

Legal Assistance: The John Warner National Defense Authorization Act for Fiscal Year 2007 and Protecting Soldiers Against Predatory Lending

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Introduction

Private Smith, a recent graduate of basic and advanced individual training, reports for duty at Fort Stewart. Family circumstances leave Private Smith behind on his bills and struggling to meet his financial obligations. Faced with the prospect of having his only family vehicle repossessed, he seeks a payday advance loan to make his car payment. Private Smith borrows \$300 from a commercial, short-term lender. The fee for the loan is \$60 (\$20 per \$100 borrowed), and the loan must be repaid within fifteen days. Private Smith, planning to repay the loan with his next paycheck, cannot repay the loan and is forced to renew the loan or extend the period for repayment. As customary, the lender allows up to four fifteen-day extensions for \$60 each, for a total of \$240 in fees. Private Smith repays the loan after sixty days along with \$240 in fees at an astronomical 487% annual percentage rate. This payment drives Private Smith further into debt and his financial situation becomes dire.

Legal assistance attorneys must often counsel Soldiers, Families, and retirees who, like Private Smith, fall victim to predatory lending practices.¹ Thus, legal assistance attorneys must stay current on the different types of usurious lending schemes and the relevant consumer laws. In addition, legal assistance attorneys should be familiar with the Financial Readiness Program run through Army Community Services. Soldiers depend on legal assistance attorneys. This program provides financial counseling for Soldiers at all levels and can be a cornerstone for Soldiers to learn how to successfully manage their finances in the future. This article addresses short-term lending, the new law purporting to protect military members against predatory short-term loans, and how legal assistance attorneys can protect Soldiers against unlawful, predatory lending. Though this article focuses on Army regulations, these protections apply to servicemembers from all military branches.²

As of 1 October 2007, provisions of the John Warner National Defense Authorization Act (NDAA)³ and subsequent Department of Defense (DOD)-issued regulations⁴ establish new protections for Soldiers and their dependents from the many lending traps that target the military. Collectively known as the Military Lending Act, these laws and regulations specifically circumscribe the conduct of pay-day lenders, title loan companies, and providers of tax refund anticipation loans.⁵ The Military Lending Act requires the lender to disclose certain terms to Soldiers and their dependents.⁶ These disclosure requirements serve two purposes: (1) to ensure that the Soldier is aware that greater protections exist for Soldiers and their dependents, and (2) to ensure that the Soldier understands the terms and conditions of the loan before completing the transaction.⁷ Additionally, the regulations specifically prohibit certain conduct by the lender.⁸ Violations of these regulations may result in making the entire lending agreement void and creating a cause of action against the lender.⁹

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¹ U.S. DEP'T OF ARMY, REG. 27-3, THE ARMY LEGAL ASSISTANCE PROGRAM para. 2-1a (21 Feb. 1996) [hereinafter AR 27-3] ("The mission of the legal assistance program is to assist those eligible for legal assistance with their personal legal affairs in a timely and professional manner by . . . [m]eeting their needs for information on personal legal matters."). For ease of reading, this article uses the term "Soldier" to refer to all eligible legal assistance clients, including retirees and Family members.

² *Id.* para. 1-4 g(2)(m) ("Timely provide all eligible clients, regardless of military department, installation, or command affiliation, with the same legal assistance services routinely provided clients affiliated with their own installations or commands.").

³ John Warner Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, 120 Stat. 2083 (2006).

⁴ Limitations on Terms of Consumer Credit Extended to Service Members, 32 C.F.R. pt. 232 (2006). This article refers to both the statute and its implementing regulations as the Military Lending Act.

⁵ *Id.* § 232.3(b)(1)(i)-(iii).

⁶ *Id.* § 232.6 (Mandatory Loan Disclosures).

⁷ *Id.* § 232.1(b).

⁸ *Id.* § 232.8 (Limitations).

⁹ *Id.* § 232.9(c).

Too often, Soldiers have little knowledge of the legal rights and protections afforded them because of their military status. Legal assistance attorneys have a duty to ensure that Soldiers are aware of their rights and protections and can find the correct avenue to enforce them.¹⁰ The Military Lending Act adds to that duty.¹¹ Soldiers who seek legal advice often have some form of short-term debt.¹² Without the attorney's help, Soldiers will continue to fall victim to the unlawful practices of short-term lenders.

Short-Term Lenders Target Soldiers

Soldiers are traditionally a good target for predatory lenders.¹³ Lenders offer short-term loans that are characteristically unreasonable and unduly oppressive to the borrower.¹⁴ Various studies conclude that Soldiers are predisposed to financial difficulty.¹⁵ Furthermore, characteristics of military pay and service entice lenders to target Soldiers.¹⁶ These characteristics include the consistency of military pay, the Soldier's assignment to a permanent duty station, and the general military obligation of financial responsibility.¹⁷

Lenders can be fairly certain of the amount of military pay¹⁸ as the DOD publicly announces Soldier salaries.¹⁹ Furthermore, Soldiers draw their pay on a regular schedule, either bi-weekly or monthly.²⁰ The nature of military assignments also makes Soldiers attractive borrowers. Soldiers typically receive permanent change of station orders every two to four years. These moves are command-controlled and subject to military regulation.²¹ A Soldier cannot relocate to avoid collection efforts.²² Thus, lenders are secure in believing that the Soldier will be present for collection of any debt.²³ Lastly, the military requires Soldiers to maintain financial security and responsibility.²⁴ At the same time, Soldiers are reluctant to alert their command to their financial difficulties for fear of adverse administrative action or punishment under the Uniform Code of Military Justice.²⁵ Therefore, short-term financial loans continue to thrive in the military environment.²⁶

¹⁰ AR 27-3, *supra* note 1, para. 3-7b (“[A]ttorneys providing legal assistance . . . may provide one or more of the following types of legal services: (b) *Legal counseling*. Legal counseling involves providing legal advice to a client.”).

¹¹ See generally 32 C.F.R. pt. 232.

¹² AR 27-3, *supra* note 1, para. 3-6e(1) (“Legal assistance will be provided to debtors on disputes over lending agreements.”).

¹³ Steven M. Graves & Christopher L. Peterson, *Predatory Lending and the Military: The Law and Geography of “Payday” Loans in Military Towns*, 66 OHIO ST. L.J. 653, 676 (2005) (“Military service members tend to have demographic characteristics associated with personal indebtedness problems.”).

