

The Military Lending Act Part II: The Department of Defense Strikes Back!

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The current rules under the Military Lending Act are akin to sending a soldier into battle with a flak jacket but no helmet. To give our troops full-cover protection, the rules need to be expanded . . . The Department of Defense's proposed revisions will go a long way toward better shielding our military from high-cost credit products.¹

I. Introduction

It is Halloween 2016, and Sergeant (SGT) Estoye Enquiebra walks into your office. He pulls out a contract that looks like a payday loan transaction. Before you get an opportunity to fully review it, he says, "Sir, they are going to take my car, and I don't know what to do!" As a legal assistance attorney, you have read about the Military Lending Act (MLA) and have helped a few Soldiers with payday loan lenders, but this one is different: this is a vehicle title loan.² You notice that the loan has a repayment term of 190 days. From what you remember, these types of loans are covered by the MLA. As you continue to interview your client, you find out he is struggling to pay his bills. Your initial research shocks you: the MLA covers vehicle title loans but only if the term is 181 days or less. Nothing promising appears in your initial research. You ask him, "SGT Enquiebra, have you thought about going to the Army Emergency Relief³ (AER) office for financial assistance?" Your client frowns and says, "So, there is nothing that can be done about my car?" Before you answer that question, you remember someone mentioning that there is a new MLA.

On October 1, 2015, the new and improved 2015 MLA went into effect.⁴ The MLA was amended after the Department of Defense (DoD) and consumer advocates recognized that the original MLA was too narrow in scope

and failed to protect Soldiers as intended.⁵ The 2015 MLA broadened the definition of consumer credit and closes the loopholes that allowed lenders to sidestep the rules meant to protect servicemembers.⁶ As a result, many credit transactions that were not covered by the 2007 MLA are now covered. The 2015 MLA also strengthened servicemembers' consumer protections by extending MLA coverage to a broader range of credit products.⁷

This article is laid out in three parts. Part II of this article explains the history of the MLA and why Congress had to act and declare war on predatory lenders. That section of the article also examines the 2007 MLA's effectiveness in protecting servicemembers. Part III discusses the recent changes to the MLA and its added protection to servicemembers. Part IV provides legal assistance attorneys with useful tips to help Soldiers navigate the 2015 MLA protections. Lastly, the conclusion offers some final thoughts about the 2015 MLA and its impact on servicemembers.

II. Background

A. Truth in Lending Act: How We Got Here.

After World War II, consumer credit transactions grew exponentially.⁸ Consumers began to borrow more in order

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¹ *Consumer Financial Protection Bureau Report Finds Loopholes in Military Lending Act Rules Rack up Costs for Servicemembers*, COMMUNITY BANK INSIGHT (Dec. 29, 2014), <https://www.cbinsight.com/press-release/consumer-financial-protection-bureau-report-finds-loopholes-in-military-lending-act-rules-rack-up-costs-for-servicemembers> (quoting CFPB Director Richard Cordray).

² A vehicle title loan, also known as car title loans, is a loan that is secured by the title of a vehicle owned by the borrower that is free and clear. U.S.

DEPT OF DEF., REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS 16 (Aug. 9, 2006), http://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.

³ See *infra* Appendix C, Army Emergency Relief (AER) for new updates to the AER.

⁴ Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 32 C.F.R. pt. 232 (2015) [hereinafter 2015 MLA]; see also 10 U.S.C. 987 (2015). The enforcement provisions became effective on October 3, 2016. 32 C.F.R. § 232.12 (2015).

⁵ Jean Ann Fox, *The Military Lending Act Five Years Later, Impact on Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign Against Predatory Lending*, CONSUMER FED'N AM. 19, 97, 100 (May 29, 2012), <http://www.consumerfed.org/pdfs/Studies.MilitaryLendingAct.5.29.12.pdf>.

⁶ 2015 MLA, 80 Fed. Reg. 43,606.

⁷ *Id.* at 43,560 (explaining that the 2015 MLA redefines credit transaction to better align itself with Truth in Lending Act; as a result, the 2015 MLA covers almost every credit transaction within the marketplace).

⁸ Christopher L. Peterson, *Truth, Understanding, And High-Cost Consumer Credit: The Historical Context of the Truth in Lending Act*, 55 FLA. L. REV. 864, 875 (Jul. 2003).

“to finance personal goods” such as “home furnishings, jewelry, pianos,” and “automobiles.”⁹ Former Senator Paul H. Douglas of Illinois recognized that the lack of transparency in the marketplace made it almost impossible for consumers to evaluate the cost of credit.¹⁰ He believed “meaningful credit disclosure” was the solution because it would apprise consumers of the true cost of credit and facilitate informed “credit shopping.”¹¹

Congress enacted the Truth in Lending Act (TILA) in 1968 to level the playing field between consumers and creditors.¹² Prior to TILA’s enactment, consumers were at the mercy of creditors’ honesty and good faith.¹³ Predatory creditors would charge consumers unconscionable interest rates because most consumers did not understand the true cost of credit.¹⁴ For example, a 1964 survey showed that families underestimated the average interest rate on consumer debt by 16 percent.¹⁵

After an intense battle against the credit industry, Congress passed legislation that required creditors to disclose the true cost of credit in a standard uniform approach.¹⁶ The most critical “disclosures were the finance charge and the annual percentage rate.”¹⁷ These disclosures helped fill the information gap between consumers and creditors. However, disclosure requirements alone could not protect the most vulnerable consumers, such as young and inexperienced servicemembers. These consumers continued to be targeted by predatory lenders.¹⁸

B. MLA: Protecting Our Servicemembers

1. DoD Report on Predatory Lending Practices

In 2006, the DoD issued a report on predatory lending practices directed at servicemembers.¹⁹ In the report, the DoD acknowledged that personal finance education alone could not combat predatory lending.²⁰ In addition, the DoD found that traditional tools such as the Armed Forces Disciplinary Control Board (AFDCB), were not suited to curb predatory lending: The AFDCB was not designed to deal with the high concentration of predatory lenders near military installations whose business practices fall within state legal limits.²¹ The report also found that “young and inexperienced” servicemembers were targets for predatory lenders and highlighted the unscrupulous practices creditors engaged in to squeeze money out of them.²² These practices included aggressively marketing short-term loans with exorbitant interest rates.²³ If the servicemembers could not repay the loan within the term of the loan contract, the lender persuaded the servicemembers to roll-over the loan for additional fees.²⁴ As a result, the servicemember became trapped in a cycle of debt with little hope of escape. The report also identified specific forms of predatory loans.²⁵

2. Types of Predatory Loans

The DoD’s report to Congress found six forms of credit transactions that were financially devastating to servicemembers.²⁶ These credit transactions were internet lending, military installment loans, car title lending, rent-to-own programs, tax refund anticipation, and payday loans.²⁷ All of these credit transactions have several commonalities: “Lending without regard to the borrower’s ability to repay the

⁹ *Id.* at 864.

