Updates

June 5, 2018

From: Shevin, Maury

Sent: Tuesday, June 05, 2018 1:24 PM

To: 'birmingham@bizjournals.com' <birmingham@bizjournals.com>

Subject: Your recent article concerning the OCC, banks and short-term, small-dollar loans

I am the Association Director of the Alabama Installment Lenders Association, the oldest and most respected Alabama trade association devoted to the consumer finance industry in the State of Alabama. Your article and your experts left a gaping hole in your reporting on recent developments with the OCC’s small dollar loan policy. By writing only about banks and payday lenders, you completely ignored the most significant and safest source for small-dollar lending in the USA—traditional installment loans.

In Alabama, traditional installment lenders are licensed by the State of Alabama Banking Department to make loans under the Alabama Small Loan Act and the Alabama Consumer Credit Act. These loans are fixed-rate, fully amortizing, closed-end extensions of consumer credit, under which the principal amount financed and scheduled interest are repaid in substantially equal installments. Further traditional installment loans do not include interest-only payments nor balloon payments at maturity. And, the traditional installment lender determines the borrower’s ability to repay before extending the loan.

The traditional installment loan has served American borrowers for more than a century. In the fiscal year ending 2016, the Alabama Banking Department reported that licensees under these two laws had

725,000 loans outstanding. This vast number of loans means that these licensed lenders fulfilled the financing needs for many Alabamians. As of the reporting date, the total outstanding balance on these loans was $4.344 billion; and these licensees had combined assets of some $5.538 billion.

It
is surprising to me that you would ignore this most common form of consumer credit extension.

Traditional installment lenders will continue to meet the growing demand of Alabamians for the efficient delivery of consumer loans at a fair price. Consumer credit is the fuel that drives the American and Alabama economy. The Alabama Installment Lenders Association is proud of the role that we are playing in making credit available to so many worthy people in Alabama.

Very truly yours,

Maurice L. Shevin

July 29, 2017

AILA
Members and Friends:

I
have compared some statistics from the Alabama State Banking Department Annual Reports for FY 2016 and FY 2015. The fiscal year in Alabama runs from October 1st to September 30th. We are probably five
months away from seeing the next Annual Report from the Alabama State Banking

Department. The following statistics are based on a comparison of 2016 with 2015:

Number of Mini-Code Licensed Offices: increased by 10.9%.

Number of Mini-Code Total Receivables: increased by 64.9%.

Dollar Amount of Mini Code Receivables: increased by 8.23%.

Net Profit: decreased by 10.1%.

Number of Small Loan Act Licensed Offices: decreased by 0.6%.

Number of Small Loan Act Loans Outstanding: decreased by 8.9%.

Dollar Amount of Total Loans Outstanding: decreased by 3%.

Net Profit: decreased by 20.7%.

Combined Number of Mini-Code and SLA Licensed Offices: increased by 6.7%.

Combined Number of Mini-Code and SLA Receivables: increased by 26.7%.

Combined Dollar Amount of Mini-Code and SLA Receivables Outstanding: increased by 7.6%.

Net Profit of combined Mini-Code and SLA: decreased by 10.8%.

I
expect that the next Annual Report will show a marked increase in Small Loan Act licenses, both because of the continuing transition of Deferred Presentment licensees to installment lending, and because of the increase lending limits under the Small Loan Act. We will soon see whether the change in the law has a positive effect on profitability.

Maury

July 25, 2017

AILA Members and Friends: With Jonathan Paret’s permission, I share with you the following information concerning the likelihood of a CRA intervention in the CFPB’s proposed Arbitration Rule. Maury

BEGINNING OF THE END FOR CFPB ARBITRATION RULE? - House Republicans today are expected to pass legislation that would block a CFPB rule banning mandatory arbitration language in consumers' contracts with credit card companies and banks.

The White House "strongly supports" the resolution. It said the CFPB's rule "would benefit trial lawyers by increasing frivolous class-action lawsuits." Read more.

Compass Point analyst Isaac Boltansky on what's next - "We now peg the odds of the mandatory arbitration rule being reversed through the [Congressional Review Act] at 60 percent. The House will easily clear the measure, but the whip count in the Senate is still fluid at this juncture and appears to be losing its footing."

July 11, 2017

CFPB Pulls the
Trigger on Arbitration Agreements Rule

Yesterday, July 10th,
the Consumer Financial Protection Bureau released its Arbitration Agreements Rule pursuant to the Dodd-Frank Act. The
release of this Rule has been much anticipated since the publication of the Proposals last year. True to the
Proposals, the Rule does not prohibit mandatory arbitration on a non-class wide basis. However, it does eliminate the
imposition of mandatory, class-wide arbitration by those who provide consumer products and services on a repetitive basis (for example, “creditors” as that term is used in the Truth-in-Lending Act, and those participating in credit decisions, acquiring consumer contracts, leasing automobiles, providing debt management services, debt collection and more).

