

**STATEMENT OF**  
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**DEPARTMENT OF DEFENSE**

**BEFORE THE**

**COMMITTEE ON JUDICIARY,**  
**SUBCOMMITTEE ON OVERSIGHT, FEDERAL RIGHTS, AND AGENCY ACTION**

**UNITED STATES SENATE**

**ON COMPLIANCE AND ENFORCEMENT OF THE SERVICEMEMBER'S CIVIL**  
**RELEIF ACT AND FINANCIAL CHALLENGES CONFRONTING**  
**SERVICEMEMBERS, VETERANS, AND THEIR FAMILIES IN THE CONSUMER**  
**FINANCIAL MARKETPLACE**

**MARCH 27, 2014**

Good Morning, Chairman Blumenthal, Ranking Member Hatch, and Members of the Committee. It is an honor to appear before you and represent the Department of Defense and all of our great men and women in uniform. On behalf of the Department, I thank you for your assistance and support in protecting our Servicemembers and their families in the consumer financial marketplace. It is a pleasure to testify before you regarding the consumer financial issues we see affecting Servicemembers and their families and the Department's response to these issues and challenges.

I should first like to provide a bit of background on the current state of the Department's involvement in consumer law issues and financial readiness. I will then turn my focus to the Servicemember's Civil Relief Act (SCRA), with specific focus on the Department's efforts to support compliance and enforcement thereof. Thirdly, I will discuss other financial challenges confronting Servicemembers, , and their families in today's consumer marketplace. These challenges are many and varied, but I will focus primarily on issues and challenges that relate to the Military Lending Act (MLA)-- use of high cost loan products, particularly by Service members who have already exceeded their ability to repay their existing debt--as the Department sees this as the biggest, current financial challenge facing our Servicemembers and their families. I will conclude with some very specific observations on where the Department sees the consumer credit industry going and the actions currently underway in very specific response to these developments.

### **Department of Defense Financial Readiness Programs**

The financial readiness of Servicemembers and their families is essential to their well-being and their ability to contribute to the mission. Over the course of my career as a Judge

Advocate, I have assisted Servicemembers and their families in deployed and garrison environments, and know well that a Servicemember distracted from the tactical mission by financial issues cannot be completely mission-focused. Thus, the Department has, for over a decade, created, refined, and enhanced financial readiness programs predicated on Servicemembers and their families receiving reasonable protections, acquiring at least a basic understanding of finances, and receiving access to helpful financial products and services.

Since the term “Financial Readiness” was first coined in 2003, the Department has continually improved and expanded its financial readiness campaign to increase Servicemember awareness of saving and financial stability, and enhance understanding of financial products and services. Utilizing a combination of education, resources, programs, and protections (such as the SCRA and the MLA), the campaign’s goal is to reduce the financial stress on military families, thereby enhancing overall mission readiness.

The Financial Readiness Campaign involves eight pillars of financial readiness:

1. Maintaining good credit
2. Achieving financial stability
3. Establishing routine savings
4. Participation in the Thrift Savings Plan and Savings Deposit Program
5. Retention of the Service-member’s Group Life Insurance and other insurance
6. Utilization of low-cost loan products as an alternative to payday lending and predatory loans
7. Use of low-cost Morale, Welfare and Recreation programs such as the Commissary and military exchange system
8. Preservation of Security Clearances

The campaign has been effective and is on-going. Servicemember participation in the Thrift Savings Program is strong. The Savings Deposit Program, available to all deployed Servicemembers, enjoys similarly strong participation rates. The campaign is augmented by nonprofit organizations that produce programs and campaigns such as “SaveandInvest.org” and “Military Saves.” The recent “Military Saves” campaign was very successful.

An essential element of our Personal Financial Readiness Program is proactive life cycle financial management services. The program addresses the effects of financial decisions on personal and professional lives, provides resources needed to make prudent consumer decisions, and offers related services and support.

A variety of resources are available to help Servicemembers and their families avoid the consequences of poor financial decisions, and to put them on the path to financial freedom. Education, counseling, and training are available both on-line and in-person to military members and families of all components. The Department has Personal Finance Managers (PFMs) at every military installation who provide financial counseling, education, training, and services. All PFMs hold a nationally recognized financial counselor certification.

As part of the DoD Military Family Life Consultants program, the Department has additional resources in the form of Personal Financial Counselors who augment other resources and provide “surge” capability to units or installations at critical times or with critical needs.

