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Regarding Predatory Lending Practices Directed At Members of the Armed Forces and Their Dependents

Senate Committee on Banking, Housing and Urban Affairs

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Mr. Chairman and members of the Committee, it is a distinct honor to appear before you today. My name is Hilary Miller, and I am president of the Payday Loan Bar Association. I am here today as an expert in subprime lending, and I appear on behalf of the payday-advance industry's national trade association, the Community Financial Services Association of America ("CFSA").

Our bar association and CFSA both subscribe to the highest principles of ethical and fair treatment of borrowers. CFSA represents owners of approximately half of the estimated 22,000 payday-advance retail outlets in the United States. CFSA has established — and, critically, enforces among its members — responsible industry practices and appropriate consumer rights and protections, including special protections for the benefit of military personnel.[1]

There are serious flaws in the Defense Department's recent *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (the "DoD Report").[2] Those flaws involve fundamental matters of both methodology and policy.

Decisions having potentially far-reaching implications regarding the cost and availability of consumer credit used by members of the Armed Forces must be reached only after careful gathering of data from a variety of sources and even-handed analysis of such data.

By failing to synthesize information from balanced sources — and by systematically excluding any input from independent economists, consumer-credit experts or the industry itself — the DoD Report presents the views only of opponents of the kinds of lending discussed.[3] The result is a biased, inaccurate and incomplete picture of the market for such credit, of the industry's practices and, most importantly, of the likely impact on military consumers were the DoD Report's recommendations to be adopted.

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[1]These protections and information resources for service members, which include prohibitions on garnishment and on contacting the chain of command for collection assistance, can be viewed in their entirety at http://www.cfsa.net/genfo/MilBestPractie.html (visited September 2, 2006).

[2]A copy of the report is available at http://www.defenselink.mil/pubs/pdfs/Report_to_Congress_final.pdf.

[3]A flawed report was perhaps predictable in light of the original directive of Congress that the Secretary of Defense consult with "representatives of military charity organizations and consumer organizations" but not with industry representatives, economists or consumer-credit experts. Section 579 of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, 119 Stat. 3276-77 (the "2006 Act").

The language of the report reveals the author's bias. Instead of providing an objective explanation of his findings, the author frequently employs normative and emotionally charged terms to describe subprime lending, thereby suggesting — without a basis in research — that such lending is a societal evil.

Our industry has a vital interest in making sure that military borrowers can repay their loans, for one simple reason: as lenders, we only make money when our borrowers repay us. If they do not pay, not only do we fail to collect their finance charges — which the DoD criticizes — but we also lose many times those charges in loan principal. In short, it is contrary to our interests to have service members get into trouble with their loans. And the reason we lend to military borrowers at all is that the entirety of the available scientific data suggest that only a tiny percentage of military borrowers actually do get into trouble with payday loans. Anecdotes derived from a non-representative sample of this small group are now being used to drive public policy for the much larger numbers of military borrowers who use payday loans for their intended purpose and who repay their loans on time.

Here are some of the DoD Report's principal flaws:

- The DoD report determines that payday loans are "predatory" solely by uncritically adopting eight factors used by a vociferous opponent of the industry, the Center for Responsible Lending, without making an independent determination that such loans are "unfair" or "abusive" as required by the applicable statute. No other recognized authority has adopted these factors.
- According to DoD's own internal data, fewer than 5% of service members have had a payday loan.
- Because fewer than 6% of payday loans ultimately default, at most 6% of that 5%, or 0.3%, of all service members have experienced financial difficulty with a payday loan. In other words, 99.7% of service members have either not had a payday loan or experience no financial difficulties with payday loans. There is simply no statistical evidence that payday loans contribute to military readiness problems to any measurable degree.
- Although some service members with financial problems have taken out payday loans, DoD has presented no data showing that payday loans *cause* financial problems. Payday loans are intended to *solve* short-term financial problems, and the overwhelming majority of users employ them in that manner.
- DoD's data regarding asserted hardship relating to payday loans consist of a mere 12 anecdotes drawn from the experiences of 1,400,000 or more service members.
- For a sample of service members with payday loans who have experienced bankruptcy, payday loans account for less than 4% of their total liabilities, and the financial difficulties suffered by such service members manifestly relate to preexisting (*i.e.*, non-payday-loan) factors.

- DoD's data regarding "targeting" of service members by payday lenders are flawed because they do not control for demographics and fail to include tests of statistical significance. The "targeting" argument assumes, in defiance of logic, that the industry would commit disproportionate resources to customers who account for only 1% of revenues.
- Service members appreciate the convenience and ease of obtaining a payday loan; 78% of service members with payday loans agree that "most people benefit from the use of credit."
- DoD's principal recommendation is to reduce the maximum permissible charge on such loans to 36%, which is below lenders' marginal cost — thereby driving legitimate, regulated lenders out of the market and compelling borrowers to deal with illegal lenders. Those lenders would just as likely pursue illegal collection methods.
- A 36% rate cap is not the only possible approach to addressing the needs of overburdened service members. The industry has suggested allowing service members a longer repayment plan similar to that offered by the banks highlighted in the DoD Report. Our proposal to DOD was to allow service members to repay their defaulted loans over a term of six months or longer, and to limit interest rates to 36% in the post-default period. It is hard to understand why the bank program is embraced by DoD and the payday-advance industry's proposal is ignored.
- Ironically, payday lending competes with bank and credit union overdraft charges and service fees and is often less expensive for the consumer. For example, if a service member is a Pentagon Federal Credit Union member, the charge for a $100 overdraft is $25; our industry typically charges only $15 for a $100 advance. Similarly, Pentagon Federal's late charge on a credit card is $39, which explains why more than 70% of our customers use payday advances to avoid late fees.

In a comprehensive submission attached to these remarks, we discuss the DoD Report as it addresses payday lending. However, many of our criticisms of the DoD Report are equally applicable to the other forms of credit addressed in the DoD Report.

The DoD Report should be rejected, and the subjects raised by the report should be given appropriately balanced further study and analytical reflection by qualified experts.

Thank you for your interest. I will be pleased to take any questions.