¹⁴ Aaron Huckstep, *Payday Lending: Do Outrageous Prices Necessarily Mean Outrageous Profits?*, 12 FORDHAM J. CORP. & FIN. L. 203, 208 (2007) (citing Caroline Wilson, *Faces in the Fight Against Predatory Lending*, COMMUNITY BANKER, Oct. 1, 2001, at 23 (“[A] process, often starting with misleading sales tactics, that culminates in the origination of a loan to a borrower who is paying too much in fees, interest or insurance, may not fully understand or was not made aware of all the provisions of the contract, and may not have the financial capacity to repay the loan.”)).

¹⁵ Graves & Peterson, *supra* note 13, at 676.

¹⁶ U.S. DEP’T OF DEFENSE, REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS 10 (9 Aug. 2006) [hereinafter DOD, REPORT ON PREDATORY LENDING], available at http://www.defenselink.mil/pubs/pdfs/Report_to_Congress_final.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ U.S. DEP’T OF DEFENSE, REG. 7000.14-R, 7A-7C DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REGULATIONS (1999) [hereinafter FMRS].

²⁰ Defense Finance and Accounting Service: *Army: Military Pay*, available at <http://www.dfas.mil/army2/militarypay/2008militarypaypaydays.html> (last visited Apr. 11, 2008).

²¹ U.S. DEP’T OF ARMY, REG. 614-6, PERMANENT CHANGE OF STATION POLICY (7 Oct. 1985).

²² DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 10.

²³ *Id.*

²⁴ U.S. DEP’T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL para. 1-5(a) (14 Mar. 1986) (“Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly.”).

²⁵ Graves & Peterson, *supra* note 13, at 685 (citing Major Alan L. Cook, *The Armed Forces as a Model Employer in Child Support Enforcement: A Proposal to Improve Service of Process on Military Members*, 155 MIL. L. REV. 153, 169 (1998) (“The institutional demand that service members have their financial affairs in order is backed up with the very real threat of reprimand, loss of security clearances, bar to re-enlistment, denial of promotion, court martial, and dishonorable discharge.”)).

²⁶ Dawn Goulet, *Protecting Our Protectors: The Defense Department's New Rules to Prevent Predatory Lending to Military Personnel*, 20 LOY. CONSUMER L. REV. 81, 82 (2007) (stating that “[a]ctive-duty military personnel are three times more likely than their civilian counterparts to take out payday loans”).

What Methods Do Short-Term Lenders Employ

This article addresses three major types of short-term loans: the payday, or cash advance, loan; the automobile title loan; and the tax refund anticipation loan.²⁷

Payday Loan

The DOD regulations define a “payday loan” as

a closed-end credit with a term of 91 days or fewer in which the amount financed does not exceed \$2,000 and the covered borrower: (1) receives funds from and incurs interest and/or is charged a fee by a creditor, and, at the same time as the funds are received, the borrower provides a check or other payment instrument to the creditor who agrees with the covered borrower not to deposit or present the check or payment instrument for more than one day, or; (2) receives funds from and incurs interest and/or is charged a fee by a creditor, and, at the same time as the funds are received, the borrower authorizes the creditor to initiate a debit or debits to the covered borrower's deposit account (by electronic fund transfer or remotely created check) after one or more days.²⁸

In sum, a payday loan is a high-interest, short-term loan which is secured by a check drawn on the borrower's bank account.²⁹ The Soldier writes a predated check, drawn on his bank account which does not contain sufficient funds to cover the amount of the check at that time.³⁰ In exchange for the check, the lender loans the Soldier a certain percentage of the check amount.³¹ The percentage of loan amount withheld by the lender, which is the cost of the loan, is included in the calculation to determine the applicable interest rate and fee charged by the lender.³² The lender then holds the check until a later date, usually one to three weeks, when the Soldier purportedly has sufficient funds in his bank account to cover the amount of the check.³³ The profit for the lender is the amount of the check minus the amount loaned to the Soldier.³⁴ The interest and fees associated with the loan often exceed an annual percentage rate of 600%.³⁵

Title Loan

The regulations define a vehicle title loan as “a closed-end credit with a term of 181 days or fewer that is secured by the title to a motor vehicle, which has been registered for use on public roads and is owned by a covered borrower, other than a purchase money transaction.”³⁶ In other words, a title loan is a short-term loan whereby the lender makes a loan to the Soldier and effectively puts a lien on the Soldier's automobile. The Soldier, upon approval and receipt of the high-interest loan will surrender to the lender the title to his vehicle.³⁷ The automobile title will serve as security for the loan.³⁸ When the

²⁷ 32 C.F.R. § 232.3(b)(1)(i)–(iii) (2006).

²⁸ *Id.* § 232.3(b)(1)(i)(A)–(B).

²⁹ JEAN ANN FOX, SAFE HARBOR FOR USURY: RECENT DEVELOPMENTS IN PAYDAY LENDING, CONSUMER FED'N AM. 1 (Sept. 1999), available at <http://www.consumerfed.org/pdfs/safeharbor.pdf>; Huckstep, *supra* note 14, at 206–07 (stating that “The check serves as the only form of security on the loan.”).

³⁰ FOX, *supra* note 29, at 1; Huckstep, *supra* note 14, at 206–07 (explaining that “[t]he borrower writes a check for a set amount, gives the check to the payday lender”).

³¹ FOX, *supra* note 29, at 1.

³² *Id.* at 1–2; Huckstep, *supra* note 14, at 206 (“The difference between the face value of the check and the amount of cash received represents the service charge on the loan”).

³³ Huckstep, *supra* note 14, at 207 (referencing Charles A. Bruch, *Taking the Pay Out of Payday Loans: Putting an End to the Usurious and Unconscionable Interest Rates Charged by Payday Lenders*, 69 U. CINN. L. REV. 1257, 1258 (2001) (“The payday lender agrees not to deposit the check for a short period of time (typically two weeks or until payday). On the due date, a borrower with sufficient funds can allow the lender to deposit the original check or pay the loan off with cash.”).

³⁴ *Id.* (explaining that “[t]he difference between the face value of the check and the amount of cash received represents the service charge on the loan”).

³⁵ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 10.

³⁶ 32 C.F.R. § 232.3(b)(1)(ii) (2006).

³⁷ AMANDA QUESTER & JEAN ANN FOX, CAR TITLE LENDING: DRIVING BORROWERS TO FINANCIAL RUIN, CONSUMER L. CTR. & CONSUMER FED'N OF AM. 4 (14 Apr. 2005), available at http://www.responsiblelending.org/pdfs/rr008-Car_Title_Lending-0405.pdf.

Soldier is unable to pay the loan, he is either forced to renew or rollover the loan for a higher interest rate or find some other source of funds to pay the loan.³⁹ In the event the Soldier fails to pay or refinance the loan, the lender will charge large penalties.⁴⁰ As legal holder of title, the lender will begin an action for repossession.⁴¹ The Soldier and his family members are then often left without a means of transportation.

