

October 23, 2018

Acting Director Mick Mulvaney  
Consumer Financial Protection Bureau  
1700 G St. N.W.  
Washington, DC 20552

Dear Acting Director Mulvaney,

On behalf of the undersigned Attorneys General, we write to express our concern about recent reports that the Consumer Financial Protection Bureau (CFPB) will no longer ensure that lenders are complying with the Military Lending Act (MLA) as part of its regular, statutorily mandated supervisory examinations. We believe that such a move would significantly harm the servicemembers who live and work in our states and that it would be contrary to the CFPB's statutory mandate.

Protection of our nation's servicemembers against financial exploitation is a bedrock tenet of federal consumer financial protection law, and it traditionally has been a bipartisan effort. Going back as far as Congress' passage of the Soldiers' and Sailors' Civil Relief Act during World War I, federal law has sought "to protect those who have been obliged to drop their own affairs to take up the burdens of the nation" by providing special protections. *Boone v. Lightner*, 319 U.S. 561, 575 (1943). These protections have been extended over the years, including in 2006 through the enactment of the MLA, which was passed by a Republican-controlled Congress and signed by President George W. Bush. The MLA protects servicemembers and their immediate families against exploitative loans charging more than 36% interest or including various predatory features. 10 U.S.C. § 987(b), (e).

The MLA ensures that servicemembers, many of whom have recently reached the age of majority and therefore have little experience in managing their own finances, are not saddled with unaffordable debt. The Defense Department has described in detail "why the issue of maintaining the financial stability of Service members and their families is critical to sustaining the all-volunteer force and maintaining its readiness." *See* Office of the Under Secretary of Defense for Personnel and Readiness, Proposed Rule, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 79 Fed. Reg. 58,602, 58,604-06 (Sept. 29, 2014). Most significantly, "[e]ach year, thousands of well-trained Service members are compelled to leave military service because they experience financial distress that leads to the revocation of their security clearances." *See* Office of the Under Secretary of Defense for Personnel and Readiness, Final Rule, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 80 Fed. Reg. 43,560, 43,599 (July 22, 2015). According to the Defense Department, a regulation finalized in 2015 that strengthened the MLA was expected to reduce the number of involuntary separations of servicemembers due to financial distress by between 5 and 30 percent, saving the military between \$14 million and \$133 million each year. *Id.* at 43,600. Additionally, the MLA provides "non-quantifiable benefits" by, among other things, "reducing stress for Service members or their families, which currently affects approximately 60 percent of military families who report experiencing stress related to their financial condition." *Id.*

We believe that the CFPB would be failing to abide by its statutorily mandated duty to enforce the MLA by restrictively interpreting its examination authority to preclude reviewing lenders' compliance with the MLA. The MLA was amended in 2013, in legislation passed by a Congress under divided party control and signed by President Barack Obama, to specify that the MLA “shall be enforced” by the CFPB (among other agencies) “under any . . . applicable authorities available to” the CFPB. 10 U.S.C. § 987(f)(6) (emphases added). Congress explicitly has provided that one “applicable authority” available to the CFPB is examination of lenders in order to “detect[] and assess[] risks to consumers and to markets for consumer financial products and services.” 12 U.S.C. § 5514(b)(1)(C). Clearly, the origination of illegal loans to servicemembers constitutes a “risk[] to consumers.” Additionally, originating illegal loans to servicemembers constitutes an “unfair, deceptive, or abusive act or practice” prohibited by 12 U.S.C. § 5536(a)(1)(B) and therefore is subject to the CFPB’s authority under 12 U.S.C. § 5514(b)(1)(A) to conduct examination to determine “compliance with the requirements of Federal consumer financial law.” Accordingly, we are perplexed by reports indicating that the CFPB has determined that it needs further statutory authority in order to conduct examinations for MLA violations. We are also disappointed to learn that CFPB did not consult the Defense Department in developing its new examination policy, even though Congress specified that the Defense Department – not the CFPB – is the primary federal agency responsible for interpreting the MLA. *See* 10 U.S.C. § 987(h).

Finally, eliminating the MLA from the subjects covered by CFPB examinations appears contrary to several of the principles that you have laid out for the CFPB under your leadership.<sup>1</sup> First, you have expressed a commitment to decision making based on cost-benefit analysis. Your proposal would result in significant added costs on servicemembers without providing examined entities meaningful regulatory relief. As less than two percent of the CFPB’s Supervision and Examination Manual is devoted to the MLA compliance, this examination is not burdensome.<sup>2</sup> Second, you have criticized a “regulation-by-enforcement” approach. By eliminating the proactive examination of compliance to correct problems before they affect servicemembers, however, your proposal will limit the CFPB’s protection of servicemembers to reactive enforcement when servicemembers submit complaints. We understand that the Defense Department believes that these examinations “contribute to effective industry education about, and compliance with, the MLA.”<sup>3</sup>

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<sup>1</sup> *See, e.g., 2018 Semi-Annual Report of the Bureau of Financial Protection: Hearing Before to H. Comm. on Fin. Servs., 115th Cong (Apr. 11, 2018) (statement of Mick Mulvaney), available at <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba00-wstate-mmulvaney-20180411.pdf>.*

<sup>2</sup> Moreover, the two percent increase in page count likely *overstates* the burden added by examination for MLA compliance, because the MLA incorporates many requirements of Regulation Z, which examiners must review regardless of whether they are reviewing for MLA compliance.

<sup>3</sup> Colin Dwyer, *Pentagon Was Not Notified Of Proposal To Change Military Lending Act*, NPR (Sept. 11, 2018) (quoting letter from Stephanie Barna, Acting Under Secretary of Defense, to Sen. Claire McCaskill), *available at* <https://www.npr.org/2018/09/11/646790785/pentagon-consumer-agency-didnt-discuss-plan-to-relax-oversight-of-military-lendi>.

Based on the above, we request that the CFPB reconsider its reported decision to discontinue reviewing lenders' compliance with the MLA as part of its examinations. Additionally, we would welcome the opportunity to work with your staff on conducting joint investigations related to the MLA, or any other financial exploitation of our states' servicemembers – a top priority for all of us.

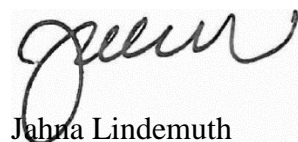
Sincerely,



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Cynthia H. Coffman  
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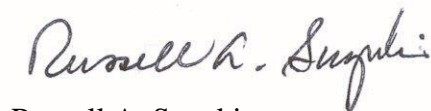
George Jepsen  
Connecticut Attorney General



Matthew P. Denn  
Delaware Attorney General



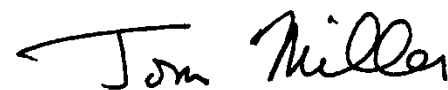
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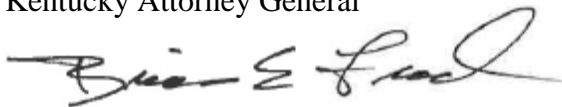
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cc: Patrick Campbell  
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