June 11, 2007

The Honorable Dr. David S. C. Chu
Under Secretary of Defense for Personnel and Readiness
2000 Defense Pentagon
Washington, DC  20301-4000

SUBJECT:  Department of Defense (DOD) Notice and Request for Comments
(DOD-2006-OS-0216) – Limitations on Terms of Consumer Credit
Extended to Service Members and Dependents (Public Law 109-364
Section 670):
Comments of American Financial Services Association

Dear Dr. Chu:

The American Financial Services Association (“AFSA”) hereby submits this letter in
response to the request by the Department of Defense (“DoD”) for comments on the
Department’s regulations implementing the requirements of the recently-enacted Section
L. 109-364, Section 670, “Limitations on Terms of Consumer Credit Extended to Service
Members and Dependents” (“Act”).

The Association, founded in 1916, is the trade association for a wide variety of consumer
finance companies. AFSA's mission is to protect and improve the consumer credit
business, maintain a positive public image, and create a legislative climate in which
reasonable credit regulation can and will be enacted. AFSA operates in the public
interest, encourages and maintains ethical business practices, and supports financial
education for consumers of all ages.

AFSA commends the DoD on its proposed regulations. If the regulations go into effect as
proposed, service members and their dependents will be protected against harmful loans,
while still maintaining access to important sources of valuable and beneficial credit.

Questions

QUESTION 1: However, we seek comment on whether the final regulation should
exclude regulated banks, credit unions and savings associations and their subsidiaries
from coverage by the regulation generally, or in limited circumstances such as in the
following circumstances: (1) the depository institutions are subject to supervision and
regulation by a federal regulatory agency; (2) the institution extends covered “consumer
credit”; (3) the extension of consumer credit by the institution is subject to supervisory
guidance by the federal bank regulatory agency that addresses consumer protection,
disclosure, and safety and soundness criteria applicable to such lending; and (4) the federal bank regulatory agency agrees to act on matters referred to it by the Department concerning complaints that such lending to a covered member may be inconsistent with the supervisory guidance, applicable law, or is having an adverse effect on military readiness. Would depository institutions find an exclusion that is limited in this manner useful? The Department notes that if the final regulatory definition includes additional limitations on the definition of covered “creditor”; it would not be precluded from expanding that definition in the future as appropriate to address new concerns or changed circumstances.

As AFSA has repeatedly stated, the best approach is a targeted one that addresses the credit products that have been identified as being a problem for service members and their dependents. AFSA believes that the DoD’s recognized the problems and proposed regulations meet this objective without unduly restricting access to valuable and beneficial credit products for service members and their dependents.

QUESTION 2: The Department seeks comments concerning whether the duration limit and monetary limit on the amount of the loan included in the definition of payday lending creates any unintended consequences for other credit products.

The DoD has taken a very effective approach in identifying the key characteristics of payday lending practices. As such, AFSA and its members do not anticipate for the proposed regulations to have any unintended consequences for other credit products.

QUESTION 3: The Department seeks comments as to whether the limits established for vehicle title loans for duration of the loan included as part of the definition cause any unintended consequences for other credit products.

AFSA and its members do not anticipate that the limits established by the proposed regulations for vehicle title loans will cause any unintended consequences for other credit products.

QUESTION 4: Accordingly, the Department solicits comments on regulatory approaches that would encourage creditors to offer affordable, small-dollar, short-term loans to Service members and their dependents. For example, should transactions that would otherwise be covered as payday loans be exempt from coverage under these rules if the MAPR is less than 24% MAPR or some other rate specified in the rules? Would a similar rule be appropriate for vehicle-title loans or tax refund anticipation loans? Are there other approaches that DoD should consider?

AFSA welcomes the open-ended question and the Department’s expressed interest in soliciting new and creative approaches to the scarcity of low APR small-dollar, short-term loans either for Service members or others in the community. AFSA believes that because of the fixed costs in making and managing a loan of any size, it must follow that
shorter-term, smaller loans will always carry higher APRs than bigger, longer-term loans regardless of risk – unless some non-market inducements are offered to the lender, in which case the cost is not so much reduced as shifted to another source of payment. Fortunately this should not mean that smaller, short-term installment loans are really more expensive, since by other relevant measures like total dollar cost and total charges as a percentage of principal these loans remain typically cheaper than bigger, longer-term loans and significantly cheaper than single payment “payday” loans.

QUESTION 5: The Department solicits comment on whether there are other fees [besides unanticipated late payments, default, delinquency or a similar occurrence] that should be expressly excluded for the same reason [a result of contingent events that may occur after the loan is consummated].

AFSA believes that the DoD has correctly excluded fees that are imposed as a result of contingent events that may occur after the loan is consummated. Therefore, AFSA does not recommend other fees for exclusion from the Military Annual Percentage Rate (“MAPR”). There are no other fees that should be included in the specific products that are subject to additional disclosures.

QUESTION 6: The Department would like feedback on the creditor's involvement in tax filing aspects of a refund anticipation loan.

AFSA does not have sufficient information to provide an answer.

QUESTION 7: Since this issue is critical to the success of the regulation, and also protecting the reputation of the creditor, the Department solicits further comment on the proposed “safe harbor” concept and the methodology proposed to implement the intended balance in approach to identification.

To ensure the efficient delivery of important credit products to covered and non-covered borrowers, the “safe harbor” proposed in the regulations is critically important. AFSA believes that it is imperative that the DoD clarify that refusal by lenders to extend credit to covered members does not violate the Act or any other federal or state laws or regulations.

