December 23, 2014

The Honorable Charles Timothy Hagel
Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-3010

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

Dear Mr. Secretary:

Consumer Federation of America, the Center for Responsible Lending, Consumer Action, the National Association of Consumer Advocates, the National Consumer Law Center (on behalf of its low-income clients), and U.S. PIRG[1] file this comment to the Department of Defense's (DoD) Proposed Rule regarding the Military Lending Act (MLA).[2] We appreciate the opportunity to respond to the DoD's notice. We support expansion of the regulation beyond the current narrow definition of "consumer credit" to apply to many more forms of consumer credit than currently regulated under the MLA. The proposed rule will better protect our nation's active-duty Service members and their dependents from predatory lending.

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[1] **Consumer Federation of America** is an association of nearly 300 non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, education and advocacy.

The Center for Responsible Lending (CRL) is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, which consists of a state-chartered credit union (Self-Help Credit Union (SHCU)), a federally-chartered credit union (Self-Help Federal Credit Union (SHFCU)), and a non-profit loan fund. SHCU has operated a North Carolina-chartered credit union since the early 1980s. Beginning in 2004, SHCU began merging with community credit unions that offer a full range of retail products. In 2008, Self-Help founded SHFCU to expand Self-Help's mission.

The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

Through multilingual financial education materials, community outreach, and issue-focused advocacy, **Consumer Action** empowers underrepresented consumers nationwide to assert their rights in the marketplace and financially prosper.

Since 1969, the nonprofit **National Consumer Law Center®** (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

U.S. PIRG serves as the federation of state Public Interest Research Groups. PIRGs are non-profit, non-partisan public interest advocacy organizations that take on powerful interests on behalf of their members. The PIRGs have long advocated for a fair financial marketplace.

[2] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 79 Fed. Reg. 58602 (Sept. 29, 2014).

The rules promulgated in 2007 by DoD under the MLA took important steps in protecting Service members from predatory forms of credit. But the rules were limited in scope and resulted in gaps and evasions. More than half of active-duty Service members are vulnerable to lenders exploiting the rule. This drastic limitation of the MLA's protections undermines Congress's purpose to protect Service members from financial exploitation.

The proposed rule would comprehensively address the shortcomings of the 2007 rule. The new rule would broaden the scope of coverage to include all forms of consumer credit covered under the MLA statute.[3] By broadly defining "consumer credit," the proposed rule would close the loopholes exploited by predatory lenders and broaden the rule's reach to other abusive products.

Broadening coverage to more forms of consumer credit and closing the loopholes exploited by payday lenders will provide the comprehensive protections intended by Congress to promote troop readiness by ensuring they are not mired down by predatory lending.

Although we believe the proposed rule is a strong step to protecting Service members, we outline below several key areas where the rule must be furthered strengthened.

I. Background.

In 2006, Congress passed the Military Lending Act (MLA) through the Talent-Nelson amendment to the John Warner National Defense Authorization Act of 2007.[4] 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 the readiness of the armed services' all-volunteer force. The statutory protections of the MLA include prohibitions against:

- Extensions of credit exceeding the 36 percent Military Annual Percentage Rate (MAPR) cap;
- Renewals and refinances that do not benefit the borrower;
- Waivers of legal rights under the Service members Civil Relief Act;
- Mandatory arbitration;
- Prepayment penalties;
- The use of checks, car 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 gave the DoD broad authority to define the scope of consumer credit and creditors covered by the MLA to prescribe regulations to effectuate the statute.[5] Congress exempted only

[3] 10 U.S.C. § 987(i)(6).
[4] 10 U.S.C. § 987.
[5] 10 U.S.C. § 987(h)(2)(D) and (E).

residential mortgages and loans to finance the purchase of automobiles and other personal property secured by that property (purchase-money credit) from the scope of the statute.[6]

The DoD's first MLA rule, promulgated in 2007, defined "consumer credit" to include only three types of narrowly defined products: closed-end payday loans and car-title loans of limited length, and tax refund anticipation loans.[7] While the rule did have an impact in protecting Service members from those predatory loans, this narrow interpretation of the MLA ultimately opened the door to harmful evasions of the MLA's intended reach.

In June 2012, Consumer Federation of America (CFA) published its study of the impact of the law as implemented by the DoD rule, and the harmful evasions that had emerged.[8] The report included an extensive review of loan products available to Service members, case studies conducted at military bases, and maps to illustrate the prevalence of nearby high-cost lenders. In March 2013, CFA also conducted an analysis of state high-cost lending laws and found that over half of Service members are currently stationed in states where state law permits high-cost lending that is not included in the 2007 definition of covered consumer credit.[9]

In 2012, Congress amended the MLA to strengthen enforcement tools and clarify that lenders are subject to state protections when lending to non-resident military borrowers.[10] The Conference Report accompanying H.R. 4310, the National Defense Authorization Act for Fiscal Year 2013, advised DoD to remain vigilant against predatory lending and abusive practices. The Conference Report also required DoD to conduct an evaluation of the effectiveness of the 2007 rule implementing the Military Lending Act and to review its regulations to ensure they evolved to address predatory lending products offered since 2007 and abuses identified by consumer protection advocates.

As required by Congress, the Department of Defense completed and submitted a report entitled "Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents" in April 2014.[11] The report included the results of a survey of Service members 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 also found that financial education alone is insufficient in reducing demand, restrictions on high-cost credit are needed and Service members would not be negatively impacted if access to high-cost credit was restricted.

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[6] 10 U.S.C. § 987(i)(6). All references in these comments to expansion are made subject to these specific statutory exemptions in the Military Lending Act.
[7] 32 CFR § 232.3.
[8] Fox, Jean Ann, *The Military Lending Act Five Years Later: Impact On Service members, the High-Cost Small Dollar Loan Market, and the Campaign against Predatory Lending.* Washington, DC: Consumer Federation of America, May 2012.
[9] Feltner, Thomas, Laura Udis, and Jean Ann Fox. *Policy Brief: Gaps in the Military Lending Act Leave Many Service Members Vulnerable to Abusive Lending Practices*. Washington, DC: Consumer Federation of America, July 2013. http://www.consumerfed.org/pdfs/130725-policybrief-mla-cfa.pdf.
[10] 10 U.S.C. § 987(d)(2).
[11] *Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents*. Washington, DC: Department of Defense, April 2014. Available at http://consumerfed.org/pdfs/140429_DoD_report.pdf.

The findings of the 2014 DoD report strongly suggested that, as currently implemented, the Military Lending Act does not sufficiently cover the high-cost credit products available to Service members, and that applying the 36 percent rate cap on a product-by-product basis is unlikely to reduce the accessibility of high-cost credit. Based on these findings, the Department of Defense concluded that a comprehensive approach is most likely to be effective.

We believe that the proposed rule provides that comprehensive approach necessary to prevent further evasions of the Military Lending Act. However, the proposed rule should be strengthened (as outlined below) to ensure that lenders are unable to modify products for the purpose of avoiding the MLA interest and fee cap and other protections.

II. The Military Annual Percentage Rate: A comprehensive 36 percent rate cap will protect Service members from abusive lending.

The 36 percent Military Annual Percentage Rate cap (MAPR) forms the core of the Military Lending Act and the proposed rule. If properly defined and applied, a 36 percent MAPR is the most effective measure to ensure borrowers do not receive to unaffordable and predatory loans while balancing the accessibility and affordability of credit. However, depending on which fees are included, the 36 percent MAPR could be calculated very different ways. The inclusion or exclusion of fees could determine whether financial products meet the cap.

The Secretary of Defense has some latitude to determine which fees to include in the MAPR. DoD's authority to set the MAPR stems directly from the MLA statute, which forbids creditors from "impos[ing] an annual percentage rate of interest greater than 36 percent" to Service members.[12] The statute instructs the Secretary of Defense to establish through rulemaking the "method for calculating the applicable annual percentage rate" and the "maximum allowable amount of all fees."[13] The Secretary also has the ability to establish "such other criteria or limitations" as he "determines appropriate."[14] The statute instructs DoD to track the definitions used in the Truth in Lending Act Regulation Z, but with specified exceptions that close some, but not all, of the TILA loopholes.[15] The statute defines "interest" as "all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, and any ancillary products,"[16] a broader definition than in Reg. Z.

While the proposed rule expands the protections of the MLA to many more forms of credit, it also weakens the MAPR by exempting many fees. To a certain extent that is an unfortunate but necessary by-product of the expanded rule, needed to prevent Service members from losing access to mainstream, and generally positive, forms of credit. But the exemptions pose the risk of

[12] 10 U.S.C. § 987(b).
[13] § 987(h)(2)(B) and (C).
[14] § 987(h)(2)(E).
[15] § 987(i)(4).
[16] § 987(i)(3).

evasions, and in the sections below we suggest further measures to avoid those evasions and ensure that any exemptions do not open the door to high-cost, harmful lending.

III. The need for a broad definition of consumer credit.

We enthusiastically support the Secretary's proposal to extend the definition of "covered credit" beyond the narrow definition in the 2007 rule. Only by providing a broad definition can the Secretary ensure that lenders comply with the letter and spirit of the rule. As discussed in greater detail in the next section, experience with the application of the 2007 rule demonstrates unambiguously that predatory lenders will find a way to evade the rule if it narrowly defines "covered credit" in terms of amounts of the loan, duration of the loan, or structure of the loan. Even small changes to the terms of a loan – adding a day to the length of the loan, for example – allowed lenders to escape the rule without eliminating well-documented abusive practices.

Enlarging the definition of credit to include all forms of credit prevents evasion and is the most effective way to give Service members the comprehensive protections Congress intended.

IV. Question 1. The proposed rule defines consumer credit consistently with certain credit regulated under TILA and will close the loopholes in the 2007 MLA rules.

We support DoD's proposed rule to expand the definition of consumer credit to include all credit currently subject to the Truth in Lending Act (TILA), and to include open-end credit and additional fees that increase the cost of borrowing, but are not currently disclosed under the Truth in Lending Act.

