



THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



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Federal Docket Management
System Office
4800 Mark Center Drive
East Tower
Suite 02G09
Alexandria, VA 22350-3100
Department of Defense
Docket ID: DoD-2013-OS-0133
Limitations on the Terms of Consumer Credit Extended to Service Members and Dependents

Dear Sir or Madam:

The undersigned trade associations (the Associations) appreciate the opportunity to offer our views on the advance notice of proposed rulemaking (ANPR) recently issued by the Department of Defense (Department). The ANPR seeks comment on whether the Department should consider revising existing protections under the Military Lending Act which apply to consumer credit extended to members of the armed forces and their dependents.

The Associations have worked closely with the Department over the last several years and appreciate this opportunity to ensure appropriate safeguards are in place to protect servicemembers and their dependents while avoiding steps that segregate military families or deny them access to needed and beneficial products and services. The Associations greatly value the service and sacrifices of the members of our armed services and their families and want to work collaboratively with the Department to ensure servicemembers at all stages of their careers as well as their families have appropriate access to credit and to the tools and skills necessary to make informed decisions about financial products and services.

As discussed in detail below, the Associations believe that the Military Lending Act as implemented by the regulation issued by the Department of Defense is working as intended to protect members of the armed forces and their dependents. Imposing additional requirements on lending to servicemembers would have adverse consequences for members of the armed forces and military families. While added restrictions are not needed, a proactive step the Associations support is strengthening financial education

for servicemembers at all phases of their career since financial education plays a critical role helping servicemembers and their families use credit products wisely.¹

We collaborated with the Department when the rules were adopted in 2007 under section 670 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year 2007.² At that time, the Associations raised a number of concerns about the restrictions mandated by the NDAA which could potentially harm men and women in uniform if not implemented with care. To avoid denying access to many common credit products enjoyed by servicemembers and their families,³ the Department crafted a narrowly tailored rule designed to address problems raised in a Department of Defense study, “*Report on Predatory Lending Practices Directed at Members of the Armed Forces and their Dependents*,” published August 9, 2006.⁴

A study by the Consumer Federation of America published in 2012⁵ (CFA Study) confirms that the current regulations have been successful and are working as intended. Although the CFA cites several areas where the regulations could be expanded, in our view the expansion is unnecessary and will have harmful consequences for servicemembers and their families.⁶ In a separate appendix to this comment letter, the Associations have addressed some of the specific issues raised by the CFA study.

The Current Rules Have Been Successful and Are Working as Intended

When the current rules were adopted in 2007, the goal was to focus on products that the Department had identified as most troublesome in its 2006 report to Congress: refund anticipation loans, payday loans and car title loans. To that extent, the rule has been effective: refund anticipation loans have largely disappeared, payday loans from brick-and-mortar locations are no longer widely available, and car title loans covered by the rules have been greatly reduced.

We note that the CFA study makes several recommendations for new rules and requirements. However, many of the steps that the organization advocates are outside the scope of the regulations implementing the Military Lending Act or, in some cases, beyond the authority of the federal government to regulate. As an example, one step worth exploring that is beyond the scope of the Military Lending Act but which addresses concerns surrounding refund anticipation loans would be for prudential regulators to encourage the institutions they supervise to offer voluntary income tax assistance (VITA)⁷ programs; one incentive would be to clearly state that VITA is fully recognized and endorsed as a community development activity under the Community Reinvestment Act (while the agencies suggest it *may* be considered (see, e.g., <http://www.fdic.gov/news/news/financial/2007/fil07097.html>), the public would be better served if the agencies provided more support for the program, including publicizing it.

¹ This is a point which the Consumer Financial Protection Bureau has also stressed, See, e.g., <http://www.consumerfinance.gov/petraeus-letter/>

² Section 670 of the 2007 NDAA, “Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents” is sometimes also referred to the Talent Amendment after one of its original sponsors, Senator Jim Talent (R-MO).

