

For Our Servicemembers, For Us All: How to Better the Military Lending Act and Why Civilians Should Demand Its Improvement

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INTRODUCTION

The men and women of the United States armed forces defend the nation from its enemies, but is the nation properly protecting its warriors from an enemy setting its sights on servicemembers' finances rather than their frontlines?¹ The military is always concerned about its overall "readiness," normally leading to political arguments about congressional funding, emerging military technologies, and training strategies.² However, America's armed forces are comprised of people who have lives outside of their military profession, and servicemembers' personal finances can greatly impact their ability to defend the nation.³ Accordingly, servicemembers can find themselves in positions where they are more worried about dodging bankruptcy than bullets. Because of predatory practices, servicemembers can become financial victims at the

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¹ See Dick Power, *For Military Families Living on the Financial Edge, Money Matters Are Complicated*, CNBC (May 23, 2019, 8:30 AM), <https://www.cnbc.com/2019/05/20/money-matters-are-complicated-for-troops-and-their-families.html> ("[S]ervice members need to be willing to ask for some assistance with their money matters. We ask them to serve and protect us, so we financial professionals can use our skills to help them. It's only fair.").

² See Aaron Mehta & Joe Gould, *The Grades Are in for America's Military Strength*, DEF. NEWS (Oct. 30, 2019), <https://www.defensenews.com/pentagon/2019/10/30/the-grades-are-in-for-americas-military-strength/> (reviewing results from 2020 Index for U.S. Military Strength); Mark F. Cancian & Seamus P. Daniels, *The State of Military Readiness: Is There a Crisis?*, CTR. FOR STRATEGIC & INT'L STUD. (Apr. 18, 2018), <https://www.csis.org/analysis/state-military-readiness-there-crisis>.

³ See RICHARD BUDDIN & D. PHUONG DO, *ASSESSING THE PERSONAL FINANCIAL PROBLEMS OF JUNIOR ENLISTED PERSONNEL* iii (2002), https://www.rand.org/pubs/monograph_reports/MR1444.html (explaining that financial problems and stress "are widespread and consume substantial amounts of military management time" and "may adversely affect [servicemembers'] job performance, and diminish the quality of life for them and their families").

local car dealership or payday lender's office.⁴ The Military Lending Act (the "Act")⁵ attempts to defend America's warriors from such financial pitfalls, but there are still some holes in the Act's defensive lines.⁶

The Act is a federal statute enacted in 2006 to help protect active-duty servicemembers from predatory loans and credit agreements.⁷ This unfortunately common scenario occurs when servicemembers enter into contracts that have incredibly high interest rates, hidden fees, or unconscionable terms, causing them great financial hardship or, worse, bankruptcy.⁸ An active-duty member of the military having personal finance issues is debilitating to the military in two ways.⁹ First, servicemembers in this situation are not as effective at their job because

⁴ See Brian Hamilton, *Pressure to Build Credit Is Putting Service Members and Their Units at Risk*, MILITARY.COM (Oct. 24, 2019), <https://www.military.com/daily-news/2019/10/24/pressure-build-credit-putting-service-members-and-their-units-risk.html> ("In fact, the Blue Star Families Military Family Lifestyle Survey found that, for the first time in 2018, financial stress was reported as the top stressor among military families. The same report showed that 62% of military families say they're feeling that kind of stress.").

⁵ 10 U.S.C. § 987 (2006).

⁶ See Mike Saunders, *The Military Lending Act and You*, MILITARY.COM (Aug. 13, 2019), <https://www.military.com/money/personal-finance/military-lending-act-you.html> (explaining how the repeal of CFPB's proactive monitoring forces the individual to watch out for predatory loans instead of the government).

⁷ FED. DEPOSIT INS. CORP., FDIC CONSUMER COMPLIANCE EXAMINATION MANUAL – SEPTEMBER 2016: V. LENDING – MILITARY LENDING ACT V–13.1 (2016), <https://www.fdic.gov/regulations/compliance/manual/5/v-13.1.pdf>.

⁸ See, e.g., Lacey Langford, *Car Buying Mistakes that Will Kill Your Finances in the Military*, LACEYLANGFORD.COM, <https://laceylangford.com/car-buying-mistakes/> (last visited Sept. 4, 2020); see also Thomas Spangler, *Financial Stability Key to Battle Ready Airmen*, AIR COMBAT COMMAND (May 20, 2014), <https://www.acc.af.mil/News/Features/Display/Article/662129/financial-stability-key-to-battle-ready-airmen/> ("[Y]ounger Airmen who have no real-world experience or have never had to manage their finances before, tend to be more at risk for financial issues than the more seasoned members on base.").

⁹ See ; U.S. GOV'T ACCOUNTABILITY OFF., GAO-05-348, MILITARY PERSONNEL: MORE DOD ACTIONS NEEDED TO ADDRESS SERVICEMEMBERS' PERSONAL FINANCIAL MANAGEMENT ISSUES (2005) [hereinafter MORE DOD ACTIONS NEEDED], <https://www.govinfo.gov/content/pkg/GAOREPORTS-GAO-05-348/html/GAOREPORTS-GAO-05-348.htm> (explaining the negative consequences that occur when servicemembers have financial issues); *Debt Holds U.S. Troops Back from Overseas Duty*, NBC NEWS (Oct. 19, 2006, 7:38 PM) [hereinafter *Debt Holds U.S. Troops Back*], http://www.nbcnews.com/id/15337932/ns/us_news-military/t/debt-holds-us-troops-back-overseas-duty/#.X1.

they are constantly worried about their financial woes, which negatively affects the operational effectiveness of the servicemember's unit.¹⁰ Second, a servicemember with severe personal finance issues or who declares bankruptcy normally loses his or her security clearance, which puts that servicemember's employment in the armed forces at great risk.¹¹

Recognizing that a servicemember's poor or colluded financial decision can have massive, negative effects on individual and unit readiness, Congress enacted the Military Lending Act to address this problem, but there is still room for improvement.¹² When the Act became effective in 2006, its protections were quite narrow and specifically targeted payday lending, in part because a Department of Defense (DOD) report, which prompted the Act's inception, showed that payday loans were causing rampant financial issues across the military.¹³ The protections of the Act have expanded since, but predatory lending still remains a problem for servicemembers.¹⁴ For instance, automobile loans with high interest rates and hidden fees still plague young servicemembers, but the Act has an automobile loan exception, preventing it from providing any protection for this common issue.¹⁵ Further, the penalty for violating the

¹⁰ See *Debt Holds U.S. Troops Back*, *supra* note 9 (“[W]hen they are over there fighting, we like them to have their heads in the game,” said Maj. Gen. Michael Lehnert. “We like to have them . . . not worrying about whether or not they are going to be able to make the mortgage payment or car payment.”).

¹¹ See MORE DOD ACTIONS NEEDED, *supra* note 9 (“Some adverse effects that may result when servicemembers experience serious financial problems include loss of security clearances, criminal or non-judicial sanctions, or adverse personnel actions including possible discharge from the military.”).

¹² See *Debt Holds U.S. Troops Back*, *supra* note 9 (noting that “President Bush signed legislation limiting how much these businesses can charge military personnel,” in reference to the first version of The Act being signed into law).

¹³ DEPT OF DEF., REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS 12 (2006), <https://apps.dtic.mil/sti/pdfs/ADA521462.pdf> (explaining that “active-duty military personnel are three times more likely than civilians to have taken out a payday loan” and that “predatory payday lending costs military families over \$80 million in abusive fees every year”); see generally 152 CONG. REC. H7679-02 (2006) (showing that representatives were passing the legislation because of concerns relating to payday lenders).

¹⁴ See discussion *infra* Section I.C.

¹⁵ 10 U.S.C. § 987(i)(6); see CONSUMER FIN. PROT. BUREAU, FINANCIALLY FIT? COMPARING THE CREDIT RECORDS OF YOUNG SERVICEMEMBERS AND CIVILIANS 3–4

Act is a simple misdemeanor, and the effectiveness of this punishment is questionable.¹⁶ Additionally, the executive branch greatly affects the Act's effectiveness due to the Consumer Financial Protection Bureau's (CFPB) current ability to choose whether or not to proactively enforce the Act, which has been highlighted by the different strategies employed by the Biden, Trump, and Obama administrations.¹⁷

Furthermore, the financial hardships that result from economic downturns, highlighted most recently by the COVID-19 pandemic, affects servicemembers and civilians alike. The military's calling to protect the nation is not put on hold during these tumultuous times, and the ability of servicemembers to carry out this mission is adversely affected by predatory lenders.¹⁸ As the opportunity for predatory lending has increased during the pandemic, the Act has become an important topic of conversation, and some argue that its protections should be extended to civilians as well.¹⁹ The CFPB is also being challenged to change its structure and how

(2020) [hereinafter FINANCIALLY FIT?], https://files.consumerfinance.gov/f/documents/cfpb_financially-fit_credit-young-servicemembers-civilians_report_2020-07.pdf (“Compared to civilians overall, between ages 18 and 24 servicemembers are more likely to have an auto loan or a credit card . . .”).

¹⁶ 10 U.S.C. § 987(f)(1).

¹⁷ See Scott Horsley, *CFPB Strips Some Consumer Protections for Payday Loans*, NPR (July 7, 2020), <https://www.npr.org/2020/07/07/888499021/cfpb-strips-some-consumer-protections-for-payday-loans> (“Federal regulators have finalized a new rule for payday lenders that strips out a key provision crafted during the Obama administration. Under the revised rule, lenders will no longer have to check that borrowers can repay their loan when it comes due.”).

¹⁸ See Mike Saunders, *Here's Why Vets Need to Avoid Predatory Lenders More than Ever*, MILITARY.COM (Aug. 21, 2020), <https://www.military.com/money/personal-finance/heres-why-vets-need-avoid-predatory-lenders-more-ever.html> (“Roughly 12 million Americans take a payday loan each year, more than half of whom struggle to pay their regular bills. As the economic crisis spins out of control[,] . . . caused by COVID-19, that percentage is expected to go higher. . . . [D]on't get caught in a debt trap.”)

¹⁹ See Charlene Crowell, *Protection Against Predatory Lending Gone*, RICHMOND FREE PRESS (Aug. 13, 2020), <http://richmondfreepress.com/news/2020/aug/13/protection-against-predatory-lending-gone-charlene/> (“If a 36 percent rate cap is good enough for the nation's military to be protected from predatory lending[,] . . . it is time to extend that same protection to the civilian population.”).

it enforces the Military Lending Act, as interested parties want to refine the Act's protections and the CFPB's ability to enforce it.²⁰

Because there are still opportunities to improve the Military Lending Act, Congress should reinforce the financial protections provided by the Act by removing the vehicle exception, increasing the potential punishment for violating the Act, and requiring the CFPB to enforce the Act's provisions. In doing so, Congress would ensure that the Act guards servicemembers' personal finances against shady creditors, changing presidents, and global crises, while also providing a potential framework for protecting the financial well-being of civilians moving forward.

Part I of this Note provides a brief overview of how predatory lenders have targeted servicemembers for centuries, how a report by the DOD triggered the creation of the Act, and how the Act has evolved over time. Part II focuses on three areas that impact the effectiveness of the Act: automobile loans, criminal punishment for violations of the Act, and the CFPB's proactive monitoring of violations of the Act. Part III proposes statutory reforms that could improve the protections provided by the Act. Finally, Part IV discusses why strengthening the Act is important now more than ever and how its success could potentially affect civilians as well.

I. HISTORY, CREATION, AND EVOLUTION OF THE MILITARY LENDING ACT

The practice of predatory lenders and merchants targeting servicemembers has spanned centuries.²¹ To better understand the relationship between predatory lending and the American military, some context must be provided, such as what predatory lending looks like and why servicemembers are targets.²² Additionally, the Act has been modified

²⁰ See generally *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020) (providing a decision on challenges to the CFPB's structure and the for-cause removal protection provided to its director).

