

Credit Cards

Department of Defense Lacks Authority To Exempt Cards From New Cap, Group Says

The Department of Defense has no legal authority to exempt credit cards from a 36 percent cap on annual percentage rates established in a recent budget measure, a private watchdog group said in a brief made available to BNA Feb. 20.

At issue is Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007, which puts a 36 percent ceiling on rates charged for consumer credit transactions by service members or their dependents (87 BBR 518, 10/9/06 [a0b3m5u9w5](#)). The cap includes all related fees.

Banking groups have voiced concerns about the new cap, which will kick in once the Department of Defense writes rules to implement the law.

But the Center for Regulatory Effectiveness, which describes itself as a clearinghouse for independent analysis of key government regulations, worries that Defense will carve out an exception for credit cards.

In a 16-page legal brief dated Feb. 1, the group said the plain language of section 670, as well as its legislative history, makes it clear that the Secretary of Defense has no leeway to take credit cards or card issuers out of Section 670's coverage.

Regulatory Limitation Not Authorized, CRE Says

"The authority of the Secretary to define 'consumer credit' and 'creditor' in regulations does not extend to allowing him to exclude certain forms of credit other than those specifically excluded by the regulation," the brief said, referring to residential mortgages and personal property loans secured by the property itself.

Jim J. Tozzi, a former Office of Management and Budget official who sits on CRE's board of advisers, Feb. 20 told BNA that copies of the brief have been sent to the Defense Department, the bank and thrift regulatory agencies, as well as Senate Banking Committee Chairman Chris Dodd (D-Conn.) and House Financial Services Committee Chairman Barney Frank (D-Mass.).

Tozzi said he expects the Defense Department to propose rules early in April. "I think in all probability that they're going to exempt credit cards from the 36 percent limit," he said.

Although current law provides a series of safeguards for service members, Section 670, which was broadly designed to protect military personnel from predatory lending practices, expands that protection significantly.

Financial services trade associations have asked the Defense Department to apply the new standards on a narrow basis by focusing on payday loans. They also say the new law makes it hard to know who is subject to the new limits and who is not, and they worry about being exposed to criminal penalties that Section 670 provides under certain circumstances.

More information about the Center for Regulatory Effectiveness may be found on the Web at:
<http://www.thecre.com/index.html>. [End of article graphic](#)

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