¹⁰ Matthew A. Edwards, *Empirical and Behavioral Critiques of Mandatory Disclosure: Socio-Economics and the Quest for Truth in Lending*, 14 CORNELL J.L. PUB. POL’Y 207 (Summer 2005).

¹¹ *Id.* at 211.

¹² NATIONAL CONSUMER LAW CENTER, TRUTH IN LENDING 31 (9th ed. 2015).

¹³ Edwards, *supra* note 10, at 207.

¹⁴ *Id.*

¹⁵ NATIONAL CONSUMER LAW CENTER, *supra* note 12, at 1. Families believed that consumer debt was 8 percent when in reality it was closer to 24 percent. *Id.*

¹⁶ *Id.*

¹⁷ Peterson, *supra* note 8, at 880.

¹⁸ U.S. DEP’T OF DEF., REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS, 4 (Aug. 9, 2006) [hereinafter DOD REPORT 2006], http://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.

¹⁹ *Id.* at 4.

²⁰ DOD REPORT 2006, *supra* note 18, at 27. The Department of Defense (DoD) emphasized that financial readiness is critical to mission readiness within the military. Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 Fed. Reg. 50, 581 (Aug. 31, 2007) (codified at 32 C.F.R. pt. 232, Oct. 1, 2007) [hereinafter 2007 MLA]. As such, the DoD made finance education a priority for all new inductees and institutes personal finance training for all servicemembers. DOD REPORT 2006, *supra* note 18, at 27.

²¹ DOD REPORT 2006, *supra* note 18, at 28. The Armed Forces Disciplinary Control Board (AFDCB) can recommend that a business whose practices is contrary to Soldier morale and discipline be made off limits to servicemembers. U.S. DEP’T OF ARMY, REG. 190-24, ARMED FORCES DISCIPLINARY CONTROL BOARDS AND OFF-INSTALLATIONS AND OPERATIONS para. 2-1 (27 July 2006). The AFDCB is suited to take on one business at a time rather than an industry of lenders. DOD REPORT 2006, *supra* note 18, at 28.

²² DOD REPORT 2006, *supra* note 18, at 4.

²³ *Id.* at 4, 63.

²⁴ *Id.* at 45.

²⁵ *Id.* The risky loans listed in the DoD report are discussed in more detail *infra* in section II.B.2 of this article, Types of Predatory Loans.

²⁶ *Id.* at 10-20.

²⁷ *Id.*

loan; excessive fees and excessive interest rates; balloon payments with unrealistic repayment terms; wealth stripping associated with repeat rollovers/financing; and fraud and deception.”²⁸

These lenders typically use military-friendly advertising techniques to attract servicemembers such as placing banners that say “support our troops” outside the storefront.²⁹ For example, prior to the 2007 MLA, a young Marine took out a total of eight payday loans and two military installment loans within the first five months after arriving to his first duty station and accrued more than \$4,800 in debt to predatory lenders.³⁰

Internet lending is especially harmful. Internet lending companies offer short-term loans that are similar to payday loans, but the credit transaction is generally initiated and closed in the “virtual marketplace.”³¹ The companies aggressively market the loans to military customers and promise quick and easy money regardless of credit history.³² They collect the consumer’s “social security number and checking account information” through lead generators and sell it to lenders in exchange for a fee.³³ The fact that the transactions are online means that servicemembers have access to these loans anywhere in the world.³⁴

For example, if SGT Enquebra goes online and types in the words military loans, he will find numerous links to companies that claim to provide quick and easy loans. If SGT Enquebra clicks one of these websites and initiates an application, he will be asked to provide his personal information to include his social security number and email address. Lenders will have enough information to reach out to SGT Enquebra in order to offer him risky financial products. These financial transactions will most likely send him into a debt spiral. In response to this study, Congress acted swiftly to protect servicemembers and directed the

Secretary of Defense to prescribe regulations that would curtail predatory lending within the military community.³⁵

3. Congressional Response

In 2007, Congress passed the John Warner National Defense Authorization Act for Fiscal Year (FY) 2007 otherwise known as the 2007 Military Lending Act (MLA).³⁶ Under 10 U.S.C. 987, Congress directed the Secretary of Defense to establish and implement regulations to protect servicemembers from predatory lenders.³⁷ At the time, the DoD made the decision to only regulate three credit products that were initially listed in its 2006 report.³⁸ The decision was based upon the short timetable the DoD was given to issue the implementing regulation and the belief that “only certain credit products posed the most severe risk to servicemembers.”³⁹

4. Credit Products Covered by the 2007 MLA

The 2007 MLA only covered three types of financial products: (1) payday loans, (2) refund anticipation loans, and (3) vehicle title loans.⁴⁰ At the time, consumer advocates argued against the decision to regulate only a narrow group of credit products because they did not believe it would curb predatory lending.⁴¹ However, the DoD accepted this risk in order to prevent unintended consequences on servicemembers’ access to consumer credit.⁴²

a. Payday Loans

The 2007 MLA defined payday loans as a closed credit loan with a financed amount of “\$2,000 or less.”⁴³ The loan “term must be for 91 days or less,” and be “based on a check held for future deposit or electronic access” to a covered

²⁸ 2007 MLA, 72 Fed. Reg. 50, 581.

²⁹ DOD REPORT 2006, *supra* note 18, at 22.

³⁰ *Id.* at 41. Military installment loans are long-term unsecured loans products offered exclusively to military members. Fox, *supra* note 5, at 61. These loans can be used for almost any purpose, to include managing everyday finances. PIONEER SERVICES DIVISION MIDCOUNTRY BANK, <https://www.pioneeremilitaryloans.com/military-loans/who-can-apply> (last visited Feb. 24, 2016).

³¹ DOD REPORT 2006, *supra* note 18, at 15-16. A virtual marketplace is “a simulation of the real marketplace where buyers and sellers meet to negotiate transactions.” *What is Virtual Marketplace*, IGI GLOBAL, DISSEMINATOR OF KNOWLEDGE, <http://www.igi-global.com/dictionary/virtual-marketplace/31721> (last visited Feb. 4, 2016).

