



1275 First Street NE, Washington, DC 20002

December 26, 2014

The Honorable Charles Timothy Hagel
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

Re: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 32 CFR Part 232, RIN 0790-AJ10

Dear Mr. Secretary:

Thank you for the opportunity to comment on the notice of proposed rulemaking under the Military Lending Act (MLA or Act) published in the *Federal Register* on September 29, 2014.¹ The Consumer Financial Protection Bureau (the Bureau or CFPB) is the nation's first federal agency focused solely on consumer financial protection. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the CFPB to protect consumers of financial products and services and to encourage the fair, transparent and competitive operation of consumer financial markets. The Bureau's mission is to make consumer financial markets work for American consumers, honest businesses, and the economy as a whole. The Bureau also, by statute, has an Office of Servicemember Affairs dedicated to military consumer financial protection and education.

The Department of Defense (the Department) has struck a sensible balance with the proposed revisions to 32 C.F.R. Part 232. By drawing on the framework of the Truth in Lending Act (TILA), the Department's proposal would provide expanded protections to servicemembers on active duty and certain dependents in their financial transactions across the marketplace. We urge the Department to finalize the proposal to revise the scope of "consumer credit" generally subject to the protections of the MLA to include "credit offered or extended to a covered borrower primarily for personal, family, and household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments." The proposed revision will go a long way towards better protecting military families from predatory lending.

As one of the agencies responsible for protecting servicemembers by enforcing the MLA², we believe that the Department's proposal, if finalized, would strengthen the ability of the Bureau and other enforcement agencies to use our authorities to stop lenders from harming servicemembers in ways the law was intended to stop. Under the current MLA regulations, our research into the

¹ 79 FR 58601, September 29, 2014.

² 10 U.S.C. 987(f)(6).

ongoing use of high-cost credit products by servicemembers (included here at Appendix A) shows that products falling just outside the scope of the current regulation have been marketed and extended to servicemembers. Furthermore, due to the narrow scope of the current MLA regulation, protections available to servicemembers can vary greatly depending on the particular state where they reside.³ The Department's proposal would help to level the playing field and provide more consistent protection for servicemembers across the country in their credit transactions.⁴

The Department's Existing Regulation

By statute, the MLA provides certain protections for extension of consumer credit to servicemembers and their dependents. Among other things, the law generally includes a rate cap of 36 percent, requires that certain additional disclosures be provided, prohibits lenders from taking a vehicle title as security for the obligation or access to an account held by the borrower, and prohibits lenders from requiring servicemembers to submit to arbitration. Because of the implementing regulations adopted in 2007, the MLA protections currently apply only to a narrow class of products: (1) closed-end payday loans with terms of 91 days or fewer, for \$2,000 or less; (2) closed-end auto title loans with terms of 181 days or fewer; and (3) closed-end refund anticipation loans.

The current regulation generally leaves a number of regulatory gaps in the MLA's protections, including:

1. Duration—Loans with initial terms in excess of 91 days (or 181 days for auto title loans).⁵
2. Open-end credit—Loans structured as open-end lines of credit.
3. Amount financed—Loans, other than covered auto title and tax refund anticipation loans, with an initial balance of over \$2,000.
4. Non-Check/ACH based loans—Loans that are similar to payday loans but do not require the borrower to provide the lender with access to a deposit account or a check or similar form of payment contemporaneously with the receipt of the loan proceeds.

In the process of consulting with the Department regarding the MLA, as directed by Congress, the Bureau undertook an analysis of loans to servicemembers to determine if servicemembers were continuing to use high-cost credit despite the protections of the MLA. We found that servicemembers were using products with rates above 36 percent and structured in ways that were not covered by the MLA regulations, such as deposit advance products. In the case of deposit advance products, we found that 22.15 percent of eligible accounts held by servicemembers used at least one deposit advance at some time over the course of a 12-month period.⁶ Analyzing the

³ See, also, Testimony of Hollister K. Petraeus before the U.S. Senate Committee on Commerce, Science & Transportation (November 20, 2013).

⁴ As Senator Talent noted in 2006 during passage of the Military Lending Act, "Our troops deserve uniform, national protection against abusive financial practices that target them." 152 Cong. Rec. S6406. *See also*, Testimony of Hollister K. Petraeus before the U.S. Senate Committee on Commerce, Science & Transportation (November 20, 2013).

⁵ Covered tax refund anticipation loans with durations longer than 91 days are covered by the current regulation.

