

December 23, 2014

The Honorable Chuck Hagel  
Secretary of Defense  
Federal Docket Management System Office  
4800 Mark Center Drive  
Second Floor, East Tower  
Suite 02G09  
Alexandria, VA 22350-3100

**Re: RIN 0790-AJ10, Limitations on Terms of Consumer Credit Extended to Service Members and Dependents**

Dear Secretary Hagel:

Thank you for the opportunity to comment on the revisions proposed by the Department of Defense (“DoD”) to its regulations implementing the Military Lending Act (“MLA Regulations”) (32 C.F.R. part 232). The views expressed below are drawn from my current work advising many of the largest credit card issuers and my prior experience as a regulator at the Federal Trade Commission (“FTC”), Federal Reserve Board, and the Consumer Financial Protection Bureau (“CFPB”), where I was the Deputy Assistant Director for the Office of Regulations. Much of my time in government was spent developing and refining regulations to protect consumers from unfair and deceptive acts and practices in connection with credit cards, particularly the regulations implementing the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act” or “the Act”). Accordingly, this letter will focus on credit cards.

I wholeheartedly agree with the DoD’s desire for strong consumer protections that promote efficient markets and facilitate Service members’ and their dependents’ access to credit on fair terms.<sup>1</sup> It is disappointing that the current MLA Regulations have not sufficiently prevented bad actors from making predatory loans to this population. To the extent the scope of the current regulations is too narrow to prevent such practices, I agree that an expansion is appropriate.

At the same time, the DoD has correctly acknowledged that these revisions should avoid “creating a system that unduly impedes the availability of credit that is beneficial to Service members or is so burdensome that the creditor cannot comply.”<sup>2</sup> With respect to

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<sup>1</sup> For convenience, this letter will generally refer to Service members with the understanding that the MLA protections also apply to their dependents.

<sup>2</sup> 79 Fed. Reg. 58602, 58604 (Sept. 22, 2014).

credit cards, I am concerned that the proposal is a disproportionate response to a theoretical problem, sweeping in highly-regulated mainstream card products to solve for the potential that bad actors will attempt to evade the MLA by entering the card market. I believe that the DoD can better achieve the same objective by leveraging the existing protections in the CARD Act.

Perhaps immodestly, I believe that the CARD Act regulations are a model of success in consumer protection, and I am proud to have contributed to their development. As discussed below, the CARD Act regulations provide robust protections for consumers and have been carefully calibrated over time to achieve those protections without unduly restricting access to a product that has become a virtual necessity for modern living. For this reason and for all the reasons discussed below, I believe the appropriate course of action is to continue to exclude from the MLA Regulations credit cards that are subject to the extensive CARD Act protections. However, to the extent that the DoD concludes that Service members require additional protections, I recommend that the DoD expand on the existing CARD Act framework rather than create an entirely new regulatory scheme.

This letter has been shared with a number of major credit card issuers who believe it presents a workable solution to the challenges posed by applying the MLA Regulations to credit cards.

## **I. OVERVIEW AND CREDIT CARD REGULATORY FRAMEWORK**

***The current product-specific approach in the MLA Regulations should be continued with respect to credit cards.*** The proposed revisions to the MLA Regulations, while largely eliminating the product-specific approach taken by the current regulations, would create special rules for credit cards. For the reasons discussed below, I believe it is appropriate to continue treating credit cards differently than other products and strongly encourage the DoD to retain this approach in the final rule.

***Credit cards are a widely adopted, frequently used, and well-liked consumer product that provides unique opportunities and benefits that are not replicated by other consumer products.*** A September 2014 study by the Federal Reserve Bank of Boston found that more than 72% of consumers have at least one credit card,<sup>3</sup> while an April 2014 DoD report found that the average Service member has 2.4 credit cards.<sup>4</sup> Because of this high penetration rate, the credit card marketplace is highly competitive, with

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<sup>3</sup> S. Schuh and J. Stavins, "The 2011 and 2012 Surveys of Consumer Payment Choice," Federal Reserve Bank of Boston, Research Data Report 14-1, p. 29 (Sept. 29, 2014) (available at <http://www.bostonfed.org/economic/rdr/2014/rdr1401.pdf>).

