American Bankers Association

Building Success. Together.

To: Marcus Beauregard
Paul Kantwill

From: Nessa Feddis
Steve Lepper

Date: April 15, 2016

Re: Interim final rule to clarify and modify the Military Lending Act Regulation

As discussed in our March 2016 meeting with you and noted in our letter of April 7, 2016, we believe that the best and most effective means of addressing our concerns with regard to the Military Lending Act (MLA) regulation is through immediate adoption of an interim final rule and simultaneous request for public comment on that interim final rule. An interim final rule adopted prior to the October 3, 2016 mandatory compliance date that clarifies and revises the rule will facilitate compliance, provide necessary legal certainty, and reduce the risk of violations and costly liability. This in turn will help to reduce the risks that military personnel and their spouses and dependents – as well as other consumers – will lose access to valuable and important consumer credit products. Simultaneously requesting public comment on the interim final rule will allow the Department to make subsequent revisions as appropriate.

As outlined in our April 7, 2016 letter, the recently amended MLA regulation presents significant compliance issues. It is critical that these issues are addressed through changes to the regulation. "Guidance" and alternative mechanisms are insufficient to address these concerns, as they lack legal authority to assure lenders that their MLA compliance procedures will not be challenged by courts, plaintiffs' attorneys, or examiners. The vulnerability is acute because, for many of the provisions, effective "guidance" would contradict the regulatory text, making lenders relying on the "guidance" an attractive target. Absent the legal support of a formal regulation, in order to avoid the risk of violation and the significant potential liability, lenders will be forced to choose between eliminating valued credit products, such as overdraft lines of credit, loans secured by bank accounts such as secured credit cards, personal loans, and car refinances, or denying those loans to covered borrowers.

The Administrative Procedures Act (APA) offers an effective mechanism, an interim final rule, to provide the much needed regulatory and legal certainty. Under § 553(b)(3)(B) of that act, agencies may adopt regulations without publishing proposed regulations for comment if they have "good cause" and explain the reasons that notice and public comment are "impracticable, unnecessary, or contrary to the public interest." We believe that there are sufficient grounds to meet all three of these criteria given the unworkability of certain provisions, covered borrowers' potential loss of access to valuable credit products, and the fast approaching mandatory compliance date.

To expedite the process, the scope of the interim final rule can be limited to avoid re-consideration of matters already considered and resolved. In addition, the public comments received after adoption of the interim final rule will allow the Department to modify the interim final rule in the event commenters raise concerns about unanticipated or undesirable effects.
The Bureau of Consumer Financial Protection, which the Department must consult under the Military Lending Act, has often issued interim final rules. For example:

- Interim final rule regarding alternative mortgage transaction parity (Regulation D) (July 22, 2011). *See* pages 44229-44231 for legal authority under APA.

- Interim final rule to amend the 2013 Rule under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (October 23, 2013). *See* pages 62995-62296 for legal authority under APA.[1]

- Interim final rule to broaden qualified mortgage coverage of lenders operating in rural and underserved areas (March 22, 2016). *See* pages 11-15 for legal authority under APA.

We strongly urge the Department to act quickly to adopt an interim final rule and request public comment. Lenders need to know whether they should continue with compliance implementation plans based on the current regulation, which may include plans to eliminate products or deny covered borrowers, or may modify those plans based on more clear, flexible regulations. With less than six months left to determine how to comply, make operational and IT changes, revise contracts, train staff, test, and audit, time is of the essence.

Many thanks for your consideration of this matter. We urge you to contact us for further discussion about the interim final rule option as well as the specific recommendations offered in our April 7, 2016 letter. You can contact Nessa Feddis at nfeddis@aba.com or 202 663 5433 or Steve Lepper at Steven.Lepper@AMBAHQ.org or 540 347 3305.

[1] In explaining the reason for the interim final rule, the Bureau wrote, "If the Bureau were to give advance notice of the amendment of these sections and even a two-week comment period, a rule could not reasonably be published in final form until early December. Servicers would experience a period of uncertainty in which they would have to continue to prepare for compliance with the original rules in case the exemptions were not finalized…This would likely divert resources from activities that would have more beneficial impacts for consumers. If the Bureau adopted the exemptions in December, servicers would then be forced to change their systems in a rush before the effective date, potentially leading to severe compliance problems and harm to consumers."