Other excellent resources, such as Military One Source (MOS), a confidential, Department of Defense-funded program providing comprehensive information on military life at no cost to active duty, Guard and Reserve Component Members and their families, are available 24 hours per day for all Service members and their families. MOS offers free and confidential

financial consultations over the phone or face-to-face, in addition to providing specialized financial and tax planning consultations. The “Money” section of MilitaryOneSource.com provides financial information and resources that include calculators, tips, books and CDs, and personal finance newsletters.

The Department has also partnered with nationally-recognized, financial literacy non-profit organizations. Groups like the Consumer Federation of America (CFA), the Better Business Bureau Military Line, and the Financial Industry Regulatory Authority Education Foundation provide tremendous resources free of charge. The Department and CFA conduct the tremendously-successful Military Saves Campaign every year. DoD also partners with the Department of the Treasury and the Federal Trade Commission (FTC)—just two of more than twenty such organizations with whom we work in Treasury’s Financial Literacy and Education Commission to address consumer awareness, and provide information on identity theft and insurance scams to Servicemembers and families.

### **The Servicemember’s Civil Relief Act**

The Department recognizes and appreciates the critical importance of the SCRA. It is clear that no other statute provides such a unique breadth of benefits and protections for Servicemembers. The purpose of the SCRA is a lofty one, to provide Servicemembers’ peace of mind, knowing that their personal affairs and economic interests will be protected while they put their lives on the line in defense of our Nation, and the Act has lived up to that goal.

The Act’s protections are broad and diverse. It protects Servicemembers from evictions, default judgments, and foreclosure. It allows them to delay judicial proceedings and to place caps on their interest rates. It also provides them and their spouses certain tax relief. Over its

long history of more than 70 years, it has lessened some of the many burdens associated with military service.

### **Congressional Efforts to Strengthen Enforcement of the SCRA**

Congress has continued to play a critical role in protecting our Servicemembers and their families. Over the last few years Congress has strengthened the SCRA's protections through such measures as the Veterans' Benefit Act of 2010, which provided for additional civil enforcement, as well as monetary damages and attorneys' fees. It also clarified that the Attorney General has similar enforcement authority on behalf of Servicemembers and other aggrieved persons.

Congress has extended the 6% interest rate cap for pre-service mortgage obligations. This interest rate cap, which had been in effect for decades, had previously applied only to actual periods of active duty. Now the interest rate cap for pre-service mortgage obligations has been extended for an additional 12 months after leaving active duty. Congress also amended the SCRA to extend protections from foreclosure on pre-service mortgage obligations for twelve months after the Servicemember leaves active duty..

### **SCRA Education and Enforcement**

Congressional support through the SCRA and other measures, however, means little if our Servicemembers are not aware of their rights. Thus, the Department has developed programs to ensure that Servicemembers know about the benefits and protections of the SCRA. This educational process involves coordinated and overlapping efforts to alert Servicemembers and their commanders of these benefits and protections and then to ensure that the proper counselors

are there to help the Servicemember fully understand the nuances of the relevant laws and receive their full protections under the law.

The Department's efforts to educate Servicemembers and their families center around installation readiness facilities, pre-deployment and re-deployment process facilities, and reserve component mobilization and demobilization processing centers. These reserve component processing centers have been of critical importance because two of the most important economic protections and benefits—the 6% interest rate cap and the extension of foreclosure protections—apply only to pre-service obligations and thus effect predominately Reservists and National Guardsmen called to active duty. As a result, SCRA and related financial training at pre-deployment and re-deployment processing facilities is more detailed and helpful than ever before.

Thus, it is with pride we assert that SCRA education, compliance, and enforcement is a “good news story.” Certainly there have been accounts of mortgage foreclosure abuses and other prominent SCRA violations. We know well, the ravages the economic crisis and burdens of more than 13 years of sustained conflict with related deployments have had upon the financial fitness of military families.

As it relates particularly to the SCRA, however, we have been effective in curbing foreclosure abuses against military personnel and their families. While there may still be some foreclosures in process or in the “pipeline,” it appears that the majority of the abuses seen in the past have been curbed. This is the result of sustained and hard work within the Department, with other government agencies, as well as with the financial industry.

The Department is fortunate to enjoy a very cooperative working relationship with other federal agencies relating to consumer law issues—the Department of Justice, the Consumer

Financial Protection Bureau (CFPB), the CFPB's Office of Servicemember Affairs (OSA), and the Office of the Comptroller of the Currency (OCC), to name just a few. Federal enforcement actions brought by our colleagues at Justice have been swift and effective. State and local compliance and enforcement efforts are critical. We are grateful for our cooperative working relationships with consumer advocates and other organizations such as the CFA and the HOPE NOW Alliance, dedicated to assisting all persons with their financial needs—but who are also tremendously dedicated to our military families.