A. *The proposed rule provides a comprehensive approach to defining consumer credit.*

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, which is how lenders evade the 2007 rule which is limited to loans of a maximum of 90 days and $2000. It would likewise stop lenders from structuring car-title loans as longer than 181 days, or styling their products open-end lines of credit with abusive features that are currently exempt because the rule only applies to closed-end loans. Likewise, the proposed rule would cover additional high-cost products that negatively affect a Service members' financial security, such as abusive installment lending, especially those which stack excessive fees for add-on products on top of the interest charges.

B. *Many payday loans, car-title loans, open-end credit and other high-cost, abusive credit fall outside the 2007 definitions.*

As a direct result of narrow definition used in the 2007 rules, many high-cost, risky payday, installment, and car-title products continue to be available to and used by Service members. For example, in 2010, a Service member reported a car-title loan line of credit from California title lender of $800 with an annual interest rate of 300 percent. The loan was not subject to the Act's protections under the current rule because it was structured as an open-end line of credit.[17] In addition, in 2013, the CFPB reported loans from Service members in North Carolina and Delaware who each took out loans at an APR of 585 percent. The loans were also not subject to the Act's protections under the current rule because they were structured as open-end lines of credit.[18] A list of loans made to Service members that fall outside the proposed definition of covered consumer credit and would be appropriately captured by the proposed rule is included in Appendix A.

C. *State laws permit MLA evasions for almost one third of Service members.*

Much of payday and car-title lending is regulated at the state level, resulting in the availability of numerous types of harmful loans that may evade the MLA. Each state sets different parameters for defining and permitting particular forms of consumer credit. However, these state laws often do not provide the same protections as the MLA.

In all, the Consumer Federation of America estimates that 356,894, or 29 percent of active duty Service members in 2011 were stationed in the 11 states that permit payday lending not subject to the Military Lending Act.[19]

In at least ten states, the 2007 Department of Defense rule does not apply to all payday lending permitted by state laws that allow payday loans longer than 90 days. Seven state laws (Alaska, Idaho, Indiana, Ohio, Rhode Island, South Dakota, and Utah) authorize payday lending but do not set a maximum loan term in defining the product, permitting loans longer than 91 days that evade the current rule's limited coverage to 90-day loans. Two more states (Colorado and Illinois) have a minimum loan term that exceeds 91 days, and Texas sets a maximum term of 180 days.[20]

Many payday lenders have also modified their loan products to be open-end lines of credit, not covered by the DoD definition of a payday loan as a closed-end loan. For example, Virginia

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[17] On file with Consumer Federation of America as case 2010-08-31.
[18] *Id.*
[19] CFA analysis of state high-cost loans conducted in March 2013 applied to demographic data contained in Department of Defense, Office of the Deputy Under Secretary of Defense (Military Community and Family Policy), "2011 Demographics: Profile of the Military Community" Exhibit 2.34 at p. 32, available at http://www.militaryonesource.mil/12038/MOS/Reports/2011_Demographics_Report.pdf.
[20] Feltner, Thomas, Laura Udis, and Jean Ann Fox. *Policy Brief: Gaps in the Military Lending Act Leave Many Service Members Vulnerable to Abusive Lending Practice*. Washington, DC: Consumer Federation of America, July 2013. http://www.consumerfed.org/pdfs/130725-policybrief-mla-cfa.pdf.

currently permits payday loans to be structured as open-end credit with no rate caps, licensing or supervision requirements. However, these products are functionally identical to closed-end payday loans: the credit limit is the amount of the payday loan, the initial loan or draw reduces the entire credit limit, and the required repayment amount is the amount of the entire loan.

In total, 335,291, or 28 percent of active duty Service members in 2011 were stationed in the 13 states that permit vehicle title lending not subject to the prohibitions and protections of the Military Lending Act.[21] Eight states do not set a maximum loan term for car-title loans or permit a loan term that may exceed 181 days: Arizona,[22] Illinois, Missouri, Nevada, New Mexico, South Dakota, Utah, and Wisconsin.

In five additional states, car-title lenders exploit loopholes in state laws to make loans that fall outside the 2007 DoD rule. Open-end vehicle title loans are permitted in Kansas with no rate cap. Vehicle title loans are made in Louisiana via a loophole in that state's small loan law and are not limited to 181 days in duration. In California, vehicle title loans are made for amounts larger than $2,500 and for terms longer than 181 days since California law does not place any restrictions on loans over $2,500. Title loans are made in South Carolina without any limits as long as the loan exceeds $600. Title loans are offered in Ohio under the state's credit services organization law with no product limits.

In total, as of September 2011, 659,475 active duty Service members – 54 percent– and their dependents, out of a total of 1,214,925 active duty Service members, may not have received all of the Military Lending Act's protections from high-cost payday or vehicle title loans.

D. *Market shift from balloon payment to installment credit and lines of credit in states that permit longer-term lending.*

The definition of "consumer credit" should be expanded to include installment loans for the purposes of the 36 percent MAPR and other protections. Research indicates that lenders are evading the 2007 rule by shifting their product from the balloon payment model to the installment model, but without reducing the risks to consumers. In 2011, CFA conducted a market scan of 20 payday lenders operating online and offering balloon payment loans.[23] In April 2014, CFA staff revisited those same lenders to determine whether the terms and conditions had changed since 2011. The review found that, of the 20 sites reviewed in 2011, 10 were no longer in business in 2014 or were operating under different names. Of the remaining

[21] CFA analysis of state high-cost loans conducted in March 2013 applied to demographic data contained in Department of Defense, Office of the Deputy Under Secretary of Defense (Military Community and Family Policy), "2011 Demographics: Profile of the Military Community" Exhibit 2.34 at p. 32, available at http://www.militaryonesource.mil/12038/MOS/Reports/2011_Demographics_Report.pdf.

[22] Arizona also permits vehicle title loans to be made to consumers who do not own their vehicles under that state's secondary motor vehicle finance law.

[23] Fox, Jean Ann. *CFA Survey of Online Payday Loan Websites*. Washington, DC: Consumer Federation of America, August 2011. http://www.consumerfed.org/pdfs/CFAsurveyInternetPaydayLoanWebsites.pdf.

sites, half had shifted to the installment lending model and no longer offered any balloon payment loans.[24]

A review of administrative data compiled by two states, Illinois and Texas, found that storefront lenders also shift to longer-term, payday installment products when authorized to do so under state law. According to data provided by the Texas Office of the Consumer Credit Commissioner, approximately 12 percent of high-cost loans issued in Texas in 2012 were structured as longer-term payday installment loans, with an average term of 101 days and likely falling outside of the scope of the 2007 MLA rules.[25] These longer-term loans are offered by 31 percent of lenders licensed as Credit Access Businesses in Texas in 2012.

In Illinois, the shift to installment lending has been more dramatic. In 2009, 64 percent of the high-cost credit market was structured as single-payment balloon payment loans. By 2012, balloon payment payday loans represented just 14 percent of the high-cost credit market.[26] By statute, payday installment loans in Illinois have a minimum term of 112 days, meaning that all payday installment loans issued in the state fall outside the 2007 Military Lending Act restrictions.

A 2014 report by payday lending analysts Stephens, Inc., also discussed the shift from balloon payment payday loans to payday installment loans among storefront lenders. The Stephens report found that, as of 2014, installment loan growth represented well over half of the total growth for industry participants who experienced growth in 2013."[27] One of the largest lenders, Cash America, has also shifted from balloon payment payday loans to longer-term payday loans and open-end lines of credit. Including both storefront and online lending, Stephens, Inc. noted that Cash America's installment and open-end products now comprise about 56 percent of the company's domestic loan balance as of December 2013.[28]

V. Questions 4, 24 and 25. Exemptions for depository institutions.

Questions 4, 24 and 25 ask whether depository institutions should receive an exemption from some or all of the provisions of the MLA. The proposed rule will provide consistent application of the statute and will ensure that, regardless of loan structure, term or type of lender, Service members will have the same protections from high-cost, abusive products. If any exemption is considered, it should be limited to loans made under the NCUA short term loans rule and must

[24] Feltner, Thomas. "High Cost Installment Lending: Case Studies from Two States, and an Analysis of the Online Market." Washington, DC, March 2014. On file at CFA.
[25] *Credit Access Business (CAB) Annual Data Report, CY 2012*. Austin, TX: Office of Consumer Credit Commissioner, 2012. http://www.legis.state.tx.us/tlodocs/83R/handouts/C2702013042914301/4c9dfae3-b2da-4f4c-8abe-c4c411637191.PDF.
[26] Feltner, Tom. "State Developments in Payday Lending Consumer Protections." presented at the 2013 The Consumer Rights Litigation Conference, Washington, DC, November 8, 2013. On file with CFA.
[27] Hecht, John. "Alternative Financial Services: Innovating to Meet Customer Needs in an Evolving Regulatory Framework." presented at the CFSA Solutions, Little Rock, AR, February 27, 2014. http://cfsaa.com/Portals/0/cfsa2014_conference/Presentations/CFSA2014_THURSDAY_GeneralSession_JohnHecht_Stephens.pdf.
[28] *Id.*

prevent excessive up-front fees. Any exemption should be limited to fees and should not apply to the other limits of the rule, especially the ban on forced arbitration and waiver of legal rights.

We recognize that many of the abuses in the marketplace involve loans made by non-depository financial institutions. However, we have identified certain products offered by depository institutions that are high-cost, lack consideration of a Service member's ability to repay and rely on direct access to a Service member's bank account. Like abusive credit offered by non-depositories, these products all too often result in unsustainable debt loads, financial insecurity and a negative impact on force readiness. To that end, the final rule must not provide any exemption that allows any institution to offer loans that duplicate the harms caused by payday loans.

