

Thinking of Accepting Payments from Customers via Discretionary Military Allotments? Think Again.

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Accepting payments via discretionary military allotments has long been suspect in the eyes of the Consumer Financial Protection Bureau. Military allotments are automatic deductions from military pay. Allotments can be non-discretionary, like payments for court-ordered child support. Or servicemembers can set up discretionary allotments to make payments to, for example, creditors.

In 2013, the CFPB took action against a lender for purported abuses of the discretionary allotment system in connection with payments for motor vehicles purchased by servicemembers. Among other things, the CFPB alleged that servicemembers were required to set up discretionary military allotments to repay their loans and that the lender did not properly disclose costs associated with repaying loans through the military allotment system. Further, when announcing the action, the CFPB emphasized its perception that the military allotment system, which "was created...to help deployed servicemembers...pay their creditors at a time when automatic bank payments and electronic transfers were not yet common bank services" is "vulnerable to misuse." In light of this perception and in response to the CFPB's enforcement action, the Department of Defense subsequently revised its policy regarding discretionary military allotments, effective January 1, 2015, to prohibit the use of allotments to purchase, lease, or rent personal property.

Fast-forward nearly ten years later and the CFPB is still closely scrutinizing the use of discretionary military allotments as a means of repayment, warning that they are particularly monitoring companies "that seek out servicemembers due to their steady paychecks and the ability to structure repayments through the military allotment system." In its June 2, 2022 blog, the CFPB stated that consumers today have expanded options to make automatic payments that generally provide servicemembers with more legal protections than using the allotment system, thus suggesting that using military allotments to repay creditors is always unnecessary and unfavorable to servicemembers. Further, the CFPB believes that lenders who use the allotment system for repayment are "prioritizing repayment of that lender's loan over the servicemember's payments of other expenses," suggesting that discretionary allotments by their nature are unfair for servicemembers, as they result in the servicemember having a lack of control over his/her finances.

The CFPB also specifically cited lenders who allegedly appear to offer various methods for repayment, but whose actual practices result in the servicemember being required, or believing he/she is required, to repay via military allotment. The blog further cautions lenders against attempting to circumvent DOD restrictions on allotment payments by requiring servicemembers to set up allotment-funded savings accounts, or setting up such accounts for the servicemember, and then deducting automatic payments from those accounts.

Accordingly, if you are offering military allotment to consumers as a means of repayment, you may want to think twice about whether the increased regulatory scrutiny and UDAAP risk is truly worth it. If it is, then, at a minimum it's time to take a close look (or, better yet, have experienced compliance counsel look) at your policies and procedures related to such payments.

Make sure that your disclosures regarding available repayment methods are clear and never require consumers to repay through military allotment. This is especially crucial for covered borrowers protected by the federal Military Lending Act, which prohibits requiring covered borrowers to establish an allotment to repay a consumer credit transaction. MLA violations can result in the transaction being declared void. Ensure that your customer service representatives are trained to describe all available payment options and that they do not encourage consumers to repay by allotment or otherwise lead consumers to believe that that is the only way the transaction can be repaid. Don't charge fees for allotment payments. Monitor customer complaints to catch issues early and correct problems identified right away. And always remember that when you are doing business with servicemembers and their dependents, the risk of scrutiny, allegations of UDAAP, and adverse regulatory action is high.

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