

July 31, 2013

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

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

Dear Mr. Secretary,

Texas Appleseed respectfully requests that the Department of Defense (the Department) expand the Military Lending Act (MLA) to ensure service members are adequately protected from predatory lending practices. The rules implemented by the Department cover certain predatory products; however, the MLA has significant gaps and loopholes, which lenders exploit to target military borrowers with high interest loans well above the MLA's 36% rate cap. In addition, there is evidence of evasion of the MLA by payday and auto title lenders in Texas.

Evasion of the MLA's provisions persists in Texas with some lenders actively encouraging otherwise covered borrowers to falsify applications or simply continuing to offer loans in excess of 36% APR to covered borrowers.¹ Texas Appleseed has observed lenders in Texas engage in both practices to evade the MLA.² One solution may be to require lenders within a certain distance of military bases or communities to verify a potential borrower's non-military

¹ Consumer Federation of America, *The Military Lending Act Five Years Later* 24 (May 2012), available at <http://www.consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf>.

² Texas Appleseed observed these practices while visiting all payday and auto title storefronts in Killeen, Texas in July 2013.

status through existing databases. Unfortunately, more robust enforcement of the MLA alone is not enough to protect service members from predatory lending practices. Accordingly, the MLA's reach should be expanded to prohibit other types of predatory loan products that create debt traps for service members and their families.

Texas Appleaseed is particularly concerned with multiple-payment or installment payday loans, which are currently not covered by the MLA due to their length (over 91 days) and/or their size (some exceed \$2,000).³ Texas has seen a steady increase in multiple-payment loans offered by payday lenders. Currently, at least 12% of payday and auto title loan products offered in Texas fall outside of the MLA's coverage.⁴ In 2007, the Department found that payday installment loans present military consumers with high fees and interest costs, but do not, in contrast to payday and auto title loans, contribute to a cycle of debt.⁵ The Department based this conclusion on whether loan products possessed four key attributes: 1) inadequate underwriting or analysis of a borrower's ability to repay the loan; 2) excessive fees and interest; 3) unrealistic repayment schedules; and 4) frequent refinancing of the loan. The Department determined that installment loan products possessed only the second attribute (excessive fees and interest) while payday and auto title loans possessed all four attributes.⁶

In Texas, high cost multiple-payment loans with rates often exceeding 600% APR are increasingly offered by payday lenders. These high-interest multiple-payment products are often extended with little regard for a borrower's ability to repay, causing many borrowers to refinance them.⁷ In Texas in 2012, just over half (51%) of multiple-payment nonbank payday loan transactions were

³ 32 CFR §232.3.

⁴ Office of Consumer Credit Commissioner, *Credit Access Business (CAB) Annual Data Report, CY 2012 (May 2013)*, available at http://www.occc.state.tx.us/pages/publications/consolidated_reports/CAB/050613%20CAB%20Annual%20CAB%20Report.pdf.

⁵ 32 CFR Part 232, 50582.

⁶ *Id.* at 50581-82.

⁷ See Texas Appleaseed, *Reshaping the Future of Small-Dollar Lending in Texas: Alternatives to High-Cost Payday and Auto Title Loans* (Jan. 2012), available at http://www.texasappleseed.net/index.php?option=com_docman&task=doc_download&gid=698&Itemid=.

refinances.⁸ Based on 2012 quarterly data, an average of nearly 34% of Texas multiple-payment payday loan borrowers refinanced a loan within the same quarter that they obtained the loan and they did so an average of 1.5 times.⁹ This figure is astounding; most multiple-payment payday loans last longer than a single yearly quarter meaning that a third of borrowers refinance well before their loans mature.

Unrealistic repayment schedules are also characteristic of multiple-payment payday loan products. Borrowers are given loans that can consume half of their monthly income or more.¹⁰ These practices are identical to those already observed in the Department's 2006 report on predatory lending practices directed at members of the armed forces and their dependents.¹¹ This report also noted that payday lending storefront operations outnumbered military installment loan companies by a ratio well over 100 to 1.¹² As the multiple payment payday and auto title market further expands, that ratio is poised to change and Texas Appleseed is concerned that the Department's implementation of the MLA will continue to leave military borrowers vulnerable to these predatory products.

Store visits conducted by Texas Appleseed in Killeen, Texas reveal that some storefronts surrounding military bases have pivoted to offering high-cost multiple-payment products to service members.¹³ For example, at least one national payday lender with two locations in Killeen, both within three miles of

⁸ Office of Consumer Credit Commissioner, *Credit Access Business (CAB) Annual Data Report CY 2012* (May 2013).

⁹ Office of Consumer Credit Commissioner, *Credit Access Business Update to the House Pensions, Investments & Financial Services Committee* (Feb. 2013), available at <http://www.legis.state.tx.us/tlodocs/83R/handouts/C2702013021814001/3f4d1118-91d5-4a44-8314-069cc7e4dfa5.PDF>.

¹⁰ For example, one lender structures loans to last 180 days with steep biweekly payments that often consume a large percentage of a borrower's monthly income.

¹¹ One military installment lending company in California reported that, in 2005, 45.8% of the number and 30.2% of the amount of loan originations were refinanced outstanding loans. U.S. Department of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (Aug. 2006), available at www.defense.gov/pubs/pdfs/report_to_congress_final.pdf.

¹² *Id.*


¹³ Texas Appleseed visited all payday and auto title storefronts in Killeen, Texas in July 2013.

Fort Hood, offers installment payday loans for up to \$3,000 with an annual percentage rate of 581.72 percent. To repay a \$1,500 loan, a borrower would make 12 payments totaling \$4,419.15 over 168-day period. The MLA does not include these multiple-payment payday loans, even though they contribute to the cycle of debt.

In summary, the MLA should be strengthened and expanded to provide comprehensive protection to members of the military and their families. Evasion of the MLA means that high-cost short-term payday loans are available to service members. Loopholes in the MLA combined with changes in the loan market itself mean that high-cost longer-term loans are readily available to service members as well. All of these loan products have annual rates well in excess of the federal cap of 36% and hurt the finances of service members, their families, and our communities. Changes to the MLA that prohibit lenders from offering those products to service members will offer some relief.

In addition to these comments, Texas Appleseed joins the comments of the Consumer Federation of America and over twenty other consumer groups who have filed in this matter urging the Department to expand its rules to cover credit products such as multiple-payment payday loans.

Sincerely,



Brett M. Merfish
Staff Attorney