Tax Refund Anticipation Loan

The regulations define a tax refund anticipation loan as “a closed-end credit [transaction] in which the covered borrower expressly grants the creditor the right to receive all or part of the borrower’s income tax refund or expressly agrees to repay the loan with the proceeds of the borrower’s refund.”⁴² In other words, the tax refund anticipation loan is a loan against the expected income tax return of the Soldier.⁴³ The Soldier may not realize that the amount he receives from the tax preparer is not their actual tax return, but a loan based on the anticipated income tax return amount.⁴⁴ After preparing the Soldier’s tax return, the lender will then have a 100% lien on the return.⁴⁵ The lender typically charges a standard fee for tax preparation, loan origination, and a loan service or administration fee.⁴⁶ All fees are generally deducted from the amount loaned to the Soldier.⁴⁷ Some of these fees are included in the calculation of the military annual percentage rate, discussed below, which typically ranges from 300% to 600%.⁴⁸ The lender may loan more money to the Soldier than the Soldier will receive as his income tax return.⁴⁹ The Soldier, oftentimes unwittingly, signs documents agreeing that any excess amount paid to the Soldier above the actual tax return amount will be a loan with unconscionable repayment terms.⁵⁰ As with other relevant short-term loans, the high cost of the loan over such a short period makes the Soldier subject to astronomical interest rates.⁵¹

Rollovers and Renewals

Soldiers who cannot repay a short-term loan at the end of the period stated in the loan agreement will normally have the opportunity to “roll over” the loan.⁵² Rolling over a loan extends the period allowed for the Soldier to repay the loan.⁵³ In order to roll over the loan, the Soldier must pay additional fees associated with the rollover while the interest charge on the loan amount continues to accrue.⁵⁴ Another option offered to the Soldier is the prospect of “renewal.”⁵⁵ A renewal is an

³⁸ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 16.

³⁹ *Id.*

⁴⁰ QUESTER & FOX, *supra* note 37, at 4–5.

⁴¹ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 16.

⁴² 32 C.F.R. § 232.3(b)(1)(iii) (2006).

⁴³ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 16 (“Tax refund anticipation loans are expensive short-term loans secured by a taxpayer’s expected tax refund that are often granted to the lowest earners, those receiving the Earned Income Tax Credit.”).

⁴⁴ *Id.* at 20.

⁴⁵ Press Release, Ctr. for Responsible Lending and The Consumer Fed’n of Am., Down, But Not Gone: Quick Tax Refund Loans Continue to Gouge Taxpayers and Military (Feb. 5, 2007) [hereinafter Down, But Not Gone], available at http://www.consumerlaw.org/issues/refund_anticipations/content/2007RALRelease.pdf.

⁴⁶ *Id.* (“[I]n 2007, a consumer can expect to pay from \$57 to \$104 to \$111 in order to get a RAL for a typical refund of about \$2,500.”).

⁴⁷ NAT’L CONSUMER LAW CTR. & CONSUMER FED’N OF AM., ANOTHER YEAR OF LOSSES: HIGH-PRICED REFUND ANTICIPATION LOANS CONTINUE TO TAKE A CHUNK OUT OF AMERICANS’ TAX REFUNDS, CTR. FOR RESPONSIBLE LENDING & THE CONSUMER FED’N OF AM. 3 (Jan. 2006) [hereinafter ANOTHER YEAR OF LOSSES], available at http://www.consumerfed.org/pdfs/2006_RAL_report.pdf.

⁴⁸ DOD, REPORT ON PREDATORY LENDING *supra* note 16, at 16.

⁴⁹ Down, But Not Gone, *supra* note 45, at 4 (“A RAL must be repaid even if the taxpayer’s refund is denied, is smaller than expected, or frozen (something that the National Taxpayer Advocate has noted happens to hundreds of thousands of taxpayers, particularly EITC recipients).”).

⁵⁰ ANOTHER YEAR OF LOSSES, *supra* note 47, at 3.

⁵¹ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 16.

⁵² *Id.* at 47.

⁵³ Huckstep, *supra* note 14, at 207 (referencing Bruch, *supra* note 33, at 1258).

⁵⁴ *Id.* (“When a borrower does not have sufficient cash to repay a loan, one easy option is to rollover or renew the loan for another term by paying additional interest or extension fees.”).

extension of additional credit.⁵⁶ In order to qualify for the extension, proceeds from the new, larger loan are used to pay off the original debt amount.⁵⁷ Essentially, the Soldier becomes obligated on a larger loan amount, often without receiving any additional funds.⁵⁸

Too often the Soldier cannot repay the high-interest loan and goes into default.⁵⁹ In the case of payday loans, the lender cashes the check which is subsequently returned to the lender for insufficient funds.⁶⁰ In such a case, the Soldier remains indebted to the lender, who continues to assess interest, while the bank charges a fee for writing a check on insufficient funds.⁶¹ In title loan transactions, the lender begins the process to repossess the Soldier's vehicle.⁶² Regardless of the loan type, the lender may then bring a summary court action for repayment of the funds. Often the Soldier chooses to obtain a payday loan from a different lender in order to pay the original debt.⁶³ The Soldier then becomes stuck in a cycle of shifting high-interest debt.

Why Is the Army Concerned?

Military Readiness and Morale

The Army is concerned with the fiscal situation of Soldiers.⁶⁴ In order to maintain troop readiness, the Army has a vested interest in maintaining high troop morale.⁶⁵ Excessive debt has a detrimental effect on the quality of life and morale of the Soldier.⁶⁶ Indeed, the DOD further recognizes that predatory loans degrade troop morale and detract from readiness.⁶⁷ Individual troop readiness is extremely important considering the current operational tempo. A key goal of the legal assistance attorney is to support Soldiers and promote military readiness.⁶⁸ With regard to the Military Lending Act, the legal assistance attorney must provide information and assistance to Soldiers plagued with financial problems resulting from such

⁵⁵ Huckstep, *supra* note 14, at 207–08 (citing Mark Flannery & Katherine Samolyk, *Payday Lending: Do the Costs Justify the Price?* 1 (FDIC Center for Financial Research Working Paper, Paper No. 2005/09, 2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=771624 (“Rollovers involve payment of only additional fees; the renewal requires repayment of the loan in full before a new loan is extended.”)).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 22.

⁵⁹ *Id.* (“[T]he borrower is placed at a disadvantage and penalized through high fees and interest and dire consequences if they default.”).

