



Credit Union National Association

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**Roland A. Arteaga**  
President & CEO

January 10, 2007

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

Re: Regulations to Implement the Consumer Credit Provisions of the John Warner National Defense Authorization Act for Fiscal Year 2007

Dear Dr. Chu:

First, we want to commend Colonel Marcus Beauregard USAF (Retired) for his very helpful presentation during the Defense Credit Union Council (DCUC) and the Credit Union National Association's (CUNA's) co-hosted audio conference on January 4<sup>th</sup>. The purpose of the audio conference was to highlight the consumer credit limitations in the 2007 National Defense Authorization Act (NDAA) and to request feedback from credit unions regarding the implementation thereof. Colonel Beauregard's briefing set the right tone for the audio conference and provided great insight as to the development of the law. To that end, we are most thankful for his participation and appreciate the Department's support of our efforts.

We also appreciate the opportunity to respond to your November 14, 2006 letter, requesting our input and recommendations as you begin the process of drafting the rules to implement this new legislation. As we noted in our letter to the Senate and House Armed Services Committees last September, we fully support the objectives of the NDAA to protect military personnel and their families from unscrupulous payday lenders; however, to ensure the law and regulation achieve their intended purpose, i.e., addressing predatory lenders that are not scrutinized by financial regulatory agencies, we ask your fullest support and consideration of our comments and recommendations.

Credit unions in the United States were formed for the very purpose of providing better alternatives to predatory lending and developing financial products that meet consumers' needs without resorting to abusive rates and fees. A number of credit unions serve the Armed Forces, working hard to ensure military personnel have the greatest opportunity to receive well-tailored



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loans and other services at favorable rates. We do not make the types of anti-consumer loans that are reflected in DoD's Report on Predatory Lending Practices or provide the kinds of predatory loans the provision in the NDAA seeks to eliminate. As such, we seek some vital clarifications to the law to ensure credit unions continue to provide servicemembers and their families the level of financial support, the products and services they richly deserve.

As you begin the rulemaking process in consultation with the National Credit Union Administration (NCUA), the Federal Reserve Board (Fed), and other financial institution regulators, we are pleased to have been invited to provide input at this early stage. CUNA represents approximately 90 percent of our nation's 8,700 state and federal credit unions, which serve nearly 87 million members. DCUC represents 245 military affiliated credit unions, the vast majority of whom operate on military bases worldwide and are also members of CUNA...and all of whom support the military and civilian personnel of the Department of Defense.

### **Discussion**

In response to your request for comments and in our role as credit union advocates, CUNA and DCUC have been working closely together to communicate extensively with our members and to elicit their concerns regarding the new military lending law. These efforts include providing information and requesting comments through our websites, as well as by facsimile and email communications. We also issued a special edition of our electronic newsletter RegWatch, which focused exclusively on this topic, and provided an opportunity for credit unions to discuss this issue through a ninety minute audio conference call that CUNA and DCUC co-hosted for a sizeable number of credit unions.

This letter reflects the comments and concerns that our member have communicated to us through this process so far. As the process is ongoing, we intend to submit a follow-up letter to DoD by February 5, 2007, in accordance with your Request for Comment recently published in the *Federal Register*.

Although DCUC and CUNA support the Department's efforts to protect servicemembers from predatory lenders, we are seriously concerned and mindful that implementation of certain provisions could be problematic and have an adverse affect on credit unions, service members, and their families. In that regard, we want to diligently and deliberately work with DoD and the federal regulators to avoid unnecessary and unintended consequences, and to ensure the final proposed rule addresses the true intent of the law, i.e.,

predatory lending, and does not hamper or limit the delivery of sound and prudent financial services to our Armed Forces.

The new law, passed by Congress and signed by President Bush on October 16, 2006, imposes a number of new restrictions with regard to providing consumer credit to military personnel, including a 36% interest rate cap on most loans extended to active duty military members, reservist, and National Guard personnel, as well as their dependents. The law also prohibits refinancing or consolidation of these loans by the same creditor; prohibits holding checks, automated clearinghouse (ACH) authorizations, or vehicle titles as security for the loan; requires additional oral and written disclosures; prohibits arbitration; mandates eligibility determinations; and imposes a number of other restrictions. To ensure the impending regulation does not limit the ability of military personnel and their families to obtain fair and appropriate lending services and to further ensure the final rule does not negatively impact financial institutions that do not engage in abusive or predatory lending practices, we offer the following comments:

- DoD will be defining several key terms in the new rule, including "creditor" and "consumer credit." We urge DoD to work closely with the financial regulators and professional financial trade associations to define these and other key terms in a manner that will permit the continuation of positive programs, such as favorable courtesy pay and overdraft protection services, and that focus on abusive predatory lending practices and predatory lenders.
- A definition of the APR that differs from the one included in the Truth in Lending Act (TILA) and Regulation Z could result in the disclosure of two APRs. Such a dual disclosure will undoubtedly confuse servicemembers and cause some major consternation, as the APR would appear to be higher than that offered to non-servicemembers. We recognize this variance would result from certain fees and charges; however, we are concerned that servicemembers will believe their credit unions are charging them a higher interest rate than that offered to other members. To eliminate ill-perceptions and ensure no confusion, we urge DoD to consider the possibility of maintaining one definition of APR, i.e., that contained in Regulation Z.
- The 36% interest rate cap, and the inclusion of fees and charges associated with the loan, could impact the products and services offered to servicemembers and their families by credit unions. Fees and charges, such as "late charges" are not included in the APR as defined under Regulation Z, the Truth in Lending Act, as they are not required by lenders to apply or secure a loan. Adding these fees to the Department's "interest"

calculation would further exasperate and confuse servicemembers and their families, and worse case, it could limit the offering of credit union products and services, many of which provide alternatives to predatory lenders. In that regard, we urge DOD, at a minimum, to exclude optional fees, charges, and late fees from the final rule.

