

**STATEMENT OF  
COLONEL PAUL KANTWILL  
DIRECTOR, OFFICE OF LEGAL POLICY  
OFFICE OF THE UNDER SECRETARY OF DEFENSE (PERSONNEL & READINESS)  
THE DEPARTMENT OF DEFENSE  
BEFORE THE  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS  
UNITED STATES SENATE  
ON EMPOWERING AND PROTECTING SERVICEMEMBERS, VETERANS, AND  
THEIR FAMILIES IN THE CONSUMER FINANCIAL MARKETPLACE**

**JUNE 26, 2012**

Good Morning, Chairman Johnson, Ranking Member Shelby, and Members of the Committee. It is a great day to be a Soldier and 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, and for the opportunity to address you today.

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. I currently serve as the Director of Legal Policy in the Office of the Under Secretary of Defense for Personnel & Readiness, but my perspective on these issues will be more that of a practitioner and Servicemembers' Advocate. I am a career Active Duty Army Judge Advocate with 22-plus years experience, with many tours of duty across the globe in active theaters of operation, providing legal support to our troops and their families. I have seen first-hand, and remind myself daily, that a Servicemember burdened with concerns outside of the parameters of his or her mission cannot reach full combat effectiveness. I believe my experience in having assisted Servicemembers in the field and leading legal organizations devoted to providing support to our Servicemembers and their families, adds credibility to my Office's present efforts on behalf Servicemembers.

We have the privilege of working daily with the Services, most notably through the Service Chiefs of Legal Assistance and Client Services, who are subject matter experts devoted to ensuring our Servicemembers and their families receive the very best in Legal Support and Assistance. This support allows our troops to concentrate on the mission and care for their families in a manner that befits their tremendous sacrifices. We are fortunate to work with the dedicated financial professionals across the Department, notably in the Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), who offer their immense talents and assistance in caring for the financial needs and well-being of the force.

We also work closely on financial issues with other Government agencies, and our close relationships with the Federal Trade Commission (FTC), the Department of Justice, the Consumer Financial Protection Bureau (CFPB), and the CFPB's Office of Servicemember Affairs (OSA), to name a few, have allowed us to make important gains on behalf of our Servicemembers. Similarly, we remain engaged with the industry: our cooperative relationships

with banking associations, credit unions, the Financial Services Roundtable and the Housing Policy Council, to name a few such institutions, have benefited military families.

I would first like to discuss the financial challenges facing our men and women in uniform and their families, and describe in general terms efforts of the Department to assist them, especially as it relates to consumer law issues. This includes the Department's aggressive and proactive financial education and training program, legal engagement and support, the Inter-Agency Process, and our engagement with industry. I would then like to highlight the Department's history with the Military Lending Act, focusing on the current climate of consumer law and Military Lending Act issues confronting the force, including the very recent observations of the Consumer Federation of America. Finally, I will discuss where the Department sees the consumer credit industry going and collective actions it plans to take in response.

### **Background of Department of Defense Involvement In Consumer Law Issues and Financial Readiness and Current Consumer Law Issues from the Field**

Financial readiness of Servicemembers and their families is essential to their well-being and their ability to contribute to the mission. As I noted at the outset, having assisted Servicemembers in deployed and garrison environments, a Servicemember distracted from the tactical mission by financial issues cannot be completely mission focused. Thus, the Department has predicated financial readiness on Servicemembers and their families having reasonable protections, basic understanding of finances, and access to helpful financial products and services.

Financial readiness was coined as a term in 2003, when the Department established a campaign designed to increase Servicemember awareness of saving and financial stability and enhance understanding of financial products and services. The campaign has been effective and is on-going. This campaign is also assisted by nonprofit organizations that produce programs and campaigns such as "SaveandInvest.org" and "Military Saves."

Six years ago, the Department recognized there were specific lending practices causing problems for Servicemembers and their families which could not be adequately addressed through education programs and awareness campaigns. Commanders were advocating for action

on behalf of the Servicemembers and their families who were having significant debt problems.. At the request of Congress, the Department reported on potentially harmful lending practices in our Report on Predatory Lending Practices Directed at members of the Armed Forces and Their Dependents, dated August 9, 2006, and subsequently Congress approved 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), which provided the Department authority to write a regulation to define “credit” subject to the limitations posed by the MLA.