²¹ 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, 666–67 (2005) (explaining the historical context surrounding predatory lenders and military personnel).

²² See discussion *infra* Sections I.A, I.B.

over the years, and these modifications provide context about its strengths and weaknesses.²³

A. Predatory Lenders Targeting Military Members: A Tried-and-True Formula

The areas of law that are most implicated in any type of loan agreement are contract law and, the less well known concept, usury law.²⁴ Usury laws are regulations “prohibiting moneylenders from charging illegally high interest rates.”²⁵ Laws that limit interest rates have been embedded in human civilization for millennia and continue to be a prevalent and important area of law.²⁶ The Act, like many usury laws, is focused on addressing predatory lending, a practice that has been around for ages.²⁷

Predatory lending takes many shapes and forms, but it is generally defined as unfair or deceitful lending practices by creditors that take advantage of debtors.²⁸ There are a few different techniques that predatory lenders use to trap borrowers, including excessive prepayment penalties, balloon payments, hidden fees or penalties, repeated refinancing, and

²³ See discussion *infra* Section I.C.

²⁴ See generally Hirsh Ament, *Predatory Lending: What Will Stop It?*, 4 J. BUS. & TECH. L. 371 (2009) (explaining how contract law, especially the concept of “unconscionability,” affects predatory lending).

²⁵ Usury Law, Black’s Law Dictionary (11th ed. 2019).; *Usury*, NAT. CONSUMER L. CTR., <https://www.nclc.org/issues/high-cost-small-loans/usury.html> (last visited Feb. 20, 2022) (“Usury laws prohibit lenders from charging borrowers excessively high rates of interest on loans.”).

²⁶ See Paul G. Hayeck, *An Economic Analysis of the Justifications for Usury Laws*, 15 ANN. REV. BANKING L. 253, 255 (1996) (“Throughout recorded history, usury laws have been omnipresent. In the Mesopotamian kingdom of Eshnunna, as early as 2000 B.C., the law limited the rate of interest to sixteen and two-thirds percent.”).

²⁷ See *id.* (“Eventually, writings began to condemn the charging of interest as an evil through which the fortunate could take advantage of the underprivileged. Aristotle criticized usury because he thought that making money from money was unproductive, ‘unnatural,’ and could only lead to the exploitation of the unfortunate.”).

²⁸ Lloyd L. Drury, III, *Predatory Lending and Its Impact on Consumer Credit*, 10 LOY. J. PUB. INT. L. 137, 138 (2009) (“Most people acknowledge that the term [predatory lending] refers to a variety of abusive, misleading, and unfair practices that are carried out by members of the personal finance industry.”).

issuing loans that the creditor knows the debtor cannot repay.²⁹ Predatory lenders tend to target certain populations, mainly individuals with low income, poor credit, and little financial sophistication to understand complex interest rates and fees.³⁰ Normally, the lender's objective is to catch the borrower in a debt trap, allowing the lender to continuously obtain payments with no end in sight for the borrower.³¹ Loans to individuals with poor credit or to individuals who are high risk for defaulting on their loan are known as subprime loans.³² Because of their age, credit scores, and other factors, young servicemembers are constantly engaging the subprime loan market, and their participation in that market is no coincidence.³³

Military members are the perfect targets for predatory lenders and subprime loans.³⁴ The vast majority of the military is under twenty-five years old, so many servicemembers normally lack personal finance expertise and have little to no credit history.³⁵ Additionally, these young servicemembers are viewed as stable borrowers because the government makes it a priority to ensure they are consistently paid and they cannot quit

²⁹See C. Bailey King, Jr., *Preemption and the North Carolina Predatory Lending Law*, 8 N.C. BANKING INST. 377, 378 (2004) ("Predatory lending is the use of unfair practices by lenders in order to take advantage of borrowers. . . . These practices include (1) excessive prepayment penalties, (2) scheduled balloon payments, (3) negative amortization, and (4) repeated refinancing of loans."); see also Drury, III, *supra* note 28, at 138–40.

³⁰See King, *supra* note 29, at 378 ("The poor, elderly, and financially unsophisticated are most vulnerable to predatory lending practices because of their need to obtain credit and their inability to understand the predatory terms. Since the vast majority of these people are subprime borrowers, predatory lending is most prevalent in the subprime market.").

³¹See Drury, III, *supra* note 28, at 141 (explaining how predatory lending can put borrowers into long or endless cycles of payment for "fast cash" and how predatory loans normally have fees that are "astronomical").

³²James Chen, *Subprime Loan*, INVESTOPEDIA (Mar. 10, 2021), <https://www.investopedia.com/terms/s/subprimeloan.asp> ("Quite often subprime borrowers have been turned down by traditional lenders because of their low credit ratings or other factors that suggest they have a reasonable chance of defaulting on the debt repayment.").

³³See FINANCIALLY FIT?, *supra* note 15, at 4 ("[A]mong those who join the military before age 21, approximately 30 percent have a deep subprime score at age 24.").

³⁴Bruce Watson, *Predatory Payday Lenders Target Military Families*, NBC NEWS (Apr. 15, 2011, 8:12 PM), http://www.nbcnews.com/id/42559366/ns/business-personal_finance/t/predatory-payday-lenders-target-military-families/#.X2ZLh9NKg1g.

³⁵See *id.*

on a whim due to their service contracts.³⁶ Predatory lenders targeting servicemembers is not a new tactic, as members of the military have been victims of predatory lending for over 2,000 years.³⁷ For example, predatory lending was problematic in ancient Rome and in China during the Ming dynasty, affecting military readiness and even causing large-scale riots.³⁸ In America, similar issues of lenders preying on military personnel became apparent during the nineteenth century.³⁹ Military members stationed in remote areas on the western frontier fell victim to predatory lenders who had goods they needed, as merchants knew they could charge higher prices or attach incredibly high interest rates to loans.⁴⁰ This practice was also a problem during the Civil War and led to unrest and upheaval in military camps.⁴¹ However, the federal government did not seem to take serious notice of the dangerous effects predatory lending had on servicemembers until the twenty-first century.⁴²

³⁶ See *id.* (“Low salaries also make military personnel into promising targets[.] . . . [I]t’s hard to imagine a more stable group of borrowers: Unlikely to be fired and unable to quit, there is little question that military borrowers will continue to have consistent income for the duration of a loan . . .”).

³⁷ See Graves & Peterson, *supra* note 21, (explaining how predatory lenders have targeted military personnel for millennia).

³⁸ *Id.* (“[T]he Roman Republic was forced to address abusive high-cost lending to military personnel prior to its rise to a preeminent power in the ancient Mediterranean. . . . [H]istorical sources link the decline of the Ming dynasty in China to debt-related peasant riots sparked by predatory lending to soldiers.”).

³⁹ *Id.* at 668 (explaining that “[h]istorians have recorded similar incidents in American history as well.”).

⁴⁰ See *id.* at 668–69 (explaining how “military personnel [who] were often posted in remote frontier garrisons” were targets of “sutlers,” a type of merchant that “came to specialize in providing goods and services to struggling soldiers” and who “got rich by charging outrageous prices and interest rates to soldiers who made steady wages and had few options”).

⁴¹ *Id.* at 669 (“While the practices associated with Civil War era sutlers varied from unit to unit, their situation repeatedly led enraged soldiers to rise up and rampage through their own camps.”).

⁴² See generally *Debt Holds U.S. Troops Back*, *supra* note 9.

B. The 2006 DOD Report: Sounding the Alarm

In the early 2000s, young servicemembers were commonly being preyed upon by different financial industries.⁴³ Payday lenders were especially creative in coming up with different ways to pitch predatory payday loans and would take extra measures to ensure the traps they were laying were well hidden.⁴⁴ Although the general public did not pay attention to these schemes, the effects of military members getting into financial distress started to become an important political topic during the wars in Afghanistan and Iraq.⁴⁵ With major wars underway, the United States needed to have as much manpower as possible, but units were being negatively affected by servicemembers not being able to deploy because they were losing their security clearance, a mandatory requirement for most military roles, as their massive debts made them security risks.⁴⁶ An important report by the DOD brought these deceptive and damaging practices to light and became the cornerstone document for drafting and enacting the Military Lending Act.⁴⁷

The 2006 DOD report was a groundbreaking document because it provided tangible data that revealed the ways in which predatory lenders

⁴³ See Diana B. Henriques, *A Deepening Debate on Soldiers and Their Insurers*, N.Y. TIMES (Sept. 8, 2004), <https://www.nytimes.com/2004/09/08/business/a-deepening-debate-on-soldiers-and-their-insurers.html> (explaining how servicemembers were falling prey to life insurance salesmen); *New Enemy for U.S. Troops: Debt*, CBS NEWS (Dec. 17, 2003, 10:01 AM), <https://www.cbsnews.com/news/new-enemy-for-us-troops-debt/> (“Fort Stewart has declared these so-called payday lenders enemies at its gate, accusing them of preying on U.S. troops with high-interest, short-term loans that plunge them deep into debt.”).

⁴⁴ See MARK MUECKE & ROB SCHNEIDER, PAYDAY LENDERS BURDEN WORKING FAMILIES AND THE U.S. ARMED FORCES 2 (Kathy Mitchell ed., Consumers Union 2003), <https://advocacy.consumerreports.org/wp-content/uploads/2013/04/payday-703.pdf> (explaining some of the different schemes used by lenders to “disguise lending as some other activity”).

⁴⁵ See *Debt Holds U.S. Troops Back*, *supra* note 9 (“The number of troops held back has climbed dramatically in the past few years[,] [a]nd[,] . . . the increase is occurring at a time when the armed forces are stretched thin by the wars in Iraq and Afghanistan.”).

⁴⁶ See *id.*

⁴⁷ See generally DEP’T OF DEF., *supra* note 13 (providing data, insights, and recommendations regarding predatory lenders and servicemembers).

had entrenched themselves into many servicemembers' pockets.⁴⁸ According to the report, the payday lending industry began to boom after the year 2000, expanding from about 8,000 payday lender storefronts in 1999 to 23,000 in 2005.⁴⁹ The report explained why military personnel were targets of predatory lending and how predatory lenders were actively targeting military personnel.⁵⁰ As an anecdotal example, the report highlighted that the zip code of the southern gate of Camp Pendleton, a large Marine Corps base in southern California, had twenty-two payday lenders, which was seventeen more than would be expected for that area based on data analytics.⁵¹ Conversely, Parris Island Marine Corps Recruit Depot, a military installation that serves exclusively as a boot camp location for those attempting to join the Marine Corps as enlisted personnel, had no payday lenders nearby because the Marine recruits were not allowed to leave the base during their training.⁵² The report showed Congress that servicemembers were actively being targeted by predatory lenders, and this strategic targeting was working.⁵³

The report highlighted that certain types of loans were causing issues, mainly payday loans, auto-title loans, and military installment loans.⁵⁴ The DOD report also explained that educating servicemembers about the dangers and effects of predatory lending, though somewhat helpful, was not as effective as military leadership deemed necessary to

⁴⁸ *See id.* at 45 (“Although the Department of Defense provides extensive financial training, a significant number of Service members . . . still fall victim to easy credit widely available around bases or online. Education does not trump the marketing of these loans and the easy availability of quick cash with few questions asked.”).

⁴⁹ *Id.* at 11–12.

⁵⁰ *See id.* at 10–11 (explaining that payday lenders had purposefully clustered around military bases across the country because young “[m]ilitary families have characteristics that can make them a market of choice for predatory lenders[,]” such as youth, regular pay, lack of financial acumen, and military policies requiring servicemembers to pay their debts).

⁵¹ *See id.* at 11 (highlighting that Air Force and Army bases in other states also had similar situations).

⁵² *Id.* (“A notable exception is Parris Island Marine Corps Recruit Depot, . . . which has virtually no payday lending because the Marine recruits do not have an opportunity to leave the installation during the time they are assigned to that location.”).