Deposit advance loans or "bank payday" loans can reach APRs of over 400 percent and the harm to consumers is well documented.[29] Although the FDIC and OCC have issued strong guidance limiting rollovers of deposit advance loans and providing other protections, a binding, comprehensive MLA rule would improve on this guidance. [30] The guidance also does not cover banks regulated by the Federal Reserve Board, such as Fifth Third Bank and Regions Bank, which have offered high-cost bank payday loans. A comprehensive final rule that applies similar protections to similar products, regardless of a banks' regulator, is critical to providing clarity and consistency.

Credit unions generally offer responsible, affordable credit products and DoD has recognized the important role they play in the financial life of Service members and their families.[31] Credit unions typically offer products that already comply with the NCUA's substantive provisions. However, some credit unions have offered balloon-payment products with higher applications fees. Although federal credit union regulations provide protections for short-term loans, particularly those made under the National Credit Union Administration's rule on "Short-term, small amount Loans" (STS Loan Rule),[32] these measures do not track the protections afforded by the Military Lending Act.

If an exemption is provided, we strongly urge DoD to ensure that any exemption:

- Is limited to loans made under the STS rule, with additional fee limitations needed to prevent payday-type loans.

[29] Borné, Rebecca, *et al.*, *Big Bank Payday Loans: High-interest loans through checking accounts keep customers in long-term debt.* Washington, D.C.: Center for Responsible Lending, July 2011. http://www.responsiblelending.org/payday-lending/research-analysis/big-bank-payday-loans.pdf; and
Payday Loans and Deposit Advance Products: A White Paper of Initial Data Findings. Washington, D.C.: Consumer Financial Protection Bureau, April 24, 2013. http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.
[30] *Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products*, Department of the Treasury, Office of the Comptroller of the Currency, 78 Fed. Reg. 70624 (November 26, 2013); and
Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Product, Federal Deposit Insurance Corporation, 78 Federal Register 70552 (November 26, 2013).
[31] *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents,* 34. Washington, DC: Department of Defense, August 9, 2006. http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf.
[32] 12 C.F.R. §701.21(c)(7)(iii).

- Ensure that the proposed rule prevents excessive upfront fees that would far exceed the 36 percent MAPR.
- Ensure that any exemption does not allow the harms of payday lending to persist.
- Any exemption should be limited to fees and the MAPR only. The remainder of the MLA limitations, particularly the mandatory arbitration ban and ban on waiver of legal rights, should apply to all forms of credit.

VI. Question 24. Expand the rollover ban.

The rollover ban should be expanded to cover vehicle title loans and consumer installment loans, and should not exempt insured depositories from the ban.

The MLA forbids practices in which the creditor "rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent."[33] Rollovers can multiply fees astronomically and indicate an underlying inability to repay. While the rollover ban alone is not sufficient to stop the debt trap, when combined with the 36 percent rate cap, seeks to address the harms caused by predatory payday, vehicle title, and other installment lending.

The proposed rule significantly departs from the 2007 rule. It prohibits rollovers only for payday loans or other "deferred presentment transactions," and does not extend to vehicle title loans.[34] The proposed definition would also provide a new exemption for insured depositories.

A. *Apply the rollover ban to car-title loans.*

First, the rollover ban should be enlarged to include car-title loans, which can be the source of significant consumer harm.[35] Car-title loans average around $1,000, carry 300 percent APR, and are secured by the title to a borrower's vehicle, typically owned free-and-clear.[36] As with other balloon-payment or otherwise unaffordable products structured as installment loans, rollovers on car-title loans can be used to mask inability to pay and to increase costs. Instead of underwriting to ensure that loans are affordable, lenders rely on borrowers taking out new loans at additional cost.

As highlighted in a recent *ProPublica* investigation about one national lender's practices to subvert the state's rate cap for car-title loans by tacking on large fees for insurance products sold in conjunction with the loan: "One Floridian appears to have renewed her loan 17 times in 1 1/2 years. Another woman borrowed $3,100 and made $2,600 in payments, but after rolling her loan over seven times she still owed $3,900. Rather than keep paying, she surrendered her car to

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[33] 10 U.S.C. § 987(e)(1).
[34] Proposed § 232.8(a).
[35] *Caution: Car Title Loans Can Leave You Stranded*. Washington, D.C.: Federal Trade Commission. http://www.consumer.ftc.gov/articles/0514-caution-car-title-loans-can-leave-you-stranded#roll-over.
[36] Montezemolo, Susanna, *The State of Lending in America and Its Impact on U.S. Households*. Washington, D.C.: Center for Responsible Lending, July 2013. http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf.

InstaLoan. A third customer had $886 in monthly income, according to her loan application. Just to renew her $3,000 loan would have required more than a third of her income."[37]

Rollovers can also create harm with longer term vehicle title loans. As with payday loans, there is an emerging trend toward longer-term and still high-cost installment products, and persistent evidence of refinancing within these long-term products. For example, in Texas, where car-title lenders make multi-payment car-title loans largely to evade city ordinances, data from the Texas regulator show that in the third quarter of 2013, more than 20 percent of borrowers refinanced the loan in the same quarter the loan was made.[38]

B. *Apply to rollover ban to consumer installment loans.*

Installment loans have been associated with repeated refinances that account for as much as two-thirds of loan business. For example, one national lender, World Acceptance, reports that for each of the last three years, over 73% of its loan originations were refinancings of existing loans.[39] Approximately 5% of the company's loans go to service members and their families, and many similar lenders line up along corridors near military installations.[40]

A front-page *New York Times* article noted that although another national company, OneMain Financial, "offers its borrowers unsecured, installment loans with interest rates of up to 36 percent" many of its borrowers refinance the loan.[41] According the *New York Times*, "About 60 percent of OneMain's loans are so-called renewals" which may essentially be "'default masking' because borrowers may be able to refinance before they run into trouble paying back their current balance."[42]

Finally, company internal documents reveal the importance of renewals to the lenders, while providing little benefit to borrowers. For example, in a 2005 lawsuit against Security Finance, which involved the company flipping two loans to a homeless borrower 37 times, an employee manual revealed an instruction to: "Push the renewals, by getting the customer to renew their accounts it will be harder for that customer to pay us out."[43]

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[37] Kiel, Paul, "Insta-Loophole: In Florida High-Cost Lender Skirts the Law," *ProPublica*, July 24, 2014, http://www.propublica.org/article/insta-loophole-in-florida-high-cost-lender-skirts-the-law.
[38] Texas Office of Consumer Credit Commissioner, "Credit Access Bureau, Fourth Quarter Data Report (CY 2012)." http://www.occc.state.tx.us/pages/publications/consolidated_reports/CAB/04292013%20CAB%204th%20Quarter%20Report.pdf.
[39] World Acceptance, 2013 10-K SEC Annual Report, https://www.sec.gov/Archives/edgar/data/108385/000010838514000020/wrld-331201410xk.htm. The company defines refinancings as "a new loan transaction with a present customer in which a portion of the new loan proceeds is used to repay the balance of an existing loan and the remaining portion is advanced to the customer."
[40] Kiel, Paul and Mitchell Hartman, "On Victory Drive, Soldiers Defeated by Debt," *ProPublica*, May 15, 2014, http://www.propublica.org/article/on-victory-drive-soldiers-defeated-by-debt.
[41] Corkery, Michael, "States Ease Interest Rate Laws the Protected Poor Borrowers," *New York Times*, October 21, 2014, at A-1, http://dealbook.nytimes.com/2014/10/21/states-ease-laws-that-protected-poor-borrowers.
[42] *Id.*
[43] Graham, Ginnie, "Small Loans, Big Business," *Tulsa World*, November 27, 2005, http://www.tulsaworld.com/archives/small-loans-big-business/article_e03d2064-309f-5ca6-8824-85a001980f23.html.

In an enforcement action against the same company, the Colorado Attorney General noted: "Security Finance's business model is to continually flip (refinance) loans after or as close as possible to … the previous loan or refinance to maximize the number and amount of acquisition charges it earns and to prevent consumers from paying off their loans or refinances as scheduled."[44] The Attorney General further noted that repeated refinances are accomplished by "underwriting practices that place consumers into loans and refinances they have no reasonable probability of repaying."[45]

These trends of repeat refinancing extend beyond these individual national companies, but rather appear to permeate the industry as whole. In North Carolina, for example, where the state regulator collects annual data on installment lending, in 2013, 77 percent of loans made by all consumer finance companies in the state were refinancings of outstanding loans or the origination of new loans to previous customers.[46]

Upon refinancing, the lender may assess new fees and extend the term of the loan. These loans are often secured by the borrower's existing personal property which also provides an opportunity for the lender to require and sell expensive property insurance and charge for filing fees or non-filing insurance. It is extremely unlikely that upon default the lender will repossess this personal property of little value, but the threat of repossession is an effective collection tactic. Refinancing exacerbates the harms caused by add-on products such as credit insurance, giving additional opportunities to cram in fees. This also reaffirms the importance of including all ancillary products in the MAPR for consumer credit like installment loans, as discussed below, in addition to restrictions against harmful refinancing.[47]

C. *Apply rollover ban to all lenders.*

All lenders should be covered by the payday loan rollover ban, with no exclusion for insured depositories. This proposed exemption fails` to protect Service members. Rollovers by depositories can be just as harmful as rollovers by other lenders. The NCUA STS Loan Rule already bans rollovers on credit union loans made under that rule.[48] The OCC and FDIC guidance likewise cautions against rollovers on deposit advance loans.[49] There is no reason that all depositories cannot comply with uniform ban, or why rollovers would be less problematic by depositories than by other lenders.

VII. Question 25. Limitations on methods of accessing financial accounts.

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[44] *State of Colorado v. Security Finance Corporation of Colorado, d/b/a Sunbelt Credit and Merit Finance, and Security Finance Corporation of Spartanburg*, District County Court, City and County of Denver (filed June 9, 2008), ¶ 14, available at http://www.coloradoattorneygeneral.gov/sites/default/files/press_releases/2010/05/18/securityfinancecomplaint.pdf.
[45] *Id.*
[46] North Carolina Commissioner of Banks, *2013 Consumer Finance Company Annual Report*, http://www.nccob.org/Public/docs/News/Pub%20And%20Research/2013_Consumer_Finance_Annual_Report_Final_Web_Copy.pdf.
[47] For further discussion of add-ons, see Section XI.
[48] 12 C.F.R. § 701.21(c)(7)(iii)(A)(4).
[49] *See supra* n. 30.