³ <http://www.aba.com/Issues/Regulatory/Documents/5176ea20b36a412790f9321794679c31ABATalent5Jan2007.pdf> and <http://www.aba.com/Issues/Regulatory/Documents/812069a4ed984e5e96c69dd989f15e8fGeorgeSchaeferletter.pdf>

⁴ http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf

⁵ *The Military Lending Act Five Years Later: Impact On Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign against Predatory Lending*, Consumer Federation of America, May 29, 2012, <http://www.consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf>.

⁶ As one simple example, all disclosures for covered credit require both oral and written disclosures. That would mean servicemembers could not apply for a loan over the Internet, an increasingly popular method for consumers to access credit and conduct banking.

⁷ See, e.g., <http://www.irs.gov/Individuals/Free-Tax-Return-Preparation-for-You-by-Volunteers>

Similarly, it is worth noting that the CFA recognized that payday loans from brick-and-mortar locations are no longer widely available to servicemembers,⁸ although online products and some store locations still offer this type of credit. In part, the CFA was constrained with reaching final conclusions by insufficient data, but the Associations believe that there are two conclusions that can be drawn: first, better education is needed for servicemembers about payday loans, and, second, these products are offered primarily by non-depository institutions. In fact, the CFA found that the Military Lending Act protections were consistently effective. Problems identified by CFA are issues which should be addressed in other ways and not by expanding the definitions in the Military Lending Act.⁹ For example, among the problems identified were spouses falsifying information and online providers operating outside the United States or claiming tribal immunity, issues which are beyond the scope of the Military Lending Act or the rule.

Finally, in examining the use of car title loans, the CFA found that many of the restrictions depended on state law definitions or state statutes. While servicemembers continue to use this type of credit, the Associations also caution against expanding the definition without careful consideration to avoid unintended consequences. For example, if a loan is covered by the Military Lending Act requirements, the borrower cannot refinance the loan, which means that a servicemember could not take advantage of a lower rate or take other steps to refinance an existing car loan.

Servicemembers Benefit from Existing Consumer Protections

It is extremely important to recognize and acknowledge that there are many other consumer protections applicable to all consumers that also benefit servicemembers and their dependents. In fact, one of the prominent justifications for the creation of the Consumer Financial Protection Bureau (the Bureau) under the Dodd-Frank Act¹⁰ was to ensure there was an agency solely devoted to protecting consumer financial interests.¹¹

What is important to stress is that a well-established system of financial protections for consumers exists beyond the Military Lending Act, something the Department recognized when it originally adopted the rule implementing the Military Lending Act in 2007. Where other consumer protections exist, it is redundant, confusing and costly to create separate parallel requirements for servicemembers who, as consumers of financial products and services, should be treated no differently from other consumers of these products and services. Even less helpful is that separate parallel rules can tend to segregate servicemembers as second-class citizens, subject to different rules and for whom some popular financial services are harder to obtain, an outcome which should be avoided.

⁸ CFA study, p. 23

⁹ It is worth noting that the CFA admitted that because they did not have full authority to investigate providers, their data are lacking information, particularly about some of the online applications for credit. Therefore, it is extremely important that the Department not act blindly and use incomplete data. Instead, the Associations believe it would be best for the Department to conduct a further and more careful analysis before taking action.

¹⁰ The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, was signed into law on July 21, 2010.