⁵³ *See id.* at 12 (explaining the “military targeting ratio” and that “active-duty military personnel are three times more likely than civilians to have taken out a payday loan”).

⁵⁴ *See id.* at 10–18.

stifle the ongoing problem.⁵⁵ Although all of the military services implemented training and messaging campaigns about the dangers of predatory lenders, servicemembers were still falling into financial traps.⁵⁶ Ultimately, the data showed that predatory lenders targeting servicemembers was a problem and was going to increase unless serious action was taken.⁵⁷ Accordingly, the DOD had a simple message for Congress: The federal government must step up and protect its warriors from a menacing domestic enemy.⁵⁸

C. The Military Lending Act and Predatory Lenders: A Game of Cat and Mouse

On October 17, 2006, the John Warner National Defense Authorization Act for Fiscal Year 2007 was passed, and the first version of the Military Lending Act was enacted.⁵⁹ Many important provisions were put into the new law that would become foundational moving forward, including the 36% military annual percentage rate (MAPR) cap and a ban on forced arbitration.⁶⁰ Additionally, it set the penalty for

⁵⁵ See *id.* at 26–27 (“Financial education and support is not a one-time effort, or comprised of a one-dimensional solution. . . . Even with the amount of outreach and education currently being conducted by the Military Services and through partner organizations, there are hundreds of thousands of Service members using predatory loan products.”).

⁵⁶ See *id.* at 23–27.

⁵⁷ See *id.* at 21–22; see also Paul E. Kantwill & Christopher L. Peterson, *American Usury Law and the Military Lending Act*, 31 LOY. CONSUMER L. REV. 500, 509–10 (2019) (“[I]n 2001, the Navy-Marine Corps Relief Society . . . provided emergency loans totaling \$5,000 to only nine servicemembers who fell victim to predatory lenders. But by 2006 the Navy-Marine Corps Relief Society provided more than \$1.37 million to military members and their families who fell victim to such lenders.”).

⁵⁸ See DEP’T OF DEF., *supra* note 13, at 53 (writing in its conclusory sentence of the report that “[s]ervice members need better protections and enforcement from Congress and state credit regulators to prevent predatory lending abuses”).

⁵⁹ See John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109–364, § 670, 120 Stat. 2083, 2266–69 (2006).

⁶⁰ See *id.* (“A creditor . . . may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.”); see also DEP’T OF DEF., *supra* note 13, at 14 (“By eliminating a borrower’s right to sue for abusive lending practices, [mandatory arbitration] clauses work to the benefit of payday lenders over consumers.”).

knowingly violating the provisions of the statute as a misdemeanor.⁶¹ The Act also set clear guidelines for what information creditors had to disclose when consumer credit was being extended to a servicemember, including a statement of the annual percentage rate (APR) for the credit line being offered, a clear description of the payment obligations under the contract, and any disclosures required by the Truth in Lending Act.⁶² Significantly, the Military Lending Act preempts any conflicting state laws, as military bases are located in dozens of different states that each have their own usury laws.⁶³ With these new legal protections in place, the Act drew a definitive line in the sand, showing that the federal government was willing to protect its servicemembers from predatory lenders.⁶⁴

Although the legislation was relatively successful at the outset, lenders gradually found loopholes in the law and began to exploit them.⁶⁵ The original scope of the Act was quite narrow, utilizing the data and recommendations from the 2006 DOD report as the basis for which types of loans should be covered.⁶⁶ For example, the DOD report indicated that new legislation should not focus on mortgage lending, as it was not a major problem at the time.⁶⁷ The report stated that the legislation's main target should be closed-end payday loans and closed-end vehicle title loans, which is a loan that has borrowers use their car as collateral.⁶⁸

⁶¹ See John Warner National Defense Authorization Act for Fiscal Year 2007 § 670 at 2267 (“MISDEMEANOR.—A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.”).

⁶² See *id.* at 2266; see also 15 U.S.C. § 1601.

⁶³ John Warner National Defense Authorization Act for Fiscal Year 2007 § 670 at 2266.

⁶⁴ See Michael D. Schag, *The Sharpened Teeth of the Military Lending Act*, 106 ILL. BAR J. 44, 45 (2018) (explaining that Congress passed the Military Lending Act “in response to a 2006 Department of Defense (‘DoD’) report”).

⁶⁵ See *id.* at 47 (“Although there were plenty of types of credit arrangements not covered by the [MLA], it was viewed by many as a success.”).

⁶⁶ See DEP’T OF DEF., *supra* note 13, at 50–52 (providing a section titled “Recommendations for Statutory Controls” that encompassed the DOD’s recommendations to Congress).

⁶⁷ *Id.* at 2 (explaining that “[m]ortgage lending was not considered by these counselors as having the level of prevalence associated with the types of loans listed above, and consequently was not reviewed as part of this report.”).

⁶⁸ See Schag, *supra* note 64, at 46 (explaining that the Military Lending Act “applied rate caps and other protections to only three consumer credit products: closed-end payday

Considering these recommendations, the Military Lending Act did not cover mortgages, auto loans, and loans to finance the purchase of personal property.⁶⁹ Moreover, the 2006 DOD report viewed some alternative credit sources, such as credit cards and open-ended payday loans, as ways to avoid the troublesome closed-end payday loans and vehicle title loans.⁷⁰ Because of this viewpoint, the Act did not originally cover other important and common sources of credit.⁷¹ Given the legislation's basic and limited protections, lenders began to circumvent the Military Lending Act's protections by modifying simple aspects of their agreements.⁷² For example, lenders could change the duration of an installment loan to ninety-two days rather than the standard ninety-day duration because the Act only applied to installment loans that were ninety-one days or fewer in length.⁷³

In an effort to provide more effective protection, Congress amended the Military Lending Act in 2013 to give servicemembers a private right of action to assist them in recovering damages caused by a

loans no greater than \$2,000 and with repayment terms of 91 days or less, closed-end vehicle title loans with repayment terms of 181 days or less, and closed-end tax refund anticipation loans"); *see also* Jason Fernando, *Car Title Loan*, INVESTOPEDIA (Jan. 13, 2021), <https://www.investopedia.com/terms/c/car-title-loan.asp> ("A car title loan is a type of short-term loan in which the borrower pledges their car as collateral. They are also known as auto title loans. . . . They are associated with subprime lending, as they often involve high-interest rates and borrowers with poor credit ratings.").

⁶⁹ *See* John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, § 670, 120 Stat. 2083, 2266-69 (2006).

⁷⁰ DEP'T OF DEF., *supra* note 13, at 33-34 (explaining that "many banks and credit unions offer other alternatives to high cost borrowing," such as "low interest rate credit cards (secured and unsecured), signature lines of credit, small signature loans, and most importantly, savings programs to build family wealth.").

⁷¹ *See* Schag, *supra* note 64, at 46 (explaining that that the original version of the Act "did not cover many other forms of credit[,] such as "credit cards, bank overdraft lines of credit, and bona fide open-ended payday or vehicle title loans.").

⁷² *See id.* at 47 ("Perhaps predictably, in response to the enactment of the [Military Lending Act], some lenders designed loans that bypassed [Military Lending Act] protections. . . . Some lenders characterized payday or car title loans as open-end credit arrangements. More amendments followed.").

⁷³ *See id.* ("Payday lenders in Illinois restructured 350-percent-interest loans as 121-day installment loans to avoid the 120-day-minimum-loan term established by the state. Military members would not enjoy [Military Lending Act] protection under such plans because the [Military Lending Act] applied only to loans of 91 days or less.").

loan that violated the Act's provisions.⁷⁴ The 2013 amendments also added formal support from federal administrative agencies, mainly the newly created Consumer Financial Protection Bureau (CFPB), by adding a provision that all agencies that enforce the Truth in Lending Act were to enforce the Military Lending Act as well.⁷⁵ Further, the 2013 update revised the definition of the term dependent to make it more expansive, including the same relatives and relationships that were typically seen in the medical and insurance industry definitions.⁷⁶

Following the 2013 amendments, the CFPB was actively monitoring and enforcing the Military Lending Act's provisions while also taking complaints from servicemembers, providing valuable information to the federal government as to what types of loans were harming servicemembers the most.⁷⁷ However, lenders and financial institutions became more vocal in their opposition of expanding the Act, arguing that too much expansion would hamstring borrowers who truly needed short-term loans or would be denied traditional loans because of their poor credit scores.⁷⁸ Lenders argued that the Military Lending Act was not taking into account the need for high interest rates on small-dollar loans, as loans under \$500 with a 36% interest rate could not be profitable, and

⁷⁴ See National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112–239, § 662, 126 Stat. 1632, 1785–86 (2013).

⁷⁵ *Id.*

⁷⁶ See Schag, *supra* note 64, at 46.

⁷⁷ Holly Petraeus, *Behind the Numbers: Servicemember Complaints*, CONSUMER FIN. PROT. BUREAU BLOG (Mar. 5, 2014), <https://www.consumerfinance.gov/about-us/blog/behind-the-numbers-servicemember-complaints/> (explaining how the CFPB's "Office of Servicemember Affairs . . . monitor[s] consumer complaints submitted by the military community and the resolutions to those complaints.").

⁷⁸ Kantwill & Peterson, *supra* note 57, at 526 ("[O]ver 350 groups, trade associations, and businesses submitted comments expressing concerns with—as well as outright opposition to—the Proposed Rule."); see also Herb Weisbaum, *Military Lending Act 'Loopholes' Are Costing Troops Money*, NBC NEWS (Jan. 9, 2015, 11:43 AM), <https://www.nbcnews.com/better/money/military-lending-act-loopholes-are-costing-troops-money-n282961> ("Financial institutions and rent-to-own retailers believe current regulations are working well and do not need to be revised – and they've told DOD that they oppose any rule changes.").

these small-dollar loans could genuinely help people when utilized correctly.⁷⁹

Nonetheless, Congress updated the Military Lending Act in 2015, as predatory lenders were still finding and exploiting loopholes.⁸⁰ The DOD realized it needed to expand what types of consumer credit were covered under the Act, as it only protected against closed-end payday loans less than \$2,000 with terms of ninety-one days or fewer, closed-end tax refund anticipation loans, and closed-end auto title loans with terms of 181 days or fewer.⁸¹ Additionally, some lenders were still finding ways around the 36% MAPR cap, implementing rates over 80% in some situations.⁸² To address these issues, new rules greatly expanded the coverage of the Military Lending Act, bringing credit cards into the fold along with different types of fees that were previously left out.⁸³

⁷⁹ See Thomas W. Miller Jr. et al., *Why a 36% Cap Is Too Low for Small-Dollar Loans*, AM. BANKER: BANKTHINK (Aug. 4, 2015, 10:00 AM), <https://www.americanbanker.com/opinion/why-a-36-cap-is-too-low-for-small-dollar-loans> (“Today, a \$300 installment loan is simply not profitable at a 36% interest rate. Neither are payday loans. The result is that a legal loan desert exists in the small-dollar loan landscape. There is demand, but no supply.”).

⁸⁰ See 32 C.F.R. § 232.4 (2015); 12 C.F.R. § 1026.1 (2015).

⁸¹ See *CFPB Report Finds Loopholes in Military Lending Act Rules Rack Up Costs for Servicemembers*, CONSUMER FIN. PROT. BUREAU (Dec. 29, 2014) [hereinafter *CFPB Report Finds Loopholes*], <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-loopholes-in-military-lending-act-rules-rack-up-costs-for-servicemembers/> (“Today the Consumer Financial Protection Bureau (CFPB) issued a report highlighting how loopholes in the current Military Lending Act rules are racking up costs for servicemembers.”); Schag, *supra* note 64, at 46.