⁶ This data came from a number of depository institutions during a 12-month study period and is further explained in Appendix A.

intensity and volume of deposit advance use by these accounts, we estimated that servicemember borrowers took more than \$50 million in deposit advances at the institutions analyzed during the 12-month study period. For a typical fee of \$10 per \$100, these \$50 million in advances would be associated with \$5 million in fees. The detailed findings of that analysis are presented in Appendix A.

High cost open-end loans, such as deposit advances, are not the only loans that fall outside the scope of the current MLA regulations. As described in our analysis attached as Appendix A, we have looked at the terms of a number of high-cost loans from contracts we have received from servicemembers. In our efforts to listen to military families and investigate potential violations of the law we have heard from the military community across the country about a variety of other products. Among many others, we have heard from the following:

- From a community readiness consultant at Joint Base McGuire-Dix-Lakehurst about a sailor with severe debt problems. The sailor had one loan from a military-specific lender with an APR at 499 percent. This loan was not subject to MLA protections under the existing regulations because it was structured as an open-end line of credit. The sailor had a second loan at an APR of 197 percent with a balance of over \$1,500. This loan also was not subject to the protections of the MLA under the existing regulations because the duration was longer than 91 days. More than 66 percent of the sailor's take home pay was committed to these two loans.
- From Army Community Services at Fort Jackson about a servicemember who took out an online installment loan with an APR of 80.53 percent. The loan was for \$3,000 and resulted in finance charges of \$1,462.92. The loan was not subject to the protections of the MLA under the existing regulations because it was for more than \$2,000.
- From a Judge Advocate General (JAG) at Marine Corps Recruit Depot San Diego whose client took out an auto title loan of \$10,000. The loan had a 36-month term with an APR of 101.9 percent. The soldier used a military ID to get the loan, so the lender was aware of the soldier's military status; however, because the duration of the loan exceeded 181 days, the MLA protections did not apply.
- From the Airman and Family Readiness Center at Travis Air Force Base about a servicemember who borrowed \$6,000 for 36 months at a 102.47 percent APR. The loan cost the servicemember \$13,463.04 and was secured by the servicemember's car title. The loan was not subject to the protections of the MLA because the duration was longer than 181 days.
- From a consumer affairs counselor at Fort Campbell about a servicemember who took out an installment loan of \$500 with an APR of 83.02 percent. The loan was not subject to the protections of the MLA because the duration was longer than 91 days.
- From a Personal Financial Readiness Center Specialist at Fort Hood about a soldier who took out a loan of \$768.75 at an APR of 611.72 percent. The soldier ultimately would pay \$1,979.36 for the loan. The loan was not subject to the protections of the MLA because the duration was longer than 91 days.
- From a servicemember in Virginia who signed up for an \$800 loan with an APR of 398.91 percent. The total payments on the loan were \$2,301.60. The loan was not subject to the protections of the MLA because the duration was longer than 91 days.

- From a military aid society about servicemembers in North Carolina and Delaware who each took out loans at an APR of 584.68 percent. The loans were not subject to the protections of the MLA because they were structured as open-end lines of credit.
- From a military aid society about a servicemember who took out a \$2,300 loan. The loan had \$300 in upfront fees and an APR of 219.19 percent. The servicemember ultimately paid more than \$6,500 for the loan. The loan was not subject to the protections of the MLA because the duration was longer than 91 days and the loan amount more than \$2,000.
- From a military aid society about a servicemember in Florida who took out a \$1,000 online military installment loan with an APR of 80.53 percent. The loan was not subject to the protections of the MLA because the duration was longer than 91 days.

The Department's Proposed Rule

The Department's proposal responds to circumvention of the MLA by largely harmonizing the definition of "consumer credit" under the MLA with credit subject to the protections of TILA. This action by the Department is consistent with the statutory purposes of the MLA and cures a number of gaps in the existing rule which allowed lenders to structure products so that they would not be subject to the protections Congress sought to provide servicemembers on active duty and certain dependents. The Bureau believes the Department's proposal implements the disclosure requirements in the Military Lending Act in a way that balances the Congressional intent to protect servicemembers while facilitating a streamlined disclosure process for financial institutions.

Consumer Credit

As noted above, the product-by-product approach taken in the current regulation has been easily circumvented. The proposed revision would broaden the definition of consumer credit, limiting the ability of lenders to make small changes to their credit contracts in order to avoid being required to comply with the MLA. We strongly support the Department's proposal to draw on the framework of TILA to broaden the regulatory definition for consumer credit under the MLA. The Truth in Lending Act, as implemented and enforced by the Bureau, has a long history and robust jurisprudence. Harmonizing the scope of the MLA with TILA will provide broader protections for servicemembers and their families across the country, consistent with the purposes of the MLA.

