

December 26, 2014

The Honorable Charles Timothy Hagel  
Secretary of Defense  
U.S. Department of Defense  
Federal Docket Management System Office  
4800 Mark Center Drive  
2nd Floor, East Tower, Suite 02G09  
Alexandria, VA 22350-3100

Re: Limitations on Terms of Consumer Credit Extended to Service Members and Dependents  
Docket ID: DoD-2013-OS-0133  
RIN 0790-AJ10

Dear Secretary Hagel:

The undersigned groups file this comment to the Department of Defense's (DoD) Proposed Rule regarding "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents." We appreciate the opportunity to respond to the DoD's notice and support the revision and expansion of the regulation beyond the current definition of "consumer credit" to one that applies to all consumer credit currently regulated under the Truth in Lending Act (TILA). This expansion will protect our nation's active-duty Service members and their dependents from high-cost, abusive credit.

### **Loopholes in the Military Lending Act put Service members' financial security at risk**

In 2006, Congress passed the Military Lending Act (MLA) as part of the John Warner National Defense Authorization Act of 2007. The MLA was enacted to protect active-duty Service members and their dependents from high-cost loans and other predatory credit practices that adversely impacted their military readiness. The MLA caps total interest and fees at 36 percent and bans harmful credit product features such as: renewals and refinances that do not benefit the borrower; forced arbitration; prepayment penalties; use of checks, vehicle titles or other automatic methods of access to the borrower's bank account; and requiring repayment by allotment as a condition of the extension of credit.

Congress exempted residential mortgages and loans to finance the purchase of automobiles and other personal loans secured by property. It authorized the DoD to define the scope of consumer credit and creditors covered by the MLA. The DoD subsequently issued its rule defining "consumer credit" that took effect on October 1, 2007 and applied 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. These narrow definitions were easily evaded by lenders who modified products to fall outside the rule's scope by either lengthening the loan term or structuring the loan as an open-end line of credit.

For example:

- 400 percent Title Installment Loan - A South Carolina lender made a vehicle title loan to a Service member on June 24, 2011 on a 13 year old car. The loan amount was \$1,615 to be repaid in 32 months with \$15,613 in interest at a 400 percent annual percentage rate. The title loan was exempt from the current rule's scope as the loan term exceeded 181 days. The loan included a forced arbitration clause that would have been prohibited if the loan was covered by the MLA.

- 584 percent Open-end Line of Credit - Prior to the enactment of the MLA, one military lender made traditional closed-end payday loans but then changed its product to open-end payday loans that are exempt from the current rule's scope. A 2012 monthly activity statement discloses a "584.68 Annual Percentage Rate" on a loan balance of \$2,000, plus other fees.
- 360 percent Online Installment Loan - A Sailor borrowed \$500 from an online lender in 2012 and was charged \$523 in interest for a total repayment of \$1,024 for a loan over 140 days. Since the term of the loan exceeded 91 days the MLA protections did not apply.

Recognizing that loopholes in the 2007 rules have allowed lenders to evade the MLA protections, Congress required DoD to issue a report to evaluate the impact of abusive credit on Service members' financial readiness. In April 2014, DoD issued their report, "Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents." The report included the results of a Service member survey and feedback from military financial counselors and found that 11 percent of enlisted Service members continue to turn to high-cost credit options. The report found that military financial counselors overwhelmingly reported that Service members would not be negatively impacted if access to high-cost credit was restricted. The findings suggested that applying the 36 percent rate cap on a product-by-product basis is unlikely to reduce the accessibility of high-cost and abusive credit. DoD concluded that an expanded and comprehensive definition of consumer credit would be a more effective approach to protect Service members from high-cost, abusive credit.

### **The proposed rule provides a comprehensive approach to defining consumer credit and prevents future loopholes**

The proposed rule closes the loopholes in the current rule by expanding the definition of consumer credit under the Military Lending Act to include products that are currently subject to the protections of TILA. Rather than taking a product-by-product approach, the proposed rule will prevent lenders from exploiting Service members by ensuring that high-cost products with abusive terms are covered by the protections established by the MLA regardless of the term of the loan or the loan's structure.

For example, the proposed definition of covered consumer credit would prevent lenders from structuring payday loans for longer than 91 days or larger than \$2,000 for the purposes of charging higher rates. It would also stop lenders from structuring auto title loans as longer than 181 days or issuing high-cost, open-end lines of credit with abusive features that are currently exempt. Likewise, the proposed rule would cover additional high-cost products that negatively affect a Service members' financial security, such as high-cost overdraft lines of credit and abusive installment lending.

The proposed rule also addresses widespread concern about the use of add-on products. It ensures that certain additional charges, 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. Add-on products, such as insurance products, often serve as a way to increase revenue in states that restrict interest rates and significantly increase the total cost of borrowing beyond the disclosed annual interest rate.

