

IN DEFENSE OF RENT-TO-OWN FOR THE MILITARY

Rental dealers can thank APRO and Rent-A-Center for their efforts to educate the U.S. Department of Defense about the rent-to-own industry's business practices.

The team successfully staved off efforts to have the new "Military Annual Percentage Rate" applied to RTO transactions with military personnel. ★ On April 6, 2007, the Department of Defense issued draft regulations entitled, *Limitations on Terms of Consumer Credit Extended to Service Members and Dependents*. These regulations are required by the terms of the enabling legislation passed last fall, the *John Warner National Defense Authorization Act for Fiscal Year 2007* (10 USC section 987). The draft regulations address certain predatory lending practices that are negatively impacting military personnel and their families and seek to curb excessive fees and annual percentage rates.

**The U.S.
Department of
Defense leaves
RTO out of
its predatory
lending
crackdown**

By Ed Winn III



The U.S. Secretary of Defense has until October 1, 2007, to implement the provisions of the new act through its regulatory powers. While rent-to-own transactions are identified in the regulations as one of five predatory lending industries—along with payday loans, vehicle title loans, military installment loans and tax refund anticipation loans—the regulations do not touch RTO practices directly.

Rent-to-own transaction incorrectly characterized as “predatory lending”

Rent-to-own/military personnel lending issues were first raised in a Department of Defense report submitted to Congress in August 2006. Congress had directed the department to study predatory lending practices directed at members of the Armed Forces and their families and to notify Congress of its findings.

The report defined a “predatory lending practice” as any “unfair or abusive loan or credit sales transaction or collection practice.” The report catalogued “rent-to-own lending” as one of the industries studied by the Department of Defense, having used old U.S. Public Interest Research Group statistics that showed rent-to-own transactions having annualized interest rates of more than 200 percent. The report also noted that RTO transactions are treated like credit sales in New Jersey, Vermont, Minnesota and Wisconsin.

As soon as the report was published, both APRO and Rent-A-Center sent letters to the Department of Defense challenging the report’s conclusions that rent-to-own transactions can appropriately be characterized as “predatory lending” or even lending at all, in light of the opposite conclusions reached by the Federal Reserve Board, the Federal Trade Commission and the Internal Revenue Service. The industry’s efforts paid off and RTO transactions, while criticized, are otherwise left alone in the proposed department regulations.

The chart below indicates how the Department of Defense characterized the various “lending products” it studied.

New APR protections established for military personnel

The law that Congress passed last fall limits the interest rate on loans to military personnel and their dependents to 36 percent APR. The statute directs the Department of Defense to develop regulations to implement the statute, explain how the disclosures are to be made to service members, how to calculate the APR, set limits on all fees associated with extensions of credit to service members and, most important, define what transactions are to be covered by the new law by defining “creditor” and “consumer credit.”

The department elected to conform its definition of “creditor” with the term’s definition in the *Truth In Lending Act*. The enabling statute defined “consumer credit” more narrowly than the term as defined in TILA by excluding residential mortgage loans and purchase money loans for cars or other personal property.

The Department of Defense came down hard on the three chief culprits of predatory lending to service members as defined in the department’s initial report: payday loans, vehicle title loans and refund anticipation loans. Payday loans are defined as closed-end loans for \$2,000 or less with a repayment term of 91 days or less and where the consumer provides a check or debit authorization to the consumer’s bank account for repayment. Vehicle title loans are defined to cover loans with a term of 180 days or less and secured by the title to a motor vehicle. Refund anticipation loans are closed-end loans in which the consumer grants the creditor the right to receive all or part of the debtor’s income tax refund.

The regulations create a new disclosure term and calculation, called the “Military Annual Percentage Rate.” The MAPR includes all interest, fees, credit service charges, credit renewal charges, credit insurance premiums, fees

for debt calculation or debt suspension agreements and fees for credit-related ancillary products sold in connection with a loan. The MAPR does not include late fees, default fees or other fees of a contingent nature.

Creditors covered by the regulation will have to make both an APR calculation in accordance with TILA and a MAPR disclosure under the Department of Defense regulations. In addition, the regulations require the following statement to appear on all loan documents to service members:

“Federal law provides important protections to active



Rental dealers can look at the Department of Defense actions and conclude that the department made the correct assumption in that rent-to-own transactions with the military are quite different from predatory lending. As APRO and Rent-A-Center both pointed out to the department, rent-to-own does not contribute to any consumers being trapped in a cycle of debt.

duty members of the Armed Forces and their dependents. Members of the Armed Forces and their dependents may be able to obtain financial assistance from Army Emergency Relief, Navy and Marine Corps Relief Society, the Air Force Aid Society or Coast Guard Mutual Aid. Members of the Armed Forces and their dependents may request free legal advice regarding an application for credit from a service legal assistance office or financial counseling from a consumer credit counselor.”

Disclosures must be made to service members in writing and the two interest rate disclosures plus the repayment terms for the loan must also be made verbally. The TILA and MAPR APR percentages will be different in many cases, because what is and what is not deemed interest under the two calculations is different.

Creditors cannot roll over, renew, refinance or consolidate a loan to a service member unless the new transaction offers more favorable terms, such as a lower MAPR. Creditors cannot require service members to submit disputes arising from the loan to arbitration nor can they require “other onerous legal notice provisions” that are not defined in the regulations.

Violations of the regulations render the transaction void from its inception, which means that the service member has no obligation to repay the loan.

A substantial distinction

Rental dealers can look at the Department of Defense actions and conclude that the department made the correct assumption in that rent-to-own transactions

with the military are quite different from predatory lending. And, indeed, the department arrived at this correct conclusion, but not without some help. The department’s concern, after studying service members’ financial situations in detail, is and has been that certain predatory business transactions threaten some service members with an unending cycle of debt that can imperil the military preparedness of the country’s fighting men and women.

As APRO and Rent-A-Center both pointed out to the department rather insistently, rent-to-own does not contribute to any consumers being trapped in a cycle of debt, since RTO is a completely non-debt transaction. The worst that can ever happen in a rent-to-own transaction is that the customer has to quit using the product and give it back to the store.

Many RTO dealers enjoy good relationships with their military customers and with the military bases where those service members are stationed. The war and the deployment of thousands of military personnel overseas for extended stays have caused hardships on many service members and their families. The rent-to-own industry has been there to help where it can and will continue to offer its products and services to soldiers and their families on flexible terms that serve both parties. As a result of our good education, the Department of Defense decided not to intrude into RTO customer relations, which is the only proper conclusion given the nature of the rent-to-own transaction. ■

Ed Winn III is APRO’s general counsel. His e-mail address is edwinn@mwvmlaw.com.

| U.S. DEPARTMENT OF DEFENSE CONCLUSIONS | | | | |
|--|--|-----------------------------|------------------------------|-------------------------------|
| Lending product | Without regard for borrowers' ability to repay | Excessive fees and interest | Unrealistic payment schedule | Repeated rollover/refinancing |
| PAYDAY LOAN | ✓ | ✓ | ✓ | ✓ |
| VEHICLE TITLE LOAN | ✓ | ✓ | ✓ | ✓ |
| MILITARY INSTALLMENT | | ✓ | | |
| REFUND ANTICIPATION | | ✓ | | |
| RENT-TO-OWN | ✓ | ✓ | | |