<sup>4</sup> *DoD Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents*, DoD, p. 30, (April 2014) (available at [http://www.consumerfed.org/pdfs/140429\\_DoD\\_report.pdf](http://www.consumerfed.org/pdfs/140429_DoD_report.pdf)).

issuers such as banks, credit unions, and retailers competing to be “top of wallet.” This competition means that Service members have a diverse range of credit card options from which to choose. Like consumers generally, they can compare a variety of products before applying for the one that meets their needs. CardHub, an online search tool that permits consumers to search credit card offerings, lists over 1,000 credit cards, which can be sorted according to a variety of factors.<sup>5</sup> This variety is unlike that found in other banking products. For example, Service members can find prestige cards with plentiful benefits, deluxe concierge service and generous rewards, as well as a high annual fee. They can also find a more utilitarian product with low rates and no annual fee. Bargain hunters can find cards with very low introductory and promotional rate offers and, at retailers, private label credit cards with promotional financing.

***Credit cards are subject to unique and extensive product-specific laws and regulations.***

Like mortgages, and unlike most other credit products, credit cards are subject to a comprehensive regulatory framework. This framework has a long history and continues to evolve. For example, in 1974, Congress passed the Fair Credit Billing Act, which, among other things, allows consumers to dispute credit card billing errors and withhold payment for damaged goods. In 1988, the Fair Credit and Charge Card Disclosure Act created the “Schumer Box,” the required disclosure section of credit card solicitations that facilitates comparisons among credit card rates and fees. The prudential regulators developed additional regulatory requirements, using FTC Act authority to prevent unfair or deceptive acts or practices. This framework was then codified and expanded by Congress in the CARD Act of 2009, and implemented by the Federal Reserve Board and CFPB through additional special provisions of Regulation Z.

***The credit card protections in Regulation Z are comprehensive.*** The credit card provisions of Regulation Z address all aspects of the product, from marketing to underwriting, credit terms to back office operations, and minimum payment warnings to billing disputes. In its review of the CARD Act regulations, the CFPB noted that the “sweeping changes in the credit card marketplace ... addressed many of the practices that consumer advocates and others had identified as particularly problematic.”<sup>6</sup> Below are examples of the provisions in Regulation Z that are applicable only to credit cards. These provisions protect Service members along with all consumers:

- ***Credit card issuers publicly provide complete information about loan terms in a way other creditors do not.*** Credit card issuers are required to submit virtually all of their credit card agreements to the CFPB for posting on its website. In addition, each issuer must prominently post its credit card agreements on its own website. This transparency allows Service members to compare products and

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<sup>5</sup> See [www.cardhub.com](http://www.cardhub.com) (last visited Dec. 19, 2014).

<sup>6</sup> CFPB Card Act Report: A review of the impact of the CARD Act on the consumer credit market, CFPB, p. 7, (Oct. 1, 2013) (hereinafter “CARD Act Report”) (available at <http://www.consumerfinance.gov/reports/card-act-report/>).