⁶⁰ Huckstep, *supra* note 14, at 207 (referencing Bruch, *supra* note 33, at 1258) (“Another [lender tactic] is for the lender to deposit the borrower's original check, leaving the borrower to deal with the high cost of bouncing a check, while still owing the payday lender.”).

⁶¹ See, e.g., IDAHO CODE ANN. § 28-46-412(3) (2007) (“Lenders may further assess a fee of up to \$ 20 for any check that bounces or is returned for insufficient funds.”).

⁶² QUESTER & FOX, *supra* note 37, at 4–5.

⁶³ Huckstep, *supra* note 14, at 207 (referencing Bruch, *supra* note 33, at 1258) (“The borrower could begin a vicious cycle: obtain a new loan from a different payday lender, and use the new funds to pay off the old debt.”).

⁶⁴ See generally U.S. DEP'T OF DEFENSE, DIR. 1344.9, INDEBTEDNESS OF MILITARY PERSONNEL (27 Oct. 1994).

⁶⁵ AR 27-3, *supra* note 1, para. 2-1b(2) (“Fostering the high morale of Soldiers and their families is an important aspect of readiness.”).

⁶⁶ Goulet, *supra* note 26, at 82 (referencing DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 45) (“Predatory lending affects the quality of life and morale of service members, and has demonstrably undermined troop readiness.”).

⁶⁷ *Id.* at 82 (citing DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 53) (The Department of Defense has stated that “predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all volunteer fighting force.”).

⁶⁸ AR 27-3, *supra* note 1, para. 2-1b(1)

Readiness. Because Active Army and RC Soldiers and emergency-essential DOD civilian employees must be prepared for immediate mobilization and deployment, their personal legal affairs must be in order at all times. Although the goal is to prepare Soldiers and emergency-essential DOD civilian employees for such eventualities well in advance of their occurrence, future legal needs cannot always be anticipated or met even under the best of plans. Possessing the capability to deliver legal assistance on short notice to great numbers during a brief period of time is essential to readiness.”.

Id.

illegal predatory lending.⁶⁹ Helping Soldiers escape these lending traps not only helps the individual Soldier, it serves to maintain troop morale and, ultimately, military readiness.⁷⁰

Duty to Maintain Fiscal Responsibility

Army Regulation (AR) 600-15 places an affirmative duty on the Soldier to maintain personal financial responsibility.⁷¹ This regulation has two principal goals: to aid creditors in dealing with uncooperative Soldiers, and to protect the Soldier's right to privacy.⁷² This aids creditors by providing a method of collection against Soldiers who refuse to pay their legitimate debts.⁷³ The regulations state that the lender's claim will be "processed" by the Army.⁷⁴ "Processed" seems to indicate that the Army will help the creditor collect on the debt; however, there is no definition for the word "processed."⁷⁵ Understanding these provisions is very important, as the commander may ultimately advise the Soldier to see a legal assistance attorney for advice regarding the debt.⁷⁶

The regulation explicitly delineates the procedures that creditors must follow.⁷⁷ The creditor must first attempt to collect the debt from the Soldier.⁷⁸ If the Soldier refuses or otherwise fails to pay the debt, the creditor must present the claim to the command.⁷⁹ The creditor must provide sufficient evidence to establish a valid claim.⁸⁰ Sufficient evidence should include a court order or the contract, signed by the Soldier, forming the basis of the indebtedness.⁸¹ The creditor must also provide written evidence sufficient to show the creditor's attempt to collect the debt from the Soldier.⁸² All evidence must conclusively show that the creditor has complied with all applicable state and federal law, as well as DOD standards of fairness, in establishing the indebtedness and collection efforts.⁸³ After presenting all affirmative evidence, the creditor may then contact the commander directly.⁸⁴ After reviewing the evidence, the commander will counsel the Soldier regarding the indebtedness and the duty of fiscal responsibility.⁸⁵ If the Soldier is unwilling to pay, the creditor can appeal to the Army Community and Family Support Center.⁸⁶

⁶⁹ *Id.* para. 3-6e(1) ("Legal assistance will be provided to debtors on disputes over lending agreements . . .").

⁷⁰ *Id.* para. 2-1b(2) ("High morale is enhanced by providing [S]oldiers and their [F]amilies information, advice and assistance responsive to their personal legal needs and problems.").

⁷¹ AR 600-15, *supra* note 24, para. 1-5a ("Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly.").

⁷² Major James S. Tripp, *Army Regulation 600-15, Indebtedness of Military Personnel: Time for an Update*, ARMY LAW., Nov. 2005, at 1, 8 ("The current AR 600-15's structure loosely reflects its two main goals: (1) the implementation of a procedure for a creditor to follow whereby he or she may receive Army assistance in collecting a debt from an uncooperative Soldier, and (2) protection of a Soldier's right to privacy.").

⁷³ AR 600-15, *supra* note 24, para. 1-4b (stating that the Commanding General, United States Army Community and Family Support Center (USACFSC) will "process debt claims received at USACFSC regarding Soldiers.").

⁷⁴ *Id.* para. 1-5c ("Creditors who follow chapter 4 will have their debt complaints processed.").

⁷⁵ Tripp, *supra* note 72, at 8 (citing AR 600-15, *supra* note 24, para. 1-4b ("Processed" is defined nowhere in the regulation, but the context certainly seems to imply that the Army will assist the creditor to receive payment.")).

⁷⁶ AR 600-15, *supra* note 24, para. 2-1c(8)(d) ("[I]nform the Soldier that counseling is available under the Legal Assistance Program (27-3).").

⁷⁷ *Id.* para. 4-1 (listing the conditions creditors must meet before getting help with processing).

⁷⁸ *Id.* para. 4-3d(2).

⁷⁹ *Id.* para. 2-2a.

⁸⁰ *Id.* para. 4-3a (providing a list of all documents necessary to establish a valid claim).

⁸¹ Tripp, *supra* note 72, at 9 (citing U.S. DEP'T OF ARMY, REG. 600-15, INDEBTEDNESS OF MILITARY PERSONNEL para. 4-3a(4) (31 Feb. 1970)) ("A Soldier does not respond, the creditor should then make available to the commander a series of documents, including either written permission from the Soldier for the creditor to contact the Army about the debt.").

⁸² AR 600-15, *supra* note 24, para. 4-3a(5) (requiring "written evidence showing the creditor's efforts to get the money directly from the Soldier").

⁸³ *Id.* para. 4-3a(1) (requiring "evidence showing the creditor has complied with the DOD's Standards of Fairness and other applicable Federal and State regulations").

⁸⁴ Tripp, *supra* note 72, at 9 ("Once all the required information has been provided and the commander has determined that the creditor complied with the terms of AR 600-15, the creditor may then contact the Soldier's commander directly.").