¹¹ It is also important to recognize that the Bureau has a separate Office of Servicemembers Affairs that works within the Bureau to focus on unique needs of servicemembers and their families. See <http://www.consumerfinance.gov/servicemembers>. Interestingly, the very existence of the Bureau underscores the fact that existing consumer protections that are sufficient should be the first line of defense since the Bureau was designed to avoid the proliferation of rules intended to protect consumers. According to the Treasury, the impetus to create the Bureau was the recognition that “fairness, effective competition, and efficient markets require consistent regulatory treatment for similar products.” [U.S. Department of the Treasury, *Financial Regulatory Reform – A New Foundation: Rebuilding Financial Supervision and Regulation*, June 2009, p. 53], sentiments echoed by then counselor to the Secretary of the Treasury, Elizabeth Warren when setting up the Bureau in 2011. “Thanks to this new law, for the first time ever, critical consumer financial protection activities performed by seven different agencies will be consolidated into one agency, closing gaps in oversight.” [Warren, Elizabeth, Remarks to Financial Services Roundtable, September, 2010. <http://www.consumerfinance.gov/speeches/a-new-approach-to-the-regulation-of-consumer-credit/>]

The Associations firmly believe that servicemembers and their families deserve the respect of the industry and the public. We fully support special protections where they are appropriate to support servicemembers' unique status, as demonstrated in the requirements of the Servicemembers Civil Relief Act (SCRA). However, where a servicemember is a consumer like any other consumer, then existing consumer protection statutes are sufficient and appropriate.

While many existing consumer protection rules already provide ample regulatory protections, education is a critical component to help servicemembers protect themselves.¹² The Associations encourage the prudential regulators to facilitate the use of existing tools, like the Community Reinvestment Act and other programs, to provide encouragement to depository institutions to extend financial training to men and women in uniform.

The Existing Rule Strikes the Proper Balance

The rule adopted in 2007 was structured carefully and struck the proper balance between protecting servicemembers and their families while still ensuring they had access to beneficial products and services offered by depository institutions which are carefully regulated and regularly examined. At the same time, the rule was narrowly focused to avoid unnecessary costs and burdens that would only increase the cost of credit or deny servicemembers access to needed and mainstream credit. The rule followed a great deal of discussion among interested parties and was adopted after careful consideration.¹³ Therefore, before any changes are made, the same type of careful consideration is needed to avoid harming servicemembers.

The Associations value the commitment of men and women in uniform and have been assisting our members to affirmatively comply with the statutes that protect men and women in uniform.¹⁴ Moreover, the supervisory regime has continued to improve; following a report by the Government Accountability Office published in July 2012,¹⁵ anecdotal reports from depository institutions indicate that the prudential regulators have stepped-up examinations on steps designed to protect servicemembers.

Covered Consumer Credit has Important Ramifications

An important point which was extensively discussed when the Military Lending Act rule was adopted in 2007 is that the penalties for violating the restrictions are draconian. Penalties include substantial fines, voiding the loan contract from inception and possible imprisonment. While intended to underscore the importance of protecting servicemembers and their families, the harshness of the penalties would discourage depository institutions from offering covered consumer credit to servicemembers and their families in order to avoid any possible violation, including inadvertent violations. For instance, the potential for voiding a contract raises safety and soundness considerations that would cause a prudent depository institution from offering many types of credit to servicemembers and their families.

¹² See, e.g., <http://www.consumerfinance.gov/blog/financial-fitness-forum/>

¹³ As noted in the Joint Industry Letter filed on June 11, 2007: "By focusing the rule on the abusive practices that initially raised Congressional concerns and limiting application of the statute to certain loans, the Department has taken a significant step towards ensuring service members and their spouses and dependents – like other consumers – continue to have access to beneficial and necessary financial products and services. It is critical that the final rule retain that careful focus so as not to deprive service members and their spouses and dependents of access to mainstream credit products not to increase their credit costs." p.1

¹⁴ For example, AMBA, ABA, ICBA and CBA representatives have met with Holly Petraeus, Assistant Director of the Bureau's Office of Servicemember Affairs, to offer support for the Bureau's efforts to help servicemembers. Similarly, the American Bankers Association has included a session on Servicemembers Civil Relief Act (SCRA) compliance at the annual Regulatory Compliance Conference every year for the last several years and offers a separate page on its website to help bankers comply with the rules. http://www.aba.com/Solutions/Compliance/Mem/Pages/ss_civil_relief_act_mar26.aspx