The proposed MLA prohibits creditors from using "a check or other method of access to a deposit, savings, or other financial account maintained by the borrower."[50] Under the current and proposed rules, if a loan complies with the MAPR, all lenders would be permitted to require repayment by electronic fund transfer (EFT) if otherwise permitted by law, direct deposit, or take a security interest in funds as long as the loan conforms to the MAPR.[51]

Depository institutions should not be given even broader exclusions from the ban on check holding and other methods of account access. Even if the Secretary determines that some institutions or products should be exempt from the MAPR, these loans should not enjoy further exemptions from the protections against access to bank accounts than are already provided in the proposed rule.

VIII. Question 5. Exemptions for specific loan products, such as student loans.

The proposed rule does not exempt any forms of credit other than those exempted by the MLA itself (mortgages, auto, and purchase-money loans). We agree that no additional loan products should be exempt from the MLA rules.

In particular, student loans should remain covered by the final rule. Student loans are almost invariably under 36 percent, and generally will have no trouble complying with most other aspects of the proposed rules. However, some student loan agreements contain forced arbitration clauses, and Service members who take out private student loans should not be required to give up their access to the justice system. Student loan servicers, which have recently come under fire for violating SCRA rights,[52] have successfully invoked these arbitration agreements to stay out of court.[53]

Service members are especially vulnerable to predatory private student loans issued in connection with for-profit colleges that may bear legal liability for the loans.[54] Indeed, some predatory schools have targeted military consumers and the funds they can access in order to evade Department of Education gainful employment rules.[55] Full MLA coverage for student

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[50] 10 U.S.C. § 987(e)(5).

[51] We have concerns about these exceptions to the statutory ban, especially for mandatory EFT, but note that this is not a change from the 2007 regulation.

[52] Press Release, "FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act," May 13, 2014. https://www.fdic.gov/news/news/press/2014/pr14033.html.

[53] *Fensterstock v. Education Finance Partners*, 2012 WL 3930647 (S.D.N.Y. Aug. 30, 2012).

[54] *See* Hines, Christine and Hauptman, Micah, *Between a Rock and a Hard Place: Courthouse Doors Shut for Aggrieved Private Student Loan Borrowers*. Washington, D.C.: Public Citizen, July 2012. http://www.citizen.org/documents/private-student-loans-predatory-lending-arbitration-report.pdf; and Written Testimony of Hollister K. Petraeus, Assistant Director, Office of Servicemember Affairs, Consumer Financial Protection Bureau, Before the U.S. Senate Committee on Banking, Housing and Urban Affairs, November 3, 2011. http://www.consumerfinance.gov/newsroom/testimony-of-hollister-k-petraeus-before-the-senate-committee-on-banking-housing-and-urban-affairs/.

[55] *See* Press Release, Sen. Committee on Health, Education, Labor & Pensions, "Two Years After Harkin Report Revealed Questionable Business Practices in For-Profit College Industry, New Analysis Shows For-Profit Colleges Are Top Recipients of

loans would ensure that Service members and their dependents have the ability to pursue their case in court if targeted by predatory student lenders and for any other dispute related to private student loans.

IX. Questions 7, 9, 10 and 15. Credit card fee exemption.

A. *In general.*

The proposed rule would exempt from the 36 percent MAPR all "bona fide" credit card fees that are "reasonable and customary." This fee exemption would include fees that would otherwise be required to be included in the MAPR, including annual fees, application fees, and transaction fees such as those for cash advances and foreign transactions. However, credit-related ancillary products sold at or before the account opening, credit insurance premiums, debt cancellation/suspension fees would not be excluded from the MAPR in any event.[56]

For bona fide, reasonable and customary fees, issuers would have a safe harbor for fees that are no more than the average cost of a similar fee charged by five or more creditors with at least $3 billion in outstanding credit card loans. But fees above those safe harbor averages might still be potentially excludable.

We do not oppose the exemption of bona fide, reasonable and customary credit card fees, as long as the rule adds some modifications to protect against predatory fees. The proposed rule provides the exemption for the purpose of preserving access to credit cards, a widely used product by the general public and by Service members. In its 2006 report to Congress, DoD referenced low-cost credit cards as an important alternative to high-cost borrowing available to Service members.[57] In most cases, the cost of credit cards is provided in the interest rate and a modest annual fee, and the vast majority of credit cards would be below a 36 percent MAPR, even if the annual fee were included.

The most common credit card fee abuses are, for the most part, addressed by the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009. While the CARD Act does not impose an interest rate cap, it provides a substantial package of consumer protections against other unfair and abusive practices and fees. The CARD Act includes protections against unfair or disproportionate late and over-limit fees; protection against retroactive APR increases; and an underwriting requirement to assess the borrower's ability to repay before issuing the card.[58]

Post 9/11 G.I. Bill Dollars," July 30, 2014. http://www.help.senate.gov/newsroom/press/release/?id=4390b234-dbda-460d-84e7-3a732a95fb0d.

[56] Proposed rule § 232.4(d).

[57] *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependent,* 34. Washington, DC: Department of Defense, August 9, 2006. http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf.

[58] *See* Consumer Financial Protection Bureau, *Card Act Report,* October, 2013. http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

We strongly support the proposed inclusion of all credit insurance premiums, debt cancellation/suspension fees, and credit-related ancillary product costs, whenever they are sold, as part of the credit card MAPR. As detailed at greater length below, these fees are frequently very costly and may be marketed in a deceptive or abusive manner. Credit card companies in particular have been recently censured by the CFPB for marketing ancillary products deceptively and abusively to account holders, both at account opening and later in the relationship. These products should be included in the MAPR whenever they are sold.

Although we generally support the proposed fee exemption for credit cards, we have a number of recommendations to strengthen and clarify the provisions of the proposed rule so that credit cards are not adopted as a vehicle for evading the Military Lending Act protections by high-cost lenders.

B. *Close the Fee Harvester Loophole*.

The proposed rule should be strengthened to protect Service members from predatory "fee harvester" credit cards. Fee harvester cards exploit subprime consumers by piling them with fees that consume much of the low credit limit, raise the cost of the credit dramatically above the disclosed APR, and expose the consumer to the risk of over-the- limit and late fees.[59]

DoD has the authority to limit fees beyond the limits imposed under the CARD Act's fee harvester provision and related regulations. The MLA gives the Secretary the authority to set a "maximum allowable amount of all fees, and the types of fees." Using this authority, the Secretary should not allow card fees to exceed 25 percent of the credit limit in any year (whether the fees are levied before or after the account is opened).

The CARD Act addressed fee harvester credit cards by limiting total fees to 25 percent of the credit limit "in the first year the account is opened."[60] However, even that modest protection is undercut by two gaps.

First, in response to an adverse court decision, the CFPB undercut the fee harvester rule by permitting card issuers to charge fees in excess of the 25 percent cap if they are imposed before the account is technically opened, such as an application fee.[61] For example, one fee harvester card charges a $75 "processing fee" before the account opened, and a $75 annual fee for a card with a $300 credit limit. The fee harvester loophole allows the $75 fee to be imposed, meaning that consumers may be charged $150 in fees, half of their credit limit, before they make a single purchase.[62]

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[59] Jurgens, Rick, and Wu, Chi Chi, *Fee-Harvesters: Low-Credit, High-Cost Cards Bleed Consumers*. Washington, DC: National Consumer Law Center, November 2007. http://www.nclc.org/images/pdf/credit_cards/fee-harvesters-report.pdf.
[60] *Id.* at 77.
[61] Randall, Maya Jackson, "Consumer watchdog retreats on 'fee harvester' cards," *Wall Street Journal*, April 12, 2012. http://www.wsj.com/articles/SB10001424052702304356604577339851223075134.
[62] First Premier Bank Credit Card's fee schedule is available online at https://www.premiercardoffer.net/CardDetails_Printable/EKOV1LVS1%200636OMI.

Second, the fee harvester rule only protects the consumer in the first year. It imposes no limits on fees in subsequent years. Thus, that same fee harvester card charges $120 in annual and "monthly servicing" fees in the second year, on top of 36 percent interest, for a card with only a $300 credit line.

The MLA rules should protect Service members from abuses by fee harvester credit cards. The fees on fee harvester cards are not bona fide, reasonable and customary fees, and will hopefully be forbidden by the rule as proposed. But the DoD should address them specifically in order to avoid any ambiguity and make clear that such fees must be included in the MAPR.

First, the DoD should make clear that fee harvester fees are included in the MAPR as either "application" fees under 232.4(c)(1)(iii)(B) or as "participation" fees under 232.4(c)(1)(iii)(C). Specifically, illustrations should state that "processing" fees, "set-up" fees, and similar fees charged in connection with the initial opening of the account are application fees that are included in the MAPR, and that "annual," "maintenance," "processing," "servicing" and other similar fees are participation fees. Alternatively, DoD should add a new category of account-opening and maintenance fees to the MAPR.

Second, the rule should include an illustration that makes clear that these types of fees, other than annual fees, are not bona fide, reasonable or customary on credit cards. We are not aware of any mainstream credit cards that charge such fees.

Third, to the extent that annual fees or other participation fees are potentially considered to be bona fide fees, they should not be viewed as bona fide, reasonable or customary on a credit line of only $300, and certainly not when viewed collectively. As discussed below, participation fees must be proportional to the amount of credit or other services provided. While there are cards on the market with annual fees of $75 or higher, they typically come with much higher credit limits and access to airline miles, cash back, expensive airline clubs or other valuable services. And the combined $75 processing fee and $75 annual fee are not reasonable or customary.

