

August 1, 2013

The Honorable Charles T. Hagel
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-3010

Re: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents
Docket ID: DoD-2013-OS-0133

Dear Mr. Secretary:

The undersigned organizations appreciate the opportunity to provide comments to the Department of Defense's Advanced Notice of Proposed Rulemaking regarding "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents" published in the June 17, 2013 Federal Register. We support revision and expansion of the regulation beyond the current definition of consumer credit.

In 2006, Congress passed the Military Lending Act (MLA) to protect active duty service members and their dependents from high-cost loans and other predatory credit practices that adversely impact their financial security. The primary features of the Act are:

- The maximum 36 percent military annual percentage rate cap;
- The preemption of state laws that discriminate against non-resident service members; and
- Prohibitions of:
 - Renewals and refinances that do not benefit the borrower,
 - Waivers of legal rights under the Servicemembers Civil Relief Act,
 - Mandatory arbitration clauses,
 - Prepayment penalties,
 - Use of checks, vehicle titles or other automatic methods of access to the borrower's bank account, and
 - Requiring repayments by allotment as a condition of the extension of credit.

Congress exempted from the MLA only residential mortgages and loans offered expressly for the purpose of purchasing automobiles and other personal property and secured by that property (purchase-money credit). Congress also authorized the DoD to define the scope of consumer credit that should be covered by the Act. The DoD's rule implementing the Act limited consumer credit to three types of products: payday loans, vehicle title loans, and tax refund anticipation loans.

The DoD's Advanced Notice of Proposed Rulemaking asks for comments on whether the rule should be expanded. Although the rule has been beneficial and limited some of the most egregious forms of traditional closed-end short term payday and vehicle title loans, it excludes many forms of credit that negatively affect the financial health of service members. We urge the DoD to strengthen the rule and ensure that all active duty service members and their dependents are adequately protected.

The current rule applies the Act's protections only to closed-end payday loans of \$2,000 or less with a loan term of 91 days or less, closed-end vehicle title loans with a loan term of 181 days or less, and tax refund anticipation loans.¹ These narrow definitions are easily evaded by lenders who make: larger payday loans; longer payday and title loans; or open-end or revolving payday or vehicle title loans. All of these products are outside the scope of the Act's protections. In addition, the rule's definition of vehicle title loans may not include automobile equity or junior lien loans and automobile sale-leaseback transactions.

The narrow definition of consumer credit under the current DoD rule leaves 54 percent of the nation's active duty service members potentially unprotected by the MLA.² This is because at least eleven states allow some forms of payday loans, and at least thirteen states allow some forms of vehicle title loans that are beyond the scope of the DoD current rule. Service members stationed in these states may legally receive payday and vehicle title loans at rates that greatly exceed a 36 percent military annual percentage rate and without the other protections of the Act.

We also urge the DoD to extend the current rule's definition of "consumer credit" to apply to financial institution deposit advance loans, including at some banks located on or near military installations. These loans are simply open-end payday loans. In addition, the rule should include within its scope overdraft protection programs that charge a fee to allow consumers to overdraft their bank accounts with repayment automatically withdrawn from their next deposit. These programs are not currently considered credit under the Truth in Lending Act. However, the DoD has the authority to determine what credit should be included in its definition.

Further, the DoD should include installment loans in the definition of consumer credit. These loans are currently exempt due to their duration and amount but have many of the harmful features the Act prohibits such as very high interest rates, automatic access to a bank account, payment by military allotment, and repeated refinances with no benefit to the consumer. These loans often include high-cost ancillary products, such as credit insurance, that increase the cost of credit significantly with little benefit to the service member. Many high-cost online lenders now offer larger payday installment loans, not protected under the narrow DoD rule definitions.

Credit cards are exempt from the current rule as it applies only to closed-end credit. Credit card rates, including penalty rates, and other fees can be very high. Although the CARD Act has been beneficial, the potential for abuse remains. We support expansion of the rule's definition of "consumer credit" to all open-end credit, but with exclusions for certain limited bona-fide and reasonable credit fees from the 36 percent MAPR.

Rent-to-own transactions are also exempt from the current rule. These transactions are appropriately consumer credit sales and should be protected as consumer credit under the Act. We recommend that the DoD add protections for these products as well.

In order to protect active duty service members and their dependents regardless of their physical location, and to cover the wide range of high-cost credit and harmful products currently exempt from the Act's protections, we urge the DoD to expand the definition of consumer credit to include all credit covered by the federal Truth in Lending Act and overdraft protection programs. In addition, protections should be applied to rent-to-own transactions.

¹ Due to the actions of federal regulators, tax refund anticipation loans are no longer widely offered by depository institutions. Those offered by non-bank entities are subject to the Act and its protections.

² Consumer Federation of America, "Policy Brief: Gaps in the Military Lending Act Leave Many Service Members Vulnerable to Abusive Lending Practices" (July 2013), at <http://www.consumerfed.org/pdfs/130725-policybrief-mla-cfa.pdf>.

We thank the DoD for its work protecting service members from high-cost credit and appreciate the opportunity to comment on this issue.

Sincerely,

Virginia Poverty Law Center
Virginia Partnership to Encourage Responsible Lending
Virginia Citizens Consumer Council
U.S. Public Interest Research Group
Texas Appleseed
Southwest Center for Economic Integrity
South Carolina Appleseed Legal Justice Center
Sargent Shriver National Center on Poverty Law
RAISE KY
Reinvestment Partners
Policy Matters Ohio
North Carolina Justice Center
National People's Action
NAACP
Msgr. John Egan Campaign for Payday Loan Reform
Maryland Consumer Rights Coalition
Maryland CASH Campaign
The Leadership Conference on Civil and Human Rights
Kentucky Equal Justice Center
Jesuit Social Research Institute, Loyola University New Orleans
Illinois Asset Building Group
Heartland Alliance for Human Needs and Human Rights
GRO Missouri
Economic Fairness Oregon
The Delaware Community Reinvestment Action Council, Inc.
Consumers Union
Consumers for Auto Reliability and Safety
Consumer Federation of the Southeast
Consumer Federation of California
Consumer Federation of America
Consumer Assistance Council of Cape Cod and the Islands
Coalition on Homelessness and Housing in Ohio
Citizen Action/Illinois
Chicago Consumer Coalition
California Reinvestment Coalition
Baltimore CASH Campaign
Americans for Financial Reform
Alabama Arise
Alabama Appleseed