

United States Senate

WASHINGTON, DC 20510

August 1, 2013

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

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

Dear Mr. Secretary:

We are writing in response to the Advanced Notice of Proposed Rulemaking addressing “Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents” issued by the Department of Defense and published in the Federal Register on June 17.

We have repeatedly expressed concern regarding the protection of our service members from predatory and high cost lending. By enacting the Military Lending Act in 2007 as part of the John Warner National Defense Authorization Act, Congress sent a clear message that such protection was of paramount importance to the financial security and military readiness of our service members.

Through the Military Lending Act, Congress authorized the Secretary of Defense to write regulations defining the types of consumer credit products to which the law’s 36% annual percentage rate (APR) cap applied as well as to provide other protections. The law gave the Department of Defense the authority and flexibility to write robust regulations that would facilitate the protection of our service members and their dependents from high cost lenders and loan products such as payday loans, car title loans, tax refund anticipation loans, installment loans targeted to military borrowers, and rent-to-own products.

Unfortunately, the rules initially promulgated by the Department contained gaps in the definition of consumer credit, which over the years, have been taken advantage of by certain lenders. Currently, the Department’s regulations apply to only three narrowly defined types of products: closed-end payday loans of \$2,000 or less and repayable in 91 days or less; closed-end vehicle title loans repayable in 181 days or less; and closed-end tax refund anticipation loans.

Due to the narrow definition of consumer credit, certain lenders are offering predatory loan products to service members at exorbitant triple digit effective interest rates and loan products that do not include the additional protections envisioned by the law. As such, a wide range of credit that is structured as open-ended versus closed-ended or that otherwise is structured to evade the limitations set forth in the current regulations fall completely outside the law’s intended prohibitions.

The Department was given the authority and has inherent flexibility provided under the law to replace narrow definitions of consumer credit with a more expansive version to which the

36% APR cap and other protections would apply. In its rulemaking, we urge the Department to consider modifying the definition of consumer credit to ensure that it is broad enough to protect service members from all forms of deceptive, abusive and/or high-cost credit, regardless of the duration or structure of the loan. At a minimum, the definition should include but not necessarily be limited to: (i) payday and vehicle title loans of any duration, whether open or closed-ended; and, (ii) tax refund anticipation loans of any duration. We also ask that you consider extending the 36% APR cap to unsecured installment loans targeted at the military and all other forms of consumer credit based on an assessment of the evolution of lending practices since 2007.

The Department of Defense has the opportunity to expand the law's protections to address forms of evolving abusive credit not envisioned when it was passed. Service members and their families deserve the strongest possible protections and swift action to ensure that all forms of credit offered to members of our armed forces are safe and sound.

Sincerely,

Jack Reed Jim Amodeo Mark Udall

Joe Donnelly

Brian Schatz

Richard Blumenthal

Bill Nelson

Tom Harkin

John Thune

Mazie Hirono

Cory Gardner

Elizabeth Ann

Jeffrey A. Muller

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