- determine the best one for their circumstances. In contrast, other creditors are not required to provide this level of transparency, and typically do not make their full terms and conditions publicly available.
- ***Credit card issuers give clear disclosure of the rates, fees, and other key terms before the Service member applies, while other creditors may make such disclosures only after the Service member is approved for the credit.*** All creditors must provide disclosures before the Service member becomes obligated, but credit card issuers must provide disclosures before the Service member even *applies*. Moreover, these early disclosures must be presented in a large, easy-to-read table, which highlights the rates, fees, and other cost information, and is formatted uniformly across all issuers. These disclosures allow Service members to understand the costs of credit before submitting an application and to easily compare credit card rates and fees before deciding whether to apply. Other creditors are not required to provide Service members with this ability to shop.
  - ***Credit card issuers are required to determine a Service member's ability to repay the debt before extending credit or increasing the Service member's credit line, while other creditors are not.*** Credit card issuers, like mortgage lenders, have an obligation to review the Service member's income or assets, and existing debts, to determine whether the Service member has an ability to repay the debt before extending credit or increasing the credit limit. Furthermore, when determining the ability to repay, an issuer must assume that the Service member will use the full credit limit on the credit card account.
  - ***Credit card issuers must extend special protection to young borrowers while other creditors need not.*** Credit card issuers are not permitted to issue a credit card to a Service member who is under 21 unless the Service member files a written application – telephone applications are not permitted – and either demonstrates an independent ability to pay or has an eligible cosigner, guarantor, or joint applicant. Other lenders are not so constrained.
  - ***Credit card issuers are subject to a variety of limitations on fees to which other creditors are not.*** Credit card issuers are subject to limits on the amount and frequency of late, over limit, and other penalty fees, while other creditors are not. The fees must be reasonable and proportional to the amount of the violation. Similarly, credit card issuers face significant constraints on their ability to charge over limit fees, including a requirement that the consumer must opt in.<sup>7</sup> Before increasing account fees, issuers are generally required to provide Service members with advance notice and a right to opt out of the increase. These limitations do not apply to other creditors.

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<sup>7</sup> In fact, most credit card issuers no longer assess over limit fees. *CARD Act Report*, p. 5 (Oct. 1, 2013).

- ***Credit card issuers are subject to a cap on the amount of fees that they may charge a Service member, while other creditors are not.*** In the first year a credit card is open, credit card issuers may not charge account or transaction fees in excess of 25% of the account's credit limit. Other creditors are not subject to these caps.
- ***Credit card issuers must limit rate increases while other creditors are not subject to the same constraints.*** Credit card issuers are subject to a host of restrictions that are not applicable to most other open-end creditors. For example, issuers generally cannot increase the rate on an existing balance. With regard to new balances, rate increases are not permitted during the first year the account is open. After the first year, advance notice of an increase is required, providing an opportunity for the Service member to discontinue using the card and avoid the increased rate. If an account remains open after a rate increase, the issuer must review that rate increase every six months to determine if the rate should be lowered again.
- ***Credit card issuers face minimum standards on promotional offers, in a way that other creditors do not.*** A credit card issuer that offers a low promotional rate or fee to a Service member cannot raise that rate or fee for at least six months and must disclose the duration of the promotion and the rate that will apply after the promotional period ends. Other creditors face no such disclosure requirements or limits on the duration of their promotions, and could offer the lower rate for just a month, a week, or even a day, if they choose.

***The CFPB has repeatedly found that the CARD Act provisions provide robust protections for consumers without unduly increasing the cost of credit or inappropriately restricting access.*** As the CFPB stated in its *CARD Act Report*, the Act “changed the landscape of the credit card market.”<sup>8</sup> Director Cordray noted that the Act “eliminated many unfair fees, made some market practices more transparent, paved the way for easier comparison shopping, and created a market where consumers can see the costs upfront. These changes are critical to strengthening consumer protections in the marketplace.”<sup>9</sup> Notably, the CFPB found that these consumer protections were accomplished contemporaneously with a reduction in the cost of credit. In short, the CFPB, which is the primary agency responsible for protecting consumers in their financial lives, has broadly acknowledged that the credit card marketplace generally functions well for consumers.

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<sup>8</sup> *CARD Act Report*, p. 4 (Oct. 1, 2013).

<sup>9</sup> Director Cordray Remarks at CARD Act Field Hearing, Oct. 2, 2013 (available at <http://www.consumerfinance.gov/newsroom/director-cordray-remarks-at-the-card-act-field-hearing/>).

## **II. RESPONSE TO QUESTION 7**

In the Supplementary Information to the proposed regulatory revision, the DoD posed the following question:

*QUESTION 7:* If the Department continues to pursue an approach that defines “consumer credit” to be generally consistent with certain credit regulated under TILA, should the Department consider including an exemption specifically for a credit card account under an open-end (not home-secured) consumer credit plan? Would the consumer protection under TILA be sufficient to be consistent with the requirements of MLA? How would an exemption for consumer credit offered through a credit card account be articulated?