³² DOD REPORT 2006, *supra* note 18, at 15-16; See Jean Ann Fox & Anna Petriani, *Internet Payday Lending: How High-priced Lenders Use the Internet to Mire Borrowers in Debt and Evade State Consumer Protections*, CONSUMER FED’N AM. 14 (Nov. 30, 2014), http://www.consumerfed.org/pdfs/Internet_Payday_Lending113004.PDF.

³³ DOD REPORT 2006, *supra* note 18, at 15; CONSUMER FIN. PROT. BUR., (Nov. 6, 2013), <http://www.consumerfinance.gov/askcfpb/1577/applying-payday-loan-online-safe.html>.

³⁴ DOD REPORT 2006, *supra* note 18, at 15.

³⁵ John Warner Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, 120 Stat. 2083 (2006); 2007 MLA, 72 Fed. Reg. 50, 584. The Act was codified at 10 U.S.C. 987. *Id.*

³⁶ *Id.*; see also Fox, *supra* note 5, at 4.

³⁷ 2007 MLA, 72 Fed. Reg. 50, 584.

³⁸ *Id.* at 50, 582.

³⁹ 2015 MLA, 80 Fed. Reg. 43,567. DoD had a short timetable because “[t]he 2006 Act, enacted on October 17, 2006, was scheduled to take effect in less than one year” *Id.*

⁴⁰ Fox, *supra* note 5, at 5.

⁴¹ 2007 MLA, 72 Fed. Reg. 50, 585.

⁴² *Id.* at 50,584. The unintended consequences refer to the reduction of the “availability of credit that is benign or beneficial to servicemembers and their families.” *Id.*

⁴³ Fox, *supra* note 5, at 5.

borrower's account for future payment.⁴⁴ These loans contributed to the cycle of debt because the business model relied on a borrower's inability to afford the loan, thus requiring frequent roll overs with high interest fees.⁴⁵

b. Tax Refund Anticipation Loans

This loan was defined as a closed end credit transaction in which the covered borrower grants the lender the right to receive a part of all of the covered borrower's tax refund or agrees to pay the loan back with the proceeds of the covered borrower's tax refund.⁴⁶ These loans are very expensive credit transactions where lenders might charge between "40 to 700 percent annual interest for ten-day loans."⁴⁷

c. Vehicle Title Loans

The 2007 MLA defined vehicle title loans as "closed end credit transactions with a term of 181 days or less that are secured by the title to the vehicle owned by the covered borrower."⁴⁸ Vehicle title loans are designed to work like payday loans and are "structured to be unaffordable."⁴⁹ According to the President of TitleMax in a deposition, "Customer loans are typically renewed at the end of each month and thereby generate significant additional interest payments."⁵⁰

The passage of the 2007 MLA was a significant step to curb these risky loans.⁵¹ For example, the 2007 MLA was credited with significantly reducing the number of payday loan store fronts near military installations.⁵² Despite the law's success, consumer advocates and the DoD recognized more needed to be done.⁵³

5. The Effect of the 2007 MLA

The narrow scope of the 2007 MLA allowed lenders to develop business practices to avoid the MLA requirements.⁵⁴ In order to sidestep the regulation, predatory lenders offered Soldiers loans that were greater than \$2,000 or with terms of ninety-two days or more.⁵⁵ Soldiers falling prey to these new financial products were no longer protected by the 2007 MLA. The result was that predatory lenders continued to charge Soldiers triple-digit interest rates and required them to sign mandatory arbitration clauses.⁵⁶ For advocacy groups seeking to protect servicemembers from predatory lenders, this outcome was untenable and highlighted the need for changes to the 2007 MLA.⁵⁷

6. Change Was Necessary

In April 2014, the DoD issued a report to Congress on the 2007 MLA concluding that changes to the MLA were essential.⁵⁸ In particular, the DoD—in consultation with the Consumer Financial Protection Bureau (CFPB), consumer advocacy groups, states' attorneys general, and other interested parties—concluded that the MLA required a more comprehensive approach to deal with the changing market place.⁵⁹ Despite the hard work put into the legislation, it was clear that the MLA's current scope was insufficient to deal with most predatory lending.⁶⁰ More importantly, the DoD's financial literacy campaign in combination with the 2007 MLA could not dissuade vulnerable servicemembers from engaging in financially risky behavior.⁶¹ In order to combat predatory lenders' "aggressive credit marketing campaigns," the DoD determined that it was necessary to limit servicemembers' high-cost options.⁶² The goal was to limit

⁴⁴ *Id.*

⁴⁵ Center for Responsible Lending, *The State of Lending in America & its impact on U.S. Households: Payday Lending Abuses and Predatory practices*, CENTER FOR RESPONSIBLE LENDING 160 (Dec. 2012), <http://www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf>.

⁴⁶ Fox, *supra* note 5, at 5.

⁴⁷ DoD REPORT 2006, *supra* note 18, at 20.

⁴⁸ *Id.* at 5.

⁴⁹ Center for Responsible Lending, *supra* note 45, at 122.

⁵⁰ *Id.* at 120. In 2013, class action car-title data showed that the median annual percentage rate (APR) for car-title borrowers was 300 percent. *Id.* at 119. In addition, "60% of 2008 New Mexico car-title borrowers lost their car that year to repossession." *Id.* at 120.

⁵¹ Fox, *supra* note 5, at 21.

⁵² *Id.* at 9.

⁵³ 2015 MLA, 80 Fed. Reg. 43,563.

⁵⁴ Tammy Duckworth, *Military Lending Act Speech*, YOUTUBE (May 8, 2015), <https://www.youtube.com/watch?v=zY1L0PmkfJQ> [hereinafter Duckworth Speech]. House Committee on Armed Services archives all

hearings and markups on their official bipartisan youtube page. <http://armedservices.house.gov/index.cfm/hearing-video-and-archive>. Congresswoman Tammy Duckworth is a U.S. Representative for Illinois's 8th Congressional District. <http://duckworth.house.gov/>; see also National Defense Authorization Act FY 16, H.R. 1735, 114th Cong. § 594, Log 143 (as reported by H. Comm. On Armed Serv., Apr. 30, 2015).

⁵⁵ Duckworth Speech, *supra* note 54.