The Department's experience with the current regulation is instructive. The current rule has been effective for those products that it covered, but over the past seven years we have seen significant changes in the types of products offered and the contours of state law. We believe that it is critically important that the MLA regulatory protections keep up. If the Department does not change the MLA rule's product-by-product approach to define what is covered, it will continue to fall victim to evasive tactics by lenders. The proposal to draw on the framework of TILA marks a sensible departure from the product-by-product approach used in the current regulation.

Treatment of Credit Card Accounts

The Department has struck a responsible balance with the treatment of credit card accounts under the proposal. We believe that the Department has an interest in preserving access to credit cards by

servicemembers. Under the proposal, credit card issuers should be able to continue offering credit card accounts to servicemembers without making significant changes to their fee structures.

Coverage of credit card accounts is essential. The strength of the Department's proposal rests on its comprehensive coverage of consumer credit products, regardless of how and from whom the credit is extended. Further, we note that some credit card issuers and their vendors have engaged in significant unfair, deceptive, or abusive acts or practices, especially with respect to ancillary insurance and "add-on" products.⁷

Such practices are evidenced by a number of recent actions taken by the Bureau's Office of Enforcement against credit card issuers and their vendors for unfair, deceptive, or abusive acts or practices, particularly related to their marketing and sale of add-on products. Over the past three years, the Bureau has obtained approximately \$1,708,500,000 in restitution and approximately \$90,100,000 in Civil Money Penalties (CMPs) in actions against credit card issuers for these and other practices impacting more than 12 million Americans.

Date	Matter	Claims	Restitution (approximate)	CMPs	Consumers Impacted (approximate)
July 18, 2012	Capital One Bank, File No. 2012-CFPB- 0001 ⁸	Deceptive marketing, sales, and operation of payment protection and credit monitoring products	\$140 million	\$25 million	2 million
September 24, 2012	Discover Bank, File No. 2012- CFPB-0005 ⁹	Deceptive telemarketing tactics in the sale of payment protection, identity theft protection, and wallet protection products.	\$200 million	\$7 million	2.5 million
September	JPMorgan	Unfair billing	\$309 million	\$20 million	2.1 million

⁷ In addition to joint actions with the Bureau, other Federal agencies with responsibility for enforcing the Military Lending Act have also taken action against credit card issuers for, among others, deceptive marketing activities. See, e.g., *Federal Trade Commission v. CompuCredit Corporation and Jefferson Capital Systems, LLC.*, Stipulated Final Order, FTC File No. 062-3212 (December 19, 2008); *In re Columbus Bank and Trust Company*, Consent Order, No. FDIC-08-033b, FDIC-08-034k (June 9, 2008); and *In re First Bank of Delaware*, Consent Order, No. FDIC-07-256b, FDIC-07-257-k (October 9, 2008).

⁸ *In re Capital One Bank*, Consent Order, No. 2012-CFPB-0001 (July 18, 2012), available at http://files.consumerfinance.gov/f/201209_cfpb_0001_001_Consent_Order_and_Stipulation.pdf.

⁹ *In re Discover Bank*, Joint Consent Order, Nos. FDIC-11-548b, FDIC-11-551k, and 2012-CFPB-0005 (September 24, 2012), available at http://files.consumerfinance.gov/f/201209_cfpb_consent_order_0005.pdf.

19, 2013	Chase Bank and Chase Bank USA, File No. 2013-CFPB-0007 ¹⁰	and administration of identity protection products.			
December 24, 2013	American Express Centurion Bank, File No. 2013-CFPB-0011 ¹¹ ; American Express Bank, FSB, File No. 2013-CFPB-0012 ¹² ; American Express Travel Related Services Company, Inc., File No. 2013-CFPB-0013 ¹³	Unfair billing tactics for and deceptive marketing of credit card add-on products; failure to provide mandatory disclosure related to free credit reports.	\$59.5 million	\$9.6 million	335,000
April 9, 2014	Bank of America, N.A. and FIA Card Services, N.A., File No. 2014-CFPB-0004 ¹⁴	Deceptive and unfair marketing, sales, and billing practices related to credit protection and identify protection products.	\$727 million	\$20 million	2.9 million
June 19, 2014	Synchrony Bank, f/k/a GE Capital Retail Bank, File No.	Deceptive practices relating to the marketing and sale of credit	\$225 million	\$3.5 million	746,000

¹⁰ *In re JPMorgan Chase Bank, N.A. and Chase Bank USA, N.A.*, Consent Order No. 2013-CFPB-0007 (September 19, 2013), available at http://files.consumerfinance.gov/f/201309_cfpb_jpmc_consent-order.pdf.