The Rule imposes specific language to include in a pre-dispute arbitration agreement to make crystal clear that the agreement does not prevent a consumer from being part of a class action case in court. It also imposes requirements on those who are subject to the Rule, to submit detailed records of arbitrations and arbitration related information to the Bureau.

The effective date of the Rule is March, 2018, at the earliest. And, there is still the possibility that Congress will act under its powers to reject the Rule within the next 60 days.

In preparation for an effective final Rule, creditors using pre-dispute arbitration agreements in their consumer finance transaction contracts, should consider the benefits of such agreements absent class-wide waiver, particularly in light of the “submission of records” requirement.

If a creditor determines that an arbitration agreement, without class-wide arbitration, is still of benefit, then the form of the agreement currently in use will require modification. If a creditor determines that arbitration without the component of mandatory class-wide arbitration is not of value, a “jury trial waiver” provision is a matter to be considered. The rules concerning jury trial waiver, differ from jurisdiction to jurisdiction.

Please let me know if you have questions. Maury

July 6, 2017

AILA Members and Friends: I think you will find the following message from AFSA regarding arbitration to be of interest. Maury

AFSA (American Financial Services Association) Email dated July 6, 2017

The Consumer Financial Protection Bureau (CFPB) is continuing its efforts to finalize an arbitration rule, as well as a small-dollar loan rule.

AFSA expects the CFPB to issue a final rule prohibiting the use of class action waivers in arbitration clauses very soon. The final rule is likely to be similar to the one that was proposed in May of 2016. AFSA anticipates that financial institutions will have around seven months to come into compliance with the final rule.

AFSA is working with its sister trade associations on a response to the final rule, which includes discussions with members of Congress about using the Congressional Review Act (CRA) to overturn it. As a reminder, regulations can be overturned by simple majority vote and the president's signature. Industry is working with Congressional leaders to garner the 51 votes needed for Senate passage. The trade associations are also discussing potential litigation challenging the rule.

The CFPB is also working to finalize the small-dollar loan rule. AFSA expects a final rule by this fall. The proposed small-dollar loan rule had an effective date of 15 months. AFSA continues to advocate for a narrower scope for the rule.

If there is a new CFPB director, the effective dates of either rule could be moved, the rules could be altered, or the rules could be withdrawn.

For questions or comments, please contact AFSA EVP Bill Himpler via email or at 202-466-8616.

March 1, 2017

http://alisondb.legislature.state.al.us/ALISON/SearchableInstruments/2017RS/PrintFiles/HB321-int.pdf

Today, Rep. Fincher and 44 co-sponsors introduced HB 321 into the Alabama House, calling for a Constitutional Amendment to set the maximum interest rate a lender may charge “on a consumer loan, line of credit, or other financial product” at 36% APR. A copy of the Bill is linked above.

As consumer finance companies well understand, such a limit would end most all sub-prime consumer loans and sales made in Alabama, including traditional installment loans, credit appliance, furniture and other product sales, and automobile and boat financing. The ramification of such a law would have draconian consequences to Alabama’s consumers.

While I understand the intent of the proponents of this measure -- to reign in consumer loan products that create a cycle-of-debt -- the result of the passage of this Bill and the adoption of such an Amendment would cripple the very people the Bill is intended to help.

There are other more appropriate approaches to address loan products that are problems for Alabama’s consumers. The Governor’s Task Force on Consumer Credit Laws has been hard at work on effective solutions. This Bill’s approach is not one of them. The Alabama Installment Lenders Association will be joining with others to explain the serious problems with this Bill and the severe implications for Alabama’s consumers that would result from its becoming law.

Maury
Shevin

December 14, 2016

A Message to

Alabama Installment Lenders Association
Members and Friends

We are drawing to the end of another year; and, it has
been a good one for our Association and most of our members. Despite some concerns early in the year about
the direction of the Alabama Legislature and notwithstanding some poor press
reporting in the summer, the Alabama Installment Lenders Association has
prevailed as a strong trade association that provides valuable and fair loan
products to our customers. Because of
our work this past year, I think that all stakeholders in the consumer finance
world -- lenders, customers, regulators, consumer advocates and academicians --
have a better understanding of what a traditional installment loan is and how
it works to the needs of our customers.
And this is important.

There are still significant “threats” out there that
have to be addressed in 2017. The
Consumer Financial Protection Bureau remains high on the list of threats along
with some consumer advocates who have difficulty distinguishing beneficial
consumer loan products and services from those that are problematic. We will continue our outreach to regulators,
legislators and consumer advocates to encourage their understanding of how
traditional installment loans work for the good of our customers.