⁸² See *CFPB Report Finds Loopholes*, *supra* note 81 (“[T]hese gaps have allowed companies to offer high-cost loans to military families by skirting the 36 percent rate cap and other military-specific credit protections.”); Jessica Silver-Greenberg & Peter Eavis, *Service Members Left Vulnerable to Payday Loans*, N.Y. TIMES: DEALBOOK (Nov. 21, 2013, 8:48 PM), <https://dealbook.nytimes.com/2013/11/21/service-members-left-vulnerable-to-payday-loans/> (“Interest rates on the loans offered by companies like Just Military Loans and Military Financial, can exceed 80 percent, according to an analysis by the Consumer Federation of America.”).

⁸³ 10 U.S.C. § 987; 32 C.F.R. § 232.4; 12 C.F.R. § 1026.1; *see also* CONSUMER FIN. PROT. BUREAU, CFPB LAWS AND REGULATIONS, MILITARY LENDING ACT (MLA) INTERAGENCY EXAMINATION PROCEDURES – 2015 AMENDMENTS (2016), https://files.consumerfinance.gov/f/documents/092016_cfpb_MLAExamManualUpdate.pdf (explaining what types of credit were coming under the protection of the Military Lending Act, including credit cards).

Accordingly, the Act has become much more comprehensive than when it was first created, but its protections are still lacking in a few critical areas.

II. CARS, CRIME, AND THE CFPB

The Military Lending Act has come a long way since its inception in 2006. However, aspects of military life and the federal government's structure play a large role in how effectively the Act protects servicemembers from predatory lenders. These include auto loans, criminal penalties for Military Lending Act violations, and the CFPB's role in monitoring and enforcing the Act's provisions.

A. Automobile Loans: A Known Problem for Young Servicemembers

Auto loans continue to be one of the greatest financial pitfalls military members fall into, as CFPB data has shown servicemembers report vehicle-related loans as one of their most frequent complaints.⁸⁴ Auto loans can get servicemembers into financial trouble because cars are a necessity in the military due to the large size of military installations and the frequency at which servicemembers move.⁸⁵ Young and with a steady paycheck, many servicemembers are excited to buy their own vehicle.⁸⁶ But they can be easily swindled by a car seller who channels the excited servicemember's focus on the car's aesthetics and functionality rather than

⁸⁴ *Protecting Those Who Serve: How the CFPB Safeguards Military Members and Veterans from Abuse in the Financial Marketplace*, U.S. PUB. INT. RSCH. GRP. (June 6, 2017), <https://uspisg.org/reports/usp/protecting-those-who-serve> (“Another leading source of complaint is the category of ‘consumer loans,’ which includes vehicle loans, pawn loans and installment loans. Vehicle-related loans account for a majority of all consumer loan complaints, when including complaints concerning vehicles leases and title loans.”).

⁸⁵ Eric Milzarski, *Why NCOs Should Never Let Their Troops Buy a Car Alone*, WE ARE THE MIGHTY (Sept. 24, 2018, 3:42 PM), <https://www.wearethemighty.com/Finance/ncos-help-troops-buy-cars?rebellitem=1#rebellitem1> (explaining that “[b]uying a car in today's world is a necessity” because “[m]ilitary installations are way too big and timetables are way too tight for a young private to make it around comfortably on foot.”).

⁸⁶ *See id.*

the shady financing accompanying it.⁸⁷ Unfortunately, a young servicemember buying a car with an alarmingly high interest rate is somewhat of an accepted problem in the military, a situation seen far too often despite efforts to prevent it.⁸⁸

The military is not ignorant of this problem, and all branches of service try to provide resources to help educate young servicemembers about the dangers of getting into an imprudent auto loan, ranging from written materials to lectures on the subject.⁸⁹ Additionally, a few lenders have tried to clarify that they are military-friendly, trying to help servicemembers avoid predatory lenders.⁹⁰ Moreover, most military installations try to create a list of off-base establishments that servicemembers should avoid because they have a reputation for their predatory practices.⁹¹ Some of the most dangerous dealerships are the one-

⁸⁷ See Michelle Fox, *Predatory Lenders Prey on Military Members. Here's How to Avoid Being Victimized*, CNBC (July 3, 2019, 9:10 AM), <https://www.cnbc.com/2019/07/03/how-military-members-can-protect-themselves-from-predatory-lenders.html> (“Unscrupulous auto lenders . . . have also been known to target members of the military. ‘One . . . sailor[] . . . told him that a car dealership located near base had convinced him to take out a loan for twice the value of the car . . . [at] an interest rate of nearly 20%,’ Falcone said.”).

⁸⁸ David Pere, *The Ultimate Guide to Military Car Buying*, FROM MIL. TO MILLIONAIRE (Nov. 4, 2019), <https://www.frommilitarytomillionaire.com/military-car-buying/> (“When ‘paying 20% interest on a Mustang’ is a commonly accepted joke, it becomes clear that our young service members are not buying cars well.”).

⁸⁹ See *Expanded Credit Protections for Service Members and Their Families*, MIL. ONESOURCE (Apr. 3, 2020, 7:40 PM), <https://www.militaryonesource.mil/financial-legal/personal-finance/borrowing/expanded-credit-protections-for-service-members-and-their-families> (showing the type of information military members are given to help them understand their rights under the Military Lending Act).

⁹⁰ *Buying a Car in the Military: Everything You Need to Know*, CAR & DRIVER, <https://www.caranddriver.com/research/a31543935/buying-a-car-in-the-military/> (last visited Feb. 24, 2022) (advising servicemembers to utilize “military-friendly” lenders because “[l]enders usually love working with military members on active duty[,] [as] [t]hey already know you have a steady job and income source and that you’re unlikely to miss a payment because you could get in a lot of trouble if you do.”).

⁹¹ *Four Steps to Buying a Car as a Service Member*, MIL. ONESOURCE (June 26, 2020, 5:34 PM), <https://www.militaryonesource.mil/military-life-cycle/new-to-the-military/getting-connected/buying-a-car-in-the-military> (“But military members still need to be extra careful because they are often sold overpriced vehicles with overpriced financing. Check out your installation’s website to see if it posts off-limits establishments to help you stay clear of local predatory lenders or car dealers.”) [<https://web.archive.org/web/20201018101443/https://www.militaryonesource.mil/military-life-cycle/new-to-the-military/getting-connected/buying-a-car-in-the-military>].

stop shops that provide the car along with the loan to purchase the vehicle, making the entire transaction convenient for busy servicemembers.⁹² Although military leadership has tried to implement proactive measures, lenders positioning themselves where they can take advantage of servicemembers is still a common problem, as car dealerships and unscrupulous lenders continue to snatch up young enlisted personnel in financial traps.⁹³

Predictably, the overall sticker price of the car is not normally what throws the unsuspecting buyer into financial distress; rather, the large interest rate attached to the vehicle is the usual culprit.⁹⁴ High-interest auto loans to buyers with low credit scores are known as subprime auto loans.⁹⁵ These types of loans are typically given to individuals with credit scores below 650.⁹⁶ For context, the average credit score for an eighteen-year-old was 631 in the year 2018,⁹⁷ and the average credit score for people between the age of twenty-three and twenty-nine was 660 in 2019.⁹⁸ Using enlisted

⁹² *Learn the Warning Signs of Military Scams*, MIL. ONESOURCE (Apr. 16, 2020, 3:40 AM), <https://www.militaryonesource.mil/military-life-cycle/new-to-the-military/getting-connected/buying-a-car-in-the-military> (“Dealers that require no credit check and offer instant approval often charge hidden fees and high interest rates that inflate the cost of a car. First- or second-time car buyers may not be aware of this.”).

⁹³ J.D. Simkins, *US Military Service Members Are Being Duped into Buying Cars That Don't Exist*, BUS. INSIDER (Aug. 20, 2019, 5:00 PM), <https://www.businessinsider.com/us-military-service-members-targeted-with-car-buying-scams-2019-8> (“A revolving door of seedy dealerships . . . next to military installations . . . tout an ability to lease the finest (lemon) vehicles without a down payment, soothing words that distract from a section of fine print that reads more like a death sentence than an auto contract.”).

⁹⁴ See Jes Naber, *Military Car Buying Guide – Everything You Need to Know About Buying a Car in the Military*, MIL. WALLET (Dec. 15, 2020), https://themilitarywallet.com/military-car-buying-guide/#Where_to_Get_Auto_Financing (providing “tips” that help servicemembers “find the right car, negotiate a good deal, [and] avoid making costly mistakes”).

⁹⁵ See Will Kenton, *Subprime Auto Loan*, INVESTOPEDIA (Dec. 1, 2020), <http://bit.ly/3nyFnJV> (providing the definition of subprime auto loans and context around such loans).

⁹⁶ See *id.*

⁹⁷ *How to Build Your Credit at 18*, CREDIT SESAME, <https://www.creditsesame.com/blog/credit-score/how-to-build-credit-at-18/> (Jul. 19, 2021).

⁹⁸ Brianna McGurran, *At What Age Can You Expect Your Best FICO® Score?*, EXPERIAN (Mar. 23, 2020), <https://www.experian.com/blogs/ask-experian/research/credit-scores-by-age/>.

personnel in the Marine Corps as an example population, approximately 70% of enlisted Marines are under twenty-four years old, meaning that many of them likely have a credit score of 650 or less.⁹⁹ As of November 2021, the average interest rate for a used car loan for a creditor with a credit score between 600 and 699 was 14.94%.¹⁰⁰ For those with a credit score of 451 to 599, the average interest rate was 17.91% for the same type of loan.¹⁰¹

A higher interest rate for a lower credit score is justifiable and does not automatically signal predatory lending.¹⁰² The lender is taking on a higher risk of default or non-payment, so there must be compensation for the additional risk.¹⁰³ Because of this tradeoff, a borrower in the subprime category can have an interest rate that is five to ten times higher than a prime loan applicant (credit score of 760 or greater), raising the interest rate into the 20% to 30% range.¹⁰⁴ Because the age demographics of the military inevitably places many young servicemembers in the subprime auto loan market, servicemembers who enlist by age nineteen shoulder 25% more debt than their civilian counterparts.¹⁰⁵ Notably, servicemembers average twice as much auto loan debt compared to civilians.¹⁰⁶

⁹⁹ *Demographics of the U.S. Military*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/background/demographics-us-military> (Jul. 13, 2020) (explaining the demographics of the military and noting that “[a]bout 70 percent of enlisted marines are twenty-four years old or younger”).

¹⁰⁰ Jamie Page Deaton & Nate Parsons, *Average Auto Loan Rates in November 2021*, U.S. NEWS (Nov. 12, 2021), <https://cars.usnews.com/cars-trucks/average-auto-loan-interest-rates>.

¹⁰¹ *Id.*

¹⁰² See Justin Pritchard, *What the Term Subprime Means*, THE BALANCE, <https://www.thebalance.com/subprime-definition-of-subprime-borrowers-and-lending-315634> (Feb. 1, 2021) (“Subprime loans are typically more expensive because lenders want higher compensation for taking more risk.”).

¹⁰³ See *id.* (“Subprime loans involve risk for everybody. The loans have less likelihood of repayment, so lenders typically charge more.”).

¹⁰⁴ See Yowana Wamala, *Average Auto Loan Interest Rates: Facts & Figures*, VALUE PENGUIN, <https://www.valuepenguin.com/auto-loans/average-auto-loan-interest-rates> (May 12, 2021) (“Individuals in this ‘subprime’ category can end up paying auto loan rates that are 5 or 10 times higher than what prime consumers receive, especially for used cars or longer term loans.”).

¹⁰⁵ FINANCIALLY FIT?, *supra* note 15, at 27.

