



August 1, 2013

Federal Docket Management System Office
4800 Mark Center Drive
East Tower, Suite 02G09
Alexandria, VA 22350-3100

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

To Whom It May Concern:

These comments are filed on behalf of the American Financial Services Association (hereinafter "AFSA")¹ in response to the Advance Notice of Proposed Rulemaking entitled "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents" (hereinafter the "ANPR").

AFSA shares the concerns expressed by the conferees on the Fiscal Year 2013 National Defense Authorization Act that military personnel and their families have access to affordable credit and are protected from abusive lending practices.

We are sensitive to the hardship that is placed on service members and their families with repeated deployments, especially for dual-career spouses, and the financial difficulties created by frequent moves.

Notwithstanding, AFSA strongly urges the Department of Defense to move cautiously on promulgating any new regulations that would affect traditional installment consumer loans because the current regulations are working. We make this appeal having extensive experience in dealing with military consumers and having an in-depth understanding of military lending matters. We believe that the current regulations provide the right balance between limiting bad forms of credit while ensuring that servicemen and women have the same access to good credit that is enjoyed in the commercial marketplace by the citizens they defend. It is a balance that must be maintained, as it is under the current regulations.

Existing Policy is Effective and Working

The current regulatory regime is working. There is no need to change the Department of Defense's regulations regarding consumer credit extended to service members and dependents. Testifying on behalf of the Pentagon in 2012, the Director of Legal Policy in the Office of the Under Secretary of Defense for Personnel and Readiness said:

¹ AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

“[T]he Department has periodically polled DoD financial counselors and legal assistance attorneys to determine if the Rule is having the desired effect. They inform us that the legislation has been extremely effective in stamping out abuses involving these types of credit.”²

This conclusion is supported by current data. At the request of the Consumer Federation of America, the Better Business Bureau reviewed complaints triggered by online installment lenders. The BBB searched their database of over 40,000 complaints received over the first three quarters of 2011 involving a wide variety of products and services and found only 37 complaints (less than one-tenth of one percent) filed against the online military installment lenders listed in the CFA survey.³

Another example of current data showing that the current regulation work comes from the 2011 confirmation proceedings of Defense Secretary designee Leon Panetta, who stated that the Department “does not intend at this time to include other lenders within the coverage of the regulation.” Rather, he stated that “[t]he goal is to try to eliminate the need to identify Service members and their families separately for protections,” warning against creating “unintentional barriers to credit.”⁴

A final example comes from the pen of Holly Petraeus, Assistant Director of the CFPB’s Office of Servicemember Affairs. Ms. Petraeus has also warned against the potential “unintended consequences” of extending the existing Military APR cap beyond products covered by the existing Rule.⁵

Traditional Installment Consumer Loans are Beneficial to Service Members and Their Families

The current regulations have established an environment whereby military members can continue to access traditional installment loan products.

Traditional installment lending provides access to affordable, repayable consumer credit because lenders work with borrowers to determine that they have the ability to make the payments required to repay the loan. It is the safest form of small-dollar lending. Installment loans utilize amortization as a means of protecting borrowers from an endless cycle of debt. The traditional installment consumer credit products offered by AFSA member companies are not the problem – in fact they are often the best solution to the financial needs of service members and their

² Kantwill, Col. Paul. Testimony before U.S. Senate Committee on Banking, Housing, and Urban Affairs, Hearing on “Empowering and Protecting Servicemembers, Veterans and their Families in the Consumer Financial Marketplace.” June 26, 2012.

³ Fox, Jean Ann. *The Military Lending Act Five Years Later: Impact On Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign against Predatory Lending*. Consumer Federation of America. May 29, 2012.

⁴ Panetta, Hon. Leon E. Response to Questions for the Record submitted by Sen. David Vitter, Hearing before the U.S. Senate Committee on Armed Services. June 9, 2011

⁵ Petraeus, Hollister K. Testimony before U.S. Senate Committee on Banking, Housing, and Urban Affairs, Hearing on “Empowering and Protecting Servicemembers, Veterans and their Families in the Consumer Financial Marketplace.” November 3, 2011.

families. Traditional installment loans are clearly, and have long been, a beneficial and useful service for service members and their families.