In light of the robust regulatory structure already governing credit cards and the ability of the CFPB to address any remaining gaps in protection, the DoD’s objective of protecting Service members while also promoting their ability to access safe and low cost credit is best met by excluding credit cards from the MLA Regulations. The exclusion can be accomplished by adding to the definition of “consumer credit” in § 232.3(f)(2) an additional exemption for “credit card accounts under an open-end (not home-secured) consumer credit plan, as defined in 12 C.F.R. § 1026.2(a)(15)(ii).”

### **A. Excluding Credit Cards is the Best Way to Further the Goals of the MLA**

*The DoD seeks “safe low-cost credit options” for Service members. Credit cards, as currently structured, are part of the solution.* The DoD noted that to maintain financial stability and readiness, Service members need access to safe, low-cost credit options.<sup>10</sup> As discussed above, given the robust regulatory protections, credit cards are perhaps the safest of all available forms of relatively short term unsecured credit. The average APR for fixed-rate credit cards is 13.02%, while the average APR for variable-rate credit cards is 15.70%.<sup>11</sup> These rates are far below the interest-rate limit established in 10 U.S.C. § 987(b), and a tiny fraction of the triple-digit rates identified as problematic in the responses to the Advance Notice of Proposed Rulemaking.<sup>12</sup> As noted above, the fees on credit cards are limited in a variety of ways, contributing both to the low cost and relative safety of the product. As also noted above, various provisions of Regulation Z provide easily accessible transparency in credit card pricing, which encourages competition on

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<sup>10</sup> 79 Fed. Reg. at 58604-58605.

<sup>11</sup> See <http://www.bankrate.com/finance/credit-cards/rate-roundup.aspx#ixzz3JdaEpd06> (last visited Dec. 17, 2014).

<sup>12</sup> 79 Fed. Reg. at 58607.

the basis of cost and enables Service members to shop for credit cards with lower rates and fees at any time without having to apply for a new card.

***There is no evidence that credit cards will be used to evade the protections in the MLA.*** The proposal does not identify, nor am I aware of, instances in which credit cards are used to evade the MLA protections. Instead, the concern appears to be that “certain creditors could take advantage of an opportunity to exploit a complete exemption for credit cards by transforming high-cost, open-end credit products (which otherwise would be covered as ‘consumer credit’) into credit card products.”<sup>13</sup> The proposal, however, offers an expansive solution to a theoretical problem. It is difficult to understand how this could be accomplished. As an initial matter, the card market has extraordinarily high barriers to entry that would make it very difficult for non-banks, much less bad actors, to evade the MLA by offering credit cards. For example, a lender seeking to enter the general purpose card market must have access to a payment network, such as Visa or MasterCard, but access is effectively limited to highly regulated banks and financial institutions.<sup>14</sup> Similarly, private label credit cards are typically only offered by mainstream retailers, whose large customer bases can justify the significant investment necessary to build the required supporting service and compliance infrastructure. In this regard, a new entrant would have to incur the expense of building and maintaining the systems to comply with the extensive CARD Act requirements, such as providing detailed upfront disclosures and periodic statements and tracking fees to avoid exceeding the 25% limit during the first year, or it would have to contract with an agent bank or service provider to do so. It is extremely unlikely that any high-cost payday lending operation could meet these requirements.

Even if such a lender is able to overcome these barriers, its ability to underwrite and issue a credit card will be restricted by the CARD Act’s ability to repay requirements. Similarly, its capacity to recover its investment and turn a profit by charging well above market rates and fees will be restricted by the CARD Act’s disclosure requirements, fee limitations, and restrictions on rate increases. Although the CARD Act regulations do not impose a rate cap, credit cards are widely available and credit card rates are generally well below the cap in the MLA Regulations, as discussed above. So an issuer seeking to take advantage of Service members through high rates would struggle to compete, absent deceptive practices of the sort properly addressed by the CFPB or FTC in enforcement actions.

***The proposed restrictions on credit cards could limit Service members’ ability to find “safe low-cost credit options.”*** The DoD has emphasized that it wishes to avoid “unduly impeding the availability of credit that is benign or beneficial to Service members and

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<sup>13</sup> *Id.* at 58611.