¹¹ *In re American Express Centurion Bank*, Consent Order, No. 2013-CFPB-0011 (December 24, 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_consent_amex_centurion_011.pdf.

¹² *In re American Express Bank, FSB*, Consent Order, No. 2013-CFPB-0012 (December 24, 2013), available at http://files.consumerfinance.gov/f/201312_cfpb_consent_amex_FSB_012.pdf.

¹³ *In re American Express Travel Related Services Company, Inc.*, Consent Order, No. 2013-CFPB-0013 (December 24, 2013), available at http://files.consumerfinance.gov/f/201312_CFPB_Consent_AETRS_013.pdf.

¹⁴ *In re Bank of America, N.A. and FIA Card Services, N.A.*, Consent Order, No. 2014-CFPB-0004 (April 9, 2014), available at http://files.consumerfinance.gov/f/201404_cfpb_bankofamerica_consent-order.pdf.

	2014-CFPB-0007 ¹⁵	card payment debt cancellation products; discrimination on the basis of national origin in connection with two direct-mail collection offers to certain consumers.			
September 25, 2014	U.S. Bank, File No. 2014-CFPB-0013 ¹⁶	Unfair practices related to the billing of identity protection product fees and acceptance of such fees while failing to provide credit monitoring and credit report retrieval services.	\$48 million	\$5 million	420,000

While the actions above may not have been focused on servicemembers specifically, we have also heard from servicemembers specifically about their experience with ancillary products on credit card accounts. For example, in one complaint submitted to the Bureau, we heard from a servicemember who purchased a third-party credit insurance product through her card issuer. When the servicemember was permanently disabled during military service, the servicemember indicated that the provider created numerous barriers to accessing the credit insurance and failed to pay on the servicemember's account, which then fell into collections. Stories like these, taken with the Bureau's findings in the course of its supervision and enforcement activity, underscore the need to include credit card accounts within the scope of the MLA protections.

However, the pricing structure for many credit card accounts—for example, annual fees charged to the account in a single billing cycle—could cause the Military Annual Percentage Rate (MAPR), to exceed the permissible 36 percent. We agree with the Department that the general utility and particular pricing structure of credit cards necessitates carving out certain specific fees from the calculation of the MAPR for credit card accounts. This distinctive safe harbor is justified, in part, because of the separate statutory scheme under the CARD Act regulating fees on credit card

¹⁵ *In re Synchrony Bank, f/k/a GE Capital Retail Bank*, Consent Order, No. 2014-CFPB-0007 (June 19, 2014), available at http://files.consumerfinance.gov/f/201406_cfpb_consent-order_synchrony-bank.pdf.

¹⁶ *In re U.S. Bank National Association*, Consent Order, No. 2014-CFPB-0013 (September 25, 2014), available at http://files.consumerfinance.gov/f/201409_cfpb_consent-order_us-bank.pdf.

accounts and because of the unique nature of the credit card market as a national market with a handful of large creditors.

We believe that the proposed exclusion from the MAPR for “bona fide” fees on credit card accounts strikes an important balance in preserving credit card access while requiring that credit card providers refrain exceeding the MLA rate cap. The proposal would allow credit card issuers to exclude from the cost limitation reasonable and customary fees tied to specific products or services. Virtually all credit cards carry a periodic annual interest rate below 36 percent and should continue to be available to servicemembers.

Identification of Covered Borrowers

Finally, the Bureau supports the revised procedure set forth in the proposed rule for identifying whether a consumer is a covered borrower. In our investigation of potential violations of the MLA and our ongoing outreach to the military community, we have seen challenges in the self-certification procedure that pose significant risks to the effective implementation of the MLA.

In order to improve the process available to creditors and to facilitate our supervision and enforcement work, the Bureau supported recently completed efforts by the Department to improve the MLA database. Using the improved database, creditors can assess the covered borrower status of large numbers of consumers in a streamlined process, and do this assessment in real time.

We believe that the revised procedure and the proposed safe harbor for relying on the MLA database is sensible, workable, and a tremendous improvement in effectuating the purpose of the MLA.

The Bureau thanks the Department for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, reading "Hollister K. Petraeus".

Hollister K. Petraeus
Assistant Director for the Office of Servicemember Affairs
Consumer Financial Protection Bureau

Appendix A: Report on The Extension of High-Cost Credit to Servicemembers and Their Families