¹⁵ <http://www.gao.gov/products/GAO-12-700>

Expanding the definition of covered consumer credit also is fraught with many consequences, and, as CFA found, responsible lenders avoid products that are or may be covered by the definition. For example, since oral disclosures are mandatory for any covered consumer credit, any servicemember who could not be reached to provide oral disclosures would be ineligible for that product. Covered consumer credit also cannot be refinanced with the same lender, denying access to even beneficial changes and preventing lenders from granting concessions to retain customers or adjusting terms for a work-out favorable to the borrower. Another problem with expanding the definition is that access to a bank account for payment or security also is banned by the Military Lending Act, a step that would complicate or prevent certain loans from being offered to servicemembers; for example, the restriction would prevent a lender from offering lower rates to servicemembers and their dependents for using direct debit to make loan payments, an increasingly popular option for consumer products.

Coverage by the Military Lending Act also carries requirements that are unlikely to help servicemembers understand loan terms, contradicting the efforts to make credit more understandable. For example, the statute and rule require a separate all-in military annual percentage rate (APR) for covered loans in addition to the existing APR. Receiving two different disclosures about the APR is likely to be confusing to borrowers. In addition, providing this second set of disclosures will increase the costs for covered consumer credit, which will be passed on to borrowers, making such products less attractive to offer or seek.

Another disadvantage inherent to covered consumer credit is that interest rates cannot be changed. While this was designed to keep rates from being raised, it also prevents them from being lowered. While current rates are not changing drastically, this restriction, particularly for open-end credit products, would very likely cause creditors to set rates higher to account for potential future interest rate fluctuations.

As noted previously, one of the challenges for creditors to comply with the requirements for a covered loan is that oral disclosures are required for all covered consumer credit. Not only is this a challenge for creditors, but it also means that any servicemember or dependents who apply for credit must be readily accessible to receive the oral disclosures. At a minimum, that bans servicemembers from opening credit accounts online. In an age when troops stationed overseas rely on electronic communications to stay in contact with their families back home, it seems counter-productive to deny them the use of the same channels for financial transactions, especially when they are increasingly familiar with these channels.

Similarly, the statute and rule ban mandatory arbitration. Without considering the merits of arbitration, if an account is structured so that mandatory arbitration is part of the overall structure of the account including its pricing and use, as is the case with certain credit or debit card products, then the product as a whole would be off-limits for servicemembers.

Finally, creditors have a challenge identifying eligible individuals. As noted in the CFA study, spouses have been known to be less than forthcoming in providing personal information about status in order to get short-term payday loans from non-depository institutions. Depository institutions have no sure way to verify whether an individual is a covered dependent.¹⁶ Therefore, if the Department of Defense expands the definition of covered credit, it simultaneously increases the need for the Department to work with creditors to identify ways to verify eligibility. Since, as noted, the penalties for violation are severe, the need increases exponentially with a broad definition of covered credit.

Conclusion

The Associations support additional safeguards for servicemembers where their unique status or role mandates such special recognition. However, where existing rules protect all consumers, additional or conflicting protections for servicemembers and their dependents will only increase costs, unnecessarily

¹⁶ While creditors can verify servicemember status, <https://www.dmdc.osd.mil/appj/scra/scraHome.do>, the accuracy of the information is not always 100% certain. Unfortunately, nothing comparable exists for dependents. While some dependents carry an identification card, <http://www.military.com/benefits/military-dependent-id-cards.html>, not all individuals covered by the Military Lending Act are covered.

segregate the military, and possibly cause confusion for servicemembers and their families. Congress adopted the Military Lending Act and the Servicemembers Civil Relief Act recognizing the unique role of the men and women in uniform, and those statutes were designed to protect them where there are special and unique circumstances directly related to their service.

We look forward to continuing to work with the Department of Defense to provide support for men and women in uniform, veterans, and their families and dependents.