⁵⁶ *Id.*

⁵⁷ Fox, *supra* note 5, at 16, 19, 60.

⁵⁸ U.S. DEP'T OF DEF., REPORT: ENHANCEMENT OF PROTECTIONS ON CONSUMER CREDIT FOR MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS, 18 (April 2014) [hereinafter DOD REPORT 2014], http://www.consumerfed.org/pdfs/140429_DoD_report.pdf.

⁵⁹ 2015 MLA, 80 Fed. Reg. 43, 561, 43,563; Telephone Interview with Eleanor Blume, Counsel Office of Regulations, Consumer Financial Protection Bureau (Nov. 4, 2015); DOD REPORT 2014, *supra* note 59, at 35-36.

⁶⁰ 2015 MLA, 80 Fed. Reg. 43,563.

⁶¹ DOD REPORT 2014, *supra* note 58, at 8-9.

⁶² DOD REPORT 2014, *supra* note 58, at 8-9.

access to loans that are not “fiscally prudent and highlight alternate” solutions to financial problems.⁶³

A study conducted by the Consumer Federation of America (CFA), five years after the 2007 MLA was passed, found that the law was successful in protecting servicemembers from predatory lending as defined by the 2007 MLA.⁶⁴ However, the legal definition of the products made it easy for predatory lenders to take advantage of the loopholes.⁶⁵ Moreover, the study also found the law had no impact on other risky high cost loans not covered by the 2007 MLA that are similar to payday loans.⁶⁶

For instance, the 2006 DoD report listed military installment loan companies under its list of predatory lenders.⁶⁷ These companies, not covered by the 2007 MLA, offer small loans with high interest rates that are similar to payday loans.⁶⁸ Many military installment loan companies were able to exploit servicemembers because those companies were granted exemptions from state usury laws.⁶⁹ They were able to receive the exemption because they offered loans “exclusively to non-resident military members.”⁷⁰ In light of these challenges, the DoD went through a significant paradigm shift in how it views and confronts predatory lending in order to close the loopholes in the law. Having discussed the origins of the 2007 MLA and its limited effects in curtailing predatory lending, we now turn to the 2015 MLA and discuss its expanded coverage of credit products sold to covered borrowers.

III. 2015 MLA: Closing the Loopholes

A. Consumer Credit

Originally, when the DoD first took steps to prescribe regulations implementing the 2007 MLA, it focused on a small number of credit products because it was concerned with the unintended market consequences of regulating a vast

array of credit products.⁷¹ Now, the DoD is taking a comprehensive approach. As a result, the 2015 MLA defines consumer credit as “credit offered or extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments.”⁷² This broader definition covers a wider range of credit products (such as credit cards) and is defined consistently with credit subject to TILA.⁷³ However, credit cards are temporarily exempt from the definition of consumer credit until October 3, 2017.⁷⁴ The 2015 MLA also clarified which consumers are protected under the act.⁷⁵

B. Covered Borrower

The 2007 MLA included dependents as covered borrowers, but the definition lacked clarity. Under the 2007 MLA, creditors could argue that the term dependent was too broad and could include individuals the law was not intended to protect. The 2015 MLA’s definition of dependent is now in accordance with 10 U.S.C. 987.⁷⁶ The definition of dependent for MLA purposes is now “consistent with the term used to establish eligibility for military medical care,” and clarifies “which family members are covered under 10 U.S.C. 987.”⁷⁷

The 2015 MLA also limits the servicemembers eligible for MLA consumer protections. The term in the new regulation for those who are protected by the MLA is “covered borrower.”⁷⁸ It specifies that only servicemembers on active duty at the time they entered into the credit transaction are afforded the MLA consumer protections.⁷⁹ Additionally, the 2015 MLA specifies that once servicemembers are no longer on active duty, they lose the MLA consumer protections and are no longer considered covered borrowers.⁸⁰ This is a significant point for a legal assistance attorney.

⁶³ *Id.*

⁶⁴ Fox, *supra* note 5, at 9.

⁶⁵ *Id.* at 10.

⁶⁶ *Id.* at 61.

⁶⁷ DoD REPORT 2006, *supra* note 18, at 10.

⁶⁸ Fox, *supra* note 5, at 61-62.

⁶⁹ DoD REPORT 2006, *supra* note 18, at 17-18.

⁷⁰ *Id.* at 17.

⁷¹ DoD REPORT 2014, *supra* note 58, at 32.

⁷² 2015 MLA, 80 Fed. Reg. 43,566.

⁷³ *Id.* at 43,563; *see also* NATIONAL CONSUMER LAW CENTER, *supra* note 12, at 1.

⁷⁴ 2015 MLA, 80 Fed. Reg. 43,612. Credit cards also have “limited exclusion for bona fide fees that are reasonable for that type of fee.” Eleanor

Blume, Recent Revisions to the Military Lending Act, at slide 26 (Nov. 3, 2015) (unpublished PowerPoint presentation) (on file with author).

⁷⁵ 2015 MLA, 80 Fed. Reg. 43,580.

⁷⁶ *Id.*; *see also* 2007 MLA, 79 Fed. Reg. 58,602-01, 58,602; PL 112-239 (Jan. 2, 2013).

⁷⁷ 2007 MLA, 79 Fed. Reg. 58,602-01, 58,602. For example, the MLA clarifies that a covered borrower’s dependents include the following: a “[s]pouse; a child under the age of 21; a child under the age of 23 enrolled full-time at an approved institution of higher learning approved by the administering Secretary. . . a child incapable of self-support because of a mental or physical incapacity that occurs under clause (i) or (ii) . . . dependent on the member . . . for over one-half of the child’s support . . . ; a parent or parent-in-law . . . dependent on the member . . . for over one-half of his support . . . ;” 10 U.S.C. 1072(2)(A), (D) (E) (2008). The definition of dependent also includes persons under 10 U.S.C. 1072 (2)(I). *Id.*

⁷⁸ 2015 MLA, 80 Fed. Reg. 43,607.

⁷⁹ *Id.* at 43,579.