QUESTION 8: The Department requests comment on whether the proposed rule for providing certain disclosures orally adequately addresses the compliance difficulties associated with the statutory requirements for oral disclosures, or whether another approach is more appropriate.

The proposed rule for providing certain disclosures presents a practical approach to balancing oral and written disclosures. AFSA recommends that the DoD regulations establish that a signed statement from a borrower saying that the oral disclosures were given is conclusive evidence of that fact.
QUESTION 9: DoD therefore seeks comments on this proposed requirement [mandating the disclosure of two annual percentage rates] and invites suggestions on alternative approaches.

AFSA again commends the DoD for a clear and concise definition of MAPR. Since the language in the Act calls for a different definition of Annual Percentage Rate (“APR”) than is in the Truth in Lending Act (“TILA”), there is no alternative approach.

QUESTION 10: The Department solicits comment on whether it can or should adopt this approach [which prohibits a creditor from extending consumer credit to a covered borrower in order to roll over, renew, or refinance consumer credit that was previously extended by the same creditor to the same covered borrower...except to workout loans and other refinancings that may benefit the borrower].

AFSA believes that the DoD’s approach will prove to be very beneficial in improving the credit situations of many borrowers. AFSA suggests that the DoD provide specific examples of the type of work outs that would be exempt. Companies should have the option of using demonstrable evidence of a benefit-to-the-borrower or a minimum threshold established under these regulations as sufficient proof of a benefit.

QUESTION 11: Assuming the final rule permits a creditor to roll over, renew or refinance credit that it previously extended to the same covered borrower in limited circumstances, the Department solicits comment on whether it can and should also adopt a rule clarifying that refinancings or renewals of a covered loan require new disclosures under Sec. 232.6 only when the transaction would also be considered a new transaction that requires Truth in Lending Act disclosures.

AFSA believes that the DoD can and should adopt a rule clarifying that refinancings or renewals of a covered loan require new disclosures only when the transactions would also be considered a new transaction that requires new TILA disclosures.

QUESTION 12: The Department solicits comment on this approach [the proposed rule not applying when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by Part 232 because the consumer was not a covered borrower at the time of the original transaction]. If such transactions were to be covered, however, should the disclosures in Sec. 232.6 only be required for transactions also deemed to be transactions requiring new disclosures under the Truth in Lending Act?

AFSA concurs that it would be unnecessarily burdensome to impose a duty on creditors to make a new determination as to the borrower’s status for each transaction with that borrower once it is determined that the borrower is not a covered member, even if the
borrower subsequently becomes a covered member. However, if such transactions were to be covered, the disclosure in Sec. 232.6 should be required only for transactions also deemed to be transactions requiring new disclosures under TILA.

QUESTION 13: The Department does not have the specific notice provisions or examples to include with this regulation and requests feedback on particular legal notice provisions [Subparagraph (a)(3) makes it unlawful for any creditor to extend consumer credit to a covered borrower if the “creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions”] that should be considered onerous.

AFSA member companies do not believe that mandated notices beyond those currently required by law are beneficial and believes that, in many cases, such notices can be confusing. Consequently, AFSA and its members recommend that the DoD refrain from proposing any additional notice provisions beyond those already codified.

QUESTION 14: Feedback is also requested on this provision and particular notice requirements [subparagraph (a)(4) makes it unlawful for any creditor to extend consumer credit to a covered borrower if the “creditor demands unreasonable notice from the covered borrower as a condition for legal action”] that should be considered unreasonable.

AFSA and its members recommend that the DoD add the following sentence at the end of section 232.8 (a)(4) of the regulations: Legal notices required by state or federal law or regulations are not effected or prohibited under this regulation.

QUESTION 15: The Department solicits comments on whether it can or should adopt this proposed exemption. [Section 232.8(a)(5) provides an exemptions to creditors, with respect to consumer credit, to use electronic fund transfer to repay a consumer credit, require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, or take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transactions that are below 36% MAPR.]

AFSA believes that the exemption under Section 232.8(a)(5) for consumer credit transactions that are below 36% MAPR is consistent with the DoD’s intended purpose of wanting to facilitate creditors making alternative loans to assist covered borrowers with financial recovery and recommends its adoption.

QUESTION 16: Comment is specifically solicited on this approach. [Section 8(a)(7) prohibits creditors from charging a prepayment penalty to covered borrowers.]
The DoD’s decision to rely on existing state and federal laws to define prepayment penalties that are prohibited under the Act is reasonable and will avoid unintended consequences.

QUESTION 17: Comment is requested on all aspects of these issues, and on how to ensure uniform implementation of, and compliance with, the statute by creditors not subject to oversight by the federal bank, thrift, and credit union regulatory agencies.

AFSA has consistently stated that the best approach is a targeted one that addresses the credit products that have been identified as being a problem for service members and their dependents. AFSA believes that the DoD’s proposed regulations have accurately described these problem credit products and that the proposed regulations meet their objective without unduly restricting access to valuable and beneficial credit for service members and their dependents.

QUESTION 18: Comment is solicited on the proposed timing for the publication of final rules. In particular, the Department intends to review the comments in a timely manner in order to propose and publish final rules on or before September 1, 2007, which is 30 days before the rules would become effective on October 1, 2007 and requests comment on the ability of covered creditors to comply with the proposed rules by October 1 in light of the specific credit products that would be covered by the rules.

AFSA members will be able to comply with the regulation by October 1, provided that the final regulation is not materially different from the proposed regulation. However, if the final regulation promulgated on or about September 1 materially changes (for example if the definition of “consumer credit” would substantially change), AFSA members would have difficulty implementing programming and other procedural changes that would be required by October 1.