Next year will likely see changes in our industry. On the federal level, there is the possibility that the Trump Administration will oversee the dismantling of significant aspects of the CFPB through legislative changes to Dodd-Frank. But, don’t jump for joy quite yet. It remains to be seen whether the pieces of Dodd-Frank that are altered only apply to Wall Street and Money Center Banks, or whether the changes also affect Main Street consumer finance companies. We will look for some regulatory relief as “compliance” has become a significant cost of doing business for traditional finance companies, despite little showing that traditional installment loans are any real problem for consumers. Our sister trade association, the American Financial Services Association, is hard at work on our behalf in Washington, pushing for regulatory relief. The National Installment Lenders Association works diligently on our issues as well.

On the state level, those who would impose rate caps at unworkable levels will, no doubt, continue in their efforts. We’ve seen some of this approach promoted at the Governor’s Task Force Meetings on Consumer Credit held last October and November. We just need to stay the course, explaining how traditional installment lending works, and why rate caps do not. Our Association will meet in Montgomery on February 21, 2017, to discuss industry developments and meet our Legislators. This annual program is always one that I look forward to. I trust that this date is already on your calendar.

I hope that all AILA members enjoy this Holiday Season with good deeds, with good cheer, with family and with friends. And, may the New Year bring you peace and happiness.

Sincerely,

Maury Shevin, Association Director

November 23, 2016

AILA Members and Friends:

The
Internal Revenue Service has eliminated one of the more troubling regulations affecting consumer finance companies, dealing with the 36-month “deemed discharge of indebtedness.” For the past several years, confusion has resulted as to whether the expiration of the 36-month rule is equivalent to the actual discharge of the indebtedness—resulting in uncertainty by creditors as to whether they may lawfully continue to pursue debt after issuance of a 1099-C based upon the 36-month deemed discharge.

The
IRS has now issued its final rule that will eliminate the required issuance of form 1099-C based upon the finance company not receiving debt repayment for 36 months.

The
final regulation applies to information returns and payee statements required to be filed after 12/31/2016. Therefore, for calendar year filers any 36-month expiration period that occurred during 2016, will no longer trigger the 1099-C filing. However, 1099-C’s must still be filed when debt is discharged. The remaining seven “identifiable events” that trigger information reporting obligations continue in full force and effect.

Happy
Thanksgiving to all.

Maury

November 1, 2016

Kevin Gardner, President, has announced that the
Alabama Lenders Association has officially been renamed the Alabama Installment Lenders Association.

The Alabama Installment Lenders Association, the
oldest and most respected Alabama trade association devoted to the consumer
finance industry, was originally founded in 1960.

“The name change reflects the
importance that we attach to being traditional installment lenders,”
Gardner said. “We want to clearly differentiate our loan products – which are
fully amortizing, payable in equal installments and without prepayment penalty
and balloon payment – from the more troubling loan products on the market
today, such as payday and title pledge loans.
This ‘rebranding’ should help us explain to customers and regulators
exactly who we are and what we do.”

The website of the Association
remains www.alabamalenders.net.

October 11, 2016

We changed our name from Alabama Lenders Association to Alabama Installment Lenders Association so that there would be no misunderstanding of our mission.

September 26, 2016

ALA
Members and Friends:

I
thought we had a great Committee Day Meeting last week. It’s always good
to get together to discuss the status of the industry. I appreciate our
new Secretary Shane Turner’s quick turn-around on the minutes and will be happy
to share a copy with any member who may have missed. (Susan Rochester did
the same thing for many years!)

We
had a serious discussion about our finances and it was very enlightening.
I am convinced that we need to expand our membership if we want to be in the
position of continuing to provide good and timely information to our
Association’s members. To this end, I want to repeat Mike Whitaker’s
invitation to let the Membership Committee know of any prospects for both
regular Members and Associate Members. We also discussed changing our
name to the “Alabama Installment Lenders Association.” Several of us are
working on that now to make it happen.

Please
note that our next Association meeting will be our Meeting and Legislative
Reception in Montgomery on February 21st,
2017.

I
also want to report that Kevin Gardner, Mike Whitaker and I went to Montgomery
for the inaugural Governor’s Task Force on Consumer Credit, immediately
following the Committee Day Meeting. The Task Force Meeting held in the
Old Capitol Building was a good beginning. Rep. David Faulkner is the
Chair and he is relying heavily on Banking Department Supervisor Scott
Corscadden and Associate Counsel Anne Gunter. The Task Force is composed
of legislators, regulators, consumer advocates, industry representatives and
academics. It is the first time in my career that I’ve sat in a room with
all of the “stakeholders” represented. It really was a good start.
Chairman Faulkner wants to focus first on Title Pledge. I think that he
reasons that we may be able to secure general agreement on the need to
break-out title pledge from the Alabama Pawn Shop Act, and lower its
rate. We’ll see.