⁸⁰ *Id.*

For instance, if SGT Enquiebra established a closed-end credit account before entering active duty, the closed-end credit account is not covered by the 2015 MLA because he was not a covered borrower at the time he established the account.⁸¹ Under this scenario, there is very little that the legal assistance attorney could do for him using the MLA. However, for a servicemember who qualifies as a covered borrower, the 2015 MLA caps the annual percentage interest rate on most credit transactions at 36 percent.⁸² After illustrating the importance of qualifying as a covered borrower, we now turn to one of the most important protections in the new MLA: specifically, the requirement for creditors to include almost every fee associated with the extension of credit when calculating the 36 percent annual interest cap.⁸³

C. Thirty-Six Percent Cap

The DoD recognized that creditors were selling unnecessary ancillary products to servicemembers, such as credit insurance products.⁸⁴ In response, the DoD amended the 2007 MLA to require creditors to include participation fees, credit insurance premiums, credit-related ancillary products, and other fees in its calculation of the 36 percent Military Annual Percentage Rate (MAPR) cap.⁸⁵ The DoD determined that these products are not appropriate for servicemembers because the military provides servicemembers with similar benefits and services.⁸⁶ It believes that these ancillary products significantly increase the cost of credit to consumers and provide little benefit to servicemembers.⁸⁷ In addition to this added protection regarding loan fees, the 2015 MLA prescribes new remedies for servicemembers and their legal counsel to use in order to dissuade predatory lenders from targeting servicemembers.⁸⁸

⁸¹ If SGT Enquiebra establishes an open-end line of credit while on active duty, this account will no longer be covered by the 2015 MLA once he leaves active duty because he is no longer a covered borrower. However, if the creditor violated the 2015 MLA while SGT Enquiebra was a covered borrower, then the contract is voidable and the creditor would be subject to the penalty and remedy provisions in 32 C.F.R. pt. 232.9 (2015). 32 C.F.R. § 232.2(a)(i)-(ii).

⁸² 2015 MLA, 80 Fed. Reg. 43,581.

⁸³ *Id.* at 43,582.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* The military provides benefits and services such as free health insurance. The military also continues to provide financial resources to servicemembers if they become ill or get into an accident. *Id.*

⁸⁷ *Id.*

⁸⁸ Violations of the 2015 MLA are discussed *infra* in section IV.B.3. . See 2015 MLA, 80 Fed. Reg. 43,611.

⁸⁹ Telephone Interview with Eleanor Blume, Counsel Office of Regulations, Consumer Financial Protection Bureau (Nov. 4, 2015) [hereinafter Blume interview]; 2015 MLA, 80 Fed. Reg. 43,591. In 2013, Congress authorized private enforcement actions when it passed the

D. Remedies and the Safe Harbor Provision

Prior to 2013, Soldiers did not have a private right of action against predatory consumers.⁸⁹ The 2015 MLA continues to provide servicemembers the ability to recover damages if a lender violates the MLA requirements.⁹⁰ Lenders who violate the MLA may be civilly liable for “actual damages, but not less than \$500 for each violation; appropriate punitive damages; or appropriate equitable or declaratory relief; and any other relief provided by law.”⁹¹ If a violation is proven, the creditor may be liable for the cost of the action and reasonable attorney fees.⁹² However, creditors can avoid liability by availing themselves of the MLA’s safe harbor provision.⁹³

The 2015 MLA provides creditors with defenses and a safe harbor.⁹⁴ First, a creditor who uses the MLA database or a consumer report from a nationwide consumer reporting agency to assess whether a consumer is a covered borrower is protected from liability.⁹⁵ The MLA database or nationwide consumer report is considered a “conclusive determination” that a consumer is or is not a covered borrower “so long as the creditor timely creates and . . . maintains a record of the information.”⁹⁶ Second, creditors may not be held civilly liable if a violation resulted from an unintentional error despite steps taken to avoid the error.⁹⁷ Legal assistance attorneys need to be aware of these potential creditor defenses as well as the federal agencies that can help servicemembers enforce their rights. One of those federal agencies is the CFPB. In 2010, Congress gave the CFPB authority to enforce the MLA and protect servicemembers from predatory lenders.⁹⁸

National Defense Authorization Act for Fiscal Year 2013 for violations of 10 U.S.C. 987. National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, 126 Stat. 1632 (2013).

⁹⁰ Blume interview, *supra* note 89.

⁹¹ *Id.*

⁹² *Id.*

⁹³ 2015 MLA, 80 Fed. Reg. 43,609.

⁹⁴ *Id.* This article does not discuss the safe harbor provision for credit card companies that charge a bona fide fee that is considered reasonable under the 2015 MLA. For more details on this safe harbor provision, refer to 80 Fed. Reg. 42,608-43,609.

⁹⁵ 2015 MLA, 80 Fed. Reg. 43,609. For additional information on the MLA database, refer to Appendix A, *infra*.

⁹⁶ *Id.*

⁹⁷ *Id.* at 43,611.

⁹⁸ CFPB, FTC receive authority to enforce Military Lending Act provisions, DODD FRANK UPDATE (Jan. 8, 2013), <http://www.doddfrankupdate.com/DFU/ArticlesDFU/CFPB-FTC-receive-authority-to-enforce-Military-Len-56919.aspx> [hereinafter CFPB].

IV. Protecting Our Clients

A. Consumer Financial Protection Bureau

The Dodd-Frank Act of 2010 established the CFPB in order to resolve the failures of consumer protection.⁹⁹ The CFPB was given the responsibility to supervise and enforce the laws covering “consumer financial products and services.”¹⁰⁰ In 2013, President Barack Obama signed the National Defense Authorization Act (NDAA) FY 13 giving the CFPB the authority to enforce the MLA.¹⁰¹ The CFPB can protect servicemembers against predatory lenders by citing MLA violations and taking curative enforcement actions against them.¹⁰² Despite the fact that the CFPB has only been in existence for a few years, the agency has been successful in protecting servicemember’s interests.

One of the best examples is the case of *In Re USA Discounters, LTD (USA Living)*. USA Discounters, Ltd was a privately-held company operating retail stores that sold furniture, electronics, and bedding.¹⁰³ The CFPB found that its retail stores were deceptively marketing to servicemembers and “misleading servicemembers.”¹⁰⁴ USA Discounters led servicemembers to believe that they had Servicemembers Civil Relief Act (SCRA) specialists who were independent agents working on the servicemember’s behalf.¹⁰⁵ In reality, the SCRA specialists were dependent on USA Discounters as its sole source of revenue.¹⁰⁶ USA Discounters settled with the CFPB and agreed to pay full restitution to servicemembers in the amount of \$350,000 and pay a civil monetary penalty.¹⁰⁷ Although the CFPB did not cite any MLA violations in this case, its message to unscrupulous companies was clear: the CFPB will not allow companies to “exploit unsuspecting servicemembers.”¹⁰⁸

⁹⁹ H.R. 4173, 111th Cong. (2010); see also CFPB, *supra* note 98.