Fourth, the rule should specify that credit card fees are not bona fide, reasonable or customary if, in the aggregate, they exceed 25 percent of the credit line, even if some of the fees are not subject to the CARD Act fee harvester cap due to the pre-account opening loophole. The rule should specifically state that pre-account opening fees are included in the 25 percent limit.

Finally, the 25 percent cap should apply after the first year of the credit card contract. Otherwise, Service members will be subject to bait-and-switch tactics.

C. ***Reasonable and customary definition.***

The proposed rule allows credit cards to exclude "bona fide" fees from the MAPR. The rule defines "bona fide fee" as a "reasonable and customary fee." While we agree with this general approach, the rule language should be sharpened for clarity and enforceability.

The proposed rule defines "indicia of reasonableness" for a participation fee as an "amount that corresponds to the credit limit …, to the services offered … or to other factors relating to the credit card account." We suggest replacing the term "corresponds" with "is proportional to" in order to clarify that the fees must be proportional to the credit limit and services provided.

The DoD should also provide illustrations of fees that are and are not reasonable, customary and proportional. For example, an issuer could not justify a $75 fee on a card with a $300 limit by comparing it to a card that typically offers a $5,000 to $10,000 credit limit. A $495 annual fee could be reasonable and customary on a card with a $30,000 limit that provides access to an airline club or other rewards that would otherwise cost $500, but not on a $10,000 limit card with that lacks club membership.

The proposed rule also requires that, to be a bona fide, reasonable and customary fee, it must be "typically imposed by other creditors for the same or a substantially similar product or service." This requirement should be imposed on all of the fees collectively and not just on individual fees. A lender should not be allowed to cherry pick the highest fees of each type and put them together in a combination that is not bona fide, reasonable or customary for a similar product or service. For example, some fee harvester cards charge several different types of participation fees. Even if a given fee could be viewed as reasonable and customary – which it should not, given the small credit lines those cards provide – certainly the combination of the annual, monthly, processing and other fees is not reasonable and customary.

Thus, proposed section 232.4(d)(3)(i) fees should be revised to state: "To assess whether a bona fide fee is reasonable and customary under paragraph (d)(1) of this section, the fee must be compared, individually and collectively, to fees typically imposed by other creditors for the same or a substantially similar product or service…. A creditor may not impose numerous fees that, taken together, are not reasonable and customary for similar products or services." The commentary should then give an illustration of a fee harvester card with an unreasonable combination of fees.

D. *Definition of credit card.*

The proposed rule permits bona fide fees above the MAPR for credit cards. However, the proposed rule does not define the incorporated term "credit card." The Department should add a definition that prevents opportunistic lenders from seeking to benefit from the credit card fee exemptions by claiming that their products are credit cards.

Presumably, the Department expects to follow Regulation Z's definition, which is "any card, plate, or other single credit device that may be used from time to time to obtain credit."[63] However, that is an incredibly broad definition. It contains virtually no limitations that would ensure that it is confined to credit cards as the term is commonly understood. Indeed, the

[63] 12 C.F.R. § 1026.2(a)(15)(i).

Consumer Financial Protection Bureau's recent enforcement action against a sham credit card is a reminder of the dangers of a loose definition.[64]

We recommend that the rules add a definition of "credit card" that captures only products that would be commonly recognized as credit cards. Specifically, the card should either be part of a widely accepted payment card network – i.e., Visa, MasterCard, Discover or American Express – or it should be a retail card such as a department store card.

We also observe that the CFPB recently proposed to include certain overdraft credit features offered in connection with prepaid cards within the Regulation Z definition of "credit card" for purposes of the CARD Act protections. A broad definition is necessary for credit connected to prepaid cards in order to protect consumers who use prepaid cards. But the MLA bona fide fee exemption should not apply to such cards, as they are not traditional credit cards and could be used to evade the MLA. Thus the Department should not permit bona fide fees outside the APR for such cards.

We propose the following definition:

> Credit card means any card, plate or other singe credit device that may be used from time to time to obtain consumer credit under an open-end credit plan and that is either:
>
> (a) Accepted by any merchant that participates in a widely accepted payment card network and is accepted upon presentation at multiple, unaffiliated merchants for goods or services,[65] or
>
> (b) Accepted for the bona fide purchase of goods or services at a particular retail merchant or group of merchants.
>
> (c) Provided that the term "credit card" does not include an overdraft line of credit that is accessed by a debit or prepaid card or an account number.

We further propose that commentary to the regulations include the following examples:

(a) Examples of network branded credit cards: Cards that carry the Visa, MasterCard, American Express or Discover brands are network branded, are widely accepted, and are redeemable at multiple unaffiliated merchants and ATMs.

(b) Examples of merchant credit cards. Department store or gasoline credit cards are examples of merchant credit cards. A credit device that is not accepted by retail

[64] *See* CFPB Press Release, "CFPB Sues Texas Company for Sham Credit Card," Dec. 17, 2014. http://www.consumerfinance.gov/newsroom/cfpb-sues-texas-company-for-sham-credit-card/.

[65] The language in subsection (a) is adapted from the Regulation E definition of "general use reloadable" prepaid card. It is not necessary to include the exclusion for home-secured or home-equity plans as those are already excluded from the MLA definition of "consumer credit" and incorporated into the definition above.

> merchants for a bona fide purchase of goods or services is not a credit card. For example, a credit device that offers credit for worthless or overpriced goods or bogus buying clubs is not a credit card.

Those examples both explain what the definitions mean and illustrate the types of traditional cards that the Department is intending to capture.

X. Questions 6 and 17. MAPR fee exemptions and inclusions for credit other than credit cards.

Question 6 asks whether de minimis bona fide fees on open-end lines of credit other than credit cards, especially overdraft lines of credit, should be excluded from the MAPR. Question 17 asks whether we agree with the proposal to include application and participation fees in the MAPR even if they are not finance charges. We address these questions together and also propose that load and transfer fees be added to the MAPR.

A. *Provide no blanket exemptions for open- or closed-end credit fees, and consider a cap for all fees in proportion to the credit.*

The proposed rule provides no fee exemptions for closed-end credit or open-ended credit plans other than credit cards. We agree that it is not appropriate to extend the general exemption for "bona fide" credit card fees to other types of consumer credit. Unlike for credit cards, no comprehensive statutory protections similar to the CARD Act protect borrowers from predatory practices by other forms of credit.

Furthermore, the proposed rule already weakens the MAPR in the statute by relying primarily on the TILA APR, which has many loopholes for fees. While the proposal fills those loopholes somewhat, other fees that are not included in the TILA APR or the MAPR could result in high cost lending well in excess of 36 percent.

To the extent that the Department considers excluding fees from the MAPR for open-end credit products, such exclusions must be tightly limited. As discussed below, any exception should be limited to participation/annual fees and a limited number of transfer fees only. These fees must be proportional to the credit line, as discussed above for credit cards.

We also urge that all fees, no matter whether included or not in the MAPR, be subject to a cap of a certain percent of the credit limit for open-ended plans or the credit extended. The cap should reflect a reasonable and proportional percentage of the credit line or credit extended. Similar to the fee harvester protections in the CARD Act, this limit would protect Service members from fees that add substantially to the cost of credit even if the MAPR is technically below 36 percent.

If the Department adopts such an approach, the cap should apply to *all* fees whether or not they are TILA finance charges, other than those excluded under the fee harvester provision of the

CARD Act, such as late fees or fees for making an expedited payment.[66] The cap should apply each year, not only in the first year.

We want to make clear that we are not endorsing any additional exclusion from the MAPR for fees than are already included in the proposal. Nor do we intend to suggest that the fees permitted by the fee harvester card rule are not problematic. These fees could substantially increase the cost of credit, potentially well above 36 percent.

The preferable approach is to include all fees in the MAPR. But to the extent that there are fees that fall outside the MAPR, it may be better to have an upper limit on the fees rather than no limit at all.

B. *Application and participation fees should be included in the MAPR other than a modest annual fee for overdraft lines of credit; the zero balance exemption is too high.*

We support DoD's proposal to include application and participation fees in the MAPR even if they are not considered finance charges and thus are not part of the TILA APR. As the Department explained, application and participation fees have been used to distort the APR and could be used to evade the MLA. For example, one lender created a product purportedly complying with Pennsylvania's interest rate cap, but increased the cost of credit by charging a $150 participation fee.[67]

However, we recommend that the Department exclude from the MAPR annual fees on overdraft lines of credit up to 5 percent of the credit limit to a maximum of $25. Annual fees above that amount would have to be included in the MAPR. (We also recommend that transfer fees be included in the MAPR with an exclusion for up to two transfer fees per year, as described in greater detail below).

Without a de minimis annual fee exemption, overdraft lines of credit may exceed the MAPR in months when the balance is low. Traditionally, overdraft lines of credit have been low cost methods of covering overdrafts, far preferable to expensive discretionary fee-based overdrafts.[68] They can result in much lower APRs and fewer fees, and are generally subject to underwriting.[69] However, fees have been rising. Currently overdraft lines of credit are priced in several ways. They generally charge a periodic rate in the 18 percent range, and some charge an additional annual fee and/or transfer fees. Annual fees appear to be in the range of $25, but transfer fees can go as high as $12.50 or even $20 per day, even on small overdrafts. Those fees may cause the

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[66] 15 C.F.R. § 1026.52(a)(1) and (2).
[67] Burns, Patrick, "Advance America loses court battle," *Lancaster Online*, September 11, 2013. http://m.lancasteronline.com/business/advance-america-loses-court-battle/article_d7968cca-4974-5868-a1ea-d5f174af96c3.html?mode=jqm.
[68] Federal Deposit Insurance Commission, *FDIC Study of Bank Overdraft Programs*, Nov. 2008. https://www.fdic.gov/bank/analytical/overdraft/.
[69] For example, the Navy Federal Credit Union's overdraft line of credit carries an APR as low as 13.9 percent and appears to have no other fees. *See* https://www.navyfederal.org/products-services/checking-savings/checking-protection.php.

true cost of credit to far exceed 36 percent in a month when several fees are incurred or very little credit is used, despite the fact that overdraft lines of credit are generally less expensive than discretionary fee-based overdraft services.