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APPENDIX A – The Associations

American Bankers Association (ABA)

The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's \$14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than \$185 million in assets. Learn more at www.aba.com.

Association of Military Banks of America (AMBA)

Founded in 1959, the Association of Military Banks of America (AMBA) is a not for profit association of banks operating on military installations, banks not located on military installations but serving military customers, and military banking facilities designated by the U. S. Treasury. The association's membership includes both community banks and large multinational financial institutions, all of which are insured by the Federal Deposit Insurance Corporation.

Consumer Bankers Association of America (CBA)

The Consumer Bankers Association (CBA) is the trade association for today's leaders in retail banking - banking services geared toward consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two-thirds of the industry's total assets. CBA's mission is to preserve and promote the retail banking industry as it strives to fulfill the financial needs of the American consumer and small business.

The Financial Services Roundtable

The Financial Services Roundtable represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$98.4 trillion in managed assets, \$1.1 trillion in revenue, and 2.4 million jobs.

The Independent Community Bankers of America (ICBA)

The Independent Community Bankers of America®, the nation's voice for more than 7,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With nearly 5,000 members, representing more than 24,000 locations nationwide and employing more than 300,000 Americans, ICBA members hold more than \$1.2 trillion in assets, \$1 trillion in deposits, and \$750 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

The National Association of Federal Credit Unions (NAFCU)

The National Association of Federal Credit Unions is a direct membership association committed to advancing the credit union community through its relentless focus on membership value in representing, assisting, educating and informing its member credit unions and their key audiences.

APPENDIX B – THE CFA STUDY

Because the CFA Study raises a number of specific issues about particular financial products or services, the Associations want to address the findings and recommendations of the study.

CFA Study – The Military Lending Act Five Years Later

At the request of the Annie E. Casey Foundation,¹⁷ not Congress or the Department, the CFA conducted a study of the effects of the Military Lending Act. While useful, the study has significant limitations, as acknowledged by CFA. In fact, the CFA recommends that additional investigation is needed before any definitive conclusions can be reached.¹⁸

The study is limited in scope and analyzed anecdotal evidence at a small number of military installations around the United States. As the CFA itself points out, “CFA was not authorized to survey servicemembers directly or to have access to Defense Department polling or Defense Manpower surveys or servicemembers.”¹⁹ The Associations agree that further analysis by the Department, with direct access to and information from military borrowers is necessary before moving forward, particularly due to the significant potential for unintended consequences.

KEY FINDINGS of the study

The CFA made several critical findings that should be addressed.

First, to the extent products meet the definition of consumer credit in the Department Military Lending Act (MLA) regulations, “the law has been largely effective in curbing predatory payday, car title, and tax refund lending to covered borrowers.” In fact, “the impact of the federal law prohibiting certain payday and car title loan products is very pronounced.”²⁰

When the Associations were working with the Department as it drafted the regulations in 2007, in our comment letter of June 11, 2007, we noted that the definition for *payday loans* is appropriate and that expanding it could potentially apply the restrictions to many other forms of credit, including student loans, personal unsecured loans and work-out loans. The current definition of a payday loan requires that when the borrower receives funds, he or she must contemporaneously provide a check or debit authorization. This restriction is designed to focus on those loans Congress intended to be covered. Similarly, by restricting the definition of *car title loans* to those of less than 182 days, the rule does not prevent servicemembers from refinancing existing car loans.