Analysis

I. Payday Loans Are Not "Predatory"

The DoD Report adopts wholesale, and without critical analysis, a set of eight criteria promulgated by a vociferous opponent of the industry, the Center for Responsible Lending ("CRL") , for determining whether a payday loan is "predatory."[4] No political, regulatory or academic authority has adopted CRL's criteria. There exists no principled rationale for the use of these criteria to the exclusion of more established notions of what constitutes a "predatory" loan.[5]

Although not clear from the DoD Report, it appears that both CRL and the author of the DoD Report believe that the CRL criteria should be applied disjunctively; *i.e*., that a loan that possesses any *one* of the eight criteria is "predatory." Since all payday loans possess at least two of the CRL criteria ("high" cost and the use of a check-repayment mechanism), the DoD Report effectively classifies all payday lending as "predatory" — without making an independent determination, as required by Congress, of how payday loans are "unfair or abusive" (within the meaning of the 2006 Act[6]). By circularly defining payday loans to be "predatory," the result of the DoD Report is a political statement, not science.

We discuss these eight factors individually.

— Interest Rate

The DoD Report's principal objection to all of the types of loans it criticizes is their "high cost."[7] Yet no other authoritative source has classified *any* form of consumer lending as "predatory" based solely on pricing.[8]

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[4]DoD Report at pp. 13-14.

[5]A standard definition is an unsuitable loan designed to exploit vulnerable and unsophisticated borrowers. A predatory loan has one or more of the following features: charges more in interest and fees than is required to cover the added risk or cost of lending to borrowers with credit imperfections, contains abusive terms and conditions that surprise or trap borrowers and lead to increased indebtedness, does not take into account the borrower's ability to repay the loan, or violates fair lending laws by targeting women, minorities and communities of color. *Payday loans meet none of these criteria*. *See*, generally, U.S. Dep't of Treasury/U.S. Dep't of Housing and Urban Development, *Joint Report on Recommendations to Curb Predatory Home Mortgage Lending* (2000), available at http://www.hud.gov/library/bookshelf12/pressrel/treasrpt.pdf (visited August 29, 2006).

[6]Section 576(c)(2) of the 2006 Act defines a "predatory lending practice" as "an unfair or abusive loan or credit sale transaction or collection practice."

[7]DoD Report at pp. 13, 16-20.

[8]As a general matter, consumer credit experts understand the term "predatory" to be rooted in deceptive and/or illegal practices to coerce borrowers into unfavorable agreements. Stephen C. Bourassa, *Predatory Lending in Jefferson County*. University of Louisville 2003, http://www.lul.org/foreclosed.htm (visited August 29, 2006). *See also*, Remarks by Governor Edward M. Gramlich at the Housing Bureau for Seniors Conference, Ann Arbor, Michigan (2002):

In the case of payday loans, the cost of credit, standing alone, is neither "unfair" nor "abusive," even though the interest rates on such loans (expressed as an annual rate) are nearly universally in the triple digits. Rather, such pricing has been found to be justified by the fixed costs of keeping stores open and the relatively high initial default rates on such loans. To the extent that CRL — and the author of the DoD Report, by unquestioningly adopting CRL's political views — claim otherwise, their views are inconsistent with the research of federal consumer credit regulators.[9]

In large measure, the perceived high cost of payday lending is driven by the small dollar amount of each loan, the high cost of maintaining stores in operation (both during and outside of traditional business hours), and the costs of marketing, originating and collecting such loans. Payday loans are thus "expensive" for the same reason that, for example, small quantities of food, available on a 24/7 basis from 7-Eleven, cost more than the same items purchased in bulk from Sam's Club during regular business hours. Likewise, so-called "low-documentation" mortgage loans have higher default rates and are more expensive than those based on more time-consuming credit investigations.[10] Consumers who buy in small quantity and want it "right now" and with no "hassle" pay higher prices for those privileges. This is not an unfair or deceptive business practice; it is part of the American system of freedom of economic choice.

There is no evidence that payday-loan pricing causes economic harm. Indeed, borrowers' economic welfare is generally enhanced, rather than reduced, as a result of such borrowing. Any analysis of the cost of payday-loan credit must take into account the cost to the borrower of *not* obtaining such credit. For example, a consumer with limited credit alternatives may write a check drawn on insufficient funds. Even if the depository bank pays the

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> In understanding the problem, it is particularly important to distinguish predatory lending from generally beneficial subprime lending. Predatory lending refers to activities and practices just cited — asset-based lending, loan flipping, packing of unnecessary fees and insurance, fraudulent or deceptive practices. Subprime lending, on the other hand, refers to *entirely appropriate and legal lending to borrowers who do not qualify for prime rates*, those rates reserved for borrowers with virtually blemish-free credit histories. Premiums for extending credit to these borrowers compensate lenders for the increased risk that they incur and range several percentage points over rates charged on prime loans. Although some have argued that these premiums are excessive, market forces should eliminate inappropriate spreads over time.

http://www.federalreserve.gov/boarddocs/speeches/2002/20020118/default.htm (visited August 29, 2006) (emphasis added).

[9]Mark Flannery and Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price*? FDIC Center for Financial Research Working Paper No. 2005-09. http://www.fdic.gov/bank/analytical/cfr/working-papers.html#payday (visited August 29, 2006).

[10]Roberto G. Quercia, Michael A. Stegman and Walter R. Davis, *The Impact of Predatory Loan Terms on Subprime Foreclosures: The Special Case of Prepayment Penalties and Balloon Payments* (2005), Center for Community Capitalism, University of North Carolina. http://www.kenan-flagler.unc.edu/assets/documents/foreclosurepaper.pdf (visited September 29, 2006).

overdraft, the cost of such credit is substantial, because the consumer is charged a service charge of $18 to $25 (or more) for the overdraft.[11] But in most cases, middle-income consumers do not find that their banks are willing to pay overdrafts; rather, the checks are returned unpaid. When the check "bounces," not only does the consumer's bank impose its service charge, but the consumer is also subjected to a returned-check fee by the merchant to whom the check had been written — generally another $25 or more. Thus, the total cost of "bouncing" a check, which may provide a consumer with a few days or weeks of credit until the check is paid is often $45 or more. Alternatively, a consumer with limited credit alternatives may engage in self-help to obtain an extension of credit in the form of a deferred payment of rent, a utility bill, or an installment due on a mortgage or a car loan. Such late payments will generally subject the consumer to late fees — penalties charged by the landlord or creditor which are very substantial relative to the true amount of temporary credit of which the consumer has availed himself. If the payment is made to a utility, often the consumer is subject to disconnect and/or reconnect fees. These charges have also risen to the point that consumers will almost always find it less expensive to employ a payday advance instead. Academic literature supports this welfare-enhancing view of payday lending.[12]

The pricing of payday loans is thus not "unfair" because, among other reasons, given the costs of providing credit, such pricing does not result in a grossly disproportionate exchange of value with the consumer or excess profitability to the lender.