⁸⁵ AR 600-15, *supra* note 24, para. 2-(c)(8) (commander's duty to counsel the Soldier regarding the debt).

⁸⁶ Tripp, *supra* note 72, at 9 ("If the debt is not disputed, but the command is unable or unwilling to persuade the Soldier to pay, the creditor may appeal to USACFSC.").

An inadvertent consequence of the commander's involvement is that Soldiers may feel pressured to pay illegitimate debts. The commander does not force the Soldier to pay the debt,⁸⁷ yet a Soldier may see the commander's involvement as a motivating factor to pay the debt.⁸⁸ The purpose of AR 600-15, paragraph 1-5(a), is defeated if the commander inadvertently counsels the Soldier on an illegitimate debt.⁸⁹ However, commanders may be unaware of the provisions of the Military Lending Act that make a seemingly legitimate debt void and unenforceable.⁹⁰ The legal assistance attorney, after becoming aware of the debt, should inform the commander that the short-term debt violates the Military Lending Act. Informing the commander, as well as the Soldier, may relieve the Soldier's worry that the commander will become involved in the collection of the predatory loan.

The Military Lending Act

The Military Lending Act covers consumer credit extended by "covered creditors" to "covered borrowers."⁹¹ Specifically, it covers the previously discussed payday loans,⁹² vehicle title loans,⁹³ and tax refund anticipation loans.⁹⁴ These three lending methods are the subject of the Act because they involve high interest rates, coupled with short payback terms.⁹⁵ It is imperative that legal assistance attorneys become familiar with these types of lending arrangements.

Which Lending Transactions Does the Act Not Cover?

The regulations do not cover certain transactions or credit arrangements entered into by Soldiers.⁹⁶ Lending arrangements excluded from the Act are: residential mortgages, refinance transactions, home equity loans or lines of credit, and reverse mortgages.⁹⁷ Further, the regulations do not cover any credit transaction to finance the purchase or lease of a motor vehicle when the credit is secured by the vehicle being purchased or leased.⁹⁸ This provision may create some confusion between a vehicle purchase loan and a title loan. The legal assistance attorney must be familiar with title liens as they relate to both vehicle purchase loans and title loans.

Also, the regulations do not cover any credit transaction to finance the purchase of personal property when the credit is secured by the property being purchased.⁹⁹ These finance agreements may be usurious and violate applicable state law, but there are no protections under the Military Lending Act. In addition, the regulations do not cover loans secured by funds in a qualified retirement account, as defined in the Internal Revenue Code.¹⁰⁰ Attorneys should watch for future clarification of the reasoning behind excluding loans secured by a qualified retirement account. Finally, any other credit transaction that is not consumer credit extended by a creditor is an exempt transaction, or is not otherwise subject to disclosure requirements for purposes of Regulation Z (Truth in Lending), is not regulated by the Military Lending Act.¹⁰¹ Nonetheless, in order to adequately advise the client regarding his financial indebtedness, the legal assistance attorney should be familiar with every type of lending transaction.

⁸⁷ AR 600-15, *supra* note 24, para. 1-5a.

⁸⁸ *Id.* para. 3-1 (Administrative and Punitive Actions).

⁸⁹ *Id.* para. 1-4b(3) ("objectives of this regulation are to protect the rights of the Soldier, his or her family members, and the interests of the Army").

⁹⁰ 32 C.F.R. § 232.9(c) (2006).

⁹¹ *Id.* § 232.1(c).

⁹² *Id.* § 232.3(b)(1)(i).

⁹³ *Id.* § 232.3(b)(1)(ii).

⁹⁴ *Id.* § 232.3(b)(1)(iii).

⁹⁵ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 4.

⁹⁶ 32 C.F.R. § 232.3(b)(2)(i)-(v).

⁹⁷ *Id.* § 232.3(b)(2)(i).

⁹⁸ *Id.* § 232.3(b)(2)(ii).

⁹⁹ *Id.* § 232.3(b)(2)(iii).

¹⁰⁰ *Id.* § 232.3(b)(2)(iv).

¹⁰¹ *Id.* § 232.3(b)(2)(v) (referencing The Truth in Lending Act (Regulation Z), 12 C.F.R. pt. 226 (1995)).

To Whom Do the Regulations Apply?

The regulations only apply to certain “covered creditors.”¹⁰² Under the Military Lending Act, a covered “creditor” (lender) is defined as “a person who is engaged in the business of extending consumer credit with respect to a borrower covered by this Regulation.”¹⁰³ All financial institutions—without exception—are subject to these regulations. These regulations include purchasers or assignees of the loan agreement.¹⁰⁴ An assignee may not engage in any transaction or take any action that would be prohibited for the original lender.¹⁰⁵

The regulations offer protections to all “covered borrowers,”¹⁰⁶ defined as a “regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of thirty days or fewer, or such a member serving on ‘Active Guard’ and ‘Reserve duty,’”¹⁰⁷ or “the member’s spouse, the member’s child, or an individual for whom the member provided more than one-half of the individual’s support for 180 days immediately preceding an extension of consumer credit covered by this part.”¹⁰⁸ For purposes of this article, “covered borrowers” will be referred to collectively as the Soldier. The legal assistance attorney must determine whether the client is indeed a “covered borrower” and thereby protected by the Act.¹⁰⁹ Notably, military retirees and non-activated Reserve Component Soldiers are not “covered borrowers.” The attorney must then determine whether the lender qualifies as a “covered creditor.”¹¹⁰ If either condition is not met, the Military Lending Act will not regulate the conduct of the creditor or protect the borrower.¹¹¹

The Military Annual Percentage Rate

What is the “Military Annual Percentage Rate” (MAPR) and how does the new code affect that rate?¹¹² “The MAPR is the cost of the consumer credit transaction expressed as an annual rate.”¹¹³ The MAPR includes most of the costs paid by the Soldier in order to receive the loan.¹¹⁴ The cost of the loan includes the “interest, fees, credit service charges, [and] credit renewal charges.”¹¹⁵ The MAPR also includes certain mandatory costs paid to the lender, such as “credit insurance premiums including, charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements,”¹¹⁶ and “fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction.”¹¹⁷

Certain items are not included in the calculation of the MAPR, such as “fees or charges imposed for actual unanticipated late payments, default, delinquency, or similar occurrence.”¹¹⁸ Fees charged for failure to pay a valid debt are not part of the cost of the original transaction, as they are contingent upon a breach of the agreement.¹¹⁹ Further, the regulations do not

¹⁰² *Id.* § 232.3(e).

¹⁰³ *Id.*

¹⁰⁴ *Id.* § 232.4(a).

