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December 16, 2014

The Honorable Charles Timothy 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,

I am writing on behalf of Woodstock Institute in response to the Department of Defense’s (DoD) notice of proposed rulemaking (NPRM) regarding enhancement of the Military Lending Act (MLA) protections that apply to consumer credit extended to members of the Armed Forces and their dependents. The NPRM, regarding “Limitations on Terms of Consumer Credit Extended to Service Members and Dependents,” was posted to the Federal Register on September 29, 2014. Woodstock Institute strongly supports the expansion of the MLA beyond its current definition of “consumer credit” to all forms of credit covered by the Truth in Lending Act (TILA). Ensuring that service members and their dependents are protected from predatory lending is crucial to their financial security and military readiness. The proposed rules account for shifts in the market that took place since the MLA was passed in 2007.

About Woodstock Institute

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity. We conduct research on financial products and practices, promote effective state and federal policies, convene a coalition of community investment stakeholders working to improve access to credit, and help people use our work to understand the issues and develop and implement solutions.

Background

Given serious concerns surrounding high-cost lending to service members, Congress passed the MLA in 2007. The Act limits the annual percentage rate (APR) of short-term, small-dollar loans offered to service members to 36 percent. It also prevents lenders from securing loans with a post-dated check or electronic access to a service member’s bank account, or voluntary military allotment. The legislation authorized the DoD to define the types of consumer credit that would be covered by the MLA. In the fall of 2007, the DoD definite “consumer credit” as: closed-end payday loans for \$2,000 or less with terms of 91 days or less; closed-end auto title loans with terms of 181 days or less; and, closed-end tax refund anticipation loans.

While the regulations curtailed many of the worst industry practices, the narrow definition of consumer credit did not extend protections to the wide range of high-cost

products that exist today, leaving military personnel and their families still vulnerable to a wide range of predatory loans.

In Illinois, the Payday Loan Reform Act (PLRA) and Consumer Installment Loan Act (CILA) were modified in 2010 and now include a number of loans that are not protected by the MLA. Payday installment loans have terms longer than 91 days and lenders can charge up to 400 percent APR. Small consumer installment loans also have terms longer than 91 days and lenders are allowed to charge up to 99 percent APR. There is no rate cap or maximum term for auto title loans in Illinois and a recent report released by the Illinois Department of Financial and Professional Regulation states that almost 90 percent of the auto title loans made in 2013 had loan terms longer than 360 days. The average APR for auto title loans in Illinois is 201 percent.¹ Service members in Illinois are not protected from any of these products under current law. In one example from our state, the spouse of a wounded warrior in the Illinois National Guard took out an auto title loan for \$2,575. The loan had a term of longer than 181 days, so it was not covered by the MLA. With an APR of 300 percent, the finance charges on the loan were \$5,720.24, amounting to a total cost of \$8,295.24.²

Like Illinois, there are at least 10 other states that permit payday and other high-cost loans that are not covered by the MLA, and at least 12 states that permit auto title loans that are not covered. We believe service members should be protected, regardless of the state in which they live.

Proposed Rules Expand Protections

Under the proposed rules, the DoD expands its definition of “consumer credit” to include all forms of credit subject to TILA and not specifically excluded by the MLA. This rule change will adequately address the loopholes of the original act by covering all payday loans, installment loans, and title loans. Lenders will no longer be able to evade the rules by extending the term of a loan beyond 91 days, increasing the principal amount, or structuring the loan as open-end credit. All of the products currently offered in Illinois will now be covered, meaning lenders will need to abide by the 36 percent rate cap. We support the Department’s decision to ensure broad coverage through a comprehensive definition of consumer credit as opposed to a piece-meal inclusion on a product-by-product basis. This language prevents future loopholes and ensures that even as products change in the marketplace, they will remain covered by the MLA protections.

The proposed rules ensure that add-on products, such as such as single premium credit insurance, debt cancellation, debt suspension or other ancillary fees, are included in the calculation of interest and are capped as part of the MLA’s 36 percent interest and fee cap. Credit cards are included to ensure that open-end lines of credit are not used as loopholes by lenders to avoid MLA protections. The rules include exemptions for bona fide, reasonable, and customary credit card fees, and most cards on the market would be exempt. The DoD struck a balance between safeguarding service members from predatory high-cost credit cards and ensuring access to safe credit cards with traditional and reasonable fees.

The changes also include a new process for lenders to verify a borrower’s military status. Lenders will be able to determine whether a consumer is covered by the MLA through an online, publicly available DoD database. Those lenders who use the database to determine eligibility will receive safe harbor from liability under the MLA, though they will still be required to follow individual state laws related to small dollar loans.

¹ “Illinois Trends Report All Consumer Loan Products Through December 2013.” Illinois Department of Financial and Professional Regulation. May 28, 2014.

² “Testimony of Hollister K. Petraeus Before the U.S. Senate Committee on Commerce, Science & Transportation.” Consumer Financial Protection Bureau. November 20, 2013.

Need for Additional Protections

While we applaud the DoD's strong proposed rule, we encourage the Department to extend MLA protections to certain products that are not covered by TILA. In Woodstock's letter to the Department regarding the advanced notice of proposed rulemaking in July of 2013, we urged the DoD to include overdraft programs and rent-to-own transactions in its definition of consumer credit. These types of products can often trap consumers in cycles of debt similar to payday loans and auto title loans. We encourage the Department to examine the impact that these and other products have on military families.

Conclusion

Woodstock Institute commends Congress and the Department for their work to protect military families from usurious and predatory financial products. The Military Lending Act couples strong rate caps with other protections to ensure that service members have access to safe and affordable credit. It is clear that the current definition of "consumer credit" does not sufficiently cover the range of high-cost products that exist today. The proposed rule provides comprehensive coverage by including all products covered by TILA, while also maintaining access to credit cards with bona fide, reasonable, and customary fees. We encourage the Department to explore the inclusion of overdraft products and rent-to-own transactions under the MLA. We are grateful for the opportunity to comment.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dory Rand".

Dory Rand, President
Woodstock Institute