While the proposed rule would also apply the MLA protections to credit cards for the purpose of preventing abusive lenders from using high-cost credit cards to avoid MLA protections, DoD provided important exemptions for bona fide, reasonable and customary credit card fees. Most credit cards in the

marketplace would be excluded from the rule, and Service members that rely on these products to meet their credit needs would not be affected.

There are several products that are not included that we believe warrant additional scrutiny. We view fee-based overdraft coverage as a high-cost credit product with similar risks as payday loans. Overdraft fees are not subject to the protections provided by TILA and would not be covered by the interest, fee cap and other protections of the MLA. A 2014 survey conducted by DoD found that while a smaller percentage of Service members were enrolled in fee-based overdraft programs, those Service members who were enrolled used them more frequently than non-Service members. Of the Service members enrolled, one in three were charged overdraft fees more than 12 times per year. Like overdraft fees, rent-to-own transactions that are not subject to TILA protections are excluded by the proposed rule. We encourage the Department of Defense to carefully review the impact that these and other excluded products have on the financial security of Service members and their dependents and to take appropriate action.

### **Conclusion**

The proposed rule strikes an appropriate balance between access to credit and restricting access to high-cost abusive credit. The proposed rule provides a targeted restriction for credit products that have been shown to negatively impact Service members' financial security, and ensures access to lower-cost options such as the \$142 million in no-cost loans provided by Military Relief Societies in 2012.

We thank the Department of Defense for its work protecting Service members from high-cost credit with abusive terms and urge the adoption of a final rule that will close the current loopholes in the definition of consumer credit and will prevent high-cost, abusive lenders from evading the protections in the MLA that keep our men and women in uniform from financial risk.

Sincerely,

### **National Organizations**

Americans for Financial Reform  
Center for Responsible Lending  
Consumer Action  
Consumer Federation of America, DC  
Consumers for Auto Reliability and Safety  
Consumers Union  
NAACP  
National Association of Consumer Advocates  
National Consumer Law Center (on behalf of its low income clients)  
National Council of La Raza  
National People's Action  
Public Citizen  
Sargent Shriver National Center on Poverty Law  
Southern Poverty Law Center  
U.S. PIRG  
United Policyholders

## **State and Local Organizations**

Alaska PIRG, AK

Alabama Arise, AL  
Gowen Consulting, AL  
Tuscaloosa Citizens Against Predatory Practices, AL  
YWCA Central Alabama, AL

Arkansans Against Abusive Payday Lending, AR

A New Leaf, AZ  
Arizona Community Action Association, AZ  
Arizona PIRG, AZ  
Center for Economic Integrity, AZ  
NACOG, AZ  
Northern Arizona Council of Governments, AZ  
RVCS, AZ

4141 Ministries, CA  
California Association of Food Banks, CA  
California Reinvestment Coalition, CA  
CALPIRG, CA  
CAMEO (California Association for Micro Enterprise Opportunity), CA  
CLSEPA, CA  
Coachella Valley Housing Coalition, CA  
Community Housing Partnership, CA  
Consumer Federation of California, CA  
Consumers for Auto Reliability and Safety, CA  
FaceFront Music Inc, CA  
Fresno CDFI, CA  
Habitat for Humanity of Greater Los Angeles, CA  
Housing and Economic Rights Advocates, CA  
Inland Fair Housing and Mediation Board, CA  
Lighthouse Philanthropy Advisors, CA  
Mission Asset Fund, CA  
Mission SF, CA  
NeighborWorks Orange County, CA  
Opportunity Fund, CA  
San Francisco Office of Financial Empowerment, CA  
Shamana Consulting, Inc., CA  
The Well Community Church, CA  
United Way Silicon Valley, CA

U.S. Department of Defense  
December 26, 2014  
Page 5

Bell Policy Center, The, CO  
Colorado Latino Leadership Advocacy Research Organization, CO  
Colorado Progressive Coalition, CO  
Consumers United Association, CO  
CoPIRG, CO

ConnPIRG, CT

Delaware Alliance for Community Advancement, DE  
Delaware Community Reinvestment Action Council, Inc., DE

Consumer Federation of the Southeast, FL  
Florida Alliance for Consumer Protection, FL  
Florida PIRG, FL  
Jacksonville Area Legal Aid, Inc., FL  
Navy-Marine Corp Relief Society - Florida, FL

Georgia PIRG, GA  
Georgia Rural Urban Summit, GA  
Georgia Watch, GA

Habitat for Humanity West Hawaii, HI

Child and Family Policy Center, IA  
CWA Iowa State Council, IA  
Iowa Citizens for Community Improvement, IA  
Iowa PIRG, IA