The beneficial features of traditional installment loans were also recognized by the Department of Defense in the conclusion of its report to Congress on the effectiveness of the regulations implementing the Military Lending Act: “Isolating detrimental credit products without impeding the availability of favorable installment loans was of central concern in developing the regulation. Consequently, installment loans that do not fit the definition of ‘consumer credit’ in Section 232.3(b)...are not covered by the regulation.”⁶

No Congressional Intent for New Regulations

While AFSA supports efforts to protect the nation’s military families, we are baffled at the justification (or really lack of any valid justification) proffered in support of the ANPR.

The ANPR cites a provision proposed by the Senate during consideration of the National Defense Authorization Act for Fiscal Year 2013 that would have required the Secretary of Defense to develop a new policy regulating installment loans marketed to members of the armed forces and their dependents.

AFSA notes that in the Conference Committee to resolve differences between the Houses, the Senate receded to the House and those provisions were rejected by the Congress as a whole. Passage of a provision or a complete bill out of one House of Congress is not passage of a law since the Congress is not a unicameral body.⁷

Absent passage of legislation by both Houses, Congressional intent cannot be inferred when one House alone acts. It is hardly unusual for legislation to pass out of one House only to be modified beyond recognition in the other body. For example, in the 112th Congress, the Senate passed 353 bills and the House passed 610 bills. Only 217 bills were enacted into law and some of those laws bore little resemblance to that which had originally been passed out of one chamber or the other.⁸

In this case, the Congressional intent is clear. Although the Senate proposed some new statutory language dealing with military lending, the House and then the Congress acting as a whole rejected that language.

⁶ Department of Defense Report on Implementation of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents. July 22, 2008.

<http://www.dcuc.org/PDF%20Files/Senate%20Report%20Final.pdf>

⁷ See Alexander Hamilton or James Madison, Federalist Paper # 62: The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions. Examples on this subject might be cited without number; and from proceedings within the United States, as well as from the history of other nations. At Section IV.

⁸ See: Resume of Congress, 159 Congressional Record D196 (March 13, 2013); Resume of Congress, 158 Congressional Record D219 (March 7, 2012)

Like all administrative law matters, the role of the Department of Defense itself in this area is based on delegated authority from Congress. But delegation is not equivalent to the abdication of Congress's lawmaking authority. In the instant case, Congress acted and rejected new statutory language, yet the ANPR cites an unsuccessful legislative effort as justification to begin new rulemaking. This seems more a political than a policy decision and as former Secretary of Labor Robert Reich stated plainly: agency politics "confounds the ideal of scientific policy-making on which the legitimacy of regulatory agencies is based."⁹

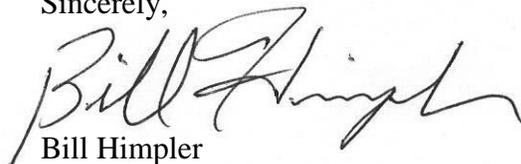
The Department Should Survey Traditional Installment Consumer Lending before Acting

The Conference Report accompanying the National Defense Authorization Act directs the Department of Defense to survey the marketplace and to review its regulations. We recommend that the Department undertake such a survey and review before, *sua sponte*, beginning a formal regulatory process in this manner. In point of fact, the Department previously found that "the Department views oversight of installment loans as providing an opportunity to work with Federal and state regulators, and internal systems, to protect Service members and their families. Increasing the regulation's coverage to include these loans would potentially decrease availability of beneficial credit for Service members and their families."¹⁰ By going forward without surveying and understanding the facts, the Department would essentially be contradicting itself. The full extent of the military lending marketplace that has changed since the passage of the underlying John Warner National Defense Authorization Act for Fiscal Year 2007 can only be recognized through surveys and research. AFSA believes that is why the Conference Committee directed the Department to research, not to write new regulations.

* * *

AFSA is prepared to work with the Department of Defense on this issue to ensure that a balance between credit availability and consumer protection remains in this area. Please feel free to contact me with any questions at 202-466-8616 or at bhimpler@afsamail.org.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association

⁹ David S. Schoenbrod, Politics and the Principle That Elected Legislators Should Make the Laws, Harvard Journal of Law & Public Policy, Vol. 26, No. 1 (Winter 2003)

¹⁰ Department of Defense Report on Implementation of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents. July 22, 2008.

<http://www.dcuc.org/PDF%20Files/Senate%20Report%20Final.pdf>