Reactions to these restrictions were mixed. Consumer advocates heralded this as an opportunity to cap all high-cost lending products, while the financial industry viewed this law and rulemaking authority as potential impediment to their ability to provide credit to Servicemembers and their families. With the assistance of the seven Federal financial regulatory agencies, DoD was able to draft and release a regulation within the prescribed time limitation seen as acceptable and workable by both the consumer advocates and the mainstream financial industry providers. The resulting rule (32 CFR Part 232) covered closed-end payday loans, vehicle title loans, and tax refund anticipation loans, with payday and vehicle title loans being tightly defined. The initial reaction of the creditors providing these loans was to eliminate Servicemembers and their families as part of their market. The Department did not perceive this response as having a detrimental impact on Servicemembers and their families, since there were a sufficient number of better alternatives available for immediate cash needs through the Military Relief Societies and the military banks and credit unions.

The Department has always understood enforcement would be a critical component of success in this area and enforcement of the Rule required assistance of the Federal and state regulators who oversee the loans covered. The Department reached out to these regulators in 2007, and has had their support ever since. In 2008, the Federal Financial Institutions Examination Council (FFIEC) produced a tool for Federal and state regulators to use as part of their examinations. This tool, the FFIEC Interagency Examination Procedures for 32 C.F.R. Part 232, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents provides procedures examiners should use to determine if creditors have systems in place to comply with 32 CFR Part 232.

Annually, the Department has sent a representative to the national conference of state regulators to ensure there are no difficulties in obtaining compliance from the covered creditors.

Each year the regulators have reported that their examinations have found compliance with the Rule and no need for enforcement action. With that said, the Department has approached states authorizing these loans that do not provide their regulators enforcement authority to make a technical change to their statute allowing for administrative enforcement, if needed. To date, 35 states either do not authorize these loans or provide their regulators with adequate administrative enforcement authority. Finally, we have been working with the FTC and the CFPB to assist in recording violations of the Servicemembers Civil Relief Act (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.

In addition to coordinating with state regulators, the 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. Also, Relief Societies, military banks, and credit unions have stepped up to the plate to assist Servicemembers and families in need. However, financial counselors and legal assistance attorneys still occasionally see clients who have payday or vehicle title loans. They also report internet and overseas opportunities exist, and some unscrupulous lenders - and even some borrowers - still attempt to skirt or evade the law. As I will discuss further, changes in the definition of the military dependents in the law will allow the use of database systems to verify who is a covered borrower and further limit opportunities for evasion.

This May, the Department had the benefit of receiving a report from the Consumer Federation of America (CFA), which combined responses from regulators, counselors, attorneys and investigative researchers. The report concludes that the MLA and its implementing regulations have had the desired effect of curtailing the use of payday, vehicle title, and refund anticipation loans by Servicemembers and their families. The over-riding theme of the report is – we have achieved much, but there is still much to be done.

The CFA's findings and recommendations echo what we have been hearing from our practitioners in the field. Our Legal Assistance Offices continue to see the full range of consumer credit issues, including questionable lending practices. While they concur that the

MLA has largely stamped out the majority of abuses, especially in the area of refund anticipation loans, they still report seeing pay day loans and auto title loans charging interest greater than 36 percent with terms that have been modified to avoid falling under the MLA. Creditors and lenders both still attempt to avoid the MLA by utilizing procedures or modifying products to fall outside of the regulation. This, of course, leads inexorably to problems with debt collectors and negative consequences continue.

The use of allotments in consumer credit transactions remains a subject of continued discussion and there is an increase in the use of lending over the internet: many of the worst sites are off-shore and outside the applicability of the MLA. Yet another concern coming from the field is that automobile dealers, especially used car dealers and “buy here, pay here” establishments, are employing high interest loans. There is little that may be done, as these loans are specifically excluded from the terms of the MLA.

### **The Department’s Efforts**

In response to these challenges and in support of our Servicemembers and their families, the Department has remained vigilant and proactive, leveraging resources, implementing an aggressive and multi-faceted financial education and training program, working with other Agencies, and providing first-class legal support to our members.