Then,
he intends to move on to Payday. The traditional installment lenders on
the Panel were very clear in differentiating installment lending from title
pledge and payday. While some of the more strident consumer
advocates don’t want to see a difference (and the payday industry wants to

“blend-in”), I think that the majority of the Task Force noted and understands the distinction. This bodes well if the Task Force is going to succeed in modifying the Deferred Presentment Services Act.

I will keep you advised of our progress. Meanwhile, please let me know if you have any questions. Thanks for your support of the Association.

Maury

August 31, 2016

ALA Members and Friends:

For those of you who will continue to make Covered Loans to Covered Borrowers after October 3rd, the following information from AFSA and the attached Military Lending Act Guidance from the Department of Defense will be useful. Remember that even if you do not intend to be making loans to Covered Borrowers, you must “scrub” your applicant to make certain that he or she is not a Covered Borrower. Checking with your credit reporting agency, or checking the Department of Defense Database are the basic methods for retaining a “safe harbor” after October 2nd. (The current separate statement signed by the applicant will no longer protect you after that date.) And, the penalties for violating the law and regulation are severe including: imprisonment for creditors who knowingly violate the

law, the contract is void, a civil penalty of not less than $500, and attorneys’ fees and court costs.

Please let me know if you have any questions. Maury

The DoD issued the attached guidance interpreting its regulation implementing the MLA. The guidance answers some questions posed by AFSA and its members, but unfortunately does not address all of our concerns. The DoD has said that it remains open to talking with the financial services industry. However, we do not expect more guidance at this time. We’re looking for opportunities to work with the DoD as they educate service members and their families about the MLA.

Here are a few key points from the guidance:

·The DoD answered AFSA’s question about what methods of transportation are included within the definition of a “vehicle.” For the purposes of the MLA, the term “vehicle” means any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation. The term does not include motor homes, RVs, golf carts, or motor scooters.

·The DoD clarified that credit extended for the purpose of purchasing personal property which secures the credit, does NOT fall within the exception to “consumer credit” under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price. In other words, any credit transaction that provides purchase money secured financing of personal property along with additional “cash-out” financing is not eligible for the exception.

·In answer to a question asking if fees that a creditor is required to pay by law and passes through to a covered borrower are required to be included in the calculation of the MAPR, the DoD said that if such fees are considered “finance charges” under Regulation Z, then such fees must be included in the calculation of the MAPR. However, if the fees are not “finance charges” under Regulation Z, they may be excluded from the calculation of the MAPR, provided they do not qualify for any other categories of charges.

·Regarding the requirement to provide oral disclosures which AFSA and others asked about, the DoD clarified that a creditor may orally provide a clear 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. Alternatively, a creditor could choose to generally describe borrowers’ obligations to make a monthly, bi-monthly, or weekly payment as the case may be.

·The DoD specified that the limitation in section 232.8(e) on a creditor using a check or other method of access to a

deposit, savings, or other financial account maintained by the covered borrower does NOT prohibit the borrower from repaying a credit transaction by check or electronic fund transfer. It prohibits a creditor from using the borrower’s account information to create a remotely created check or payment order in order to collect payments. It also prohibits a creditor from using a post-dated check provided at or around the time the credit is extended.

·In answer to a question posed by AFSA and others, the DoD clarified that an assignee is permitted to avail itself of a covered borrower identification safe harbor if the assignee has maintained the original creditor’s record of a covered borrower check.

Maurice L. Shevin, Association Director

MLA_DOD Guidance_8.26.16-C2-C1.pdf

July 18, 2016

Maurice Shevin has been asked to serve on Governor Robert Bentley's Alabama Consumer Credit Task Force. Congratulations, Maury!

July 5, 2016

ALA Members and Friends:

The end of June and beginning of July have started out with
several important developments for Alabama’s consumer finance industry.

John Harrison, who has served as Superintendent of the State of Alabama Banking Department for 11 years, resigned his office effective June 30th. Mr. Harrison has been an excellent leader of the Banking Department serving with distinction under two Governors, garnering the respect of consumer activists, industry members and legislators. He has worked tirelessly to continue Alabama’s rich tradition of excellence among state banking departments across the nation.

We are delighted with Governor Bentley’s selection of Rep. Mike Hill to replace Mr. Harrison. Mr. Hill has been very active in the banking and finance world for many years. He has served in the Alabama Legislature for 30 years, where he chaired the Banking & Insurance Committee in years past, now known as Financial Services. He has been involved in most every significant legislative act important to the consumer finance industry and the consumers of Alabama for years. We do not think that the Governor could have found a more appropriate replacement for Mr. Harrison.