A recent study by Karlan and Zinman (2006) provides the best and most complete scientific answer to the question, "Do high-interest short-term loans harm consumers?" The authors used a lender to conduct a large-scale, randomized trial in which marginal borrowers who would not ordinarily receive access to short-term loans were granted loans. Those who

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[11]The cost of overdraft-protection credit can be astronomical and generally exceeds the cost of comparable payday-loan credit. Banks are not required to disclose these costs as an annual rate. For unknown reasons, the DoD Report does not address them.

[12]Samuel Hanson and Donald P. Morgan, *Predatory Lending?* Federal Reserve Bank of New York working paper (2005), available at http://www.consumercreditresearchfoundation.org/_files/FRB_Morgan_Hanson_5_2005.pdf (visited August 29, 2006) (no evidence that payday lending is "predatory").

The notion that the borrower engages in his own welfare-enhancement calculus is likewise suggested by Thomas E. Lehman of Indiana Wesleyan University:

> In all likelihood, the borrower cares not what the "effective APR" is on the loan. The real price signal to which the borrower responds is the flat fee that is charged to hold the postdated check. If the value attached by the borrower to the immediate cash advance exceeds the value of the [principal] plus the fee one or two weeks hence, then the borrower will undertake the transaction . . . .

"In Defense of Payday Lending," *The Free Market*, Ludwig von Mises Institute, Vol. 23, No. 9 (2003).

See also, James J. White, "The Usury Trompe L'Oeil," 51 S.C. L. Rev. 445, 466 (2000) ("Contrary to those who claim to befriend the impecunious consumer, . . . even the poorest consumers are quite savvy. They understand the alternatives and make choices about borrowing that are wise for them even when the decisions seem foolish or wasteful to middle-class observers").

received these loans were, one year later, less likely to be poor, unemployed or hungry.[13] There is no comparably rigorous study showing a contradictory result.

Both Hanson and Morgan (2005), fn. 12, and Bond, Musto and Yilmaz (2006)[14] conclude that predatory lending is effectively eliminated through robust competition.[15] There can be no more perfectly competitive industry than the payday-loan business.[16]

In summary, there is no authoritative or theoretical support for the DoD Report's conclusion that the "high" interest rates traditionally charged on payday loans, without more, render them "predatory."

— Short Minimum Loan Term

The DoD Report asserts — again adopting, without analysis or question, the CRL view — that the short-term nature of the loan, without more, renders a payday loan "predatory."[17]

The sole support for this claim is the unsubstantiated statement that "75% of payday customers are unable to repay their loan within two weeks." There is no factual basis for this statement.

Both CRL (and the author of the DoD Report) assume, without factual basis, that the reason all payday loans that have been renewed, or "rolled over," is that the borrowers were *unable* to repay them. This conclusion is but one of many possible conclusions why borrowers may choose to extend the maturity of their loans. None of the academic literature in this field addresses the *reason* for "rollovers."

Even assuming that the average number of rollovers cited for non-military users were correct, the rate of repeat usage of payday loans among military borrowers is known to be much lower. In a recent independent study, 49% of military enlisted payday-loan borrowers reported they have used a payday loan no more than twice in the last year (compared to 16%

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[13]Dean S. Karlin and Jonathan Zinman, *Expanding Credit Access: Using Randomized Supply Decisions to Estimate the Impacts* (2006). http://www.dartmouth.edu/~jzinman/Papers/Karlan&Zinman%20Consumer%20Credit%20Impacts.pdf (visited August 29, 2006).

[14]Philip Bond, David K. Musto and Bilge Yilmaz, *Predatory Lending in a Rational World*, Federal Reserve Bank of Philadelphia Working Paper No. 06-2 (2006). http://ideas.repec.org/p/fip/fedpwp/06-2.html (visited August 29, 2006).

[15]*See also*, "Let competition curb payday lending excesses," *Crain's Chicago Business* (May 17, 2004).

[16]*See*, generally, *Banking on the fringe*, Federal Reserve Bank of Minneapolis (July 2004), http://minneapolisfed.org/pubs/fedgaz/04-07/banking.cfm (visited August 29, 2006).

[17]"The letters from the regulators recognize that a practice that can be abusive in some contexts can also — in absence of fraud or deception — be highly beneficial to consumers." Report of the Staff to Chairman Gramm, Committee on Banking, Housing and Urban Affairs, Predatory Lending Practices: Staff Analysis of Regulators' Responses (August 23, 2000) available at http://banking.senate.gov/docs/reports/predlend/predlend.htm (visited August 29, 2006).

of the general population of payday borrowers); 79% said they had no more than four loans in the last year (compared to 65% of the general population).[18]

Finally, there is no theoretical support for the supposition that a loan, the duration and cost of which are fully disclosed to the consumer, and which (as noted in the preceding paragraph) military borrowers actually repay in accordance with the original schedule, is "predatory" within the meaning of the 2006 Act. The cost of renewal credit is neither "unfair" nor "abusive" for the same reasons (*supra*, pp. 2-4) that the cost of the original loan is not predatory. The mere fact that a minority of military borrowers may find it necessary to renew their loans likewise does not render such loans "unfair" or "abusive" because the consequences of renewal do not result in either a meaningful reduction in consumer economic welfare nor excess profits to the lender.

— Single Balloon Payment

The DoD Report again incorporates, without examination, a CRL criterion for "predatory" lending that the entire balance of a consumer loan is repayable in a single balloon payment.[19] The report incorrectly states that payday loans do not allow for partial installment payments to be made during the loan term; in fact, nearly all payday lenders permit partial payments, and such prepayments are required to be accepted under the laws of many states.[20]

The DoD Report fails to set forth any principled reason why a requirement for repayment in a single balloon payment is evidence of predation. As with the "short minimum loan term" issue discussed above, the nature and terms of the loan are fully disclosed to, and understood by, the borrower at the time the loan is entered into — perhaps more than any other aspect of any loan's terms. There is no fraud or deception regarding the consequences to the consumer of being unable to make partial repayments or of failure to make the single required repayment. There is no material economic difference to the borrower, *ceteris paribus*, in being required to make a single payment in two weeks instead of two payments at one-week intervals; indeed, because payday loans generally have a "bullet" maturity date at or immediately after the borrower's next payday, the single-installment nature of the loan benefits the borrower by allowing payment coincident with his employer's payroll practices.