In the area of financial readiness, the Department has long believed financial readiness has a direct impact on mission readiness. In order to provide Servicemembers and their families with the tools and information they need to develop individual strategies to achieve financial goals and address financial challenges, the Under Secretary of Defense (Personnel & Readiness) initiated the DoD Financial Readiness Campaign in 2003. This campaign is a concerted effort to enhance the financial readiness of all Servicemembers and families through education, resources, programs, and protections. The campaign’s goal is to alleviate financial stressors on the military to enhance family, financial, and overall mission readiness.

The Financial Readiness Campaign rests on eight pillars of financial readiness including:

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 PX
8. Preservation of Security Clearances

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 related services and support.

A variety of resources are available to help Servicemembers and their families avoid common traps and pitfalls due to 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 and are available to military members and families of all components. The Department has Personal Finance Managers (PFMs) at every military installation family center who provide financial counseling, education, training, and services. PFMs must hold a nationally recognized financial counselor certification.

As part of the DoD Military Family Life Consultants (MFLC) program, the Department has Personal Financial Counselors (PFCs) who: are available for rotational or surge support assignments for installations and other units; can be requested to support Yellow Ribbon Reintegration Program events and other Reserve Component family events via the on-demand Joint Family Resource Center; and are part of most state Joint Family Support and Assistance Program (JFSAP) staffs.

In addition, Military OneSource (MOS) provides financial support services 24/7 for all Service members and their families. MOS offers up to 12 free and confidential financial consultations via phone or face-to-face, and access to specialized financial and tax planning consultations via phone. The money section of [MilitaryOneSource.com](https://www.militaryonesource.com) provides financial information and resources that include calculators, tips, books and CDs, and personal finance newsletters.

The Department has also partnered with several financially-related non-profit organizations to promote financial literacy, such as CFA, Better Business Bureau Military Line, and the Financial Industry Regulatory Authority (FINRA) Education Foundation. DoD and CFA partner annually to conduct the *Military Saves* campaign, and DoD partners with the Department of the Treasury and FTC (two of twenty Federal agencies that are also members of Treasury's Financial Literacy and Education Commission) to address consumer awareness, identity theft, and insurance scams to Servicemembers and families.

The Services Legal Assistance Programs have risen to the occasion, offering first-class legal support in consumer law as well as all other legal disciplines. The primary effort is the provision of legal assistance where it is needed most: to individual clients at the installation level. In this area all the Services excel, continuing to assist a large number of Consumer Law related matters. 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 designate Consumer Law Matters as a top priority, offering specialized training at the Service JAG Schools. For example, Consumer Law Matters have been recognized as a "Tier 1" service in terms of field delivery & specialized training for providers at the Naval Justice School (NJS). This includes individual Judge Advocate completion of a "Consumer Law" section of the revised Legal Assistance Course to ensure field providers are fully trained to support. The Department's partnership with the Legal Assistance for Military Practitioners (LAMP) Committee of the American Bar Association (ABA) and its Pro Bono Project (PBP), enables the Services' Legal Assistance organizations to offer unprecedented assistance, in the form of both in- and out-of court-representation, from volunteer attorneys who are subject matter experts in many areas, including Consumer Law, a prominent area of focus for the PBP.

The Department and the Services have leveraged all available resources, working with the CFPB, and the CFBP's OSA, and other organizations such as the HOPE NOW Alliance to execute outreach programs for Servicemembers, especially those assigned to installations in the areas hardest hit by the mortgage foreclosure crisis. The Services' Legal Assistance staffs have participated extensively in outreach programs at places such as such as Nellis AFB, Naval Station San Diego, Marine Corps Base Camp Pendleton, Fort Bragg, and numerous other locations.

The Services have provided a plethora of consumer focused webcasts on consumer law focused areas such as the SCRA; Fair Debt Collection Procedures; Credit Reporting & the Fair Credit Act; the Mortgage Crisis and related consumer law issues; and Bankruptcy. The Service Chiefs of Legal Assistance send out weekly Legal Assistance notes or “Legal Assistance Practice Advisories,” to the installation level Legal Assistance offices, which include the latest information on any breaking news/new developments. Recent advisories have included consumer law-specific information such as the Military Lending Act, information on DOJ's various efforts and settlements with mortgage and lending institutions and settlement of a suit against a property manager not permitting Servicemembers from terminating their leases under provisions of the SCRA. They also forward to the CFPB consumer warnings and information on online consumer tools.