¹⁰⁰ Morgan Lewis, *The Consumer Financial Protection Bureau: What It Is and What to Expect* 2-3 MORGAN LEWIS (Jan. 2012), http://www.morganlewis.com/pubs/lit_whitepaper_consumerfinancialprotectionbureau_jan2012.pdf

¹⁰¹ National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (2012); see also Buckley Sandler, *President Signs Bill Enhancing Enforcement of the Military Lending Act*, JDSUPRA (Jan. 14, 2013), <http://www.jdsupra.com/legalnews/president-signs-bill-enhancing-enforceme-84627/>.

¹⁰² CFPB, *supra* note 98.

¹⁰³ In the Matter of: USA Discounters, Ltd., No. 2014-CFPB-0011, 2014 WL 4472895 (Aug. 14, 2014).

¹⁰⁴ Angela Martin, *CFPB Enforcement Actions*, at slide 26 (Oct. 19, 2015) (unpublished PowerPoint presentation) (on file with author).

¹⁰⁵ In the Matter of: USA Discounters, Ltd., 2014 WL 4472895.

¹⁰⁶ *Id.*

B. Helping the Client

Legal assistance attorneys can help their clients by reviewing the contract and any written disclosures given to the client. However, reviewing the client’s documents will not be enough. Talk to the client about his or her service transaction with the creditor. Practitioners may find that creditors made misleading assertions and promises not memorialized in the written loan documents, which will be key in determining whether the creditor complied with the 2015 MLA. The steps below are a good starting point for legal assistance attorneys navigating the 2015 MLA.¹⁰⁹

1. Define the Problem

Before making any recommendations, a legal assistance attorney should analyze whether the credit transaction is covered by the 2015 MLA, whether there is an exception, and whether the creditor can be held liable for the violation.¹¹⁰ First, determine if the credit transaction is defined as consumer credit for purposes of the 2015 MLA.¹¹¹ Although the new definition for consumer credit covers most credit transactions in the marketplace, some transactions such as federal student loans are not covered by the act.¹¹²

Second, legal assistance attorneys should determine if an exception applies to the credit transaction.¹¹³ The act does not apply to consumer credit transactions intended to finance the purchase of a residence, personal property, or a motor vehicle when the credit is secured by that property.¹¹⁴ In addition, the 2015 MLA does not apply to credit transactions by a consumer who is not a covered borrower.¹¹⁵

Third, determine if the creditor is protected by the safe harbor provision. A creditor cannot be held liable if it availed itself of the safe harbor provision by using the MLA database or a nationwide consumer reporting agency to verify whether the consumer was a covered borrower.¹¹⁶ If the attorney

¹⁰⁷ *Id.*

¹⁰⁸ Martin, *supra* note 104, at 27.

¹⁰⁹ These steps are meant as a starting point and should not replace the attorney’s legal analysis of the case.

¹¹⁰ 2015 MLA, 80 Fed. Reg. 43,607.

¹¹¹ 32 C.F.R. § 232.3 (f)(1)-(2) (2015).

¹¹² Eleanor Blume, *Recent Revisions to the Military Lending Act*, at slide 16 (Nov. 3, 2015) (unpublished PowerPoint presentation) (on file with author). During the presentation, Ms. Blume emphasized that the MLA 2015 does not cover student federal loans. *Id.*

¹¹³ Blume interview, *supra* note 89.

¹¹⁴ 32 C.F.R. § 232.3(f)(2) (2015).

¹¹⁵ *Id.* § 232.3(f)(2)(v).

¹¹⁶ *Id.* § 232.5(b).

determines that the credit transaction is covered by the 2015 MLA, the next step is to inquire whether all of the mandatory disclosures were provided to the client.

2. Mandatory Disclosures

Looking for mandatory disclosures can seem daunting with all of the boilerplate language,¹¹⁷ so it is important to take it one step at a time. If the creditor conducted an MLA credit transaction with the client, determine whether the lender provided a statement of the MAPR. The 2015 MLA requires that the creditor provide the covered borrower a MAPR model statement or a statement substantially similar to the model statement.¹¹⁸ The creditor is required to provide the MAPR statement in writing so that the covered borrower can keep a copy.¹¹⁹ Also, determine if the client was given the MAPR statement orally or given a toll-free number.¹²⁰ In addition to providing the covered borrower a MAPR model statement, creditors are required to provide the statement orally in person or provide a toll-free number that the consumer can call and receive the oral disclosure.¹²¹ Finally, determine if the creditor provided a clear description of the payment obligation.¹²² A payment schedule or account opening disclosure that complies with TILA meets this requirement.¹²³ The next step in the analysis is to look for prohibited terms within the loan contract that violates the 2015 MLA.

3. 2015 MLA Violations

The 2015 MLA proscribes a list of practices that are illegal for creditors to engage in while extending credit to

covered borrowers.¹²⁴ At a minimum, legal assistance attorneys should determine if the creditor violated any of the following MLA prohibitions: (1) whether the servicemember was required “to submit to arbitration,”¹²⁵ (2) whether the creditor “used a check or other method of access to a servicemember’s deposit, or savings as a requirement for the loan,”¹²⁶ (3) whether the creditor requires “an electronic fund transfer to repay the loan,”¹²⁷ (4) whether the creditor requires “a direct deposit of the” servicemember’s salary “as a condition of eligibility for the loan,”¹²⁸ (5) whether the creditor requires “an allotment to repay the obligation as a condition of eligibility for the loan,”¹²⁹ (6) whether the creditor prohibited the servicemember from “prepaying the consumer credit or charging a penalty fee for prepaying . . . the consumer credit,”¹³⁰ (7) whether the servicemember was required to waive his or her “right to legal recourse,”¹³¹ (8) whether the creditor required “unreasonable notice as a condition for legal action,”¹³² (9) whether the creditor uses the servicemember’s “title to a vehicle as a security for the obligation involving consumer credit,”¹³³ or (10) whether the credit in question has been “rolled over, refinanced, renewed, repaid, consolidated in the extension credit to the borrower by a creditor who is not chartered or licensed under Federal or State law as a bank, savings association, or credit union.”¹³⁴

In addition to the legal analysis discussed above, practitioners should also ensure that the client understands how to file a complaint with the CFPB.¹³⁵ Upon receipt of a complaint, the CFPB will contact the company to inquire about the servicemember’s complaint and try to resolve the matter before taking any enforcement actions.¹³⁶

¹¹⁷ Boiler plate language is “ready-made or all-purpose language that will fit in a variety of documents.” BRYAN A. GARNER ET AL., BLACK’S LAW DICTIONARY 209 (10th ed. 2014).