Consistent with this approach, the proposed rule should reduce the allowance for an annual fee billed during a zero-balance cycle to no more than $25. The proposed exemption of $100 is too high and could permit an abusively high proportion of fee to credit extended.[70]

C. *Include in the MAPR transfer and load fees on overdraft lines of credit and prepaid cards, with an exception for two overdraft line of credit transfer fees per year.*

Due to uncertainties in Regulation Z, transfer and load fees on overdraft lines of credit and prepaid cards might not be considered finance charges and might be excluded from the MAPR. We recommend that DoD avoid any confusion and evasions and specifically include such fees, other than two transfer fees per year on overdraft lines of credit on checking accounts.

A overdraft line of credit transfer fee may be fully or partly excluded under the Regulation Z exception for checking account fees, which states that a fee is only a finance charge to "the extent that the charge exceeds the charge for a similar account without a credit feature." 12 C.F.R. § 1026.4(b)(2). The Official Staff Interpretations to Reg. Z gives the example of an excluded fee as a $5 transfer fee on an overdraft line of credit, which would be excluded compared to a $25 overdraft or NSF fee on other checking accounts.

Load and transfer fees on prepaid cards have also been used to manipulate the APR and facilitate payday loans, as demonstrated by CheckSmart in Arizona. In 2010, a 36 percent usury cap took effect in Arizona. In order to avoid this cap and to continue making payday loans, the payday lender CheckSmart created a line of credit linked to a prepaid card. The credit line carried only a 35.9 percent interest rate, but a "convenience transfer fee" of $3.50 for each $28.50 transferred applied. A consumer who needed to net $100 would borrow $114, have $14 in transfer fees deducted, and pay 35.9 percent interest on the $114. The true APR was 401 percent. While this product is no longer on the market, it is not hard to imagine similar evasions.

A load or transfer fee on a prepaid card might well be a finance charge (and thus included in the MAPR). But predatory lenders could try to exploit some ambiguities in Regulation Z.[71]

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[70] Proposed rule § 232.4(c)(2)(ii)(B).

[71] Under Reg. Z, a "finance charge" is any charge "payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit." A load fee is essentially similar to "service, transaction, activity, and carrying charges", which are clearly finance charges. *See* National Consumer Law Center, Truth in Lending § 3.7.3.1 (8th ed. 2012 & Supp.) (citing examples of fees similar to load fees that were held to be finance charges). However, if a prepaid card charged load fees for cash loads to the card, the lender might argue that the load fee is not a finance charge because it is a "charge payable in a comparable cash transaction" or should be exempt "to the extent that the charge exceeds the charge for a similar account without a credit feature." 12 C.F.R. § 1026.4(b)(2). On the other hand, that interpretation should be rejected, because the comparable transaction is an electronic load like a direct deposit, for which prepaid cards do not charge fees.

Consequently, in light of the legal uncertainties about whether all load or transfer fees are included in the MAPR, the Department should ensure that such fees are not used to evade the MAPR. In order to ensure that Service members have access to low cost overdraft protection but are not subject to multiplying fees outside the MAPR, we urge DoD to specifically include transfer and load fees in the MAPR with an exception only for two transfer fees per year in connection with an overdraft line of credit on a checking account. These modest exclusions would allow overdraft lines of credit to continue on the market, without allowing their fees to become abusive. There should be no fee exclusion on prepaid cards, which do not overdraft and do not need overdraft protection.

If the Department chooses not to specifically include load and transfer fees in the MAPR, it will be especially essential to provide an overall cap on fees outside the MAPR, as discussed above.

XI. Question 16. Credit insurance, debt cancellation/suspension, and other credit-related ancillary products ("add-ons").

A. *Add-ons cause consumer injury.*

The proposed rule includes credit insurance, debt cancellation/suspension fees, and other credit-related ancillary products (collectively known as "add-ons") in the MAPR. These products are the source of considerable consumer injury, particularly for credit cards and installment loans, and the proposed rule correctly includes them in the MAPR, subject to refinements we suggest below. It is difficult to envision much benefit to Service members from the purchase of these products.[72]

A series of enforcement actions by the Consumer Financial Protection Bureau provides important examples of how add-on products can be used to increase the cost of using a credit card, both at the time the account is opened and later in the relationship.

In July 2012, the CFPB issued a bulletin describing its supervisory experience with add-on products and clarifying the steps that supervised institutions should take to ensure that add-on products do not harm consumers or violate federal law.[73] The bulletin discussed expectations around the marketing of add-on products and associated employee compensation guidelines to ensure that financial institutions do not create an incentive to provide inaccurate information. The bulletin also highlighted the need to ensure that consumers are not required to purchase products as a condition of obtaining credit.

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[72] *See* Statement of Captain Mark D. Patton, USN Commanding Officer, Naval Base Point Loma, CA, Head, Task Force Predatory Lending (Southwest) before the California State Senate Joint Assembly, Sunset Review/Consumer Protection, May 23, 2006, appended to DoD's "Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents" at 86-88.

[73] *Marketing of Credit Card Add-on Products*. CFPB Bulletin 2012-06. Washington, DC: Consumer Financial Protection Bureau, July 18, 2012. http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf.

Following the release of this bulletin, the CFPB undertook a number of enforcement actions against financial institutions that offered add-on products in a deceptive manner. These enforcement actions are indicative of the widespread practice of charging fees beyond the interest and finance charges that are disclosed according to the Truth in Lending Act.

In September 2014, the CFPB ordered U.S. Bank to provide an estimated $48 million in relief to consumers harmed by illegal billing practices. U.S. Bank consumers were unfairly charged for certain identity protection and credit monitoring services that they did not receive. These services were sold as add-on products for credit cards and other bank products such as mortgage loans and checking accounts. U.S. Bank was ordered to pay $5 million civil money penalty to the CFPB and a $4 million penalty to the Office of the Comptroller of the Currency (OCC).[74]

In April 2014 the CFPB ordered Bank of America, N.A. and FIA Card Services, N.A. to provide an estimated $727 million in relief to consumers harmed by practices related to credit card add-on products. Roughly 1.4 million consumers were affected by Bank of America's deceptive marketing of their add-on products. Bank of America also illegally charged approximately 1.9 million consumer accounts for credit monitoring and credit reporting services that they were not receiving. Bank of America will pay a $20 million civil money penalty to the CFPB.[75]

In September 2013, the CFPB joined with the OCC and ordered Chase Bank USA, N.A. and JPMorgan Chase Bank, N.A. to refund an estimated $309 million to more than 2.1 million customers for illegal credit card practices. The agencies found that Chase engaged in unfair billing practices for certain credit card "add-on products" by charging consumers for credit monitoring services that they did not receive.[76]

B. *Add-on products are of particular concern for installment loans.*

Add-on products are of particular concern in installment loans. As noted in our comments to the Advance Notice of Proposed Rulemaking,[77] installment loans frequently include high-cost ancillary products as credit life and disability insurance and discount clubs or plans that increase the cost of credit significantly. One installment loan described in the investigative series was made to a Service member with an APR of 90 percent but actually had an effective 182 percent

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[74] "CFPB Orders U.S. Bank to Pay $48 Million Refund to Consumers Illegally Billed for Services Not Received." Consumer Financial Protection Bureau, September 25, 2014. http://www.consumerfinance.gov/newsroom/cfpb-orders-u-s-bank-to-pay-48-million-refund-to-consumers-illegally-billed-for-services-not-received/.

[75] "CFPB Orders Bank of America To Pay $727 Million In Consumer Relief For Illegal Credit Card Practices." Consumer Financial Protection Bureau, April 9, 2014. http://www.consumerfinance.gov/newsroom/cfpb-orders-bank-of-america-to-pay-727-million-in-consumer-relief-for-illegal-credit-card-practices/.

[76] "CFPB Orders Chase and JPMorgan Chase to Pay $309 Million Refund for Illegal Credit Card Practices." Consumer Financial Protection Bureau, September 19, 2013. http://www.consumerfinance.gov/newsroom/cfpb-orders-chase-and-jpmorgan-chase-to-pay-309-million-refund-for-illegal-credit-card-practices/.

[77] Consumer Federation of America, Center for Responsible Lending, and National Consumer Law Center, Comment on Advanced Notice of Proposed Rulemaking, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, August 1, 2013, at 5-8. http://www.consumerfed.org/pdfs/Short-Letter-Sign-On-DoD-MLA.pdf.