— Loan "Flipping"

The DoD Report adopts the CRL terminology of "loan flipping" to refer to "rollovers," or loan renewals. Neither CRL nor the DoD Report correctly utilizes the term "flip-

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[18]William O. Brown, Jr. and Charles B. Cushman, *Payday Loan Attitudes and Usage Among Enlisted Military Personnel* (2006). Available at http://www.consumercreditresearchfoundation.org/_files/060628MilitaryPDLSurvey.pdf (visited August 29, 2006).

[19]Many "mainstream" forms of consumer credit are payable in a single balloon payment, such as the currently popular interest-only home mortgages and certain home equity lines of credit. The DoD Report fails to explain how, if at all, these credit vehicles are distinguishable in predation from payday loans.

[20]*E.g.*, Nevada, Utah, Louisiana and Virginia.

ping," although use of the term gives the issue more of a political charge, as CRL hopes and expects; and in this respect, the author of the DoD Report is likely an unwitting dupee.

"Loan flipping" is a "predatory" practice by *mortgage* lenders where the lender *induces* the borrower to refinance an existing, favorable mortgage (often serially) by falsely representing the benefits of the new loan, and ultimately providing little or no economic benefit for the consumer because the manifest benefit is consumed by additional loan points, loan fees, prepayment penalties and fees from financing the sale of credit-related products such as life and disability insurance.[21] For example, some homeowners are pressured by lenders into refinancing existing subsidized mortgage loans in exchange for commercial loans at higher interest rates, but with slightly lower monthly payments and substantial fees rolled into an increased principal balance. These tactics, because the consumer is actively deceived into believing that the transaction produces a net economic benefit for him, are clearly "abusive" within the meaning of the 2006 Act.

In contrast, renewals of payday loans are initiated not by the lender but rather by the *borrower*. The borrower fully understands at the outset of the original loan *and* of any renewal loan what the costs and benefits are to him of repayment or renewal. Pricing of a payday loan is straightforward and does not involve complex computations to determine the cost of credit. There is no opportunity for the lender to conceal costs or to confuse the borrower regarding the economic benefits of extension.

The payday lender's "default setting" is that the loan must be repaid in full on the original due date. Because payday-loan renewals are initiated by the borrower, the harms sought to be avoided by federal and state anti-"flipping" regulations are simply absent from this arena.

Under the Best Practices for the Industry of the CFSA, CFSA members limit payday-loan renewals to the *lesser* of four or the number permitted by applicable state law.[22] Applicable state laws in Arizona (for military borrowers), California, District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, Ohio, Oklahoma, South Carolina, Tennessee, Virginia, Washington and Wyoming *proscribe all rollovers whatsoever*. State laws in Alabama, Colorado, North Dakota and Rhode Island limit the permissible number of rollovers to *one*. Laws in the other 12 states which permit payday lending have variable limits on the number of rollovers permitted.

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[21] *See*, Comptroller of the Currency, *Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices*, O.C.C. Advisory Letter 2003-2, available at http://www.occ.treas.gov/ftp/advisory/2003-2.doc (visited August 29, 2006).

[22] Community Financial Services Association, *Best Practices for the Industry*, http://www.cfsa.net/genfo/egeninf.html (visited August 29, 2006).

There is no factual or authoritative support for the DoD Report's conclusion that merely permitting rollovers, to the very limited extent allowed by law or by CFSA's Best Practices, is a predatory practice.

— Simultaneous Borrowing from Multiple Lenders

It is theoretically possible for a borrower to incur substantial amounts of debt by contracting simultaneously with multiple payday lenders — just as a borrower may have multiple credit cards, mortgages, car loans and doctors' bills. Neither CRL nor the author of the DoD Report explains how this possibility is the result of a predatory practice *by lenders*. Virtually any consumer good or service holds risks if it is over-consumed. To the extent that a borrower can become indebted to multiple lenders simultaneously, consumer activists like CRL (and, by wholesale adoption, the author of the DoD Report) appear to expect lenders to protect borrowers not from predation by lenders but rather from the results of the borrowers' own improvident financial decisions.

It is ironic that the proponents of such protections expect sellers of credit services to ascertain whether the buyers have relationships with competitors, and, if so, to refrain from doing business with those buyers. In any other field of endeavor, the Sherman Act would be loudly invoked, and the Justice Department would be vitally concerned about the anticompetitive nature of these behaviors.

Once again, the author of the DoD Report does not explain how it is "unfair" or "abusive" for a lender to extend credit to a borrower who has existing credit relationships with others — especially, as is usually the case, if the lender is unaware of those relationships.[23]

— No Consideration of the Borrower's Ability to Repay

CRL's language, which is once again adopted unquestioningly and verbatim by the DoD report, asserts that "payday lenders encourage consumers to borrow the maximum allowed, regardless of their credit history." The notion that payday lenders extend credit regardless of the likelihood of repayment by borrowers is preposterous and reveals the utter ignorance of the DoD Report's author regarding how the industry operates.

Every payday lender employs a credit-scoring system to make credit decisions regarding individual borrowers. Such systems are ubiquitous in the consumer credit industry and are employed equally for credit cards, car loans, store credit and mortgages; the models vary from lender to lender and by type of loan. The largest and most sophisticated payday lenders employ computer-based models that are tested against large databases of actual experience and that are continually refined over time. Smaller lenders often use paper-based "check the box" systems to ensure that borrowers meet their credit criteria. The systems take into account such factors as whether the borrower has a telephone at his residence, whether he has a

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[23]Alabama, Florida, Illinois, Indiana, Michigan, North Dakota and Oklahoma have state "database" requirements that limit or proscribe multiple loans to a single borrower from multiple payday lenders and provide for an electronic means to determine the existence of an outstanding loan from a competitor.

steady source of income, his prior credit history with the lender and others, and his legal ability to contract. The factors vary by lender.

All of these systems have one goal, and one goal only: to screen out borrowers who are unlikely to repay their payday loans.

Lenders make money only if borrowers pay them; if they do not repay, lenders go out of business. It is beyond silly to suggest that lenders are unconcerned about the possibility that a borrower will default.

— Deferred Check Mechanism

A universal feature of a payday loan is that the borrower gives the lender a check or other authorization to debit the borrower's checking account on the maturity date of the loan. If the borrower has not prepaid the loan in cash or otherwise, on the maturity date, the lender deposits the check. If the check is returned unpaid, the borrower may be subjected to a service charge *by his bank* because the borrower failed to arrange to have sufficient funds in his checking account at loan maturity.