¹¹⁸ 32 C.F.R. § 232.6(a)(1) (2015).

¹¹⁹ *Id.* § 232.6(d).

¹²⁰ Creditors have the option to provide the required disclosures to the covered borrower via a toll-free number. 2015 MLA, 80 Fed. Reg. 43,588. This is particularly important for creditors who conduct credit transactions over the Internet where in-person interaction is impossible. *Id.*

¹²¹ *Id.* § 232.6(d)(2)(i)-(iii).

¹²² *Id.* § 232.6(a)(3).

¹²³ *Id.* § 232.6(a)(3).

¹²⁴ 2015 MLA provides remedies to covered borrowers for MLA violations such as voiding the contract from its inception, and providing the covered borrower with a private cause of action, to include reasonable attorney fees. 2015 MLA, 80 Fed. Reg. 43,611.

¹²⁵ 32 C.F.R. § 232.8(c) (2015).

¹²⁶ *Id.* § 232.8(e). The prohibition does not apply to credit that is consistent with MAPR requirements under § 232.4(b).

¹²⁷ *Id.* § 232.8(e)(1). The creditor may engage in this practice if the credit transaction is consistent with MAPR requirements under § 232.4(b).

¹²⁸ *Id.* § 232.8(e)(2). The creditor may engage in this practice if the credit transaction is consistent with MAPR requirements under § 232.4(b).

¹²⁹ *Id.* § 232.8(g).

¹³⁰ *Id.* § 232.8(h).

¹³¹ *Id.* § 232.8(b).

¹³² *Id.* § 232.8(d).

¹³³ *Id.* § 232.8(f). Under this provision, a creditor does not include a person “chartered or licensed under Federal or State law as a bank, savings association, or credit union.” *Id.* Therefore, it would not be illegal for a properly licensed bank to use the “title of a vehicle as security for the obligation involving consumer credit.” *Id.*

¹³⁴ *Id.* § 232.8(a).

¹³⁵ *The Complaint Process*, CONSUMER FIN. PROT. BUR., <http://www.consumerfinance.gov/complaint/process/> (last visited Jan. 19, 2016).

¹³⁶ *Id.* Legal assistance attorneys can help their clients submit a complaint to the CFPB by going to the CFPB complaint process webpage listed above. *see id.* The CFPB webpage is user-friendly and can be easily navigated by most consumers. Creditor compliance date for the 2015 MLA is October 3, 2016. For credit cards, the compliance date is October 3, 2017. 2015 MLA, 80 Fed. Reg. 43011. *See infra* App. B, CFPB Complaint Process.

4. Document Review

Most legal assistance attorneys will be relatively new at reviewing credit transactions. However, there are a couple key issues to look for in order to spot problems with the credit transaction. First, a legal assistance attorney should conduct a cursory review of the documents for any obvious arithmetic errors.¹³⁷ For example, in a closed credit transaction, determine if the “amount financed and the finance charge equals the disclosed total of payments.”¹³⁸

Next, review the documents to see if the creditor provided an itemized list of MAPR components.¹³⁹ The 2015 MLA does not require creditors to provide an itemized list. However, if one is provided, then the legal assistance attorney must determine if all ancillary credit products sold in connection with the credit transaction were included in the MAPR calculation. Ancillary products that are not included in the calculation of the MAPR are a sign that there may be a 2015 MLA violation. If there is no itemized list, ask the client whether there were any other ancillary products, such as credit insurance,¹⁴⁰ that were sold in connection with the transaction. If so, review the documents to see if this product was listed and accounted for in the cost.

Third, the practitioner can check the APR provided by the creditor by using commercial online APR calculators or manually using the Federal Reserve Board APR tables.¹⁴¹ After conducting a cursory review, examine the 2015 MLA mandatory disclosures.¹⁴²

V. Conclusion

The 2015 MLA provides servicemembers with a new layer of added protections.¹⁴³ The DoD understood that relying solely on education to combat predatory lending was bound to fail.¹⁴⁴ Education alone could not overcome the aggressive marketing used by predatory lenders.¹⁴⁵ Congress’ enactment of the MLA was a great start to

protecting servicemembers from predatory lending. However, in the years since its enactment, the DoD and consumer advocacy groups recognized that the marketplace had changed.¹⁴⁶ Some predatory lenders’ business practices evolved in order to circumvent the MLA. Changes to the MLA were necessary to close the loopholes.

The 2015 MLA is a comprehensive approach to tackling the ever-changing tactics of predatory lenders.¹⁴⁷ It broadens the definition of consumer credit to align itself to TILA’s definition of consumer credit, thereby covering almost every credit transaction in the marketplace.¹⁴⁸ The regulation provides additional remedies to servicemembers that were not expressly written into the previous version.¹⁴⁹ The task of legal assistance attorneys is to help servicemembers like SGT Enquiebra navigate the process.

“Sir, are you ok? It looks like you were daydreaming.” says SGT Enquiebra. “No, I am fine. I was thinking about your case,” you reply. “Let’s review your contract. Did Free Cash Title Loan verify that you were an active duty servicemember?” you ask. SGT Enquiebra puts his head down and says, “Yes, but they had me sign a form that says that I do not qualify as a covered borrower.” With confidence, you respond, “Don’t worry, Sergeant, I believe there is something we can do about this contract. We will draft a letter to Free Cash and notify them of your rights under the 2015 MLA.”

Legal assistance attorneys are a force multiplier to the Army. Now, they can also be a force multiplier to servicemembers trapped in a cycle of debt. By reviewing the servicemember’s contract and asking a few simple questions, a legal assistance attorney can help their client avoid the cycle debt caused by predatory lenders.

¹³⁷ NATIONAL CONSUMER LAW CENTER, *supra* note 12, at 165. A practitioner may want to refer to helpful manuals covering TILA APR analysis such as the TILA Consumer Credit and Sales Legal Practice series.

¹³⁸ NATIONAL CONSUMER LAW CENTER, *supra* note 12, at 165.

¹³⁹ *Id.* These components will vary, depending on the number of ancillary products sold in connection with the transaction.