Since the current rule limits protections to active-duty servicemembers but not reservists and their dependents and not inactive personnel, retirees or veterans, the study recommends expanding coverage beyond active-duty servicemembers. However, this completely overlooks a key foundation for the Military Lending Act which was to promote and protect military readiness of active duty servicemembers. Even if that were disregarded, there is a separate challenge for the Department of Defense to create a system that allows creditors to verify eligibility easily and quickly. While the Department has greatly improved the ability of lenders to verify coverage for SCRA protections and validate that an individual is on active duty, it is not as easy to validate whether someone is a dependent, which is one reason that spouses have been able to evade identification, as noted by the CFA study. Therefore, to avoid invitation to fraud,

¹⁷ According to the Foundation’s website, “The Annie E. Casey Foundation is a private charitable organization, dedicated to helping build better futures for disadvantaged children in the United States. It was established in 1948 by Jim Casey, one of the founders of UPS, and his siblings, who named the Foundation in honor of their mother. The primary mission of the Foundation is to foster public policies, human-service reforms, and community supports that more effectively meet the needs of today’s vulnerable children and families.” <http://www.aecf.org/AboutUs.aspx>

¹⁸ CFA Study, p. 10

¹⁹ CFA Study, p. 8

²⁰ CFA Study, p. 9

simple means are needed to determine whether someone is a covered individual. The Associations welcome the opportunity to work with the Department to solve the problem.

The CFA study also suggests that lenders have exploited loopholes, something identified as particularly problematic with online payday loans and states where high cost loans are not prohibited. To address these problems, CFA recommends removing time limit definitions for payday and car title loans and applying the rules uniformly for open and closed-end loans. These are similar to recommendations that were raised when the rules were initially under consideration in 2006 and 2007. The problem with expanding coverage is that it has unintended consequences for servicemembers and their families since an expanded definition also would capture many beneficial credit products which was one of the reasons the Department adopted a narrow definition originally. Therefore, careful analysis by the Department, as recommended by the CFA, should precede any expansion of the definition to ensure that servicemembers are not necessarily harmed. Likewise, more targeted solutions that focus on the specific problems instead of expanding the definitions in the regulation is likely to be far more productive and more effective at solving any problem.

The CFA recommends adding rent-to-own and retail installment financing as forms of credit that the rules should cover, particularly when allotments are used to make payments.²¹ An informal poll of our members suggests few depository institutions use allotments for loan payments by servicemembers. As a general proposition, depository institutions offer many alternatives for re-payment, including bill payment systems and online banking that are simpler to use and set up than allotments. However, since allotments can be beneficial for servicemembers when properly used, the Associations recommend careful study before adopting new restrictions to avoid harmful unintended consequences. In addition, building on the recommendations from the Consumer Financial Protection Bureau, this is an area where better education of servicemembers about the inherent dangers caused by careless use of allotments is important.

In part, the problem may be solved more directly by enforcing additional existing restrictions rather than expanding the definition of covered consumer credit. Section 662 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law No: 112-239) granted enforcement authority for the Military Lending Act to prudential regulators to the same extent as the agencies are authorized to enforce the Truth in Lending Act, and the Associations believe that having the prudential regulators examine compliance with these provisions is appropriate and should continue. It also is important to underscore that where the CFA study identifies problems, the loans are not being offered by depository institutions. It follows that the fault is not in the law, but in lax enforcement by those charged with enforcing restrictions against those already under their jurisdiction. It may be a question of whether agencies that have authority to take steps to address additional problems need greater resources, including additional staff, to take the necessary steps to protect servicemembers, but it is not the fault of the existing substantive standards which the Department has put in place.

Other Concerns Raised by CFA

Servicemembers remain prime targets for credit providers that cluster around military bases and promote products targeted at the military. This has been an ongoing problem for servicemembers. One step that the Associations believe would be beneficial would be to simplify the steps needed for banks and credit unions to establish a presence on-base. Having a federally regulated and supervised depository institution readily accessible to servicemembers and their families would create a first-line of defense against predators. Equally important, ready access to supervised depository institutions should facilitate educational opportunities for servicemembers. And, it would provide ready-access to counseling from regulated financial institutions.