With the creation by the Governor of the Alabama Consumer Credit Task Force designed to study all consumer lending laws in Alabama, Mr.

Hill will have a unique opportunity to shape the future of the consumer finance industry in Alabama. We look forward to working with Mr. Hill in this effort.

CFPB Small Dollar Loan Rule Proposal—What the Director Said Next

By Maurice Shevin • Friday, June 24, 2016

Several years ago, one of our local traditional installment lenders said that payday and title pledge lenders were going to cause a serious disruption in traditional installment lending. Boy was he right.

As reported recently, the CFPB's Proposal released for comment on June 2nd treats vehicle secured loans of more than 45 days with a Total Cost of Credit (i.e., an “all-in APR”) of greater than 36% as a “longer-term covered loan.” The significance of this designation is that a lender of such a loan must jump through a series of analytical hoops before it may make such a loan.

So, what is wrong with that? That answer lies in the nature of the traditional installment lending business itself, and how consumer loans are made and their cost structure determined. Economics dictate that smaller dollar consumer loans (basically under $2500) cannot be made profitably and securely today within the all-in APR guidelines set forth in the Proposal. And, when

additional costs of compliance are layered onto such loans, such increases will be passed along to the borrower. It is also a certainty that the break-even point for lenders will dictate the need for a higher loan amount.

These issues were covered with Director Cordray when he attended the meeting of the National Installment Lenders Association (“NILA”) in Washington earlier this week. The take away by attendees is that the Bureau's Proposal is not cast in stone, and the Bureau is open to rethinking its positions—but only based on data. Recall that the CFPB prides itself on being a data driven agency.

The Director generally introduced the Proposal and explained that the CFPB intends to require an ability to repay determination for consumer loans creating and existing for repetitive roll-overs, whether the characterization of the loan is payday, title pledge or installment. The Director heard from the group that the traditional installment lenders represented by NILA do not make consumer loans that abuse via a cycle-of-debt, because traditional installment loans are underwritten, fully amortizing with equal installment payments, made with no prepayment penalty nor balloon payments, made with no required leveraged payment mechanism, and generally reported to credit reporting agencies.

While acknowledging that this type of loan product in general may be beneficial to consumers, the Director said that the bureau is concerned that very high-cost lenders can adapt to include these indicia; and, if the Rule ultimately adopted with respect to vehicle security in particular does not address these loans as “covered” then the intent of the Rule to rein in abusive loans will not have been achieved.

The Director was aware that high-cost lenders have already succeeded in a legislative effort to avoid the Proposed Rule. An installment loan made under the new Mississippi Credit Availability Act would not be a covered loan if vehicle security is not taken. The Director invited NILA to address this issue and make suggestions in any comment letter that it chooses to write.

Director Cordray was
generous with his time and NILA made its presentation efficiently in
recognition of the Director's busy schedule. The hard work begins
now: That is, we need to suggest changes in the Proposal, backed by data,
because as one presenter said earlier in the meeting, “The demand for credit
cannot be legislated away, but the source for credit can be.”

October 23, 2015

ALA
Members and Friends:

The
Alabama Lenders Association is committed to differentiating ourselves from
payday and title pawn lenders, who are not traditional installment
lenders. Our website at www.alabamalenders.net clearly sets forth
who we are and what we are about:

We are traditional installment lenders. Our lending is
based on three principles: (i) equal installment payments (ii) for
customers who have the ability to repay (iii) with a clear pathway out of debt.
Installment loans show with clarity precisely when the loan will pay out based upon
the payment schedule. We help our customers build their credit record by
reporting to credit bureaus. This encourages both responsible borrowing
and responsible lending. Our loans are customer driven—no prepayment
penalties and understandable repayment terms are the rule. Our loans are
transparent, making them the safest loan product for consumers. And, we
make loans from local offices with local lenders, offering much more
personalized service than a bank.

Our

members—whether large or small--are committed to traditional installment lending. The Association adopted a policy that our Members may not hold licenses under the acts permitting these other types of lending. The Executive Committee, now joined by the chairman of the Membership Committee, carefully vets all applicants for membership to ensure that their business methods comport to our Association’s Code of Ethics, adopted over 10 years ago. Our Code of Ethics is clearly presented on our website.

We recognize that it is vitally important that the good name of installment lenders, and the Alabama Lenders Association in particular, not be confused with payday and title pawn lending. We work hard to distinguish ourselves, and tell the story of our good work.

Should you have any questions concerning membership or the mission of the Association, please raise them with me, President Kevin Gardner, or any member of the Board of Directors.

