state that they are not service members or dependents of service members (as is allowed under the current regulation). The Department defends the proposed two-step verification process by stating that it "has become aware of misuses of the covered borrower identification statement whereby a Service member (or covered dependent) falsely declares that he or she is not a covered borrower" and notes its concern about the possibility that "a Service member seeking a credit product that is subject to the MLA falsely states – either on his or her own initiative or complicit with the creditor . . . that he or she is not a covered borrower so that the institution offers the credit product unencumbered by the interest-rate limit and other restrictions of the MLA."[3]

Predatory lenders that coerce service members into signing false statements already can and should be dealt with under existing consumer protection laws. Further, we encourage the Department to invest additional resources in financial education so that service members and their families have the knowledge to make informed financial decisions and choose affordable credit products – such as those offered by credit unions – and they do not fall victim to predatory loan products which violate the Military Lending Act.[4] We believe credit unions should be able to trust a member's statement that he or she is not a service member, and regulations should allow credit unions to rely on that trust. The proposed verification steps to ensure that an applicant is *not* a service member are not reasonable; they place an unfair burden on lenders and will significantly add to compliance costs.

If the Department chooses not to exempt depository institutions from the proposed regulation, we are concerned about the Department's proposed DMDC database verification step. The Department has not sufficiently articulated how lenders may use and rely on the database – for example whether lenders may rely equally on results from submission of social security numbers or birth dates -- and what would or should happen if the online database is unavailable to the lender when a borrower submits an application for credit. Finally, if the Department finalizes its proposal, it should allow an extended implementation period to allow credit unions and technology providers the time necessary to implement changes required by the proposal.

Thank you for the opportunity to comment on the proposal. If you have any questions about our letter, please do not hesitate to give me a call at (317) 594-5320.

Sincerely,

John McKenzie
President, Indiana Credit Union League

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[3] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 79 Fed. Reg. 58602, 58614 (Sept. 29, 2014).

[4] The Department notes in the proposal that "the majority of Service members have access to reasonably priced (as well as low-cost) credit, and, as long as they wisely use those resources, they are likely not to need high-cost loans to fulfill their credit needs." 79 Fed. Reg. at 58624-58625.