The Inter-Agency process is alive and well and the Department is fortunate to enjoy a cooperative working relationship with other federal agencies relating to consumer law issues—such as the Department of Justice, the CFPB, and the CFPB’s OSA. The Department also works closely with a myriad of state and local agencies whose assistance, especially in the enforcement milieu, is absolutely invaluable. The Department is also grateful for the cooperative working relationships with consumer advocates and other organizations such as the Consumer Federation of America and the HOPE NOW Alliance, dedicated to assisting all persons with their financial needs—but are also dedicated to our military families.

Lastly, we remain engaged with the consumer financial industry. The Department has sustained engagement with banks and credit unions. It is essential, if we will represent our Servicemembers and their families well and advocate effectively on their behalf, the lines of communication must remain open. We have maintained open lines of communication with organizations such as the American Bankers Association, the Association of Military Bankers of America, and the Credit Union National Association, 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 (FSR) and the Housing Policy Council (HPC) has already borne much fruit. The industry has been highly complementary of the Department’s enhancements of the Defense Manpower Data Center’s database capabilities, providing the industry with real-time, public-access, large batch data search capabilities allowing the industry to identify their military customers and provide them the SCRA and other benefits to

which they are entitled. The Department worked closely with FSR and HPC to develop the “Military Orders Short Form,” a vehicle allowing Servicemembers to invoke their SCRA protections more easily. Our work with the industry and with the other agencies has already produced great developments regarding protections and benefits for military families disadvantaged by Permanent Change of Station (PCS) moves.

## **The Way Ahead**

The current efforts of the Department, other Government agencies, and non-profit organizations are important. But 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. As noted above, CFA’s recent report highlights there is much to be done. The report provides several findings and recommendations, and it is useful to highlight them here:

- DoD should cover forms of payday and vehicle title loans not covered by the regulation;
- DoD should cover problematic high cost products not covered by the regulation;
- There are additional concerns about the use of overdraft protection programs that need to be addressed;
- Service members and families should be considered as equivalent to citizens of the state for purposes of the application of state consumer protection laws;
- Enforcement should be enhanced to authorize enforcement of the MLA and rule by Federal agencies inadvertently excluded from having authority;
- DoD should limit mandatory use of the military allotment system to secure a loan; and
- DoD should undertake further survey of Servicemembers, legal assistance attorneys, and financial counselors to validate the need to make additional changes to the implementing regulation.

The Department values the efforts of the CFA, a non-partisan, non-profit entity which has historically advocated on behalf of Servicemembers and their families in the consumer law and financial arenas. The Department is currently reviewing the CFA recommendations and, after completion of an internal survey, which will measure the prevalence and impacts of concerns with financial products, will review options for appropriate action. Furthermore, DoD may wish

to publish an advance notice of proposed rulemaking in order to obtain a broad basis of feedback from consumer advocates, financial industries, Federal and state regulators, and engaged citizens in order to determine the potential benefits, pitfalls, and unintended consequences of extending the definitions in the regulation to cover additional forms of payday, vehicle title, and refund anticipation loans, as well as other forms of financial products not covered by the regulation. The Departments may also consider an advanced notice of proposed rulemaking in the Federal Register once DoD knows what changes to the MLA may be included in the National Defense Authorization Act for Fiscal Year 2013.

In response to these many concerns and developments, the Department has already undertaken efforts to acquire the best available current data from the field. Well under way is the formulation of a survey of the experts in the field--those who work with military families daily on consumer law issues. This survey will query the "boots on the ground:" financial counselors; legal assistance attorneys; paralegals, etc., with a view toward acquiring better empirical and anecdotal data on the issues affecting our military families most directly.

The Department also supports Congressional activity in this area, offering our support of recent Senate Amendments proposing members of the Armed Forces and their dependents be treated equally concerning state consumer protection laws; and proposing relief in civil actions for violations of protections on consumer credit extended to members of the Armed Forces and their dependents.

The Department recognizes there are limits to the protections that can be provided through regulation, education and counseling, or direct assistance available to Servicemembers and the families in financial trouble. Prudent protection through regulation is essential to prevent young Servicemembers with a steady paycheck and little financial experience from being taken advantage of in the marketplace. A system of protection that does not adequately provide for each of these three elements is likely to leave Servicemembers and their families vulnerable. The Department is committed to balancing regulation with education and assistance to maintain their financial readiness. The MLA and implementing regulation have done what was intended over the past five 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.