Maury

October 07, 2015

To
ALA Members and Friends:

This morning the CFPB announced its proposal to ban mandatory pre-dispute arbitration clauses in consumer contracts that require a consumer’s claims to be arbitrated separately and severally. Over the years, creditors have developed arbitration clauses that require claims between consumers and creditors to be arbitrated, and that limit such arbitrations to individual actions as opposed to class-wide arbitration. In other words, consumers can’t join with others similarly situated to pursue claims together. Consumer advocates and others have argued that such contractual provisions frustrate consumers, prevent remedial class action, and unfairly protect bad-actors.

Section 1028 of the Dodd-Frank Wall Street Reform and Consumer Protection Act specifically mandates the CFPB to conduct a study—which it has—and if the Bureau finds that prohibiting or limiting arbitration “is in the public interest and for the protection of consumers” then it may adopt a rule consistent with the study’s findings.

The March, 2015, study by the CFPB analyzed

*
over 1,800 consumer finance arbitration disputes filed over a period of three years,

*
a sample of nearly 3,500 individual consumer finance cases filed in federal court over the same three year period,

* all of the 562 consumer finance class cases filed in federal court and in selected state courts during the same period,

* 40,000 small claims filings over the course of a single year,

* more than 400 consumer financial class settlements in federal courts over a period of five years, and

* more than 1,100 state and federal public enforcement actions relating to consumer finance.

According to the CFPB, the study results prove that consumers are adversely served by limiting their access to class action litigation. The full study is available for review at http://www.consumerfinance.gov/reports/arbitration-study-report-to-congress-2015/.

The Outline of Proposals found at http://www.consumerfinance.gov/f/201510_cfpb_small-business-review-panel-packet-explaining-the-proposal-under-consideration.pdf would not ban mandatory, pre-dispute arbitration clauses entirely. Rather, the CFPB proposes that arbitration clauses in consumer finance contracts would have to explicitly say that they do not apply to cases filed as class actions unless and until the class certification is denied by

the court or the class claims are dismissed in court.

The arbitration procedure for individual claims is not left entirely alone in the Proposal. The CFPB is also considering mandating that companies that use arbitration clauses for individual disputes, submit to the CFPB the arbitration claims filed and awards issued. Also, the CFPB is considering as part of the Proposal, the publishing of the claims and awards on its website.

The CFPB’s Outline of the Proposal to address arbitration is the first step in the rulemaking process. The next step is to convene a Small Business Review panel to gather feedback from interested parties. Once that is done, then the CFPB would adopt a Rule to become operative no earlier than 180 days after the effective date of a final rule. The CFPB contemplates setting an effective date of 30 days after the rule is published, thus giving creditors 210 days after a rule is published to make changes to form contracts.

I will discuss this with you in more detail as matters progress.

Maury

FOR IMMEDIATE RELEASE:

July 21, 2015

CONTACT:

Office of
Communications

Tel: (202) 435-7170

CONSUMER
FINANCIAL PROTECTION BUREAU STATEMENT ON DEPARTMENT OF DEFENSE MILITARY LENDING ACT FINAL RULE

WASHINGTON,
D.C. – Today, the U.S.
Department of Defense issued a final rule expanding the types of credit products that are covered by the 36-percent rate cap and other military-specific protections under the Military Lending Act. The rule closes loopholes that have led to lenders skirting the law with products that fall outside the scope of the existing regulation.

Consumer
Financial Protection Bureau Director Richard Cordray issued the following statement:

“I congratulate
Secretary Carter and the Department of Defense on the final rule published today. The CFPB strongly supports the Department’s efforts to strengthen consumer protections for our nation’s military families. Today’s rule will help

ensure that American servicemembers get the legal protections they deserve. As one of the agencies responsible for enforcing the Military Lending Act, we stand ready to stop illegal lending to military families.”

Holly Petraeus,
Consumer Financial Protection Bureau Assistant Director, Office of Servicemember Affairs, issued the following statement:

“When I drive down the strip outside a military installation and count 20 fast-cash lenders in less than 4 miles, that’s not a convenience, that’s a problem. I commend Secretary Carter for taking this important step to make the Military Lending Act more effective.”

Background

The Military Lending Act provides servicemembers and their dependents with specific protections for their “consumer credit” transactions. Among other protections, the law limits the annual rate on an extension of such credit to 36 percent, provides for military-specific disclosures, and prohibits creditors from requiring a servicemember to submit to arbitration in the event of a dispute. As initially implemented by the Department of Defense in 2007, the Military Lending Act protections applied to three narrowly-defined “consumer credit” products:

closed-end payday loans for no more than $2,000 and with a term of 91 days or fewer;

closed-end auto title loans with a term of 181 days or fewer; and

closed-end tax refund anticipation loans.

The final rule announced today amends the definition of “consumer credit” covered by the regulation to more closely align with the broad, traditional definition of credit covered by the Truth in Lending Act. The rule generally covers consumer credit offered or extended to active-duty servicemembers or their dependents, as long as the credit is subject to a finance charge or payable by written agreement in more than four installments. In accordance with the statute, the MLA regulation would continue to exclude residential mortgages and credit extended to finance the purchase of, and secured by, personal property, such as vehicle purchase loans.