Once again, the DoD Report fails to explain how it could be predatory from the standpoint of the lender when a third party charges the borrower for returning a check unpaid. The lender does not control such charges and is a stranger to the relationship between the borrower and his depository bank. The borrower, but not the lender, had the power to avoid the charge by assuring that adequate funds were in the borrower's account.

Automatic charges to the borrower's checking account are a routine feature of many "mainstream" forms of consumer credit. The DoD does not suggest how a lender's right to initiate such charges, standing alone, is "unfair" or "abusive."

The DoD Report also improperly suggests that a borrower "may fear criminal prosecution" for such returned checks. Any such fears are unfounded. CFSA, through its Best Practices (*supra*, fn. 22), forbids its members from threatening or pursuing criminal action against a borrower as a result of the borrower's check being returned unpaid. This proscription is codified in most of the state laws that permit payday lending.[24]

— Mandatory Arbitration Clauses

Many consumer and non-consumer contracts contain arbitration clauses. *Parties to arbitration clauses do not waive their substantive rights* or, as the DoD Report erroneously states, eliminate the borrower's right to sue for abusive lending practices.[25] Congress enacted the Federal Arbitration Act to promote the expeditious and inexpensive resolution of both contractual disputes *and* statutory claims. Longstanding federal public policy strongly supports arbitration of disputes. As the U.S. Supreme Court has held:

[24] *See, e.g.*, Cal. Fin. Code §§ 23035(c)(3) and (d)(1).

[25] The DoD Report incorrectly states (at p. 21) that the Federal Arbitration Act "eliminates the borrowers' opportunity to obtain legal recourse" and improperly suggests that arbitrators "paid for by the lender" will be biased in favor of the lender. These statements are patently false.

> By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum. It trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.[26]

Arbitration permits the vindication of consumer claims for abusive and other improper lending practices. An analysis of actual awards and results suggests that consumers fare better in arbitration than in the judicial system and are satisfied with the results.[27]

The DoD Report's statements regarding arbitration are simply unfounded.

II. The DoD Report Fails to Demonstrate the Existence of a Problem Warranting Legislative Action

The DoD Report presents what is at best a confused, inconsistent and anecdotal picture regarding the prevalence of payday-loan use among service members. It is impossible to draw any conclusion from the report regarding (a) what percentage of military borrowers have experienced extreme financial difficulties while having payday loans outstanding, or (b) whether, and in what percentage of cases, payday loans were themselves a material factor in causing or contributing to the financial difficulties. Without such information, Congress cannot make an informed decision regarding the legislative action, if any, to be taken. It may indeed be the case that some change is warranted, but it is impossible to draw any conclusions from the haphazard presentation of data contained in the DoD Report.

— No Meaningful Percentage of Service Members Appear to be "In Trouble" with Payday Loans

The author's methodology in drafting the DoD Report is highly problematic. Although a quantitative survey of military personnel was undertaken to determine what actual percentage of service members make use of payday loans, that study was not used as a vehicle to determine how such loans have contributed to (or deterred) the service members' economic welfare. Instead, the Defense Department now discredits its own survey and substitutes, for quantitative data, a number of "case studies" culled from reports by "financial counselors and legal assistance attorneys" in instances where assistance had been rendered to service members after "being trapped in high interest loans."[28]

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[26] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 629, 105 S.Ct. 3345, 87 L.Ed.2d 444 (1985).

[27] Michael T. Burr, *The Truth About ADR*, 14 Corporate Legal Times 44, 45 (2004); Ernst & Young, *Outcomes of Arbitration – An Empirical Study of Consumer Lending Cases* (2004), http://www.adrforum.com/rcontrol/documents/ResearchStudiesAndStatistics/2005ErnstAndYoung.pdf (visited August 29, 2006).

[28] DoD Report at p. 39.

These "case studies" were not chosen at random from all financial-assistance files.[29] The "case studies" are not asserted to be a representative cross-section of all military families, of all military payday-loan users, or, indeed, of all users of military financial counseling. Rather, they are the product of the author's attempt to extract the most sympathetic (and possibly most egregious) examples of personal financial mismanagement by service members and then to hold them out as the "evidence" of the need for legislative relief.

It is impossible to determine the *prevalence* of personal financial problems from the anecdotes presented in the DoD Report. Assuming, in the light most favorable to the DoD Report's author, that the 3,393 "case studies" are drawn only from a single short time period, they represent a mere 0.2% of the 1,379,879 active duty personnel;[30] if the "case studies" were collected over a longer period, possibly of years — during which the armed forces experienced considerable turnover — then the incidence of such "cases" is much lower than 0.2%. The DoD Report simply does not disclose enough information to be able to fix the proper denominator.

The "case studies" were distilled into 17 anecdotes in the DoD Report. A mere 12 of these anecdotes involved payday loans.[31] Twelve anecdotes should not be deemed sufficient evidence to warrant extraordinary legislative action.

The best evidence of the absence of a "problem" is contained in other, inconsistent aspects of the DoD Report itself:

First, *according to the Defense Department's own data, only 5% of service members use payday loans at all*.[32]

Second, the DoD Report states that "payday loans carry very low risk of loss";[33] in other words, the default rate — the best proxy for the rate at which payday-loan borrowers "get in trouble" — is low. CRL claims the default rate to be 6%.[34] Assuming this rate to be

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[29]The DoD Report does not disclose how the "financial counselors and legal assistance attorneys" were instructed to select the "case studies."

[30]Department of Defense, Directorate for Information Operations and Reports (2006). Military Personnel Statistics. http://www.dior.whs.mil/mmid/military/rg0601.pdf (visited August 30, 2006).

[31]DoD Report at pp. 39-42.

[32]DoD Report at p. 13. The author of the DoD Report insists that his own data must be incorrect because such data are is inconsistent with a study by the Consumer Credit Research Foundation (fn. 18, *supra*) that found the incidence of payday-loan use by enlisted military personnel at 13%. But the Foundation only surveyed personnel who live on and in the immediate vicinity of military bases in the continental United States; if deployed and otherwise stationed personnel — who generally will not have access to payday loans at retail locations — were included in the denominator, the result would likely be much lower and consistent with the DoD Report's 5% figure.

[33]*Id*.

[34]*Center for Responsible Lending, Fact v. Fiction: The Truth about Payday Lending Industry Claims*. http://www.responsiblelending.org/issues/payday/briefs/page.jsp?itemID=29557872 (visited August 30, 2006).

accurate, or even in the ballpark, the percentage of all service members who "get into trouble" while having payday loans outstanding is about 6% of 5%, or 0.3%. In other words, 99.7% of service members either do not use payday loans or are unaffected by "troubled" payday loans.