MAPR when the ancillary products were included.[78] In another example, "A $2,475 installment loan made [by TMX Finance] to a soldier at Fort Stewart near Savannah, Ga., in 2011 and reviewed by ProPublica, for example, carried a 43 percent annual rate over 14 months — but that rate effectively soared to 80 percent when the insurance products were included. To get the loan, the soldier surrendered the title to his car."[79] The investigation further describes how lender employees deliberately conceal or misrepresent the add-on products from the borrower. [80]

In North Carolina, the sale of insurance products on installment loans made by consumer finance companies is more than double the number of loans originated, indicating that a single loan can be often stacked with multiple insurance products.[81] Also indicative of the lenders using credit insurance or add-on sales to artificially disguise the cost of the loan, installment lenders tack products on in states that have lower statutory caps on interest, but not in states that allow for higher interest rates.[82] Finally, a significant amount of the premium costs return to the lender, rather than payouts to consumers.[83]

As noted in Section VI, there are high levels of repeat refinancing of installment loans, particularly among consumer finance companies. These refinances not only provide lenders the opportunity to extend the length of the loan and charge new origination or processing fees while providing little to no benefit to the borrower, the refinancing is also an opportunity to sell new add-on products. This creates a harmful and entwined relationship between refinancing and the cost of add-on products – providing an incentive for installment lenders to extend the loan through refinancing while resulting in significant cost to the borrowers with little or no benefit.[84]

C. *The proposed rule should define credit-related ancillary products broadly and include them in the MAPR whenever they are sold.*

The proposed rule would correctly include credit insurance premiums and debt cancellation/suspension fees in the MAPR, whether they are sold when the consumer is first

[78] Kiel, Paul, "The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt." *ProPublica*, May 13, 2014. http://www.propublica.org/article/installment-loans-world-finance.
[79] Kiel, Paul and Mitchell Hartman, "On Victory Drive, Soldiers Defeated by Debt," *ProPublica*, May 15, 2014, http://www.propublica.org/article/on-victory-drive-soldiers-defeated-by-debt.
[80] *Id*. ("You were supposed to tell the customer you could not do the loan without them purchasing all of the insurance products, and you never said 'purchase,' …You said they are 'included with the loan' and focused on how wonderful they are … Every new person who came in, we always hit and maximized with the insurance…That was money that went back to the company.")
[81] The North Carolina Commissioner of Banks's 2013 Consumer Finance Annual Report showed more than 1.17 million insurance products sold in connection with 552,964 consumer finance loans made in 2013. http://www.nccob.gov/public/docs/News/Pub%20And%20Research/2012_Consumer_Finance_Annual_Report.pdf.
[82] Kiel, Paul, "The 182 Percent Loan: How Installment Lenders Put Borrowers in a World of Hurt," *ProPublica*, May 13, 2014. http://www.propublica.org/article/installment-loans-world-finance.
[83] *Id*. For one insurance company whose products are sold by consumer finance companies, 69 percent of the premiums went to back to the lenders, while 5 percent went to pay actual insurance claims. A similar pattern holds for the sale of its accident and health policies sold in junction with the loan – in one state, Georgia, in 2011, 56 percent went back to the lenders, and only 14 percent went to claims.
[84] A survey by the North Carolina Justice Center of 50 cases filed by consumer finance lenders in Wake County, North Carolina, found that where there was evidence of refinancing, a majority of the "payout" went towards paying credit insurance fees. The average amount disbursed to borrowers was less than $1.50.

extended credit or later on. But credit-related ancillary products" would only be included if they are sold at or before the credit transaction (for closed-end products) or account opening (for open-ended products).[85]

The Department should broaden the rule to include credit-related ancillary products whenever they are sold. "Credit-related ancillary products" should be defined broadly to include any product marketed by the creditor and the creditor's affiliates and vendors using the pre-existing relationship between the creditor and the consumer top market the product, at any time during the relationship between the creditor and consumer. This would include any good or service, such as identity theft protect, credit monitoring services, and discount clubs or plans.

XII. Effective Date.

DoD has proposed that the new rules, once effective, will apply only to a new "transaction or account for consumer credit consummated or established on or after" the effective date of the final rule.[86] The Department is concerned about the potential injustice and operational difficulties that could arise if new requirements under the amended regulation were to apply to pre-existing transactions or accounts.

We generally agree with this approach with two exceptions. First, the ban on forced arbitration should apply to existing accounts and transactions. Second, unless the SCRA applies, the new rules should apply to new transactions under pre-existing open-end lines of credit if the Service member puts the lender on notice of his or her military status or if the creditor otherwise has knowledge of covered status.

A. *The forced arbitration ban should apply to all new disputes.*

We applaud the DoD's proposed rule to expand the current military financial protections and the ban on pre-dispute mandatory ("forced") arbitration clauses to more forms of consumer credit currently regulated under the Truth in Lending Act (TILA) for active-duty Service members and their dependents. We propose that the ban on forced arbitration be applied to new disputes on existing contracts, as well as to all new contracts arising after the effective date. This change would not affect disputes that have already arisen where an arbitration proceeding has already begun. Instead, it would prevent the future enforcement of an arbitration agreement against a Service member for any new dispute related to a consumer credit contract.

Forced arbitration clauses are problematic because they eliminate access to the courts and instead push Service member claims into private, secretive arbitration systems set up by the same bad actors that violated the law in the first place. Arbitrators are not required to follow the laws that protect Service members, and there is no public review to make sure the arbitrator got it right. In its 2006 report, the DoD states that "Service members should retain full legal recourse again

[85] Proposed rule § 232.4(c)(1)(i) and (ii).
[86] Proposed § 232.12(b).

unscrupulous lenders. Loan contracts to Service members should not include mandatory arbitration clauses or onerous notice provisions, and should not require the Service member to waive his or her right of recourse, such as the right to participate in a plaintiff class."

Prohibiting the use of forced arbitration clauses is now more urgent than ever, given the expansive use and claim suppressing effect of these clauses by financial institutions in contracts with Service members. The preliminary findings of an arbitration study in 2013 by the CFPB suggest that financial institutions are responding to recent Supreme Court decisions like *AT&T v. Concepcion* by increasing the use of forced arbitration clauses in their consumer financial services contracts since 2012. Despite the prevalence of forced arbitration clauses in consumer financial contracts, restricting the rights of millions of consumers, arbitration provides almost no relief to consumers harmed by predatory or abusive practices in the financial services industry, including conduct causing widespread financial losses. The CFPB's initial study confirmed that, because of the significant costs and other burdens involved, consumers rarely go to arbitration at all and even fewer go to arbitration for small-dollar loan (e.g. payday loan) disputes.

Financial institution can determine a consumer's military status when a dispute occurs, before invoking the arbitration clause. At the time of the dispute, the creditor can use the Defense Manpower Data Center (DMDC) website to check the military status of the Service member as it would if it were to file the required affidavit of service in a court case or as a creditor would be required to do under various provisions of the Service members Civil Relief Act (SCRA).

After checking the database, if the consumer is covered, the creditor could not insist on arbitration. If the consumer is not covered, the creditor should be required to provide notice that the creditor has checked the database and determined that the consumer is not covered, but that the consumer may provide evidence that he or she is a covered Service member or dependent. This notice would serve two functions: ensuring that creditors check the database, and giving an opportunity for the consumer to correct any mistakes.

B. *The MLA should apply to new extensions of credit under pre-existing plans and to individuals who change military status.*

The MLA should apply to new extensions of credit under pre-existing open-end plans in order to ensure an appropriate scope of protection for Service members under either the MLA or the Servicemembers Civil Relief Act. The SCRA protects Service members with respect to credit products that were taken out prior to military service. The MLA applies to new extensions of credit taken out during military service. The two should be interpreted so that there is no gap.

The SCRA applies only to an "obligation or liability … that is incurred … before the servicemember enters military service."[87] It is unclear if an extension of credit that a Service member incurs after entering military service on a pre-existing credit card is protected by the SCRA. We understand that many card issuers will cap the interest rate at 6 percent on all

[87] 50 U.S.C. app. § 527(a)(1).

transactions on the card. But the language of the SCRA is unclear and we are aware of no case law addressing the issue.

If neither the SCRA nor the MLA applies to new extensions of credit under pre-existing accounts, there will be a huge gap in protections for Service members. Consumers may keep credit cards for decades and indeed their entire lives. Consequently, if a Service member has a pre-existing credit card and continues to use it throughout a long military career, the Service member could receive no protection under that credit card under the rules as proposed.

We recognize the difficulty that creditors would face if they were expected to constantly monitor the status of all cardholders and to know when a consumer becomes a covered Service member. Consequently, we believe that, in the narrow circumstance of pre-existing open-end lines of credit, the Service member should have the burden of notifying the creditor that his or her status has changed. Once on notice, if the SCRA protections do not apply, the creditor should be obligated to comply with the MLA.

This approach is consistent with the approach under the SCRA. Service members are entitled to the interest rate reduction under the SCRA only if they provide written notice to the creditor.[88]

While extending the MLA to new extensions of credit under a pre-existing credit card might result in two different interest rates applying to the pre- and post-service obligations, we do not believe that that is a significant difficulty. That may already be true today if the 6 percent SCRA cap applies to pre-existing balances but not to new purchases.[89] In addition, the vast majority of credit cards already comply with the MLA, and extending MLA protections to new extensions of credit is unlikely to require any changes for mainstream, non-predatory credit products.

XIII. The proposed rule does not address some forms of high-cost credit available to service Members.

A. *Overdraft fees.*

Fee-based "courtesy" overdraft protection services are not currently subject to TILA disclosure requirements and, as such are outside the scope of the proposed rule. In its report to Congress in 2006, the Department of Defense expressed concern about overdraft fees. In that report, DoD recognized that overdraft protection is an inadvertent form of short-term lending that lacks TILA disclosure and frequently results in fees that are very high compared to the overdraft amount advanced.[90]

[88] 50 U.S.C. app. § 527(b)(1).
[89] Creditors also already have obligations under the Credit CARD Act to segregate different rates for preexisting balances if the creditor raises the interest rate.
[90] *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*, 34. Washington, DC: Department of Defense, August 9, 2006. http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf.

In a report released by the Consumer Financial Protection Bureau in 2014, the Bureau found that overdraft and non-sufficient funds (NSF) fees constitute about 75 percent of total checking account fees and average over $250 per year for accountholders who opt-in to overdraft coverage. The report also found that just eight percent of accountholders incurred nearly 75 percent of all overdraft fees.[91] Currently, approximately 5 percent of enlisted Service members use fee-based overdraft loans. Of those that use overdraft, 9 percent overdraft at least once per month, 16 percent overdraft twice per month and 9 percent overdraft every week.[92]

Fee-based overdraft programs are a form of high cost lending that should be covered under the MLA. DoD could use its authority to limit credit[93] fees to protect Service members from high overdraft fees.