²¹ <http://www.military.com/benefits/military-pay/military-pay-allotments.html>

There are several financial constraints that the CFA study identifies which are unique to servicemembers and military families, the very issues that the Associations believe should be those which are addressed in special protections. These include:

- Non-reimbursed moving expenses
- Loss of spouse income due to frequent moves or deployment
- Expenses of maintaining houses that cannot be sold when a servicemember is ordered to move to a new base

While these issues are financial challenges, they are not components of credit products. However, the Associations and our members look forward to working with the Department to find ways to assist servicemembers with these financial challenges. For example, creating cooperative ventures with the National Military Family Association, developing a special job-bank for military spouses, and additional steps are programs which can and should be explored.

Another challenge that the CFA study identifies is that military bases are often located in states with lax consumer protections. To the extent that this is indeed the case, it is a problem which is clearly beyond the scope of the Military Lending Act. However, this is an area where expanding opportunities for financial education can become very important and should be pursued. Many Association members already participate in the Military Saves program which is in part designed to support financial education. Another option that would help support financial education for servicemembers would be to encourage the prudential banking regulators to give favorable consideration under the Community Reinvestment Act (CRA) to activities and investments which provide financial training to men and women in uniform and their families.

The study also identifies a number of problems that have been reported through the FTC Military Sentinel database. These include increased incidences of identity theft, debt collection, and mortgage foreclosure relief. In many instances, these are issues that are already addressed through separate consumer protection regulations. It is important that, absent a clear showing of a need to adopt separate, parallel, possibly overlapping and probably confusing regulations, existing consumer protection statutes and regulations should control.

It is also worth noting that the Consumer Financial Protection Bureau recently published its own study of complaints from servicemembers.²² As with the FTC program, many of the complaints identified in the CFPB study are not unique to servicemembers or military status but are covered by protections under existing consumer protection statutes.

Two Specific Products Identified by CFA

According to the CFA study, there are two types of products offered by depository institutions that the CFA deems to be like payday loans in structure, cost and borrower impact: overdraft loans & deposit advance loans.

What the study omits is that these products are often among the few limited options available to consumers who may have had problems managing their accounts. When the Associations commented on the MLA draft regulations, we pointed out that some of the benefits for consumers to overdraft protection and now advance deposit products is that they help consumers avoid bounced-check fees, avoid added fees which can be imposed by merchants or other payees, avoid the increased inconvenience which can be associated with replacing a check rejected for insufficient funds, and avoid potentially adverse information being submitted to consumer databases. Therefore, the benefits as well as the risks must be factored into the equation.

Separate and apart from omitting any of the benefits associated with these two types of products, the CFA study does not demonstrate how these products are unique to military users. Absent some unique

²² http://files.consumerfinance.gov/f/201304_complaintreport_-OSA-military-financial-complaints-report.pdf

attribute for servicemembers and their dependents, the Associations believe that it can only be confusing to providers and consumers to have separate and parallel requirements. Moreover, absent something unique for military consumers, it would be premature for the Department to take action when both products are under extensive study and review by the prudential regulators, particularly the CFPB.

However, there are several recommendations that CFA raises in the study that should be addressed in the context of the Department request for comment.

Overdrafts

First, CFA recommends that CFPB ban debit card overdraft fees for all transactions at the point-of-sale (POS) and at ATMs and that Truth-in-Lending Act (TILA) protections should be extended by Congress or CFPB to all overdrafts, including those triggered by checks, ACH and recurring debts. The Associations oppose those recommendations. As the comment is addressed to the Bureau and not the Department, the Associations will address those issues as part of the Bureau's ongoing study of overdraft programs. Creating separate and unequal requirements is costly, burdensome, confusing and counter-productive.

Second, the CFA study recommends that the Department revise the definition of consumer credit in the MLA rule to eliminate reference to TILA. That recommendation completely overlooks something carefully considered and discussed when the current regulations were adopted. At that time, using the TILA definitions was adopted by the Department as a simple mechanism to avoid confusion for lenders and, more particularly, consumers. By using a common definition, the Department adopted regulations that ensure clarity as well as simplify compliance. Adding separate and disparate definitions undermines the ability of consumers to understand credit products and should be avoided. It would be a step backwards to disconnect the MLA and TILA.