Finally, the DoD Report itself suggests that the "problem," if one exists at all, is diminishing substantially without legislative action — a 20% decline from 2004 to 2006 — through, among other things, education and command attention.[35]

A problem which is not experienced by 99.7% of all service members, and where usage is declining to immaterial levels, cannot be said to be worthy of immediate legislative action.

— There Is No Evidence That Payday Loans Cause Financial Hardship or Affect Military Readiness

As noted above, in a very small percentage of cases — 0.3% of all service members — there is a default or "trouble" with a payday loan.

The data do not show whether payday loans *caused* the service members' financial difficulty, or whether — as is far more likely — the payday loan was merely an unsuccessful attempt to find a solution to a preexisting financial problem.

The 12 anecdotes presented in the DoD Report involving payday loans fail to present, in a balanced way, the totality of the financial circumstances of the borrowers. It is impossible to determine from those anecdotes how the service members fell on hard times, whether they sought payday loans before or after experiencing other financial reversals, the other obligations they had outstanding, and why they were ultimately unable to repay their debts.

The author of the DoD Report wishes readers to believe that payday loans were the cause of the service members' difficulties in those cases where the service members (a) had outstanding payday loans, and (b) experienced financial difficulties. In other words, he concludes that the mere coincidence of payday loans and financial difficulties means that payday loans must be the *cause* of the financial difficulties. This *post hoc, ergo propter hoc* reasoning — that correlation is causation — is a tempting logical fallacy for an author whose conclusion had been reached before the research began.

Such an explanation is not supported by DoD Report's data and, more importantly, is inconsistent with what is known generally about how consumers behave with payday-loan borrowings. Although the vast majority of payday-loan borrowers use such credit responsibly, for its intended short-term purpose and under circumstances where repayment is likely, a small minority of borrowers seek payday loans when they are already in serious financial difficulty and when their repayment prospects are poor. Such borrowers may hold a good-faith expectation that their circumstances will improve if they can temporize, or they may simply seek to postpone the day of reckoning. Either way, this small minority of borrowers is

[35]DoD Report at p. 37-38.

generally operating under an enormous debt load *before* incurring payday-loan debt. Often, the debts have been caused by circumstances beyond the borrower's control, such as unforeseen medical expenses (medical expenses are a factor in approximately half of all personal bankruptcies, even among fully insured debtors[36]). In such circumstances, a payday loan will have postponed, but ultimately made little difference to, the debtor's financial failure.

This analysis is borne out by a random sample conducted by CFSA of service members' bankruptcy petitions in cases where payday loans were discharged, which provide the details of their debts on a creditor-by-creditor basis.[37] Payday-loan debt comprises less than 4% of such bankrupt service members' total liabilities. Perhaps more interesting is that none of such petitions reveals either a judgment or garnishment for payday-loan debt, while such judgments and garnishments for other debts were commonplace.

It is likewise difficult, because of the lack quantitative data, to accept at face value the DoD Report's implicit (and unexamined and unexplained) conclusion that high-interest-rate lending, without more, adversely affects military readiness. While being "in financial trouble" may result in loss of a security clearance, there is no logical causation chain that connects merely having access to payday loans to being "in trouble." As noted above, the vast majority of payday-loan borrowers repay their loans without "trouble." To the extent that these borrowers are "in trouble," the data available show that they were universally "in trouble" *before* obtaining payday-loan credit. In the vast majority of cases, payday loans are a solution to a problem, not *the* problem — and there is no objective evidence to the contrary.

Finally, if it is assumed — as CRL posits — that some military borrowers make use of multiple payday loans, the total amount they pay in interest is extremely unlikely, without more, to rive rise to a "readiness" problem. A borrower with ten loans over a two-year period who pays $600 in interest will have paid less in payday-loan interest than the cost of a twice-weekly cup of coffee from Starbucks.

In summary, the DoD Report fails to set forth any evidence from which Congress may logically conclude that payday loans cause or contribute to financial difficulties for service members. To the contrary, the data suggest that the vast majority of borrowers repay their payday loans without difficulty, as intended, and use them as the short-term "bridge" for which they are designed.

— Alleged "Targeting" of Military Customers is Not Meaningful to this Analysis

The DoD Report cites at length a study (Graves and Peterson, 2005)[38] purporting to show that payday lenders concentrate their retail locations near military institutions in order

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[36]See, generally, "MarketWatch: Illness And Injury As Contributors To Bankruptcy," *Health Affairs* (February 2, 2005) (available at http://content.healthaffairs.org/cgi/content/full/hlthaff.w5.63/DC1 [visited August 31, 2006]).

[37]Details available on request.

[38]"Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns." 66 Oh. St. Law Rev. 653 (2005).

to "target" potential military borrowers. Even assuming the correctness of this analysis, such putative "targeting" is irrelevant if (a) payday loans are not "predatory" (within the meaning of the 2006 Act), or (b) payday loans do not materially cause or contribute to a decrease in economic welfare for borrowers. As noted above, the DoD Report sheds heat, but no light, on these matters.

Moreover, even if the concentration data are credited, there are innocent as well as sinister explanations for such concentration. For example, areas around military bases universally contain large numbers of support businesses, the employees of which are often more squarely within the demographic profile of payday-loan users than service members themselves.

Graves and Peterson also assume that demographics alone explain retailers' store- location decisions. They do not consider, and thus do not include in their analysis, other factors that may explain these decisions. For example, rental costs, payroll costs, zoning regulations and proximity to other retail outlets ("agglomeration effects," in economic terms) are all factors in store-location strategy.[39]

The "targeting" argument also defies common sense. Military customers account for a very small percentage of all users of payday loans.[40] It is illogical that payday-loan companies would devote disproportionate resources to marketing to such a small percentage of their customer base.