¹⁰⁶ *Id.*

For civilians and servicemembers alike, the CFPB's enforcement in the area of auto loans was minimal during the Trump Administration's tenure, even though auto loans account for about 10% of all consumer debt in the United States.¹⁰⁷ From July 2011 to July 2016, the CFPB brought 135 enforcement actions against varying businesses and lenders, and thirteen of these actions were against auto lenders.¹⁰⁸ From August 2016 to August 2019, the CFPB brought zero enforcement actions against auto financing companies.¹⁰⁹ One reason for the CFPB's lack of enforcement has been the success of auto industry lobbyists in keeping the CFPB out of the auto industry, which has provided greater opportunity for predatory lending.¹¹⁰ Yet, auto loans continue to be a consistent issue, as thousands of vehicle loan complaints were reported to the CFPB in 2019, and the statistics provided by the CFPB only cover reported complaints, meaning there are likely many instances that go unreported.¹¹¹ Ultimately, subprime auto loans are greatly affecting servicemembers, and the Military Lending Act could be revised to address this issue.

B. The Military Lending Act and Criminal Punishment

¹⁰⁷ Andrew Schmidt, *Pump the Brakes: What Financial Regulators Should Consider in Trying to Prevent a Subprime Auto Loan Bubble*, 107 CAL. L. REV. 1345, 1363 (2019) (“[T]he CFPB’s auto industry enforcement activity indicates that auto loan enforcement is somewhat low priority Over the CFPB’s life, enforcement actions against auto lenders have comprised only 6.67 percent of its total docket, although auto loan debt accounts for 10 percent of all consumer debt”).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* (“Since July 21, 2016, the CFPB has brought 60 additional enforcement actions, but none against auto finance companies.”).

¹¹⁰ See Christopher K. Seide, *Consumer Financial Protection Post Dodd-Frank: Solutions to Protect Consumers Against Wrongful Foreclosure Practices and Predatory Subprime Auto Lending*, 3 U. P.R. BUS. L.J. 219, 250 (2012) (“Auto industry lobbyists were successful in keeping car loans, made by auto dealers, away from the reach of the CFPB. This has left the CFPB powerless to safeguard consumers from threats posed by subprime auto lending.”).

¹¹¹ See BUREAU OF CONSUMER FIN. PROT., CONSUMER RESPONSE ANNUAL REPORT 53–56 (2020) (highlighting how the CFPB “received approximately 7,900 vehicle loan or lease complaints” in 2019 alone).

Predatory lending is normally considered “white collar” crime due to its financial nature and deceptive tactics.¹¹² White collar criminals tend to be educated, rational risk takers who are well-versed in the law, helping them bend the rules or violate the applicable regulations in discreet ways.¹¹³ In the context of financial lending, some lenders diligently watch for proposed rules and regulations and make a concerted effort to prevent restrictive lending laws from passing, as they are willing to spend millions of dollars in lobbying efforts when necessary.¹¹⁴

When analyzing how the law should punish white collar crime, scholars debate how much social harm is actually caused by white collar criminals and how severe the penalties should be for such actors.¹¹⁵ Some argue white collar crime does not create as much social harm as violent or sexual crimes, while others argue the social harm of financial crimes is deemphasized and undervalued.¹¹⁶ This debate feeds into the question of how white collar criminals should be punished and whether the

¹¹² See M. I. Dixon, *The Re-Defining of White Collar Crime*, 13 DICK. J. INT’L L. 561, 561 (1995) (“This article asserts that the term ‘white collar crime’ includes all financial frauds. Fraud is described as ‘the deliberate deception, trickery, or cheating in order to gain an advantage.’ This concept of deceit is central to contemporary views on white collar crime.”).

¹¹³ See Mihailis E. Diamantis, *White-Collar Showdown*, 103 IOWA L. REV. 320, 326 (2017) (“White-collar fraudsters seem like they should be the objects par excellence of deterrence—true rational egoists. They are often educated, financially savvy, and good at calculating risk.”).

¹¹⁴ See Blake Ellis & Melanie Hicken, *Payday Lenders Throw Millions at Powerful Politicians to Get Their Way*, CNN MONEY (Dec. 18, 2014, 11:31 AM), <https://money.cnn.com/2014/12/18/pf/payday-lenders-contributions/index.html> (“Since the beginning of 2013, high-cost loan providers and those with ties to the industry have spent more than \$13 million on lobbying and campaign donations to at least 50 lawmakers.”).

¹¹⁵ Compare Mirko Bagaric et al., *Halting the Senseless Civil War Against White-Collar Offenders: “The Conduct Undermined the Integrity of the Markets” and Other Fallacies*, 2016 MICH. ST. L. REV. 1019, 1022 (2016) (“The key reason that white-collar offenses should be dealt with less severely than is currently the practice is because empirical data establishes that these offenses cause far less harm than violent and sexual offenses.”), with Matthew A. Ford, *White-Collar Crime, Social Harm, and Punishment: A Critique and Modification of the Sixth Circuit’s Ruling in United States v. Davis*, 82 ST. JOHN’S L. REV. 383, 395 (2008) (“Many commentators and judges continue to deny or devalue the social harm caused by white collar crime, despite popular and congressional recognition.”).

¹¹⁶ See Bagaric et al., *supra* note 115; see also Ford, *supra* note 115.

punishment should be focused on deterrence or retribution.¹¹⁷ One objective of deterrence is for the punishment of the crime to make the criminal reluctant to commit the same crime again.¹¹⁸ Additionally, the punishment should discourage others from committing the same crime in the future, as other potential criminals are now warned and potentially deterred because of the convicted criminal's punishment.¹¹⁹ Two important aspects of deterrence include the certainty of being caught when breaking the law and how severe the punishment is once the person is apprehended.¹²⁰ Studies have proven that an increased certainty of punishment does increase deterrence, and more severe punishment, in the right situations, promotes deterrence as well.¹²¹

Currently, the criminal penalty for knowingly violating the Military Lending Act is a misdemeanor.¹²² Servicemembers who are provided a loan or contract in violation of the Act also have access to civil remedies.¹²³ However, it is rare that a member of the armed forces has the time or resources to see a civil case to completion due to the limitations of military counsel and the high cost of utilizing private civilian counsel.¹²⁴

¹¹⁷ See Diamantis, *supra* note 113, at 325–34.

¹¹⁸ See Peter J. Henning, *Is Deterrence Relevant in Sentencing White-Collar Criminals?*, 61 WAYNE L. REV. 27, 41 (2015) (“There are two types of deterrence: specific and general. The former focuses on limiting the defendant’s recidivism by incapacitating the person for a period of time and demonstrating the cost of future violations, especially under statutes that impose enhanced punishment on repeat offenders.”).

¹¹⁹ See *id.* (explaining that general deterrence “is concerned with preventing others from engaging in similar misconduct in the future, focusing on communicating a message that other violators will be punished similarly”).

¹²⁰ See *id.*

¹²¹ David Crump, *Deterrence*, 49 SAINT MARY’S L.J. 317, 324 (2018) (“If [certainty of punishment] can be increased, the likelihood of punishment grows, and thus the deterrence of crime is stronger. . . . Increased severity, too, may increase the deterrent in some cases.”).

¹²² 10 U.S.C. § 987(f)(1).

¹²³ § 987(f)(5).

¹²⁴ See *Military Legal Assistance and Civil Matters*, A.B.A. (Dec. 3, 2020), https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/working_with_lawyer/information_about_lawyers/military_legal_assistance/civil_matters/ (providing a caveat to “[k]eep in mind . . . that military legal assistance attorneys cannot provide you the full range of legal help that you may need If you are in need of more help than the military legal assistance lawyer can provide you, he or she may be able to connect you to a non-military lawyer who can represent you pro bono”).

Accordingly, an important aspect of the Military Lending Act's effectiveness is the criminal penalties that can be placed on violators.

C. The Complicated Relationship Between the CFPB and the Military Lending Act

The CFPB's reduction of Military Lending Act supervision and enforcement efforts under the Trump Administration show that the effectiveness of the Military Lending Act is not insulated from politics.¹²⁵ The CFPB was created in 2010 under the Dodd-Frank Wall Street Reform and Consumer Protection Act, making it a relatively new agency.¹²⁶ After the 2008 recession, the CFPB was positioned to serve as a high-level shield to help protect consumers from abusive and unfair financial practices.¹²⁷ The 2008 recession highlighted that the government needed to do a better job protecting consumers, and the economy as a whole, by regulating and overseeing the consumer finance market.¹²⁸ President Obama appointed Richard Cordray as the CFPB's first director in 2012.¹²⁹ Under Cordray's

¹²⁵ See Kate Berry, *Pentagon, Others Baffled by CFPB Plan to Cease Military Lending Exams*, AM. BANKER (Oct. 11, 2018, 9:00 PM), <https://www.americanbanker.com/news/pentagon-others-baffled-by-cfpb-plan-to-cease-military-lending-exams> (“Acting CFPB Director Mick Mulvaney’s claim that the Dodd-Frank Act does not give the bureau statutory authority to enforce the Military Lending Act is a major reversal from the Obama administration.”).

¹²⁶ CONSUMER FIN. PROT. BUREAU, BUILDING THE CFPB 8 (2021), https://files.consumerfinance.gov/f/2011/07/Report_BuildingTheCfpb1.pdf (“In July 2010, Congress passed and President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. The law – often referred to as the Dodd-Frank Act created the Consumer Financial Protection Bureau (the CFPB).”).

¹²⁷ See *The Bureau*, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/about-us/the-bureau/> (last visited Feb. 26, 2022) (“We aim to make consumer financial markets work for consumers, responsible providers, and the economy as a whole. We protect consumers from unfair, deceptive, or abusive practices and take action against companies that break the law.”).

¹²⁸ See generally Raj Date, *Lessons Learned from the Financial Crisis: The Need for the CFPB*, CONSUMER FIN. PROT. BUREAU (Sept. 15, 2011), <https://www.consumerfinance.gov/about-us/newsroom/lessons-learned-from-the-financial-crisis-the-need-for-the-cfpb/> (explaining the importance of the CFPB after the 2008 recession).

¹²⁹ See Courtney C. Cornelius, *The High Cost of Low Supervision: How Servicemembers Will Inevitably Pay for the CFPB's Reactive Approach to the Military Lending Act*, 23 N.C. BANKING INST. 431, 436–37 (2019) (“In July 2013, Richard Cordray became the first director of

leadership, the CFPB took a proactive approach to protecting consumers from predatory lenders, and the CFPB found that violations were running rampant among loans to military personnel.¹³⁰ Although many people praised the CFPB's strategy of being an active watchdog, the Trump administration changed how the CFPB enforced the Military Lending Act.¹³¹

In 2017, President Trump appointed Mick Mulvaney as director of the CFPB, and the CFPB began to change its enforcement tactics, as it no longer provided active supervision and responded to a much smaller volume of complaints.¹³² For example, in 2018, Mulvaney announced that the CFPB would stop routine examinations of lenders to determine if they had violated any of the Military Lending Act's provisions.¹³³ These proactive Military Lending Act examinations, which had been in place from 2011 to 2017, had returned an estimated \$130 million back to servicemembers and their dependents.¹³⁴ Mulvaney's successor, Kathy

the CFPB, following his appointment to the position in January 2012. Cordray's interpretation of the CFPB's authority was one of proactive supervision to safeguard consumers.”).

¹³⁰ See *id.* at 437–38 (discussing how the CFPB proactively searched for Military Lending Act violations under the Obama administration).

¹³¹ See *id.* at 439–40 (explaining that “Mulvaney quickly made it publicly known that he did not agree with the CFPB's proactive approach to consumer protection” and that Mulvaney thought the CFPB was “overreaching”).

¹³² See *id.* (explaining the change of direction under the Trump administration, as “Mulvaney announced that the CFPB would suspend periodic supervisory exams related to MLA violations as another overstep of authority from Dodd-Frank”).

¹³³ See Glenn Thrush, *Mulvaney Looks to Weaken Oversight of Military Lending*, N.Y. TIMES, Aug. 10, 2018, at B4 (“The Trump administration is planning to suspend routine examinations of lenders for violations of the Military Lending Act, which was devised to protect military service members and their families from financial fraud, predatory loans and credit card gouging, according to internal agency documents.”); see also *Bureau Reportedly Stepping Away from MLA Oversight*, NAFCU (Aug. 14, 2018), <https://www.nafcu.org/newsroom/bureau-reportedly-stepping-away-mla-oversight> (“The Bureau of Consumer Financial Protection . . . will reportedly not examine financial institutions for compliance with the Department of Defense's (DoD) Military Lending Act (MLA) rule.”).