<sup>14</sup> *See, e.g.*, MasterCard Rules Rule 1.1 (available at [http://www.mastercard.com/us/merchant/pdf/BM-Entire\\_Manual\\_public.pdf](http://www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf)).

their families.”<sup>15</sup> Unfortunately, the rule, as currently drafted, would appear to have that effect. While issuers will, for obvious reasons, be extremely reluctant to restrict access to credit for Service members, it is possible that the proposal will have that effect. For example, issuers currently encourage consumers to switch to a lower-rate product by offering promotional rates on balance transfers that are accompanied by a balance transfer fee of 1-5% of the transferred balance. Under the proposed military annual percentage rate (“MAPR”) calculations, that fee would be treated as if the entire balance transfer must be repaid in the month of the transfer, regardless of how long the promotional rate is in effect. Thus, under the proposal, an issuer charging a 2.9% APR and a 3% fee would be imposing an MAPR of approximately 38.9% in the initial monthly billing period.

It would be illegal to extend such an offer to a Service member, unless the issuer was confident that the offer fell within the safe harbor. As noted above, Card Hub identified more than 1,000 credit card offers, many of which were from the top five issuers. Many of these 1,000 offers are permutations of the same basic introductory balance transfer offer, with different rate and fee combinations, and varying with regard to rewards, accompanying promotional purchase APRs, and other features. In my experience, it would be next to impossible to establish, with complete confidence, the universe of “substantially similar” offers, which is required to establish eligibility for the proposed safe harbor. Furthermore, while the safe harbor is intended to provide a flexible regulatory standard, the ambiguity inherent in such standards often has the unfortunate and unintended result of creating a competitive advantage for lenders that are willing to take compliance risk.

**B. Alternative Approach to Addressing the Unique Nature of Credit Cards Under the MLA Regulations**

*If the DoD determines that credit cards should not be excluded from the MLA Regulations, a less burdensome and equally effective alternative to the proposal is to base the credit card rate cap on the “Corresponding APR.”* The DoD’s first stated objective is to ensure that the interest rate does not exceed the limit set in 10 U.S.C. § 987(b). For credit cards, this objective could be achieved with less confusion and disruption through a limit on the periodic rate and the corresponding APR, as determined under Regulation Z, 12 C.F.R. § 1026.14(b). A 36% rate cap based on the corresponding APR could be implemented using existing compliance systems and therefore would impose less of a burden on industry. As noted above, credit card disclosures include the corresponding APR in a prominent table and on monthly periodic statements. Basing the 36% rate cap on the corresponding APR will provide a clearer, well-established rule for the industry. For Service members, this approach would tie the protections to the familiar corresponding APR that already appears on account-opening disclosures and periodic statements, allowing Service members to verify that they are receiving the MLA protections.

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<sup>15</sup> 79 Fed. Reg. at 58610.

It is also worth noting that, by using the corresponding APR instead of the “effective APR” in 12 C.F.R. § 1026.14(c), the DoD would avoid reviving a method of calculating cost that was found to be ineffective years ago for credit card products. Specifically, in connection with the new credit card disclosures that took effect in 2010, the Federal Reserve removed the pre-existing requirement to disclose the effective APR on credit card and other open-end periodic statements, concluding that the effective APR in Regulation Z was not an accurate measure of the cost of credit for open-end credit card accounts and actually confused consumers.<sup>16</sup> The Federal Reserve left the effective APR calculation method in Regulation Z solely as an option for home equity lines of credit, which would be exempt under the MLA Regulations.<sup>17</sup>

***A 36% rate cap for credit cards based on the corresponding APR would mitigate some of the risk of unduly restricting credit.*** Administratively, credit card issuers would be better positioned to impose and comply with a simple rate cap rather than the more complex and confusing new MAPR calculation. While a 36% corresponding APR cap would risk restricting access to credit for Service members, this more narrowly tailored approach might help military families avoid more significant unintended consequences.

