Special Alert: Department of Defense Issues Interpretive Rule Regarding Compliance with the Military Lending Act

Today, the Department of Defense ("DoD" or "Department") published in the Federal Register an interpretive rule regarding compliance with its July 2015 amendments to the regulations implementing the Military Lending Act ("MLA"). The July 2015 amendments will extend the MLA's 36% military annual percentage rate ("MAPR") cap, ban on mandatory arbitration, and other limitations to a wider range of credit products—including open-end credit—offered or extended to active duty service members and their dependents ("covered borrowers"). Compliance is mandatory beginning on October 3, 2016, except that credit card issuers have until October 3, 2017 to comply. Additional BuckleySandler materials on the MLA amendments are available here, here, and here.

DoD stated that the interpretive rule "does not substantively change the [July 2015] regulation implementing the MLA, but rather merely states the Department's preexisting interpretations of an existing regulation" and thus is effective immediately upon publication. The DoD also emphasized that the guidance provided in the rule "represent[s] official interpretations of the Department…."

The interpretive rule addresses a number of ambiguities in the amended regulations. Among other things, DoD states that in its view:

- For open-end credit products where the MAPR will vary each billing cycle, a creditor can comply with the 36% MAPR cap "by waiving fees or finance charges, either in whole or in part, in order to reduce the MAPR to 36 percent or below in a given billing cycle."
- While creditors are required to provide an oral disclosure of "the payment obligation" before or at the time the covered borrower becomes obligated or establishes an account, "an oral recitation of the payment schedule or the account-opening disclosure [under Regulation Z] is not the only way a creditor may comply." Instead, the creditor may orally provide "a general description of how the payment obligation is calculated or a description of what the borrower's payment obligation would be based on an estimate of the amount the borrower may borrow." The DoD further states that "a generic oral description of the payment obligation may be provided, even though the disclosure is the same for borrowers with a variety of consumer credit transactions or accounts."
- If the MLA's required oral disclosures are provided through a toll-free telephone number, the oral disclosure need only be available for a period "reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure."
- Although the MLA disclosures (which include the Regulation Z disclosures) generally must be provided before or at the time the borrower becomes obligated or establishes an account, creditors may still rely on the provisions in Regulation Z allowing those disclosures to be provided after the borrower has become obligated on a transaction for purchase orders or requests for credit made by telephone or mail.
- Assignees can rely on the safe harbor provided to creditors that have determined covered borrower status using the DoD database or a credit report.
- Creditors may include terms that are prohibited for covered borrowers (such as mandatory arbitration clauses) in a standard written credit agreement used for both covered and non-covered borrowers if "the agreement includes a contractual 'savings' clause limiting the

application of the proscribed term to only non-covered borrowers, consistent with any other applicable law."

- The prohibition on the use of a check or other method of access to a deposit, savings, or other financial account maintained by a covered borrower does not prohibit covered borrowers from "tendering a check or authorizing access to a deposit, savings, or other financial account to repay a creditor" or from "authorizing automatically recurring payments, provided that such recurring payments comply with other laws, such as the Electronic Fund Transfer Act…."
- The exemption for credit transactions that are expressly intended to finance the purchase of personal property and are secured by that property does not apply to transactions where the amount of credit includes a "cash out" provision that exceeds the purchase price.

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Questions regarding the matters discussed in this Alert may be directed to any of our lawyers listed below, or to any other BuckleySandler attorney with whom you have consulted in the past.

- Valerie L. Hletko, (202) 349-8054
- Benjamin K. Olson, (202) 349-7924
- Manley Williams, (202) 349-8060
- Sasha Leonhardt, (202) 349-7971
- Andrew W. Grant, (202) 349-8056