We have been and remain engaged with the consumer financial industry. If we are to represent and protect our Servicemembers and their families—and we will—it is essential to have open lines of communication with the industry. We are proud of our cooperation with the American Bankers Association, the Association of Military Bankers of America, the Credit Union National Association, and the Defense Credit Union Council, in efforts to keep them apprised on the SCRA and the MLA, and advise them of issues affecting our Force. Our close working relationship with the Financial Services Roundtable and the Housing Policy Council has allowed us to advocate frequently and effectively on financial issues affecting the Force. The industry remains supportive and complementary of the Department's enhancements to the Defense Manpower Data Center's database capabilities, providing industry with real-time, public-access, large batch data search capabilities and allowing industry to identify military customers and provide them SCRA and other benefits to which they are entitled. Other initiatives include forms, accepted by the financial industry, that allow Servicemembers to invoke their SCRA protections more easily. Our work with industry and other agencies has already produced great developments regarding protections and benefits for military families disadvantaged by Permanent Change of Station moves.



In conclusion, while there may be more foreclosures on the horizon, and we are not yet out of the “economic woods,” we are very encouraged by solid progress on the SCRA front.

### **The Military Lending Act and Related Financial Challenges**

Despite the aforementioned successes on the SCRA front, we have commensurate concerns regarding small dollar lending and related products and services. Seven years ago, the Department recognized there were some specific lending practices causing problems for Servicemembers and their families which could not be adequately addressed through education programs and awareness campaigns. Significant Departmental and Inter-Agency action resulted in our Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents (2006), and subsequent Congressional action in the form of the Talent Amendment, commonly referred to as the Military Lending Act (MLA) (Sec 670 of the John Warner National Defense Authorization Act for FY 2007). The MLA gave the Department authority to write a regulation to define “credit” subject to the limitations posed by the MLA.

With the assistance of the Prudential Regulatory Agencies we did just that, and the resulting rule (32 CFR Part 232) covered tax refund anticipation loans and closed-end payday loans and vehicle title loans -- both of which are tightly defined. This good work stamped out the majority of abuses in the areas regulated, and we have relied upon the enforcement efforts of Federal and state regulators to great effect.

The Department has remained vigilant in this area. Annually, we send a representative to the National Conference of Consumer Credit Administrators to ensure uniformity in compliance by covered creditors. Each year the regulators have reported that their examinations have found compliance with the Rule and no need for enforcement action. In some states where such loans

are authorized, but in which enforcement authority has not been provided, the Department has engaged the States, requesting they make technical amendments to their statutes allowing for administrative enforcement. To date, 37 States either do not authorize these loans or provide their regulators with adequate administrative enforcement authority.

The Department has also been working with the FTC and the CFPB to assist in recording violations of the SCRA and the MLA in the FTC's law enforcement database – Military Sentinel. DoD legal assistance attorneys and financial counselors assist military clients with recording instances of fraud, deception, abusive practices, and identity theft into the database so U.S. Attorneys, State Attorneys General, Federal and state regulators, and other law enforcement agencies have access to allegations.

Our Servicemembers, families, legal assistance attorneys, and financial counselors have informed us that the MLA legislation has been extremely effective in stamping out abuses involving the types of credit covered. In addition, military Relief Societies, military banks, and credit unions have assisted Servicemembers and families in need. However in response to changes in the marketplace and Federal and state policies, lenders have sought, and are seeking, to create products and services which fall outside of the MLA and the enforcement actions mentioned above.

Several years removed from its enactment, however, our financial counselors and legal assistance attorneys still see clients who have payday or vehicle title loans. They also report that internet and overseas opportunities exist outside of the law, and that some unscrupulous lenders – and even borrowers – still attempt to skirt or evade the law, by entering into loans that are covered by the MLA. Additionally, many lenders now offer loans in addition to those covered by the MLA that charge interest greater than 36 percent and contain terms that are outside of the

current definitions in the implementing regulation for the MLA. The credit marketplace has changed since 2007 and we anticipate that it will continue to adjust to market demands and changes in state and Federal policy.

Lending over the internet remains an issue, with the most egregious offenders located offshore or outside the United States, thereby avoiding coverage under the Act. The use of allotments in consumer credit transactions and the abuse of high cost installments loans are also of concern to the Department.

### **The Department's Efforts**

This has not escaped our—or Congress'—attention, and at the direction of the Congress, the Department is studying changes in the credit marketplace and their effects on Servicemembers and their families. DoD posted an Advanced Notice of Proposed Rulemaking (ANPR) in the Federal Register on June 17, 2013 through August 1, 2013, requesting public comment on the report request made on pages 782 and 783 of House Report 112-329, to accompany H.R. 4310. Specifically, the ANPR requested the public respond to the following four questions:

- (1) The need to revise the implementing regulation (32 CFR Part 232), with special attention to the definition of covered consumer credit;
- (2) If there is a need for change, what should be included in any revision and why;
- (3) What should not be included in any revision and why; and
- (4) Examples of alternative programs designed to assist Servicemembers who need small dollar loans.