¹⁴⁰ Credit insurance is a product that is used to “can cancel or suspend part or all of a credit card debt under specific circumstances, such as loss of life, disability, or involuntary unemployment.” U.S. Gov’t Accountability Office: Consumer Costs for Debt Protection Products Can be Substantial relative to Benefits but Are not a Focus of Regulatory Oversight, GAO-11-311, at 2 (Mar. 2011), <http://www.gao.gov/assets/320/317034.pdf>.

¹⁴¹ NATIONAL CONSUMER LAW CENTER, *supra* note 12, at 165. A copy of the Federal Reserve Board APR tables volumes I & II can be ordered at <http://www.federalreserve.gov/pubs/orderform.pdf>.

¹⁴² The 2015 MLA requires creditors to provide the following mandatory disclosures to covered borrowers with respect to the extension of consumer credit: “(1) a statement of the MAPR applicable to the extension of

consumer credit; (2) any disclosures required under Regulation Z . . . ; and (3) a clear description of the payment obligation of the covered borrower” 2015 MLA, 80 Fed. Reg. 43, 610. Regulation Z is also known as TILA. *Id.* at 43,560. Required disclosures under Regulation Z can also be found at the CFPB website. <http://www.consumerfinance.gov/eregulations/1026-18/2016-06834#1026-18> (last visited Oct. 17, 2016). For example, legal assistance attorneys can look for required content disclosures under a closed-credit transaction on the website and verify that those disclosures are in the contract.

¹⁴³ 2015 MLA, 80 Fed. Reg. 43,610.

¹⁴⁴ DOD REPORT 2014, *supra* note 58, at 9.

¹⁴⁵ *Id.* at 2, 38.

¹⁴⁶ *Id.* at 18, 32.

¹⁴⁷ Blume interview, *supra* note 89.

¹⁴⁸ 2015 MLA, 80 Fed. Reg. 43,610.

¹⁴⁹ Blume interview, *supra* note 89.

2015 MLA



2015 MLA



SSN, DOB, Last name

2015 MLA



Proof of "covered borrower"

CFPB Complaint Process

Covered Borrowers can file a complaint by clicking on "Submit a Complaint"

How we use complaint data
 Each week we send thousands of consumers' complaints about financial products and services to companies for response. Data from those complaints help us understand the financial marketplace and protect consumers. Visit the [Consumer Complaint Database](#).

- We forward each complaint to the appropriate company for a response.
- We share complaint data with state and federal agencies. We also present a report to Congress twice each year.
- We analyze complaint data to help with our work to supervise companies, enforce federal consumer financial laws, and write better rules and regulations.
- We publish complaints in the Consumer Complaint Database (without personal information).

What we publish in the Consumer Complaint Database
 Complaints must meet all of the publication criteria in our [privacy statement](#), [narrative data policy statement](#), and [narrative scrubbing standards](#).

Data that we always share	Date received	The date the CFPB receives the complaint. For example, "05/25/2013"
Product	The type of product the consumer identified in the complaint. For example, "Bank account or service" or "Student loan"	

The complaint process

When you submit a complaint to the CFPB, we forward your complaint to the company and work to get a response about your issue. [Submit a complaint to the CFPB](#)

- 1. Complaint submitted**
 You submit a complaint about an issue you have with a company about a consumer financial product or service. You will receive email updates and can [log in](#) to track the status of your complaint.
- 2. Review and route**
 We'll forward your complaint and any documents you provide to the company and work to get a response from them. If we find that another government agency would be better able to assist, we will forward your complaint to them and let you know.
- 3. Company response**
 The company reviews your complaint, communicates with you as needed, and reports back about the steps taken or that will be taken on the issue you identify in your complaint.
- 4. Complaint published**
 We'll publish information about your complaint – such as the subject and date of the complaint – on our public Consumer Complaint Database. With your consent we also publish your description of what happened, after taking steps to remove personal information.
- 5. Consumer review**
 We will let you know when the company responds. You can review that response and give us feedback.
- 6. Analyze and report**
 Complaints help with our work to supervise companies, enforce federal consumer financial laws, and write better rules and regulations. We also [report to Congress](#) about the complaints we receive.

Have an issue with a financial product or service?
[Submit a complaint to the CFPB](#)

Army Emergency Relief

Army Emergency Relief Now Provides Direct Access for all Soldiers

“Effective 9 September 2015, all Soldiers, regardless of rank, are authorized direct access to apply for Army Emergency Relief assistance *except* for those Soldiers who are in Initial Entry Training (BCT/OSUT) and have less than one year time in service. Direct access without the Commander/First Sergeant review will be limited to two assistance requests (loan or grant) within a 12 month period, regardless of rank.”

See
<http://www.aerhq.org/dnn563/FinancialAssistance/FAQs.aspx>.

Who is eligible?

“Soldiers on active duty and their eligible dependents.

Soldiers retired from active duty because of longevity, or retired upon reaching age 60 (Reserve Component) and their eligible Family members.

Widows(ers) and orphans of Soldiers who died while on active duty or while retired.

Medically retired Soldiers and their eligible Family members.

Members of the Reserve Component of the Army (Army

National Guard and Army Reserve under Title 10 U.S.C.) on continuous active duty for more than 30 consecutive days and their eligible Family members.”

Army Emergency Relief

When is a Soldier NOT eligible for direct access to AER?

“Effective 9 September 2015, all Soldiers, regardless of rank, are authorized direct access to AER for financial assistance, except for those who fall in one or more of the categories listed below:

Soldiers in the grades of E-1 through E-4 who are in Initial Entry Training (Basic Training/OSUT) *are not* eligible for direct access to AER.

Soldiers with less than 12 months Time in Service (TIS) *are not* eligible for direct access to AER..

Soldiers who have two or more requests (Loan or Grant) within a 12 month period *are not* eligible for direct access to AER.

Soldiers who exhibit “High Risk” behavior for financial problems IAW AR 600-85 and Sec Army Directive 2015-21 *are not* eligible for direct access to AER.

Soldiers who fall in one or more of the categories listed above will require the Company Commander/First Sergeant review of their AER application prior to submitting a request for AER assistance.”

AER does not provide funds:

“For nonessentials

To finance ordinary leave or vacation

To pay fines or legal expenses

To liquidate or consolidate debt

For purchase of home or home improvements

To cover bad checks or pay credit card bills”

For more information, go to
<http://www.aerhq.org/dnn563/>.