¹³⁴ See Cornelius, *supra* note 129, at 440 (“These supervisory examinations, administered under Cordray, returned an estimated \$130 million in relief to servicemembers and their families.”); see also Thrush, *supra* note 133 (“Since its creation under the Obama administration in 2011, the consumer agency has returned more than \$130 million to service members, veterans and their families and handled more than 72,000 complaints per year, according to the agency.”).

Kraninger, another Trump appointee, continued the agency's hands-off approach.¹³⁵ In 2020, the CFPB began dismantling a Obama administration rule that forced lenders to verify that borrowers could actually pay back the loan they were being given, removing another protection for consumers.¹³⁶

The Biden administration, thus far, has shown a desire to return the CFPB to its previous role as a watchdog agency.¹³⁷ In January 2021, Kraninger resigned from her post, and President Biden nominated Rohit Chopra to replace her, as Chopra is expected to make the CFPB supervise and enforce the Military Lending Act more aggressively.¹³⁸ Since President Biden took office, the routine examinations for Military Lending Act

¹³⁵ See Katy O'Donnell, *Military Personnel Caught in Crossfire over Lending Law*, POLITICO (Apr. 9, 2019, 7:01 PM), <https://www.politico.com/story/2019/04/09/military-personnel-caught-in-crossfire-over-lending-law-1290791> (explaining that “CFPB Director Kathy Kraninger and her congressional critics are clashing over a law meant to protect military personnel from predatory lenders” because “Kraninger says the bureau lacks the power to monitor violations of the statute — even though the CFPB did just that during the Obama administration — while Democrats insist that it can”).

¹³⁶ See Scott Horsley, *CFPB Strips Some Consumer Protections for Payday Loans*, NPR (July 7, 2020, 4:17 PM), <https://www.npr.org/2020/07/07/888499021/cfpb-strips-some-consumer-protections-for-payday-loans> (“Federal regulators have finalized a new rule for payday lenders that strips out a key provision crafted during the Obama administration. Under the revised rule, lenders will no longer have to check that borrowers can repay their loan when it comes due.”).

¹³⁷ See Adam Edelman, *‘A Cop on the Beat Again’: Biden Looks to Reassert Consumer Watchdog Agency Sidelined by Trump*, NBC NEWS (Mar. 23, 2021, 4:31AM), <https://www.nbcnews.com/politics/white-house/cop-beat-again-biden-looks-reassert-consumer-watchdog-agency-sidelined-n1261586> (noting that the then acting CFPB director Dave Uejio was hiring additional staff and reviewing the agency's policies).

¹³⁸ See Kate Berry, *CFPB's Kraninger Resigns Just as Biden Takes Office*, AM. BANKER (Jan. 20, 2021, 1:26 PM), <https://www.americanbanker.com/news/cfpbs-kraninger-resigns-just-as-biden-takes-office> (“Consumer Financial Protection Bureau Director Kathy Kraninger resigned Wednesday, clearing the way for the Biden administration to pick a successor. . . She ended up resigning on the same day Biden was inaugurated.”); see also Tyler Pager et al., *Biden Taps Warren Ally Chopra to Lead Consumer Bureau*, POLITICO (Jan. 17, 2021, 7:51 PM), <https://www.politico.com/news/2021/01/17/biden-rohit-chopra-consumer-bureau-460086> (“President-elect Joe Biden will nominate Rohit Chopra to be the next director of the Consumer Financial Protection Bureau. . . . [T]he Biden administration plans to return the CFPB to the more-muscular posture of its early days following three years of Trump administration appointees curbing the agency's reach.”).

violations that Mick Mulvaney discontinued have been restarted.¹³⁹ Time will tell if the CFPB, under Chopra's leadership, will take an even more active role more moving forward. Ultimately, the different ways that presidential administrations approach the role of the CFPB, including its enforcement of the Military Lending Act, means servicemembers and the public at large may not realize how a new presidential administration can alter the effectiveness of the Act.¹⁴⁰

III. WAYS TO STRENGTHEN THE PROTECTIONS OF THE MILITARY LENDING ACT

Statutory reform is probably the best way to address issues that currently impact the Military Lending Act's effectiveness. A few substantive changes to the statutory framework of the Act and the CFPB could help alleviate the problems outlined above. These changes include modifying the vehicle loan exception, the criminal penalties associated with Act violations, and the CFPB's enforcement powers.

A. Remove the Vehicle Loan Exception

Since predatory automobile loans are plaguing young servicemembers, Congress should remove the vehicle loan exception found in the Military Lending Act.¹⁴¹ The exception for these types of loans, which is found in the text of 10 U.S.C. § 987(i)(6), states that a loan “procured in the course of purchasing a car or other personal property” does not fall within the scope of the Military Lending Act if the title of the vehicle serves as the debtor's collateral.¹⁴² Perhaps confusingly, auto title loans are covered by the Act, but this coverage provides no protection to

¹³⁹ Jon Prior, *CFPB Restarts Military Lending Act Exams*, AM. BANKER (June 16, 2021, 4:12PM), <https://www.americanbanker.com/news/cfpb-restarts-military-lending-act-exams>.

¹⁴⁰ See e.g., Renae Merle, *I Have Not Burned the Place Down': Mulvaney Defends His Leadership of Consumer Watchdog*, CHI. TRIB. (Apr. 12, 2018, 8:15 AM), <https://www.chicagotribune.com/business/ct-biz-mick-mulvaney-cfpb-20180412-story.html>.

¹⁴¹ See 10 U.S.C. § 987(i)(6); discussion *supra* Section II.A.

¹⁴² § 987(i)(6).

someone buying a car through normal financing.¹⁴³ Because of the language of § 987(i)(6), auto loan lenders can place whatever types of interest or fees they want on auto loans to servicemembers and their dependents without worrying about the Military Lending Act's protections.¹⁴⁴ Additionally, some servicemembers may be less cautious when purchasing a car because they do not realize the Act's provisions do not apply to auto loans the same way they do to other types of consumer credit.¹⁴⁵ Accordingly, the vehicle loan exception should be removed, and there are two potential avenues to accomplish this revision.¹⁴⁶

One potential solution would be to amend the language of § 987(i)(6) to completely remove the auto loan exception.¹⁴⁷ For example, the statute would continue to allow loans for personal property to remain outside of the Act's scope, but the new language would no longer call out auto loans as an exception to that rule.¹⁴⁸ If this solution was pursued, all the protections that servicemembers have under the Military Lending Act would apply in full force to auto loans.¹⁴⁹ The most impactful and practical protection would be the 36% MAPR cap, as any auto loan that has an interest rate above 36% could no longer be extended to servicemembers

¹⁴³ See Schag, *supra* note 64, at 47 (explaining that the Military Lending Act currently covers auto title loans); Fernando, *supra* note 68 (“A car title loan is a type of short-term loan in which the borrower pledges their car as collateral. They are also known as auto title loans.”).

¹⁴⁴ See Sarita Harbour, *7 Hidden Costs of Taking Out an Auto Loan*, CBS NEWS (Sept. 2, 2016, 5:00 AM), <https://www.cbsnews.com/media/7-hidden-costs-of-taking-out-an-auto-loan/> (“One of the less obvious costs when buying a new car is . . . higher interest rates . . . According to the Consumer Financial Protection Bureau, car dealers sometimes add their own fee on top of auto loans through a higher interest rate, bumping up the annual percentage rate.”).

¹⁴⁵ See generally *Military Lending Act*, MIL. BENEFITS, <https://militarybenefits.info/military-lending-act/> (last visited Feb. 26, 2022) (explaining to servicemembers what types of credit and loans are covered by the Military Lending Act and which ones are not).

¹⁴⁶ *Cf.* § 987(i)(6) (explaining that “a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured” does not fall within the protections provided by the Act).

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

¹⁴⁹ See generally § 987.

without violating the Act.¹⁵⁰ Additionally, since the MAPR protection is relatively comprehensive, many hidden fees and other stealthy ways to increase the interest rate go towards this cap, bolstering its effectiveness.¹⁵¹

The potential downfall of categorically removing the auto loan exception and applying the 36% MAPR cap to auto loans is that the Military Lending Act would only be applicable to a small number of loans, as few auto loans have that high of an interest rate.¹⁵² The average rate of a subprime auto loan is normally in the high teens, not the thirties or forties.¹⁵³ However, the Military Lending Act would cover those auto loans that many consider to be the most abusive because of the exorbitant interest rate.¹⁵⁴ The Act may also provide a more relevant cap when auto loan interest rates swell nationally, as seen in 2019.¹⁵⁵ The 36% MAPR cap is also high enough that it still provides servicemembers with poor credit the ability to obtain a loan if they truly believe the loan is necessary to purchase a vehicle.¹⁵⁶ Ultimately, this change would allow auto loans with extreme interest rates to be covered by the Military Lending Act.¹⁵⁷

¹⁵⁰ See § 987(b) (“A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.”).

¹⁵¹ See Schag, *supra* note 64, at 47 (“The MAPR includes interest, fees, credit service charges, credit renewal charges, credit insurance premiums, and other fees assessed in connection with the loan. . . . The MAPR’s 36 percent rate also includes finance charges under Regulation Z and other charges covered as interest.”).

¹⁵² See Deaton & Parsons, *supra* note 100 (explaining the average interest rate for a subprime auto loan was around 17.79% in November 2021).

¹⁵³ See *id.*

¹⁵⁴ See *id.*

¹⁵⁵ See Annie Nova, *How to Buy a Car, with Less Debt*, CNBC (Feb. 1, 2019, 3:03 PM), <https://www.cnbc.com/2019/02/01/auto-loan-rates-are-some-of-the-highest-in-a-decade-how-to-save.html> (explaining that, in 2019, “[v]ehicle prices and interest rates [are] so high right now that consumers are facing the very real possibility of spending thousands of dollars more on a new vehicle than they did last time they purchased a new car”).

¹⁵⁶ See LAUREN K. SAUNDERS, NAT. CONSUMER L. CTR., *WHY 36%? THE HISTORY, USE, AND PURPOSE OF THE 36% INTEREST RATE CAP 2–7* (2013) (explaining why a 36% interest rate makes sense and has been agreed upon as a reasonable number by federal and state governments).

¹⁵⁷ See Madison Miller, *What is a Subprime Loan?*, VALUE PENGUIN (June 14, 2020), <https://www.valuepenguin.com/loans/what-is-a-subprime-loan> [<https://web.archive.org/web/20200607043213/https://www.valuepenguin.com/loan>]

The more aggressive solution would be to create a lower MAPR specifically for auto loans.¹⁵⁸ Currently, 10 U.S.C. § 987(b) applies a blanket 36% cap on all consumer credit that falls within the protections of the Military Lending Act.¹⁵⁹ As auto loans would become protected under the Act, § 987(b) could be amended to add language that provides an interest rate cap for auto loans that is below the current 36% maximum. For instance, the auto loan interest cap could be set at a blanket value, such as 25%, or the cap could be a formula tied to the national prime rate for auto loans with an added percentage differential. As an example of what the formula could look like, the automobile interest rate cap could equal the national auto loan prime rate plus fifteen percentage points (prime rate + 15% = Military Lending Act auto loan MAPR cap).¹⁶⁰ A lower MAPR cap for auto loans would be a much more impactful protection because more auto loans would fall into a lower interest range, allowing more servicemembers to be protected from high-interest car loans.¹⁶¹

There are a few drawbacks to the more aggressive solution.¹⁶² First, this solution would limit how many servicemembers may actually be able to purchase a car because many young servicemembers have low credit

s/what-is-a-subprime-loan] (explaining that one of the cons of subprime loans is that “[p]redatory lenders charge high interest rates or hide fees that may hurt borrowers if they are unprepared”).