The perspective provided in the responses depended primarily on the role of the respondents or the constituents the respondents represented. Eleven letters from 5 bank associations, 7 credit union associations/affiliates/councils/leagues, 2 financial services/installment lender associations, one credit union and one financial services company expressed their satisfaction and support for the current regulation and warned against the potential for unintended consequences if the scope of the definitions are extended. Four of the responses from credit union associations and the one financial services company went further to say DoD should continue to take targeted action through the regulation against problematic lenders. Three responses from rent-to-own (RTO) companies expressed that RTO is not credit and therefore should not be subject to the regulation and that RTO is “an attractive marketplace choice for many, including some service members.” The response from the online lenders defended the need for access by Servicemembers to small dollar, short term credit. Seven letters from 45 consumer advocacy groups advocated extending the scope of the definitions in the regulation, and 44 consumer groups recommended extending the scope of the definitions to cover all credit subject to the Truth in Lending Act (TILA). One of the Military Relief Societies, a national veterans support organization, and two individuals also provided input to extend the scope of the definitions in the regulation.

The perspective of agencies within state governments has been particularly insightful to the Department, since many of these organizations have oversight and enforcement responsibility over several of the credit products in question. Fourteen State Attorneys General recommended covering the full range of credit products and advocated including overdraft protection and RTO. Three State Departments of Veterans Affairs and the association representing 49 state credit regulators recommended covering all credit subject to TILA. Finally, a letter signed by 54

Members of the House of Representative recommended extending the scope of the definitions to close loopholes that allow continued access to payday and vehicle title loans, and a letter signed by 23 Senators advocated extending the scope of the definitions, along with covering installment loans.

Loan providers expressed their concern that changes in the MLA may have unintended consequences for military borrowers (such as limiting credit), add to their regulatory burdens, or restrict their ability to offer high cost loans. Consumer advocates and state officials said that if the MLA has been designed to protect military borrowers from high cost loans (even if limited to payday and vehicle title loans), the MLA cannot fulfill its role without considering loans with longer terms (that can feature installments), open-end credit, and increased principal. These opposing viewpoints lead to the important question whether the limitations provided by the MLA since 2007 can be continued without creating undesirable consequences.

As a result of what we have learned, the Department assembled the Prudential Regulatory Agencies and the CFPB to explore revisions to the regulation. We established a team of skilled economists and analysts to assist us in this initial rulemaking, in addition to a similarly-skilled team of drafters. From all of these sources, and with all of this assistance, we will determine the best course our proposed rulemaking should take.

As our work progresses, and in response to these challenges and in support of our Servicemembers and their families, the Department remains proactive and vigilant; employing multi-faceted education and training programs, and leveraging all available resources, including extensive cooperation with all of the Agencies and partners described above.

The Services Legal Assistance Programs have continued to provide expert legal assistance in all consumer law areas. These services, focused where needed at the installation

level, are available to assist in a large number of consumer law related areas. These include services in all the areas noted above, to include the burgeoning areas of suspect auto loans/purchase practices, deployment-related SCRA violations, and aggressive debt collection practices.

The Services continue to designate consumer law matters in their highest tiers of available services and provide specialized training to all legal assistance practitioners. The Department's long-term association with the Legal Assistance for Military Practitioners Committee of the American Bar Association (ABA) and its Pro Bono Project (PBP), enables the Services' Legal Assistance organizations to refer eligible clients to the PBP, where they receive both in- and out-of court-representation from local volunteer attorneys who are subject matter experts in consumer law. The PBP has been so successful that the ABA has pushed the concept to state and local bar associations, who are now offering very similar programs in conjunction with their local military installations.

## **The Way Ahead**

Current efforts of the Department, other Government agencies, and non-profit organizations are important. But even more important are future efforts to protect and advocate for our Servicemembers, the way ahead on consumer law issues affecting the Force, and how we work to meet those challenges. We remain committed to balancing regulation with education and assistance to maintain the financial readiness of the force. The MLA and implementing regulation have done what was intended over the past seven years, and the Department plans to maintain a steady approach to the implementing regulation to balance the protections offered through the regulation while sustaining unimpeded access to helpful financial products.

On behalf of the Department, I thank you for your assistance and support. It is my privilege to appear before you and I look forward to your questions.