***A 36% rate cap based on the corresponding APR is appropriate for credit cards because credit cards are uniquely subject to fee limits under Regulation Z, and therefore fees should be excluded from any MAPR calculation for credit cards.*** As noted above, Regulation Z imposes a variety of restrictions on fees. It limits the amount of penalty fees and the circumstances under which they can be imposed. These fee limits were developed after extensive notice and public comment, and were designed to implement Congress’ determination that penalty fees on credit card accounts be “reasonable and proportional.”<sup>18</sup> Regulation Z also limits the total amount of required, non-penalty fees that can be imposed in the first year an account is opened. As with the penalty fee limits, the 25% fee cap was based on Congress’ understanding of the appropriate protections that should be offered to consumers. Together, these fee limits ensure that Service members, like other consumers, are not charged excessive fees.

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<sup>16</sup> 74 Fed. Reg. 5244, 5252-5253 (Jan. 29, 2009) (stating that “the effective APR for a given cycle is unlikely to accurately indicate the cost of credit in a future cycle, because if any of several factors (such as timing of transactions and payments) is different in the future cycle, the effective APR will be different even if the amount of the transaction is the same”).

<sup>17</sup> See 12 C.F.R. § 1026.14(c) (stating that a creditor offering a home equity line of credit subject to § 1026.40 “need not disclose an effective annual percentage rate” but may do so “at its option”); proposed 32 C.F.R. § 232.3(f)(2)(i) (exempting “any credit transaction secured by an interest in the covered borrower’s dwelling, including . . . [a] home equity loan or line of credit”).

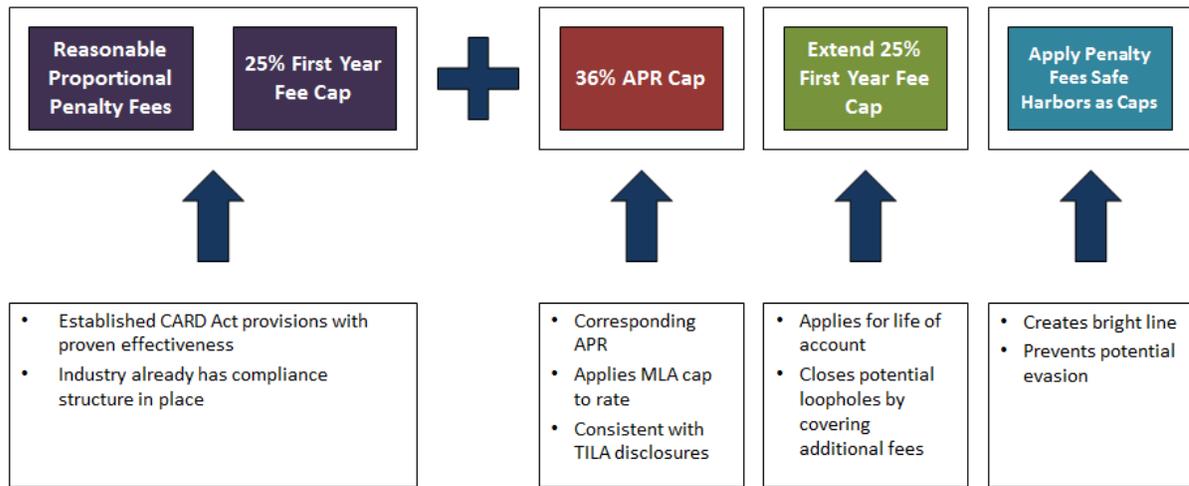
<sup>18</sup> 15 U.S.C. § 1665d. Although there has been some uncertainty, the DoD’s intent in the proposal appears to have been to exclude penalty fees that are not finance charges from the MAPR. See 79 Fed. Reg. at 58618 (“[W]hereas the Department’s existing regulation provides exclusions from the MAPR for late payment fees and taxes required to be paid, proposed § 232.4(c) omits these provisions because these charges (as well as other charges) are not finance charges under Regulation Z.” (footnotes omitted)).