Third, CFA recommends that base commanders require on-base branches as part of the agreement to operate the branch to eliminate overdraft fees for POS or ATM transactions. The Associations are concerned, though, that taking steps which increase the burdens for operating a branch on base will only further discourage depository institutions from maintaining an on-base presence. That deprives servicemembers from ready access to financial institutions which are both carefully regulated and closely supervised, but it also makes them more susceptible to the very predatory lenders that CFA has identified as operating near the gates of most military bases. In other words, the recommendation would be counter-productive to protecting servicemembers.

Deposit Advance Products

The CFA also recommends that the Department take certain steps regarding deposit advance products, yet does not explain how these products are unique to servicemembers. That said, the study also recommends the Consumer Financial Protection Bureau study these products, something the Bureau is already undertaking. Any study also must consider alternatives available to the consumers who rely on them. And, any study also must evaluate the consumers that rely on them as well as the existing restrictions already in place to protect consumers.

The Department's review of the Military Lending Act is not the proper forum to conduct this discussion. The Bureau is already engaged in an evaluation of deposit advance products and working toward a considered policy position. Separate FDIC and OCC proposals are already under consideration. Another separate regulatory initiative at this point would not be constructive.

Another CFA recommendation was to prohibit on-base branches from offering these products. However, that overlooks the challenges presented by requiring an on-base facility to operate under a completely different set of requirements than off-base branches of the same institution. The added costs are likely to further discourage the presence of banks and credit unions on-base making the payday lenders the CFA identifies as the entities clustered around bases as the most likely sources for servicemembers to get credit, driving the military to the very payday lenders they want to steer them from.

The study also recommends that Congress or the Department define payday loans to include open-end credit. However, at the time the Department implemented the current rules, it was acknowledged that too

broad a definition or one which covered open-ended credit could affect eligibility for other open-end products, most notably home equity loans and credit cards, to the detriment of servicemembers. This is due to the fact that the definition triggers a whole series of restrictions for covered credit which was the foundation for the Department taking a focused approach in the definition. The Associations believe that care must be taken to focus on specific problems to avoid doing more harm than good.

Non-bank Products Identified by CFA

Finally, the CFA study identifies two additional products, primarily offered by non-depository institutions, that are deemed to cause problems for servicemembers and their dependents.

The first category is military installment loans. One of the challenges that the Department has grappled with in the past is how to define these loans in such a way that the definition does not encompass virtually any installment credit. As presented by the CFA, these are loans which are characterized by excessive fees and often provided by creditors which are not subject to state licensing requirements. One of the characteristics identified by CFA is that non-licensed creditors may target non-residents in order to sidestep state laws which only protect residents of the state. A second characteristic of these products, according to CFA, is that the provider operates as an affiliate of a tribal community or is a company outside the United States which operates through the Internet in order to evade supervision and enforcement. As a solution, CFA recommends simply expanding the existing definitions under the MLA to cover more products and services. However, this approach merely raises the likelihood of triggering the unintended consequences the Department sought to avoid in 2007 since it would deny access to credit for many servicemembers and their dependents. Instead, the Associations urge the Department to identify the specific problem and tailor a solution that solves that specific problem instead of taking a scattershot approach that is not focused.

A second category of products is retail installment products, including rent-to-own programs. Generally, these are products offered by retailers clustered near military bases with re-payment often set up using the allotment system. According to CFA, the retail items purchased through these products are often over-priced with substantial add-ons of questionable value. Since these are not covered by TILA, they are exempt from the current regulations. However, the Associations believe that expanding coverage by re-defining consumer credit under the MLA is more likely to harm servicemembers than help them. Instead, as with military installment loans, we stand ready to work with the Department to identify a targeted solution which focuses on the specific problem without taking a scattershot approach.