- Determining members' eligibility for coverage under this new law, especially for those credit unions that do not have military fields of membership or otherwise do not serve large numbers of military personnel, could be problematic. Since the law does not require service members or their dependents to notify lenders of their eligibility under this new law, lenders may either have to develop new applicant identification procedures or revised loan applications to ensure this information is collected. Since the new law also applies to military dependents of servicemembers, it will be very difficult for credit unions to make this determination. Servicemembers and their dependents must take a proactive role in the identification process. In that regard, we urge DoD to adopt the notification requirements of the Servicemembers Civil Relief Act (SCRA) and place the burden on military personnel and their families to make known their active duty status.
- The new law requires disclosures to be provided both orally and in writing. Without a doubt, oral disclosures will lengthen the loan process and inhibit the ability to process loans electronically, through the mail, or by facsimile. This may also be very problematic for servicemembers who desire to apply for credit from their credit union through the Internet while they are deployed in remote locations and overseas. Additionally, given the length and detail of credit agreements, on site oral disclosures would even further hamper the loan process and encumber the servicemember. We believe the provisions of the rules that address oral disclosures should provide some accommodation for electronic, facsimile, and mail transactions. Any required oral disclosures should be limited to the key terms of the transaction that will help facilitate the servicemember's understanding of the transaction.
- DoD should clarify the provision that excludes mortgage loans from the requirements of this new law. We believe this exclusion should be clarified to cover home equity loans and home equity lines of credit.
- The rules should permit loan refinancings to the extent they provide benefits to the servicemembers, such as refinancings that result in lower interest rates and lower loan payments. The purpose of the statute is to protect servicemembers from incurring additional debt and higher payments and, therefore, the rules implementing this statute should not

prohibit loan refinancings that will provide lower rates, payments, or other benefits to servicemembers. Similarly, the rules should recognize that vehicle titles used as collateral by mainstream financial institutions for longer-term installment loans, such as credit unions, are means in which servicemembers may achieve lower interest rates, consolidate loans, and reduce payments.

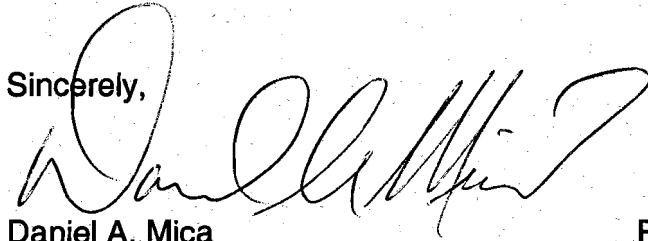
- The rules should also clarify that financial services and products that currently do not require an APR calculation would also not require such a calculation under this new law. The primary example here would be overdraft privilege or courtesy pay services that credit unions provide to their members who may inadvertently overdraw their accounts. The Fed's longstanding position is that fees for these services are not subject to the APR calculation requirements under Regulation Z and, therefore, we believe should not be subject to such requirements under this new law.
- We are also concerned about the provision of the law that prohibits the creditor from using "a check or other method of access to a deposit, savings, or other financial account maintained by the borrower . . . as security for the obligation." We understand, and agree, that this should prohibit repayment methods such as the use of post-dated checks for payday loans, but urge DoD not to interpret this as prohibiting arrangements in which servicemembers voluntarily allow the lender to withdraw loan payments directly from the servicemembers account. We would view such an arrangement as an efficient and convenient means in which to make loan payments, for both lenders and servicemembers, and not an arrangement that provides "security for the obligation."
- The rules should clarify that loan transactions initiated prior to the effective date of the rules should be exempted from these requirements. This will alleviate the possible disruption of loans that credit unions may have already provided to servicemembers.
- We recognize that it may be difficult to draft rules that will adequately address the above issues, depending on the interpretation of the statutory provisions. However, we are encouraged that DoD will be working closely with the other financial institution regulators, including NCUA and the Fed. These agencies are not only well-versed in lending issues, but are very experienced in the process of drafting rules in this area that take into account the regulatory burdens that will be imposed on financial institutions. We look forward to reviewing the proposed rules that will be issued shortly and working with DoD and the other regulators to address our specific concerns with regard to these rules. As part of this rulemaking process, we also believe it would be very productive for DoD to meet

Dr. David S.C. Chu  
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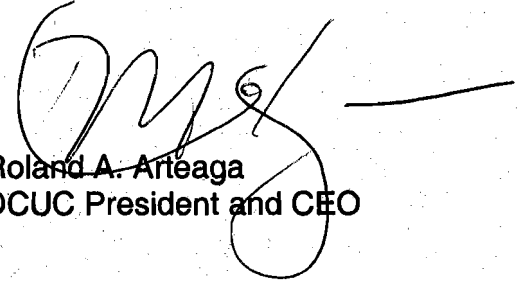
directly with financial institution trade associations and other industry representatives on a periodic basis to discuss these and other implementation issues.

Thank you for the opportunity to comment as you begin the process of developing the rules to implement this new military lending law. If you or your staff have questions about our comments, please give us or Senior Vice President and Deputy General Counsel Mary Dunn or Senior Assistant General Counsel Jeffrey Bloch a call at (202) 638-5777.

Sincerely,



Daniel A. Mica  
CUNA President and CEO



Roland A. Arteaga  
DCUC President and CEO