¹⁵⁸ *But cf.* 10 U.S.C. § 987(b) (applying a 36% cap on all consumer credit covered by the Military Lending Act).

¹⁵⁹ *See id.* (“A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.”).

¹⁶⁰ *Cf.* MONT. CODE ANN. § 31-1-107(1) (West 2019) (explaining that “[p]arties may agree in writing to the payment of any rate of interest that does not exceed the greater of 15% or an amount that is 6 percentage points per year above the prime rate published by the federal reserve system in its statistical release”); 6 R.I. GEN. LAWS ANN. § 6-26-2(b) (West 2020) (explaining that the “alternate rate” is the “rate per annum that is equal to nine percentage points (9%) plus an index that is the domestic prime rate as published in the Money Rates section of The Wall Street Journal on the last business day of each month”).

¹⁶¹ *See* Deaton & Parsons, *supra* note 100 (showing that in November 2021 the average interest rate for a used car was 17.91% for those with a credit score of 451–599, as auto loan interest rates typically do not reach into the thirty-to-forty percentage point range).

¹⁶² *See, e.g.,* *Why I Hate the Military Lending Act*, MILITARY.COM (Oct. 2, 2014), <https://www.military.com/paycheck-chronicles/2014/10/02/why-i-hate-military-lending-act> (arguing that “[i]f I want to go take out a car-title loan with a 48% interest rate, I should not be prevented from doing so”).

scores, putting them in the subprime auto loan market.¹⁶³ Although some would argue that taking a high-interest auto loan is an unwise financial decision, young servicemembers should still have the ability to take that risk if they desire, as their freedom to contract for a vehicle should not be curtailed too greatly.¹⁶⁴ Second, an interest rate lower than 36% could possibly cause the Military Lending Act to be revised more frequently because national interest rates fluctuate.¹⁶⁵ Many would find frequent revisions to the interest rate provision cumbersome and damaging, as lenders and borrowers would find it more difficult to comply with the law and understand its protections.¹⁶⁶ Additionally, Congress would likely find it difficult to agree on what the lower MAPR cap should be for auto loans and when it should be changed.¹⁶⁷ Therefore, the less aggressive solution, simply removing the auto loan exception, is likely the best option at this time; however, the more aggressive solution could become more compelling if the 36% MAPR cap does little to protect servicemembers from predatory auto loans.

B. Increase Criminal Punishment to Deter Potential Military Lending Act Violators

The Military Lending Act could be updated to deter potential violators by punishing convicted violators with more severe penalties and

¹⁶³ See FINANCIALLY FIT?, *supra* note 15, at 27.

¹⁶⁴ See Bill Himpler, *On Consumer Credit and Unintended Consequences*, MIL. TIMES (Nov. 8, 2019), <https://www.militarytimes.com/opinion/commentary/2019/11/08/on-consumer-credit-and-unintended-consequences/> (explaining that blanket interest rate caps can take prevent servicemembers who need to take a high interest loan from being able to obtain one, and these restrictions can “fail to account for [servicemembers’] very real needs”).

¹⁶⁵ See O’Donnell, *supra* note 135 (explaining that Congress is concerned about revising the Military Lending Act, “fearing that reopening the Military Lending Act would merely lead to new loopholes.”).

¹⁶⁶ See *id.*

¹⁶⁷ See Richie Bernardo, *Usury Laws by State, Interest Rate Caps, The Bible & More*, WALLETHUB (June 20, 2014), <https://wallethub.com/edu/cc/usury-laws/25568> (explaining that usury laws are different across all fifty states, as “[u]sury limits vary by loan amount, loan type and issuing institution, depending on the state.”); see also Chris Arnold, *49 Senators Want to Keep Protections of Military Lending Act in Place*, NPR (Aug. 16, 2018, 5:08 AM), <https://www.npr.org/2018/08/16/639149706/49-senators-want-to-keep-protections-of-military-lending-act-in-place>.

having collateral consequences accompany a conviction.¹⁶⁸ Under 10 U.S.C. § 987(f)(1), creditors who knowingly violate the Act are subject to criminal prosecution, and violations are considered a Class A misdemeanor.¹⁶⁹ Defendants guilty of Class A misdemeanors cannot be sentenced to a term of imprisonment for more than one year.¹⁷⁰ Additionally, the maximum amount that the guilty party can be fined is dependent on whether the party is an individual or an organization.¹⁷¹ An individual cannot be fined more than \$100,000, and an organization cannot be fined more than \$200,000.¹⁷² In certain cases, a fine can be double the amount of “pecuniary gain” the defendant obtained in the course of the crime.¹⁷³ A lender guilty of violating the Military Lending Act must disgorge the value received in an attempt to make the servicemember whole, as the unlawful contract is deemed void from its inception.¹⁷⁴ Although these penalties do hold guilty lenders accountable to a certain extent, there is room to make the potential penalties more effective, especially from a deterrence perspective.¹⁷⁵

The most aggressive solution would be to categorically change the punishment for knowingly violating the Military Lending Act from a misdemeanor to a Class E felony.¹⁷⁶ A Class E felony categorization would substantially raise the potential length of imprisonment, as the guilty party

¹⁶⁸ See J. Scott Dutcher, *From the Boardroom to the Cellblock: The Justifications for Harsher Punishment of White-Collar and Corporate Crime*, 37 ARIZ. ST. L.J. 1295, 1303–08 (2005) (explaining how increased punishment, such as increasing prison sentences and applicable fines, is a strong deterrent for white collar criminals, as “[t]he potential value for deterrence in the punishment of white-collar and corporate crime is much higher than it is for blue-collar crimes.”).

¹⁶⁹ See 10 U.S.C. § 987(f)(1).

¹⁷⁰ 18 U.S.C. § 3581(b)(6).

¹⁷¹ See 18 U.S.C. § 3571(b)–(c) (explaining how much an individual and organization can be fined based on the categorization of the crime).

¹⁷² 18 U.S.C. § 3571(b)(5); 18 U.S.C. § 3571(c)(5).

¹⁷³ See 18 U.S.C. § 3571(d).

¹⁷⁴ See 10 U.S.C. § 987(f)(1)–(3).

¹⁷⁵ See Dutcher, *supra* note 168, at 1308 (“[D]eterrence can play an important role in preventing future white-collar and corporate crime when punishments for such offenses entail substantial prison terms and the financial penalties are more severe than their economic gains, forcing offenders to dip into their savings to reimburse those they cheated.”).

¹⁷⁶ See 10 U.S.C. § 987(f)(1) (establishing that the only criminal penalty for a “creditor who knowingly violates” the Military Lending Act is a misdemeanor).

can be imprisoned for up to three years.¹⁷⁷ Additionally, potential fines substantially increase for Class E felonies. For an individual, the fine amount cannot exceed \$250,000, which is a \$150,000 increase from the Class A misdemeanor cap.¹⁷⁸ For organizations, the fine for a Class E felony can be as high as \$500,000, a \$300,000 increase from the potential fine organizations face today.¹⁷⁹ There are many felonious white collar crimes, including money laundering, embezzlement, and fraud, so a felony designation for violating the Military Lending Act would not be unprecedented.¹⁸⁰

Felonies carry great weight both in the judicial system and in society's view, as many people wish to avoid the categorization of felon.¹⁸¹ Moreover, a felony designation also makes violations more likely to be investigated and prosecuted by the government, as federal prosecutors tend to pursue more serious offenses over lesser ones.¹⁸² Because of the strong punishment accompanying felonious crimes and the government's interest in prosecuting such crimes, the deterrent value of changing the Military Lending Act's punishment from a misdemeanor to a felony is clear.¹⁸³

¹⁷⁷ See 18 U.S.C. § 3581(b)(5).

¹⁷⁸ Compare 18 U.S.C. § 3571(b)(5), with 18 U.S.C. § 3571(b)(3).

¹⁷⁹ Compare 18 U.S.C. § 3571(c)(5), with 18 U.S.C. § 3571(c)(3).

¹⁸⁰ See generally 18 U.S.C. § 657 (providing an example of an embezzlement felony); 18 U.S.C. § 1004 (providing an example of a fraud felony); 18 U.S.C. § 1956 (providing an example of a money laundering felony).

¹⁸¹ See *Parker v. Ellis*, 362 U.S. 574, 593–94 (1960) (Warren, J., dissenting) (“Conviction of a felony imposes a status upon a person which not only makes him vulnerable to future sanctions . . . but which also seriously affects his reputation and economic opportunities.”).

¹⁸² See ENV'T L. INST., LAW OF ENVIRONMENTAL PROTECTION § 9:222 (2021) (explaining that “the classification of a party’s conduct . . . may determine whether charges are ever commenced against that party” because “the U.S. Attorneys’ Offices all operate with fairly limited prosecutorial resources,” so “they must choose which cases to prosecute” with one factor being “the seriousness of the offense as evidenced through its classification either as a misdemeanor or a felony.”).

¹⁸³ See *id.* (“A felony, with its higher sentences, has a greater deterrent value than a misdemeanor. Thus, . . . the target of a] . . . criminal investigation . . . is well advised to focus from the beginning on whether the government is investigating a misdemeanor or felony violation.”).

Some may argue that a felony is too severe a punishment for a nonviolent crime.¹⁸⁴ Although reasonable minds could disagree on whether a felony designation is too extreme, a potential solution to alleviate this concern is to create a felony punishment for those who purposefully or willfully violate the Military Lending Act while keeping a misdemeanor punishment for those who knowingly violate the Military Lending Act.¹⁸⁵ This solution would be a more balanced approach for punishing violators because it would utilize a lender's mens rea to establish their culpability.¹⁸⁶

Another approach would be to keep the Class A misdemeanor categorization but explicitly include minimum fines and prison time in the Military Lending Act's statutory framework. For instance, there could be a mandatory minimum imprisonment of six months paired with a mandatory minimum fine of \$5,000.¹⁸⁷ Granted, mandatory minimum sentencing has harsh critics that question its true deterrent potential.¹⁸⁸ But, this criticism should not foreclose mandatory minimums in the Military Lending Act's context, as white collar criminals are more likely to

¹⁸⁴ See, e.g., Ellen S. Podgor, *The Challenge of White Collar Sentencing*, 97 J. CRIM. L. & CRIMINOLOGY 731, 733 (2007) ("The sentences imposed on these first offenders for economic crimes can exceed the sentences seen for violent street crimes, such as murder or rape. In an effort to crack down on white collar criminality, the courts and legislature have produced draconian sentences that place prominence on the activity involved.").

¹⁸⁵ See ENV'T L. INST., *supra* note 182, at § 9:222 ("[F]elony offenses generally require proof of a greater degree of criminal intent than do misdemeanors."); see also Ray A. Knight & Lee G. Knight, *Criminal Tax Fraud: An Analytical Review*, 57 MO. L. REV. 175, 196–206 (1992) (explaining that tax fraud misdemeanors and felonies both had a "willful" mens rea requirement and arguing that left too much discretion to prosecutors and did not properly account for different levels of culpability).

¹⁸⁶ See Darryl K. Brown, *Federal Mens Rea Interpretation and the Limits of Culpability's Relevance*, 75 L. & CONTEMP. PROBS. 109, 109–10 (2012) (explaining that "[m]ens rea requirements are the traditional means to determine culpability" and that different types of mens rea can serve as "bases for sentencing").

¹⁸⁷ See 10 U.S.C. § 987(f)(1). The current language of § 987(f)(1) states that "[a] creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both." *Id.* An explicit change to this language that set a minimum imprisonment duration and a minimum fine would ensure that a judge had to provide an imprisonment term and fine, warning violators that they would have to face some type of tangible punishment if convicted.