¹⁰⁵ *Id.* § 232.8(b).

¹⁰⁶ *Id.* § 232.3(c).

¹⁰⁷ 32 C.F.R. § 232.3(c)(1). For further definition of “Active Guard” and “Reserve duty,” see 10 U.S.C.S. § 101(d)(6) (LexisNexis 2008).

¹⁰⁸ 32 C.F.R. § 232.3(c)(2).

¹⁰⁹ *Id.* § 232.3(c).

¹¹⁰ *Id.* § 232.3(e).

¹¹¹ *Id.* § 232.2.

¹¹² *Id.* § 232.3(h).

¹¹³ *Id.*

¹¹⁴ *Id.* § 232.3(h)(1).

¹¹⁵ *Id.* § 232.3(h)(1)(i).

¹¹⁶ *Id.* § 232.3(h)(1)(ii).

¹¹⁷ *Id.* § 232.3(h)(1)(iii).

¹¹⁸ *Id.* § 232.3(h)(2)(i).

¹¹⁹ *Id.*

affect “taxes or fees prescribed by law that actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest.”¹²⁰ The Military Lending Act purports to protect Soldiers against predatory lenders.¹²¹ It does not restrict the right of state or local governments to tax certain financial transactions.¹²² The regulation does not control “any tax levied on security instruments or documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.”¹²³ Again, state and local governments charge certain tax and recording fees. The Military Lending Act does not regulate such activity.

Not every fee charged by the lender is included in calculating the MAPR. The MAPR does not include “tax return preparation fees associated with a tax refund anticipation loan, whether or not the fees are deducted from the loan proceeds.”¹²⁴ This is an important distinction. The lender may deduct the cost of his tax preparation service from the proceeds of the loan and the fee is not included in the MAPR.¹²⁵ Lenders will often provide rapid-refund loans at a legal interest rate, but charge an exorbitant preparation fee.¹²⁶ Even though the legal assistance office offers free tax preparation services to Soldiers,¹²⁷ they often opt to take these high-cost, high-interest loans in order to immediately receive funds from their income tax return. The Military Lending Act offers no protection to the Soldier against these fees, as the regulations control only fees that are included in the MAPR.¹²⁸ The legal assistance attorney must closely examine the credit transaction to determine whether the amount withheld from the rapid refund loan is a preparation fee or a loan origination fee.

What Are the MAPR Limits?

The regulations specifically limit the MAPR.¹²⁹ In calculating all fees, including renewal or refinance fees, and applicable interest rates, the total MAPR cannot exceed 36%.¹³⁰ Importantly, the maximum MAPR applies to any assignee of the creditor, as well as the creditor who originated the loan.¹³¹ The Soldier must specifically agree to any legitimate MAPR as stated in the credit agreement or promissory note.¹³² A lender cannot circumvent the regulations by issuing a loan and quickly transferring the debt to another assignee, who erroneously believes he is protected by the “good faith purchaser” rule.¹³³ Lastly, the MAPR cannot violate the Military Lending Act¹³⁴ or any other applicable state or federal law.¹³⁵

Covered Borrower Identification Statement

The regulations impose certain disclosure requirements.¹³⁶ Specifically, each applicable credit agreement must contain a “Covered Borrower Identification Statement.”¹³⁷ This provision also applies to consumer credit originated or extended

¹²⁰ *Id.* § 232.3(h)(2)(ii).

¹²¹ *Id.* § 232.1(b).

¹²² *Id.* § 232.3(h)(2)(ii).

¹²³ *Id.* § 232.3(h)(2)(iii).

¹²⁴ *Id.* § 232.3(h)(2)(iv).

¹²⁵ *Id.*

¹²⁶ Down, But Not Gone, *supra* note 45, at 4.

¹²⁷ AR 27-3, *supra* note 1, para. 3-6i (“Legal assistance will be provided on real and personal property tax issues and on the preparation of Federal and State income tax returns.”).

¹²⁸ 32 C.F.R. § 232.1(c)(1).

¹²⁹ *Id.* § 232.4.

¹³⁰ *Id.* § 232.4(b).

¹³¹ *Id.* § 232.4(a).

¹³² *Id.* § 232.4(a)(1).

¹³³ 15 U.S.C. § 1640(f) (2000).

¹³⁴ 32 C.F.R. § 232.4(a)(3).

¹³⁵ *Id.* § 232.4(a)(2).

¹³⁶ *Id.* § 232.6.

¹³⁷ *Id.* § 232.5(a)(1).

through the Internet.¹³⁸ The lender must present the written covered borrower identification statement to the applicant before entering into the transaction.¹³⁹ The applicant must sign the statement indicating that he is or is not a covered borrower.¹⁴⁰ If the Soldier signs the agreement, including the covered borrower identification statement, erroneously or falsely indicating that he is not a covered borrower, then the lender will not be subject to these regulations.¹⁴¹

This requirement does not apply to a transaction in which the Soldier rolls over, renews, repays, refinances, or consolidates the loan in a manner that does not exceed the allowable MAPR or violate other provisions of this Act.¹⁴² These are very important provisions, as the Soldier can waive the protections of the Military Lending Act by falsely affirming that he is not a covered borrower.¹⁴³ The legal assistance attorney should remind the Soldier that “knowingly making a false statement on a credit application is a crime.”¹⁴⁴ One caveat is that the creditor must not have determined the borrower to be a covered borrower by any other optional, identity verification procedure.¹⁴⁵ If the lender is aware that the client is a covered borrower the Soldier cannot waive his rights by any method, including falsifying the covered borrower identification statement.

Financial Disclosures: What and How?

The lender must make certain financial disclosures, “clearly and conspicuously,” before entering into the contract with the covered borrower.¹⁴⁶ The agreement must clearly disclose the total dollar amount charged as a fee for the loan and the calculated MAPR.¹⁴⁷ Also, there must be a “clear description of the payment obligation of the covered borrower.”¹⁴⁸ The standard for adequate disclosure is that the Soldier must be able to readily identify all charges, fees, and the MAPR.¹⁴⁹ The lender may use a detailed payment schedule to satisfy this requirement.¹⁵⁰ These requirements are in addition to any disclosures required by other laws, including the Truth in Lending Act.¹⁵¹

The regulations place certain requirements on the manner of disclosure.¹⁵² The above-stated disclosures must be in writing “in a form the covered borrower can keep.”¹⁵³ The lender may satisfy this requirement by providing a copy of the credit agreement to the Soldier.¹⁵⁴ The creditor must also provide the required disclosures orally before consummating the transaction.¹⁵⁵ This oral disclosure requirement applies to mail and Internet transactions as well.¹⁵⁶ The lender can satisfy this requirement by providing a toll-free telephone number where the Soldier can listen to the oral disclosures.¹⁵⁷ Disclosures

¹³⁸ *Id.* § 232.6(b)(2).