*To the extent the DoD remains concerned about fees on credit card accounts, it could extend the 25% fee limitation for the life of the covered borrower's account, expand that limitation to cover additional fees charged in connection with the account, and require issuers to adhere to the safe harbors for penalty fees.* Specifically, the 25% cap could be applied to fees charged with respect to the account prior to account opening (such as application fees) as well as charges to the account for credit insurance premiums; debt cancellation or debt suspension coverage; or credit monitoring and identity theft protection products. To avoid unduly restricting Service members' access to credit, each year, the benchmark would reset based on the then current credit limit. However, the existing Regulation Z guidance regarding decreases in credit limits during that year, which is incorporated by reference in proposed § 232.3(q), would prevent bad actors from manipulating the credit limit to evade the fee limitations.<sup>19</sup>

In addition to extending and expanding the 25% limitation, the DoD could require that issuers comply with the safe harbors for penalty fees in 12 C.F.R. § 1026.52(b)(1)(ii) with respect to Service member accounts. In other words, penalty fees could not be tied to the costs incurred by the issuer as a result of violations of the account terms and would instead be capped at \$27 for initial violations and \$38 for subsequent violations during 2015, with annual adjustments based on the Consumer Price Index.

This potential solution is illustrated in the following graphic:

### Summary of Proposed APR Fix



<sup>19</sup> See Regulation Z, comment 52(a)(1)-3.ii (“If a card issuer decreases the credit limit during the first year after the account is opened, § 1026.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced.”).

This structure would ensure that Service members are never charged excessive fees while utilizing existing compliance systems. Thus, unlike the extensive costs that issuers would have to incur to comply with the proposed revisions as drafted, this approach would reduce some costs and thus reduce the potential adverse impact to Service members or other consumers.

***The exclusion can be accomplished by adding the following exemption to the list of exceptions to the definition of “consumer credit” in § 232.3(f)(2):***

(v) Credit card accounts under an open-end (not home-secured) consumer credit plan, as defined in 12 C.F.R. § 1026.2(a)(15)(ii), provided that:

(1) The periodic rate and the corresponding APR on the account, as determined under 12 C.F.R. § 1026.14(b), does not exceed 36 percent;

(2) Fees for violating the terms or other requirements of the account cannot exceed the dollar amounts in 12 C.F.R. § 1026.52(b)(1)(ii); and

(3) Except as otherwise provided in paragraphs (f)(2)(v)(4) and (5) of this section, the issuer applies the fee limitations in 12 C.F.R. § 1026.52(a) to the account each year as if that year were the first year after account opening.

(4) The limitation on fees for each year under paragraph (f)(2)(v)(3) of this section shall be based on the credit limit in effect on the first day of that year.

(5) In addition to the fees subject to 12 C.F.R. § 1026.52(a), the limitation in paragraph (f)(2)(v)(3) of this section applies to: (i) fees the consumer is required to pay with respect to the account prior to account opening; and (ii) to charges to the account for credit insurance premiums; debt cancellation or debt suspension coverage; or credit monitoring and identity theft protection products.

***Another benefit of this approach is that, because the Regulation Z fee limit is already in effect for all consumers during the first year after account opening, a “safe harbor” period after account opening would effectively be provided to allow the issuer to make the covered borrower determination.*** This approach would address many of industry’s concerns about the operational challenges associated with the DoD database and should reduce some of the negative impacts on the availability of credit to Service members at point of sale.

As discussed above, it will be operationally difficult to provide credit card products to the general market that also comply with the MLA. This is particularly true in retail settings

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where it will be difficult to determine in real time whether the applicant is a Service member given the historic limitations on the DoD's ability to consistently provide that information online in real time. Even with enhancements, the volume of inquiries related to credit card applications is likely to overwhelm DoD's systems and an outage could result in the inability to decision a large number of applications on, for example, "Black Friday" following Thanksgiving.

If the DoD applies the MLA Regulations to credit cards, it should permit card issuers to determine within 60 days after account opening whether the applicant is entitled to MLA protections and, if so, refund any excess charges and reduce the charges going forward.

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I thank you again for this opportunity to comment on the DoD's recently proposed revisions to its regulations implementing the MLA. If you have questions on any aspects of this letter, please call me at (202) 349-7924.

Sincerely,

A handwritten signature in blue ink, appearing to read "Benjamin K. Olson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Benjamin K. Olson