The Military Lending Act is implemented by the Department of Defense, and is enforced by the CFPB and other federal regulators. In September 2013, the CFPB released guidelines on how its examiners will identify consumer harm and risks related to MLA violations when supervising payday lenders. In November 2013, the Bureau took action against a payday lender, Cash America, for extending payday loans to servicemembers and their families in violation of the Military Lending Act. In December 2014, the Bureau issued a report highlighting how lenders had continued to exploit loopholes in the existing Military Lending Act rules.

The announcement by the Department of Defense is available here: http://www.defense.gov/Releases/Release.aspx?ReleaseID=17395

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The Consumer Financial Protection Bureau is a
21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

June 11, 2015

Two
developments to report to you:

Frist,
SB 327, the exemptions/garnishment bill that we fought so hard for was just signed by the Governor this afternoon. I want to take this opportunity to thank John and Tami Teague for the great job that they did in seeing this bill through passage in the 11th hour in the Senate, with our amendment on it. This amendment will have far reaching effect if it is successfully used to reverse the decision of the Alabama Court of Civil Appeals in Pruett. I thought the bill was dead (and reported it to some as such) one week ago. But, because of John’s extraordinary efforts, he was able to get it brought up for consideration by the full Senate in the midst of the battle over the Budget. And, now the Governor has signed.

The
result is that we have increased personal property and homestead exemptions in
Alabama together with a clearly stated “intent of the Legislature” that wages,
salaries and bonuses are not personal property for the purposes of
Alabama law and the Alabama Constitution. This law is in effect now.

Also,
the Small Claims Court jurisdictional amount increase to $6000 was passed and
signed by the Governor. This new law is Act No. 2015-224. It
becomes effective on August 1, 2015. Some of our members took the lead on
getting this bill shepherded through the Legislature. .

When
we are in Point Clear, be sure to thank all of the people who work so hard for
us in and on Montgomery matters—our friends in the Legislature, our members and
our government affairs experts!

Maury

April 7, 2015

Social media
policies: Why every employer needs one

By Daniel J.

Burnick • Friday, March 27, 2015

Over the past several weeks, you may have read about the murder of a young girl in Birmingham at a fight that was arranged through Facebook; or the fight in Birmingham's Railroad Park that was posted on Facebook; or the fight in Green County at a school bus stop where shots were fired that was posted on Facebook; or Wisconsin Governor and Presidential hopeful Scott Walker's Director of Social Media who resigned after inappropriate tweets. It seems as if every day or two, there is another instance of social media activity that makes you shake your head and wonder what is going on.

Employers often face the same predicament. Recently in Montgomery, an employee at Max Credit Union was placed on leave after being accused of commenting on a customer's account on a local Facebook page. According to the report, “a MAX employee posted a couple’s account information claiming they had a negative balance in their account on the Prattville-Millbrook Montgomery Black List Facebook page. Max Credit Union is investigating the claim.”

Any employer faces the risk of having inappropriate information posted on Social Media by an employee that should not be posted. The information can be trade secrets or confidential information, such as customer lists, pricing information or a secret formula. It can be personal identifying information such as social security numbers, addresses or dates of birth. Medical practices have patient information that if posted on social media can be a violation of HIPAA. Social media posting by attorneys or their clients can waive the Attorney-Client privilege or breach settlement agreements that have confidentiality provisions. Unlawful harassment, be it based on race, sex, pregnancy, disability or other protected classifications can occur on social media. Every Employer has information that it does not want posted on Social Media.

Employers should be proactive in addressing the improper dissemination of information through social media by implementing a social media Policy, educating and training the workforce on the policy, and enforcing the Policy. Although the implementation of a social media policy may not prevent improper postings, the policy can be the basis for disciplinary action, up to and including termination. Such a policy may also provide some measure of protection for the Employer should the Employer be sued as the result of an improper posting on social media.

Practice
pointer: Employees are constantly acting
inappropriately on social media.
Oftentimes, the inappropriate conduct centers on work issues. It is important for Employers to implement a social media policy, which is in compliance with the National Labor Relations
Act, educate and train their employees on the policy, and enforce it.

For more
information, please contact:

Daniel J. Burnick

dburnick@sirote.com

205.930.5192

March 26th, 2015

To: AFSA Membership

From: Chris Stinebert

Re: CFPB Provides Early Look at Payday Loan Proposal

Date: March 26, 2015

Early this morning, the Consumer Financial Protection Bureau (CFPB) published an outline of proposals it is considering regarding payday loans in advance of convening a Small Business Review Panel to gather feedback from small lenders, which is the next required step in the rulemaking process. The CFPB is also hosting a field hearing on the subject today at 12:00 p.m. EDT.