¹³⁹ *Id.* § 232.5(a)(1).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* § 232.5(d) (“Transaction which are exempt from the disclosure requirements are where the creditor rolls over, renews, repays, refinances, or consolidates consumer credit in accordance with § 232.8(a)(1) if § 232.5(a)(1) and § 232.5(a)(2) applied to the previous transaction.”).

¹⁴³ *Id.* § 232.5(a).

¹⁴⁴ *Id.* § 232.5(a)(1).

¹⁴⁵ *Id.* § 232.5(a)(2).

¹⁴⁶ *Id.* § 232.6(a).

¹⁴⁷ *Id.* § 232.6(a)(1).

¹⁴⁸ *Id.* § 232.6(a)(3).

¹⁴⁹ *Id.* § 232.6(a).

¹⁵⁰ *Id.* § 232.6(a)(3).

¹⁵¹ *Id.* § 232.6(a)(2) (referencing Regulation Z, 12 C.F.R. pt. 226).

¹⁵² *Id.* § 232.6(b).

¹⁵³ *Id.* § 232.6(b)(1).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* § 232.6(b)(2).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* § 232.6(b)(2).

are required for refinancing or renewal of covered loans if the transaction is considered a new transaction that requires disclosures under the Truth in Lending Act.¹⁵⁸ It is important to query the Soldier regarding the oral disclosure—the Soldier will likely have the burden of proving that there was no oral disclosure.

Refinancing an Old Transaction

The regulations control the possible refinance terms of prior loan agreements.¹⁵⁹ A lender cannot roll over, renew, repay, refinance, or consolidate any of the subject loans to a covered borrower with new credit, unless the new transaction results in more favorable terms to the covered borrower.¹⁶⁰ More favorable terms are those that comply with the Military Lending Act and subsequent regulations. The more favorable terms provision does not apply if the initial extension of credit would have been permitted by this section.¹⁶¹

No Waiver of Legal Action

The Soldier cannot waive his right to legal recourse under this or any other law.¹⁶² Specifically, the Soldier cannot waive his rights under the Servicemembers Civil Relief Act.¹⁶³ The most common form of waiver is an arbitration clause.¹⁶⁴ The regulations specifically state that a lender cannot require a Soldier to submit to arbitration.¹⁶⁵ No agreement to arbitrate a dispute involving the extension of consumer credit to a covered borrower will be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.¹⁶⁶ Further, the lender cannot impose any other onerous legal notice provisions in the case of a dispute.¹⁶⁷ For example, lending agreements often require notice to the lender of any claim or dispute regarding the validity of the loan.¹⁶⁸ Per the regulations, a creditor may not demand unreasonable notice from the covered borrower as a condition of legal action.¹⁶⁹

No Paycheck Lending

Under the new regulations, a lender may not use a check or other access to the Soldier's financial account, unless the loan agreement complies with all of the regulations under the Military Lending Act.¹⁷⁰ This provision requires close inspection, as it does not prohibit certain payment assurances or methods.¹⁷¹ For example, the creditor may require an electronic fund transfer to repay a consumer credit transaction.¹⁷² If the transaction complies with these regulations, the lender may require repayment of such a loan via electronic debit.¹⁷³ The lender may also require direct deposit of the

¹⁵⁸ *Id.* § 232.6(c) (referencing 12 C.F.R. § 226.20(a), which states that “[a] refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer.”).

¹⁵⁹ *Id.* § 232.6(c).

¹⁶⁰ *Id.* § 232.8(a)(1).

¹⁶¹ *Id.*

¹⁶² *Id.* § 232.8(a)(2).

¹⁶³ *Id.* § 232.10.

¹⁶⁴ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 7.

¹⁶⁵ 32 C.F.R. § 232.8(a)(3).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 7.

¹⁶⁹ 32 C.F.R. § 232.8(a)(4).

¹⁷⁰ *Id.* § 232.8(a)(5)

¹⁷¹ *See generally id.* § 232.8.

¹⁷² *Id.* § 232.8(a)(5)(i).

¹⁷³ *Id.*

borrower's salary in order to secure repayment of a legitimate loan.¹⁷⁴ This type of arrangement is most common where the short-term lender is financed by a bank where the Soldier maintains an account.¹⁷⁵ The lender may take a security interest in funds deposited in the Soldier's account if that account was established to deposit the loan proceeds.¹⁷⁶ Be aware that this provision does not affect a bank or other financial institution's right to offset the debt owed to that entity, granted by other statutes, regulations, or common law, against the account of the Soldier.¹⁷⁷ Finally, if the terms of the loan allow for payment in allotments, the lender may require that automatic payments be established in accordance with the allotment schedule.¹⁷⁸

Early Payment or Pay-off Clauses

A creditor may not include provisions stating that the covered borrower is prohibited from prepaying the consumer credit or that the covered borrower is charged a penalty for prepaying all or part of the consumer credit.¹⁷⁹ These types of provisions result in usurious interest rates, as the Soldier is precluded from escaping the exorbitant interest and fees through early repayment of the loan.¹⁸⁰ The regulations generally prohibit any provisions that restrict the Soldier from finding his way out of the debt cycle created by these short-term, high-interest loans.

Act Preempts State Law

The regulations specifically state that they "preempt any State or Federal law to the extent such law, rule or regulation is inconsistent Any State law may provide greater protections than those described under 10 U.S.C. § 987 and this Regulation."¹⁸¹ Furthermore, "[s]tate law is not allowed to treat covered borrowers differently than what is provided for under this Regulation."¹⁸²

Legal Assistance Attorney: Serving the Soldier

Legal assistance attorneys advise Soldiers on their legal troubles.¹⁸³ Primarily, the attorney informs the Soldier of the law that governs or pertains to the Soldier's situation.¹⁸⁴ Depending on knowledge or expertise, the attorney will advise the Soldier of his rights or protections under the law.¹⁸⁵ The remaining part of this article explains the requirements of the Military Lending Act in a manner easily understood by attorney and client alike.

Legal assistance attorneys should first attempt to represent the Soldier's interest through negotiation and unofficial mediation with the lender/creditor.¹⁸⁶ The attorney may contact the lender to determine the circumstances of the loan agreement.¹⁸⁷ After carefully examining the facts, the attorney should inform the Soldier whether the terms of the lending agreement violate state or federal law. After determining that the lender has violated the law, the attorney will typically write a letter to the lender, giving him notice of his illegal conduct.¹⁸⁸ Depending on the Soldier's desires, the attorney may also

¹⁷⁴ *Id.* § 232.8(a)(5)(ii).

