

January 16, 2015

Federal Docket Management System Office  
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East Tower, Suite 02G09  
Alexandria, VA 22350-3100

Proposed changes to the Military Lending Act Regulation  
Department of Defense  
RIN 0790-AJ10  
79 *Federal Register* 58601 (September 29, 2014)

Dear Sir or Madam:

The American Bankers Association (ABA)<sup>1</sup> respectfully submits this additional letter<sup>2</sup> to the Department of Defense's (Department)'s proposal to amend the regulations that implement the Military Lending Act (MLA) in light of the Bureau of Consumer Financial Protection's (Bureau) study, entitled "The Extension of High-Cost Credit to Servicemembers and Their Families" (Study). That study was publicly released after comments to the proposal were due and therefore unavailable for reference and comment by the public.

ABA writes to alert the Department to shortcomings of the Study and the accompanying Bureau comment letter, which shortcomings make them unsuitable for reliance by the Department in developing a final rule. Fundamentally, ABA believes that the Bureau's report is incomplete and flawed and the associated comment letter's position unsupported and arguably even contradicted by the Bureau's own Study. Indeed, the Bureau's Study on which it bases its advocacy for the adoption of a Department proposal does not meet the Bureau's own evidence-based standard that it would apply to its own rule-making. In other words, the Department should not adopt changes to the MLA regulations on the basis of a deficient administrative record from the Bureau that would not pass muster under the Bureau's own regulatory obligations under the Dodd-Frank Act.

First, the Bureau's letter asserts that there is a differential exposure of military families to Deposit Advance Programs (DAPs) when compared to the population at large—intimating that this differential warrants covering military families' usage of DAPs under the MLA. In fact, as the Study points out in its footnote 11, whatever differential penetration the Study calculates has not been evaluated against other explanatory variables that might eliminate the statistical significance of such a superficial penetration number. The footnote further warns that this percentage "does not mean that being a servicemember makes a person more likely to use deposit advance products." This important point is ignored in the comment letter.

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$15 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$11 trillion in deposits and extend more than \$8 trillion in loans.

<sup>2</sup> The ABA joined other trade associations in a joint comment letter submitted December 18, 2014. It will be referred to as the "Association [letter](#)."

What is further disappointing about the Bureau Study itself is that it publishes such an innuendo when the Bureau has within reach the information and capability of testing such explanatory variables. However, rather than supply the Department with a thorough analysis that would provide a probative basis for considering differential treatment of DAPs under the MLA, the Bureau fails to meet its responsibility to inform authoritatively the Department as part of its consultative role. We urge the Department to take no action in connection with the supposed differential exposure of military personnel and their spouses and dependents to DAPs until the Department is able to pursue and obtain the explanatory analysis identified by but missing from the Bureau's Study.

Second, the Study and comment letter urge coverage of DAPs under the MLA without addressing the merits of DAPs or making explicit whether the Bureau is excluding the product from servicemember choice alone or considers the product ill-advised for any and all Americans.<sup>3</sup> The Bureau has spent the better part of two years studying payday loans and other small dollar short-term consumer credit such as DAPs and we understand it is on the verge of initiating a rule-making in this area that will cover all consumers.<sup>4</sup> The Department, considering the Bureau comment letter, should take into account that the Bureau has hardly begun its own formal and public consideration of the merits of DAPs, so any Bureau views should be considered at most preliminary hypotheses, untested yet by full and adequate research and public consideration. It is very possible that the Department could be taking action to deny to military families financial service products available to the broader public.

These points illustrate that the Bureau's comment letter and press release in effect use the Study and data to promote the unsupported conclusion that military personnel are more likely to use DAPs and that DAPs are not suitable for use by servicemembers. However, on each point the Bureau is offering advice that it would be reluctant to consider by its own standards.

In addition, the Bureau supports the MLA regulation proposal "to draw on the framework of TILA [Truth in Lending Act] to broaden the regulatory definition of consumer credit under the MLA" and recommends that the scopes of both statutes be "harmonized." However, in doing so, the Bureau is advocating what is beyond the scope and purpose of the MLA. The MLA was enacted to focus directly on specific problems faced by military personnel, not to create a template for Department review of a broader range of financial services. As the Department itself has noted, that is a task beyond its responsibility and resources. For example, TILA includes mortgages and purchase money loans such as car loans, and MLA specifically excludes these products from its purview. Thus, harmonization of these two regulations cannot and should not be a justification for adopting a broader definition of consumer credit in the MLA regulation.

We also note that the Bureau's letter urges Department adoption of its proposed rule without addressing important points that ABA and other lending trade associations made in a November 21,

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<sup>3</sup> We also believe that the Bureau's letter did not adequately describe or characterize deposit advance products. For example, the Bureau, in its comment letter and Study, states that the "typical" fee was \$10 per \$100. However, one bank that had offered the product for almost a decade and that was a dominant provider among the approximately six banks that had been offering the product, charged \$7.50 per \$100, a significantly lower price. As the Bureau notes, banks have largely abandoned the product based on OCC and FDIC guidance.

<sup>4</sup> Alan Zibel, "CFPB Sets Sight on Payday Loans," WSJ, 5 January 2015.

2014, meeting with Bureau staff about the unworkability of the military annual percentage rate (MAPR) with regard to mainstream products, including credit cards and small dollar affordable loans. Nor does the Bureau's letter address the concerns that we expressed to the Bureau about the vagueness, risks, and unintended consequences of the regulation's other prohibitions, such as those against waivers of the "right to legal recourse," and "unreasonable" notices of legal action.

In addition, the Bureau seems to ignore concerns about the ability of the Department to handle the significant increase in the volume of inquiries into its database to verify military status that will result if the proposal is adopted. Were the Bureau conducting this rule-making, it could not so cavalierly ignore these facts. However, apparently when taking a public position on another agency's rule, the Bureau does not observe a similar commitment to be data-driven and thorough in evaluating the relevant facts impacting a proposal, even after those issues are brought to its attention.

We appreciate the opportunity to provide these additional comments in light of the Bureau's recent Study and comment letter. We caution the Department not to rely upon the Bureau's letter and Study to extend the MLA rule's coverage to insured depository institution products like DAPs, credit cards, or other mainstream consumer financial products that have not been demonstrated to cause the kinds of problems for servicemembers and their spouses and dependents that were targeted by the MLA. Ultimately, it is servicemembers of all ranks and their spouses and dependents who will suffer if a rule is promulgated on such a faulty basis as the points raised in the Bureau's recent materials. These families will lose access to valuable mainstream products that will help them manage their finances as effectively as do members of the general population.

We appreciate the opportunity to provide these supplementary comments and are happy to discuss.

Sincerely,

A handwritten signature in black ink that reads "Nessa E. Feddis". The signature is written in a cursive, flowing style.

Nessa Feddis  
Vice President and Senior Counsel