Despite specifically mentioning certain high-cost installment loans, the proposals shared by the CFPB today focus on ability to repay, loans requiring repayment via a deposit account or paycheck, or the lender holding a security interest in the borrower’s vehicle. The proposals would cover short-term credit products that require consumers to pay back the loan in full within 45 days, as well as “high-cost, longer-term credit products of more than 45 days where the lender collects payments through access to the consumer’s deposit account or paycheck, or holds a security interest in the consumer’s vehicle, and the all-in (including add-on charges) annual percentage rate is more than 36 percent.” This all-in rate could be analogous to the Military Annual Percentage Rate or MAPR.

The CFPB announcement specifically references installment loans. “Installment loans typically stretch longer than a two-week or one-month payday loan, have loan amounts ranging from a hundred dollars to several thousand dollars, and may impose very high interest rates. The principal, interest, and other finance charges on these loans are typically repaid in installments. Some have balloon payments. The proposal would also apply to high-cost open-end lines of credit with account access or a security interest in a vehicle.”

The proposals fall into two categories: one covering short-term loans and the other covering longer-term loans. Both categories include two sets of requirements that lenders could choose to follow, either prevention requirements or protection requirements. Under the prevention requirements, lenders would have to verify the consumer’s income, major financial obligations, and borrowing history to determine a consumer’s ability to repay the loan. For longer-term loans, fees for ancillary products must be included in the ability-to-repay calculation. Under the protection requirements, lenders would have to comply with certain restrictions intended to ensure that consumers can affordably repay their debt. Both categories would include restrictions on the number of loans consumers can receive in given time periods.

The proposal also includes restrictions on collection practices. The CFPB is considering requiring lenders to provide borrowers three business days' notice before submitting a transaction to the consumer’s bank. In addition, a lender could not attempt a third withdrawal from a consumer's deposit account if the two prior attempts were unsuccessful without obtaining a new authorization. Finally, the proposal caps short-term loan rollovers at two – three total – followed by a mandatory 60 day cooling off period. Refinances on longer term loans would be prohibited if the consumer is delinquent on previous loan obligations.

It appears that the CFPB was intending to cover title loan products in this area of their proposal; however, if a traditional installment lender holds a security interest in the borrower’s vehicle, it would be covered under the proposal. AFSA will seek clarification on this requirement as well as ensuring that the ACH portion of the proposal is only triggered if a lender requires access to a consumer’s deposit account rather than offering the service as a convenience to the consumer.

Although we are encouraged that the CFPB’s outline of various proposals under consideration does not focus on

traditional installment loans, we remain diligent and concerned that the actual proposed rule may adversely impact our member’s business practices, and more importantly, consumers’ ability to access credit through the most affordable product available – traditional installment loans.

The proposals published today are the first step of a lengthy process and could change substantially. Next, the CFPB must convene a Small Business Review Panel. After the panel, the CFPB may formally propose rules, which must be subject to the public comment and review process. AFSA will be represented on the upcoming Small Business Review Panel, and will continue to work with the CFPB throughout the process. AFSA will continue to make the distinction between traditional installment loans and other small dollar products to the CFPB, policymakers, and the general public.

The field hearing will be streamed live via the CFPB blog starting at 12:00 p.m. EDT.

Relevant Links:

Outline of Proposals

Fact Sheet on Proposals

Fact Sheet on SBREFA panel process

Fact Sheet on SBREFA panel

Press release

For more information, please contact AFSA Executive Vice President Bill Himpler at 202-466-8616 or bhimpler@afsamail.org.

January 16, 2015

ALA
Members and Friends:

We’ve
gotten a number of inquiries recently about the dates for our next two meetings:

The
Legislative Meeting & Reception in Montgomery is March 17th, on the 6th floor of the RSA Plaza Building, 770 Washington Avenue. The RSA Plaza Building is located directly across Washington Avenue from the Alabama State House which is behind the State Capitol. The meeting will start at 3:00 PM, and the Reception for Members of the Legislature and Staff will start at 5:00 PM. Please plan to stay and talk to our friends in the Legislature, until approximately 8:00 PM. Parking in the adjacent lot, will open at 2:30.

The
Annual Convention in Pt. Clear is June 18th through 20th. This Conference will take place at the Marriott Grand Hotel on Mobile Bay, and will include counsel information from Sam and me on the topics of compliance, legislation and more. Association business topics include mapping out the direction for the Association in the coming year. And, of course, we will have all of our fun activities and entertainment including great food, golf, and fishing. Be on the look-out for the 2015 Registration Brochure.

I
look forward to seeing you at both meetings.

Maury