Idaho Community Action Network, ID

Center for Economic Progress, IL  
Chatham Business Association, IL  
Chicago Consumer Coalition, IL  
Citizen Action/Illinois, IL  
Gospel Justice Initiative, IL  
Heartland Alliance, IL  
Illinois Asset Building Group, IL  
Illinois PIRG, IL  
Monsignor John Egan Campaign for Payday Loan Reform, IL  
National Community Investment Fund, IL  
North Side Community Federal Credit Union, IL  
Partners in Community Building, IL  
Project IRENE, IL  
Retired, IL  
The Resurrection Project, IL  
Woodstock Institute, IL

U.S. Department of Defense  
December 26, 2014  
Page 6

Indiana Assets & Opportunity Network, IN  
Indiana Association for Community Economic Development, IN  
Northwest Indiana Reinvestment Alliance, IN

Kansas Appleseed, KS  
Sunflower Community Action, KS

Kentucky Equal Justice Center, KY

Jesuit Social Research Institute, Loyola University New Orleans, LA  
Louisiana Budget Project, LA

MASSPIRG, MA

Maryland Consumer Rights Coalition, MD  
Maryland PIRG, MD  
Neighborhood Housing Services of Baltimore, MD  
Public Justice Center, MD

Maine Center for Economic Policy, ME  
Maine People's Alliance, ME

Habitat for Humanity of Kent County, MI  
PIRG in Michigan (PIRGIM), MI

ISAIAH, MN

Communities Creating Opportunity, MO  
Missouri Faith Voices, MO  
MoPIRG, MO

Coalition for a Prosperous Mississippi, MS

Indian People's Action, MT

Action NC, NC  
CCCS of Greater Greensboro, A division of Family Service of the Piedmont Inc., NC  
Credit Counseling Agencies of North Carolina, NC  
Disability Rights NC, NC  
Financial Pathways of the Piedmont, NC  
Habitat for Humanity of Charlotte, NC  
Habitat for Humanity of North Carolina, NC  
Military Officers Association of America - North Carolina Council of Chapters, NC  
National Association of Social Workers-North Carolina Chapter, NC  
NC State AFL-CIO, NC  
NCPIRG, NC  
North Carolina Consumers Council, Inc., NC  
North Carolina Council of Churches, NC

U.S. Department of Defense  
December 26, 2014  
Page 7

North Carolina Housing Coalition, NC  
North Carolina Justice Center , NC  
OnTrack Financial Education & Counseling, NC  
North Carolina Conference United Methodist Church, NC  
Reinvestment Partners, NC  
TarHeel Alliance of Classroom Teachers, NC  
The Collaborative of North Carolina, NC  
The Support Center, NC

North Dakota Economic Security and Prosperity Alliance, ND

Nebraska Appleseed, NE

NHPIRG, NH  
United Valley Interfaith Project, NH

NJ PIRG, NJ

New Mexico Office - Center for Economic Integrity, NM  
NMPIRG, NM

Progressive Leadership Alliance of Nevada, NV

NYPIRG, NY

Cleveland Housing Network, OH  
Cleveland Tenants Organization, OH  
Coalition on Homelessness and Housing in Ohio, OH  
Community Action Commission of Fayette County, OH  
Defiance County Residential Housing, OH  
Diocese of Southern Ohio, OH  
Habitat for Humanity - MidOhio, OH  
House of Ruth, OH  
Huntington WV Area Habitat for Humanity, Inc., OH  
Military Officers Association of America - Ohio, OH  
Neighborhood Housing Services of Greater Cleveland, OH  
New Home Development, OH  
Ohio CDC Association, OH  
Ohio PIRG, OH  
Ohio Poverty Law Center, OH  
Orrville Area United Way, OH  
Over-the-Rhine Community Housing, OH  
Policy Matters Ohio, OH

U.S. Department of Defense  
December 26, 2014  
Page 8

Oklahoma Policy Institute, OK

Economic Fairness Oregon, OR  
Oregon PIRG (OSPIRG), OR

Clarifi, PA  
Health, Education, and Legal Assistance Project: A Medical-Legal Partnership, PA  
Just Harvest, PA  
PennPIRG, PA  
Pennsylvania Council of Churches, PA  
The One Less Foundation, PA  
Unitarian Universalist Pennsylvania Legislative Advocacy Network, PA

Rhode Island State Council of Churches, RI  
RIPIRG, RI  
The Community Relations Council of the Jewish Alliance of Greater Rhode Island , RI

Columbia Consumer Education Council , SC  
South Carolina Appleseed Legal Justice Center, SC

Anti-Poverty Coalition of Greater Dallas, TX  
Texas Appleseed, TX  
TexPIRG, TX

Virginia Partnership to Encourage Responsible Lending, VA  
Virginia Poverty Law Center, VA

United Valley Interfaith Project, VT

Washington Statewide Poverty Action Network, WA  
WASHPIRG, WA

WISPIRG, WI

Huntington WV Area Habitat for Humanity, Inc., WV