¹⁷⁵ FOX, *supra* note 29, at 9.

¹⁷⁶ 32 C.F.R. § 232.8(a)(5)(iii).

¹⁷⁷ *Id.* § 232.3(b)(1)(i)(B).

¹⁷⁸ *Id.* § 232.8(a)(6).

¹⁷⁹ *Id.* § 232.8(a)(7).

¹⁸⁰ *See generally* FOX, *supra* note 29.

¹⁸¹ 32 C.F.R. § 232.7(a).

¹⁸² *Id.* § 232.7(b).

¹⁸³ AR 27-3, *supra* note 1, para. 3-3 (General).

¹⁸⁴ *Id.* para. 3-6h(1) ("Legal assistance will be provided on invoking whatever protections may be afforded under the [SCRA] on matters relating to the prosecution or defense of civil lawsuits based on alleged tortious conduct.").

¹⁸⁵ *Id.* para. 3-5 (Scope).

¹⁸⁶ *Id.* App. B-4(d) (citing legal negotiation as one of the many types of legal services that may be provided to eligible clients).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* para. 3-7c (Legal correspondence).

call and negotiate with the lender on the client's behalf.¹⁸⁹ Before taking any of these steps, the attorney should be well-versed in the applicable law and relevant facts of the loan agreement. As the Military Lending Act is very specific regarding the lender's conduct, the attorney will gather most of his information from the loan agreement.

Generally speaking, a legal assistance attorney cannot represent a Soldier in court.¹⁹⁰ However, there are certain exceptions to this rule.¹⁹¹ A legal assistance attorney may represent a Soldier in state or federal court if that attorney is a member of the state/federal bar where the violation took place, or if a special program exists allowing the lawyer to undertake such representation.¹⁹² In any event, the attorney should always consult his supervisor and the Staff Judge Advocate before undertaking such representation.¹⁹³ The Staff Judge Advocate may determine that the circumstances warrant in-court representation by a legal assistance attorney.¹⁹⁴ For example, maintaining troop readiness is a command objective that could warrant in-court representation.¹⁹⁵ Nonetheless, in-court representation by a uniformed Judge Advocate is not the norm. Army regulations specifically provide for referral of a Soldier to a civilian attorney with experience in the subject matter and local jurisdiction.¹⁹⁶

The legal assistance attorney is obliged to help the Soldier contact a civilian attorney.¹⁹⁷ The attorney should consult closely with the Soldier before external referral.¹⁹⁸ The Soldier needs to be aware of the costs and procedures that he will face in consulting a civilian attorney. Civilian consumer law attorneys typically charge high fees due to the difficult subject matter of such cases. Often, Soldiers cannot afford civilian attorneys.¹⁹⁹ The legal assistance attorney should try to help the client without sending him to a civilian attorney.²⁰⁰ Furthermore, Army regulation states that once a Soldier retains a paid civilian attorney, the matter may no longer be within the realm of military legal services.²⁰¹ For these reasons, the attorney should do as much as possible to help the Soldier without or before referral. The civilian attorney representing the Soldier may contact the legal assistance attorney for factual information about the Soldier's situation or interpretation of the law as it affects Soldiers in general. The legal assistance attorney may assist the civilian attorney if authorized by the client and Army regulation.

¹⁸⁹ *Id.* para. 3-7d (Legal negotiation).

¹⁹⁰ *Id.* para. 3-7g(1) (“[O]nly a supervising attorney can authorize in-court representation by an attorney providing legal assistance. Authorization may be on a case-by-case basis or for certain categories of cases . . . it may also be authorized to advance certain command objectives (for example, protecting service members from certain unfair business practices.”).

¹⁹¹ *Id.*

¹⁹² *Id.* para. 3-7g(4)

In-court representation may occur in any one or combination of the following methods: (a) *Bar membership*. The attorney providing legal assistance is qualified (through bar membership or otherwise) to represent clients in the particular Federal, State, or foreign jurisdiction (b) *State-approved program*. The attorney providing legal assistance from an Active Army legal office is authorized to represent clients pursuant to a written agreement with the State bar or pursuant to a motion granted by an appropriate court of the State concerned.

Id.

¹⁹³ *Id.* para. 3-7g(1).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* para. 3-7h(1) (“Attorneys providing legal assistance may refer a client to an attorney in another military legal office, to a civilian lawyer, or to another office or agency whenever referral is in the best interest of the client or required by this regulation.”).

¹⁹⁷ *Id.* para. 3-6h(1) (“Subject to the availability of expertise and resources, other legal assistance may be provided, but such assistance will be limited to counseling and assistance on retaining a civilian lawyer.”).

¹⁹⁸ *Id.* para. 3-7g(3).

¹⁹⁹ *Id.* para. 3-7g(3)(e).

²⁰⁰ *Id.* para. 3-7h(2) (“Clients should be assisted whenever possible without referral. Unnecessary referrals delay the delivery of legal assistance and cause inconvenience to clients.”).

²⁰¹ *Id.* para. 3-5b (“A matter entirely within the legal assistance program may also cease to be within the legal assistance program if the client is paying a fee for professional legal services for help on that matter (for example, to a civilian lawyer to whom the client was referred.”).

Conclusion

Legal assistance exists to benefit Soldiers.²⁰² The legal assistance attorney may be the first, and possibly only, line of defense against predatory lenders. To adequately serve the Soldier, the legal assistance attorney must be very familiar with the Military Lending Act and subsequent regulations. In the face of tighter federal regulation of predatory lending, it appears that lenders are modifying their lending agreements to extend for more than ninety days, thereby falling outside the Act's purview.²⁰³ This is just one example of the many alternative lending arrangements that lenders will use in order to circumvent the Act.²⁰⁴ As common law develops around the Military Lending Act, attorneys will have to independently research this topic in order to stay apprised of the changing nature of short-term, lending agreements. Soldiers depend on legal assistance attorneys. Therefore, attorneys must strive to maintain the knowledge and skills to serve and protect Soldiers and should become familiar with services offered by the Financial Readiness Program to refer and assist Soldiers in learning how to avoid future financial dilemmas.

²⁰² *Id.* para. 1-1 (Purpose).

²⁰³ DOD, REPORT ON PREDATORY LENDING, *supra* note 16, at 22, 47; *see also* Consumer Affairs, *Pentagon's Predatory Lending Rules Faulted*, (14 June 2007), available at http://www.consumeraffairs.com/news04/2007/06/pentagon_predatory.html.

²⁰⁴ FOX, *supra* note 29, at 1.