Finally, the unspoken message of both the DoD Report and of Graves and Peterson is that it is somehow wrongful for businesses to address their services directly to groups of their potential customers. Yet military borrowers have legitimate needs for short-term credit, based on their age, their stage in the economic lifecycle and the high value to them of immediate consumption of certain kinds of goods and services:

> While military compensation tends to be stable, the household cash expenditures of military enlisted personnel can be irregular because of features of the military lifestyle and rules governing service. Enlisted personnel, because of their young age, general standard of living and historical low in-

[39]Graves and Peterson's study does not follow customary social science protocols by controlling for, for example, characteristics of the nearby non-military populations such as income, unemployment, home ownership and education levels. Their paper implicitly assumes that all those characteristics are distributed equally across each state, and that military bases are placed in random locations. Graves and Peterson calculate the "predicted" number of payday lenders by calculating a statewide number of payday outlets per person and multiplying that number by the population in the military installation's ZIP Code. Their theory assumes, effectively, that Detroit and Grosse Point should have the same number of payday lenders per person. They fail to provide *t*-statistics from which a reader can determine whether the difference between the "predicted" and "actual" number of lenders is statistically significant. For these reasons, the study cannot be accorded any scientific weight.

[40]Letter from Penn, Schoen & Berland Associates, Inc., *Results of Poll Determination Payday Loan Usage Among Active Duty Members of the US Military* (January 2005), available at http://www.cfsa.net/genfo/Military-Polling-Results-Memo.pdf (visited September 5, 2006).

comes, are not likely to have amassed significant precautionary savings to address these issues. However, they are able to smooth these irregularities in cash outflows by taking on debt, and they can repay that indebtedness through their stable incomes.

> Because of their youth, military enlisted personnel tend to be at the stage in life where the acquisition of durable goods can provide a stream of perceived economic benefits that substantially exceeds the cost of consumer credit.[41]

In the final analysis, however, there is simply no analog for Graves and Peterson's "targeting" analysis in any other field of endeavor. Public policy regarding the services offered by fast-food stores, convenience stores, gasoline stations, supermarkets, liquor stores or casinos is not derived from studies of the concentration of their outlets around military bases. Rather, an objective and quantitative determination must be made regarding the nature of the services offered and their value to society. The DoD Study fails to provide a scientific and factual basis for such a determination.

III. The DoD Report's Conclusions Are Not Supported by Economic Theory or Sound Public Policy

The DoD Report fails to provide quantitative and scientific evidence to demonstrate the existence of a "problem" requiring a legislative solution. But even if the DoD Report's deeply flawed analysis were credited, the principal recommendations of its author find little theoretical support in economic literature or public policy. Although apparently well intentioned, implementation of the author's recommendations will not provide a meaningful benefit to service members and will materially diminish the economic choices available to military personnel, while creating unintended consequences and problems. These recommendations should therefore be rejected.

— 36% APR Ceiling

The DoD Report's principal and most dramatic recommendation is a 36% across-the-board federal interest-rate ceiling on all lending to military borrowers. If this interest rate were to be applied to payday lending, it would fix the consumer price below the lenders' marginal costs and well below the lenders' average costs (Flannery and Samolyk, 2005, fn. 9). The practical effect of such a rate cap would be to eliminate the legitimate market for such lending altogether.

The economic effects of price controls of any kind are notorious. While affordability and consumer protection are generally cited as the goals of price ceilings, price controls invariably become a wealth-redistribution mechanism. This mechanism evolves into a system of implicit subsidies, under which some rates are maintained at levels that are artificially

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[41] William O. Brown, Jr. and Charles B. Cushman, *Compensation and Short-Term Credit Needs of U.S. Military Enlisted Personnel* (2006). http://www.consumercreditresearchfoundation.org/_files/060427MilitaryCredit.pdf (visited August 31, 2006).

high so that others can be restrained. Usury ceilings erode service quality, as lenders reduce the expenses of their operations and weed out all but the most creditworthy borrowers; pricing to the most desirable customers is invariably increased so that the least desirable customers can be subsidized, if they are served at all. The distortion of market forces that occurs with rate caps will deprive the most desperate of borrowers of the opportunity to borrow from legitimate, regulated lenders and instead compel marginal borrowers to deal with lenders who are willing to lend illegally[42] and who, more likely than not, will pursue just as illegal collection practices when the loans come due.

The DoD Report assumes, without any theoretical or practical foundation, that: (a) payday loans will continue to be available in a legitimate market, even if rates are fixed below lenders' costs; or (b) if such loans are unavailable, borrowers will behave in a manner deemed more "responsible" financially.

History teaches that Congress has vast powers, but it cannot suspend the laws of economics; needy borrowers will obtain the credit that they need, even if they can only do so illegally.

The effect of a legitimate and regulated market for payday loans has been salutary. As noted above, CRL claims that at least 94% of payday-loan borrowers repay their loans without default; approximately 99.7% of all service members appear to be unaffected by payday-loan defaults. There is no meaningful black market for military credit, so that the opportunities for a wide range of criminal behaviors simply do not exist — yet.

Consumer credit experts, even those who favor usury ceilings, recognize the bluntness of usury as a tool for regulating consumer credit policy.[43] Other tools, while less direct, may have a consumer-friendly effect while allowing the market itself to create the proper pricing. For example, liberalized bankruptcy exemptions and restrictions on creditor remedies (such as on garnishment and collection) force lenders to internalize the costs of improvident credit decisions while not restraining prices artificially. Likewise, as the DoD Report recommends, enhanced disclosures may be useful to promote informed shopping and to eliminate the effects of unintended transactions. Finally, there are a variety of approaches that are gaining popularity in Europe but have not been attempted in the United States, such as requiring lenders to give advice regarding appropriate forms of credit and so-called "responsible lending" rules.[44] (The CFSA Best Practices, fn. 22, are a form of "responsible lending" princi-

[42]Rationing and under-the-table payments are common results of statutory price ceilings. "Loan sharking" is the most prevalent result of artificially low usury ceilings.

[43]Steven M. Crafton, *An Empirical Test of the Effect of Usury Laws*, 23 J. L. & Econ. 135, 145 (1980); James E. McNulty, *A Reexamination of the Problem of State Usury Ceilings: The Impact in the Mortgage Market*, 20 Q. Rev. Econ. & Bus. 16, 26-27 (1980); Loretta J. Mester, *Why Are Credit Card Rates Sticky?*, 4 Econ. Theory 505, 505, 521 (1994); *Usury Laws: The Bad Side of Town*, Economist, Nov. 28, 1998, at 30.

[44]*See, e.g.*, Commission of the European Communities, Proposed Directive on Consumer Credit Agreements (2005), available at http://ec.europa.eu/consumers/cons_int/fina_serv/cons_directive/2ndproposal_en.pdf (visited August 31, 2006).

ples.) There is thus sound scholarly support for the notion that usury regulations should be the last resort, not the first, in regulating credit markets. Evidence of need for such crude re-regulation is simply absent from the DoD Report.