B. *Rent to own transactions and sales finance transactions are not addressed by the proposed rule.*

The Department of Defense rules applying the Military Lending Act do not define rent-to-own or sales financing to buy products and services as "consumer credit" subject to the protections of the law, notably the provision prohibiting credit secured by allotment or the 36 percent APR inclusive rate cap. However, the targeting of service members by retailers, car dealers, and other entities that sell on credit paid by allotment is well-documented.[94]

In its 2006 report to Congress, DoD expressed concern about rent-to-own transactions, including the high-cost of using rent-to-own to use or purchase household goods, as well as lender's failure to consider a Service member's ability to repay based on their current financial obligations.[95] DMDC survey data found that approximately four percent of enlisted service members entered into rent-to-own transactions.[96] At the time, DoD expressed concern about the lack of disclosure describing the total cost of a rent-to-own transaction and the limited number of states that restrict rent-to-own interest rates. In the 2007 rule, rent-to-own transactions were excluded from the definition of covered credit and the financial protections afforded by the MLA. However, a series of recent enforcement actions suggest that lenders inflate purchase prices for the purposes of hiding the true cost or include unnecessary add-on fees.

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[91] *Data Point: Checking Account Overdraft*, 5. Washington, DC: Consumer Financial Protection Bureau, July 2014. http://files.consumerfinance.gov/f/201407_cfpb_report_data-point_overdrafts.pdf.

[92] *Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents*, 26. Washington, DC: Department of Defense, April 2014. http://consumerfed.org/pdfs/140429_DoD_report.pdf.

[93] Regulators have recognized that overdraft services are a form of credit, even though they have exempted these services from TILA disclosures. For example, the February, 2005 Joint Guidance on Overdraft Protection Programs issued by the OCC, FDIC, Federal Reserve, and NCUA recognizes that overdraft services are a form of credit. https://www.fdic.gov/news/news/financial/2005/fil1105.html.

[94] Fox, Jean Ann. *The Military Lending Act Five Years Later: Impact On Service members, the High-Cost Small Dollar Loan Market, and the Campaign against Predatory Lending*, 77. Washington, DC: Consumer Federation of America, May 2012. http://www.consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf.

[95] *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*, 19. Washington, DC: Department of Defense, August 9, 2006. http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf. page 34.

[96] *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*, 38. Washington, DC: Department of Defense, August 9, 2006. http://www.defense.gov/pubs/pdfs/report_to_congress_final.pdf.

In July 2014, the CFPB and 13 state attorneys general obtained approximately $92 million in debt relief from Rome Finance for about 17,000 U.S. Service members and other consumers harmed by the company's predatory lending scheme. Rome Finance aggressively marketed credit offers with no down payment and instant financing. The company then hid the true cost of borrowing by artificially inflating the disclosed price of the consumer goods being sold.[97] While this case did not involve a classic rent-to-own arrangement, it does highlight the dangers of hiding the cost of credit in the purchase price of goods.

The proposed rule does not address these ongoing concerns raised about the high-cost of financing products using rent-to-own contracts or sales finance. However, in June 2013, DoD expressed concern about the misuse of the allotment process by businesses and lenders and announced the creation of a working group from enforcement agencies and bank regulators. The working group was tasked with recommending improvements to the allotment process and report back in 180 days.[98] In November 2014, DoD adopted a policy prohibiting the use of allotments to purchase jewelry, furniture, appliances and other personal property.

The new allotment policy will help protect Service members, but by itself it does not address abusive retail credit practices or high cost credit disguised as rent-to-own transactions. The Department should consider further protections in those areas.

XIV. Anti-Evasion.

In order to protect against evasions, the rule should specify that the Department and all other enforcement agencies have the ability to take steps against willful evasions of the rule. This provision should state that conduct shall be in violation of the MLA rule if the form of the fee or the loan product is designed primarily to circumvent, or has the effect of circumventing, the provisions of the MLA rule.

XV. Conclusion.

We appreciate the opportunity to comment on this proposed rule and thank the Department of Defense for its work to date ensuring that Service members receive the credit options intended by Congress when it passed the Military Lending Act. While we urge further consideration of the issues described in the sections above, we believe the proposed rule generally strikes an appropriate balance between access to safe and sustainable credit and restricting access to high-cost, abusive credit.

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[97] "CFPB and 13 State Attorneys General Obtain About $92 Million in Debt Relief for Service members Harmed by Predatory Lending Scheme." Consumer Financial Protection Bureau, July 29, 2014. http://www.consumerfinance.gov/newsroom/cfpb-and-13-state-attorneys-general-obtain-about-92-million-in-debt-relief-for-Service members-harmed-by-predatory-lending-scheme/.

[98] "Statement by Secretary Hagel on Abuse of the Discretionary Allotment System by Financial Services Institutions." Department of Defense, June 27, 2013. http://www.defense.gov/Releases/Release.aspx?ReleaseID=16123.

We urge the swift 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.

Appendix A. Examples of loans to Service members not subject to the Military Lending Act protections as a result of loopholes in the 2007 Department of Defense rule defining covered credit.

1. In 2012, a Service member reported that they had a payday loan structured as an open-end line of credit with an outstanding balance of $1,284 with a 585 percent annual percentage rate.[99] The loan was not subject to the Act's protections under the current rule because it was structured as an open-end line of credit.

2. In 2012, a Service member reported that they had a loan out with an online lender claiming tribal immunity. The loan principal was $900, the finance change was $524, the term was five months and the annual interest rate was 359 percent.[100] The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 91 days.

3. In 2011, a Service member reported a loan from a military-specific lender of $1,500 and a finance charge of $731 for an annual interest rate of 81 percent repayable over 12 months. The loan was repaid by a voluntary allotment of military pay. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 91 days.[101]

4. In 2011, a Service member reported a car-title loan from a South Carolina title lender of $1,615 with a finance charge of $15,613 and an annual interest rate of 400 percent repayable over 32 months. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 181 days.[102]

5. In 2011, a Service member reported a car-title loan from Virginia title lender of $1,206 with a finance charge of $2,054 and an annual interest rate of 240 percent repayable over 12 months. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 181 days.[103]

6. In 2010, a Service member reported a loan from a military-specific lender of $1,500 with a finance charge of $731 and an annual interest rate of 80 percent repayable over 12 months. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 91 days.[104]

7. In 2010, a Service member reported a car-title loan from Virginia title lender of $1,206 with a finance charge of $2,054 and an annual interest rate of 240 percent repayable over 12

[99] On file with Consumer Federation of America as case 2011-11-13.
[100] On file with Consumer Federation of America as case 2012-03-30.
[101] On file with Consumer Federation of America as case 2011-07-05.
[102] On file with Consumer Federation of America as case 2011-06-24.
[103] On file with Consumer Federation of America as case 2011-06-24.
[104] On file with Consumer Federation of America as case 2010-12-03.

months. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 181 days.[105]

8. In 2010, a Service member reported a car-title loan from California title lender of $4,426 with a finance charge of $4,427 and an annual interest rate of 125 percent repayable over 24 months. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 181 days.[106]

9. In 2010, a Service member reported a car-title loan line of credit from California title lender of $800 with an annual interest rate of 300 percent. The loan was not subject to the Act's protections under the current rule because it was structured as an open-end line of credit.[107]

10. In 2009, a retired Service member in Texas reported a car-title loan from a Texas car-title lender of $4,000 at 9.75 percent annual interest and a credit services organization fee of $1,200 for arranging the loan. The disclosed APR for this loan was 375 percent and the loan was issued on the condition that the borrower agreed to forced arbitration. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 181 days.[108]

11. In 2013, the CFPB reported a title loan taken out by the spouse of a member of the Illinois National Guard. The loan principal was $2,575 at an APR of 300 percent. The finance charges on the loan were $5,720 for a total amount of $8,295. The loan was not subject to the Act's protections under the current rule because it had a term longer than 181 days.[109]

12. In 2013, the CFPB reported a $6,000 car-title loan taken out by a Service member at Travis Air Force Base, California. The loan was financed at 36 months at 102.47 percent APR for a total of $13,463. The loan was not subject to the MLA's protections under the current rule because it was for a term longer than 181 days.[110]

13. In 2013, the CFPB reported loans from Service members in North Carolina and Delaware who each took out loans at an APR of 585 percent. The loans were not subject to the Act's protections under the current rule because they were structured as open-end lines of credit.[111]

14. In 2013, the CFPB heard from a JAG at Marine Corps Recruit Depot-San Diego who a client who took out an auto title loan of $10,000. The terms of the loan were 36 months with an

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[105] On file with Consumer Federation of America as case 2011-06-24.
[106] On file with Consumer Federation of America as case 2010-11-23.
[107] On file with Consumer Federation of America as case 2010-08-31.
[108] On file with Consumer Federation of America as case 2009-09-22.
[109] Testimony of Hollister K. Petraeus Assistant Director, Consumer Financial Protection Bureau Office of Service member Affairs presented at the U.S. Senate Committee on Commerce, Science & Transportation, Washington, DC, November 20, 2013. http://www.consumerfinance.gov/newsroom/hollister-k-petraeus-before-the-u-s-senate-committee-on-commerce-science-transportation/.
[110] *Id.*
[111] *Id.*

APR of 102 percent. The Marine used his military ID to get the loan, so they were aware of his military status. The loan was not subject to the Act's protections under the current rule because it had a term that exceeded 181 days.[112]

15. In 2013, the CFPB heard from a community readiness consultant at Joint Base McGuire-Dix-Lakehurst in New Jersey told me about a sailor with severe debt problems. He had one loan from a military-specific lender with an APR at 499 percent. This loan was not subject to the protections of the Military Lending Act 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 was not subject to the Act's protections under the current rule because it was for a term longer than 91 days. The sailor was paying over 66 percent of his take-home pay trying to pay off these two loans.[113]

16. A Navy Relief representative informed the director of legal assistance for Marine Corps Installment East of a Service member with a loan with an interest rate of 81 percent, and also noted that a number of payday lenders have moved their operations online to target Service members.[114]

[112] *Id.*
[113] *Id.*
[114] Jowers, Karen. "New Rules to Cap Credit Interest Rates for Troops," *Navy Times*, September 26, 2014. http://www.navytimes.com/article/20140926/BENEFITS/309260047/New-rules-cap-credit-interest-rates-troops.