The DoD Report proposes to reverse years of enlightened deregulation of credit markets. This deregulation has resulted in unprecedented access to credit for low-income borrowers.[45] Moreover, deregulation has caused the average cost of credit to existing borrowers to decline.[46]

Service members obviously appreciate the convenience and ease of obtaining a payday loan; 78% of service members agree that "most people benefit from the use of credit."[47] Other authorities are in accord.[48]

The state legislatures of 37 states have performed this calculus and reached conclusions that are directly contrary to those of the author of the DoD Report. Recognizing that it is better to have a robust and competitive but *regulated* market for the kinds of credit that borrowers actually demand, these states have, after careful study, both enabled such lending and set interest-rate ceilings at levels that exceed lenders' costs. The DoD Report discounts the decisions of these state legislatures entirely.

Throughout, the DoD Report notes that many borrowers turn to payday lending because they *already* have bad credit. The DoD Report's "solution" is to eliminate a borrowing option when the damage (*i.e.*, bad credit) has already been done. The most appropriate and effective policy response would be one that addresses the root cause, not one that eliminates

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[45]*See*, generally, Baxter, W.F., "Section 85 of the National Bank Act and Consumer Welfare," 1995 Utah L. Rev. 1009, 1023:

> Finally, notwithstanding the familiar populist politics of usury laws, the greatest gains from federal preemption are likely to accrue to the least well-off consumers in society. Regulatory restrictions in credit markets hurt highest-risk borrowers the most. Based on a review of the empirical literature estimating the impact of restrictive interest rate ceilings before *Marquette*, one study concludes that "lower-income families and families headed by younger persons would seem to be among those most likely to be denied credit as a result of such [interest rate] ceilings." [footnote omitted] In credit card markets in particular, both the Credit Research Center survey data and a New York State study echo this result. These studies indicate that pre-*Marquette* rate ceilings affected the probability that a low-income or lower-middle-income family would hold a credit card but did not affect the probability of cardholding for higher-income families.

[46]*Id*. at 1022.

[47]DoD Report at p. 44.

[48]"Payday lenders have grown dramatically in the past few years precisely because they are meeting both a need and a service banks and credit unions have failed to provide — convenient, small loans on a short-term basis . . . . Payday lenders are fast, friendly and have convenient hours; they are open until 6 p.m. and on Saturdays . . . . They have a good business model; they fill a need and provide a service that people want." National Association of Community Credit Unions, *Credit Union Alternatives to Payday Lending* (January 2006), available at http://www.naccu.coop/white_papers.html (visited August 29, 2006).

a possible, albeit temporary, solution. Education and the fostering of sound personal finances would create more financial options for households than any other solution.

The DoD Report gives no attention to the possible harm caused by eliminating *lawful* access to payday-loan credit for the 99.7% of service members who either do not payday loans at all, or who use them responsibly and for their intended purpose. Further study of this issue is warranted prior to material legislative change.

— Ability to Repay

As noted above, the DoD Report discusses the extension of credit without regard to ability to repay. Payday lenders *never* extend credit without consideration of the borrower's ability to repay. An essential feature of any positive credit decision is that the borrower has a steady source of income, and that income can be used to make loan payments. This is the same criterion that is employed by providers of both secured and unsecured credit of virtually every kind (with the possible exception of pawn lending).

The overarching unique feature of a payday loan is that the borrower provides the lender with a check for the aggregate of the loan principal and finance charge at the inception of the relationship; the lender knows that the check is likely to be honored because the borrower's checking account is periodically replenished by the borrower's employer. It is this very check that provides the lender with the borrower's assurance of repayment. The DoD Report stands logic on its head by recommending that this check be dispensed with, thereby eliminating the lender's assurance of the borrower's ability to repay.

If taking the borrower's check were proscribed, a payday loan would have very different economic characteristics, because the lender's collection costs and overall credit experience would be dramatically and adversely affected. Elimination of the check would drive lenders' costs up to the point were it would no longer be economic to extend credit at current market rates; such credit would be unthinkable at the proposed ceiling rates.

— Arbitration

The DoD Report recommends that arbitration clauses in loan contracts with military borrowers be forbidden. As noted earlier in this letter, there is no evidence of a "problem" to which this "solution" purports to be responsive. Overall complaint rates to regulators regarding payday loans are extremely low: on the order of magnitude of one complaint per million loans. Other than litigation involving the now-defunct "bank model," there have been only a handful of reported cases relating to the payday-loan industry.

As noted above, agreeing to arbitration does not amount to the waiver of any substantive rights. By agreeing to arbitrate, a consumer submits his claims to an impartial tribunal that is authorized to award any remedy that a court might award, including injunctive relief, attorneys' fees and costs. Arbitration is more expeditious and less expensive than litigation and produces results with which consumers are nearly universally satisfied.

This recommendation is inconsistent with federal public policy that encourages non-judicial resolution of disputes and should be rejected.

— Other Recommendations

CFSA takes no position regarding the remaining recommendations of the DoD Report.

Although the report makes the uncontroversial suggestion that uniform cost-of-credit disclosures be given to military borrowers, in fact such disclosures are already being made to all payday-loan borrowers because they are required under the Truth in Lending Act, 15 U.S.C. § 1601 *et seq*., and the Federal Reserve Board's implementing Regulation Z, 12 C.F.R. Part 226. The requirement for such disclosures is likewise incorporated in many of the state-law provisions that enable payday lending. It is unclear whether this recommendation is intended to remedy a perceived deficiency in payday lending or in some other form of credit.

The report also makes the recommendation that lenders be precluded from contracting for waivers of the protections provided by the Servicemembers' Civil Relief Act.[49] Such waivers are unenforceable in any event, and it is once again not clear what wrong is sought to be remedied by the author's recommendation.

Conclusion

The DoD Report is biased, unscientific and fails to follow the routine social-science protocols that enable policy makers to reach informed decisions regarding consumer-credit law. The report makes recommendations that are unsound from a policy standpoint, and those recommendations are intended to address problems that have not been proven to exist with any demonstrated rate of incidence. The overwhelming evidence is that payday loans are employed by borrowers for their intended short-term purpose, and nearly all borrowers repay them as agreed, without financial distress.

The DoD Report should be rejected in its entirety.

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[49] This law protects not only those on active duty but also Reservists and activated members of the National Guard. 50 U.S.C. App. § 501 *et seq*. The U.S. Supreme Court has said that the predecessor statute should be read "with an eye friendly to those who dropped their affairs to answer their country's call," *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948), and its provisions are generally considered to be non-waivable.