¹⁸⁸ See generally Steven Nauman, *Brown v. Plata: Renewing the Call to End Mandatory Minimum Sentencing*, 65 FLA. L. REV. 855 (2013) (arguing vehemently against minimum sentencing and stating that indeterminate sentencing is a much better solution).

be deterred by guaranteed punishment.¹⁸⁹ A mandatory minimum sentence could arguably help deter potential violators because they would be on notice that a conviction guarantees jail time and a fine, making lenders more hesitant to violate the Military Lending Act.¹⁹⁰

Another solution could be a registration or warning program that makes it clear to all individuals that the lender has been found guilty of previously violating the Military Lending Act. A punishment of this sort is considered a collateral consequence of a conviction, and some commonplace examples of such consequences are sex offender registration and firearm prohibitions for felons.¹⁹¹ Both felonies and misdemeanors can have collateral consequences, and these type of consequences have historically been based on a concern for public safety.¹⁹² Although there is less of a public safety concern attached to predatory lending compared to sexual or violent crimes, the utility of such collateral consequences is still applicable to white collar crime, especially when considering brand recognition and reputation in the marketplace.¹⁹³

The pairing of collateral consequences with criminal sentences has become more commonplace, as studies have found that shame is an

¹⁸⁹ See Henning, *supra* note 118, at 35 (“People who operate in the white-collar world seem to be the likeliest candidates to be aware of a prison sentence imposed on someone in the same industry, and to respond by avoiding future misconduct, even for actions that may appear to be typical in the modern business environment.”).

¹⁹⁰ See Dutcher, *supra* note 168, at 1305–06 (explaining that significant prison terms and fines are required to actually deter white collar criminals from committing the crime).

¹⁹¹ See Paul T. Crane, *Charging on the Margin*, 57 WM. & MARY L. REV. 775, 784–85 (2016) (explaining that a collateral consequence “is any sanction or disability imposed by law as a result of a criminal conviction that is in addition to the conviction’s direct consequences”); see also 18 U.S.C. § 922(g)(1) (explaining that individuals convicted of a felony may not “ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition” or “receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce”).

¹⁹² See Crane, *supra* note 191, at 790 (explaining that collateral consequences for sex offenders and other felons focus on “reducing threats to public safety”).

¹⁹³ See *id.* at 789 (explaining that “prosecutors will be most interested in imposing collateral consequences that further the varied purposes of criminal prosecution, such as deterrence”); Dustyn Coontz, *Beyond First Blush: The Utility of Shame as a Master Emotion in Criminal Sentencing*, 2015 MICH. ST. L. REV. 415, 452–54 (2015) (explaining how “the strongest case for the utility of shame as punishment is in its application to the theory of specific deterrence” and that general deterrence is also achieved, as “shame works in generally deterring crime because of its universality.”).

incredibly powerful motivator.¹⁹⁴ An important benefit of collateral consequences is their effectiveness as a deterrent, especially for white collar criminals.¹⁹⁵ Part of this effectiveness stems from collateral consequences normally sticking with offenders after they serve their prison term or pay their fine, providing more deterrent power to misdemeanor convictions and lower level felonies.¹⁹⁶

Collateral consequences could be beneficial in helping explicitly warn servicemembers that they are dealing with a lender who has previously violated the Military Lending Act. For example, military installations could be provided a real-time list of lenders who have been found guilty of violating the Military Lending Act, and this information could be disseminated to servicemembers.¹⁹⁷ Additionally, lenders who previously violated the Military Lending Act could be required to put a notice or warning on their physical establishment's doors, place unmissable warning banners on their websites, and warn servicemembers verbally of the lender's Military Lending Act violations before finalizing a contract.¹⁹⁸ Although collateral consequences can have negative impacts on the accused and create unfair stigmas, these issues would likely be less severe for white collar criminals.¹⁹⁹ Whatever collateral consequences or shame tactics are made available to prosecutors and judges, these

¹⁹⁴ See Coontz, *supra* note 193, at 445 (“Shame is effective in altering behavior because it is a ‘master emotion.’ . . . [S]entences that seek to elicit shame or guilt are gaining steam because of the nearly universal recognition that they at least might work.”).

¹⁹⁵ See *id.* at 437 (explaining that shame tactics and general deterrence normally “are most effective in the context of white-collar crimes”).

¹⁹⁶ See Crane, *supra* note 191, at 794 (explaining that “the collateral consequence almost always lasts longer than the defendant’s term of incarceration, which for low-level offenders is usually short or nonexistent,” making misdemeanor prosecution more appealing for prosecutors and more effective as a deterrent).

¹⁹⁷ Cf. Nora V. Demleitner, *Structuring Relief for Sex Offenders from Registration and Notification Requirements: Learning from Foreign Jurisdictions and from the Model Penal Code: Sentencing*, 30 FED. SENT’G REP. 317, 317 (2018) (explaining certain restrictions and actions required of sex offenders after conviction, which could provide basic ideas or examples for what collateral consequences could be placed on Military Lending Act violators).

¹⁹⁸ Cf. *id.* at 318.

¹⁹⁹ See *id.* at 317 (“Despite their nominally preventive function, offenders and the public alike consider and experience these sanctions as stigmatizing and punitive. This is particularly true for the sex offender registry with its attendant public notification component.”).

consequences would be a powerful deterrent to potential Military Lending Act violators and a helpful warning for servicemembers.²⁰⁰ Ultimately, the Act could help protect servicemembers more effectively by ensuring that the potential and actual punishment for violating the Act genuinely deters predatory lenders.

C. Active Enforcement: Legislation, Lawsuits, and Lawyers

The CFPB's level of supervision and enforcement of the Military Lending Act is currently dependent on the preferences of the CFPB's director, which directly affects how much the Act protects servicemembers.²⁰¹ There has been heated debate on Capitol Hill as to what statutory authority the CFBP has regarding Military Lending Act supervision and enforcement.²⁰² The debate has stemmed from the CFPB's three previous directors having different interpretations regarding the CFBP's statutory backing and how that backing affects the Act's enforcement.²⁰³

²⁰⁰ See Coontz, *supra* note 193, at 445 (explaining how collateral consequences that invoke shame seem to help deter future crimes).

²⁰¹ See Sarah Reise, *CFPB to Ramp up MLA Supervision and Enforcement*, JD SUPRA (Feb. 3, 2021), <https://www.jdsupra.com/legalnews/cfpb-to-ramp-up-mla-supervision-and-4204815/> (explaining that there will be “new priorities for the CFPB’s Supervision, Enforcement and Fair Lending Division under the Biden Administration” and that the incoming administration “criticized the prior administration’s approach to the MLA, which . . . resulted in weakened enforcement and supervision”).

²⁰² See Kate Berry, *House Dems to CFPB Chief: Use the Authority Congress Gave You*, AM. BANKER (Feb. 6, 2020, 4:49 PM), <https://www.americanbanker.com/news/house-dems-to-cfpb-chief-use-the-authority-congress-gave-you> (“At yet another tense hearing Thursday of the House Financial Services Committee focused on the CFPB, Kraninger butted heads with several lawmakers over the bureau’s supervisory authorities as well as the agency’s overall mission. Republicans, meanwhile, used the hearing to push for changes to the CFPB’s leadership structure.”).

²⁰³ See *id.* (reporting in February 2020 that “House Democrats chastised Consumer Financial Protection Bureau Director Kathy Kraninger for not supervising student loan servicers and for refusing to examine financial firms for compliance with the Military Lending Act”); O’Donnell, *supra* note 135 (reporting in April 2019 that “CFPB Director Kathy Kraninger and her congressional critics are clashing over a law meant to protect military personnel from predatory lenders”); see also Merle, *supra* note 140 (reporting in April 2018 that “Mick Mulvaney defended his leadership of the Consumer Financial Protection Bureau . . . in front of a House committee Wednesday, dismissing criticism from Democratic lawmakers that he was weakening the watchdog agency”).

As previously highlighted, Corday, an Obama appointee, was proactive in enforcing the Military Lending Act's provisions, actively seeking out violations or compliance failures before complaints were filed.²⁰⁴ Mulvaney, a Trump appointee, changed course and made the CFPB much more reactive.²⁰⁵ Mulvaney stated that the statutory framework for the CFPB should be more explicit about the CFPB's authority to proactively supervise and enforce the Act's provisions.²⁰⁶ Kraninger, who was also appointed by Trump and originally echoed Mulvaney's opinion, changed course at the end of her tenure, as the CFPB began more proactively enforcing the Military Lending Act at the end of 2020.²⁰⁷ Kraninger's change of heart was likely attributable to the results of the 2020 presidential election, as the CFPB became more proactive once Joe Biden was named President-Elect.²⁰⁸ Rohit Chopra, appointed by President Biden after Kraninger resigned, was confirmed as the newest director of the CFPB in September 2021, and his vision, thus far, has been

²⁰⁴ See Cornelius, *supra* note 129, at 437 (“Cordray’s interpretation of the CFPB’s authority was one of proactive supervision to safeguard consumers.”).

²⁰⁵ See *id.* at 439 (“Mulvaney quickly made it publicly known that he did not agree with the CFPB’s proactive approach to consumer protection. Instead, he stated that the CFPB was overstepping the authority it was given in Dodd-Frank.”).

²⁰⁶ See Berry, *supra* note 202 (“Former acting CFPB chief Mick Mulvaney had stated that the CFPB lacks explicit examination authority under the law, but that position was criticized by both consumer advocates and the Department of Defense. Last year, Kraninger asked Congress for ‘clear authority’ to conduct exams.”).

²⁰⁷ See Erica A.N. Kramer, *CFPB Announces Broad Military Lending Act Compliance Sweep*, JD SUPRA (Jan. 5, 2021), <https://www.jdsupra.com/legalnews/cfpb-announces-broad-military-lending-7195693/> (“[T]he December 4th complaint is just the beginning. Specifically, the CFPB’s press release states, ‘[t]oday’s action is part of a broader Bureau sweep of investigations of multiple lenders that may be violating the MLA.’ This broad sweep runs contrary to 2018 statements from former CFPB director Mick Mulvaney”); see also Jim Flynn, *Money & the Law: Military Lending Act Aimed at Protecting Service Members*, THE GAZETTE (Jan. 3, 2021), https://gazette.com/business/money-the-law-military-lending-act-aimed-at-protecting-service-members/article_dfff4914-49e6-11eb-a1da-877800ed731c.html (“The Military Lending Act has climbed up the enforcement priority ladder for the Consumer Financial Protection Bureau The CFPB’s most recent target is a company called LendUp Loans. In December, CFPB sued LendUp Loans and is seeking an injunction against further violations”).

²⁰⁸ See David Bauman, *CUNA Chimes in as Biden Expected to Reinvalidate CFPB Enforcement & Supervision*, CREDIT UNION TIMES (Nov. 9, 2020, 12:59 PM), <https://www.cutimes.com/2020/11/09/cuna-chimes-in-as-biden-expected-to-reinvalidate-cfpb-enforcement-supervision/?slreturn=20210007200031>.

to make the CFPB a proactive agency again, swinging the pendulum of MLA enforcement back towards the Obama administration's stance.²⁰⁹ This back and forth illustrates how a large amount of the Act's effectiveness still hangs on the temperament of the CFPB's director and how he or she interprets the power given to the CFPB based on its legislative backing.²¹⁰

One possible solution is for Congress to pass legislation that explicitly bolsters the CFPB's legislative backing to actively supervise and enforce the Military Lending Act.²¹¹ In January 2019, Kraninger sent proposed legislative language to Vice President Mike Pence and Speaker of the House Nancy Pelosi that would update 12 U.S.C. § 5514, providing explicit language that the CFPB can supervise and enforce the Military Lending Act.²¹² If passed, the proposed legislation would provide more firepower to the voices that demand the CFPB be a more aggressive and

²⁰⁹ See Joshua Dhyani, *New CFPB Chief Rohit Chopra Confirmed by Senate and Takes Immediate Action Against Big Tech Firms*, JD SUPRA (Nov. 11, 2021), <https://www.jdsupra.com/legalnews/new-cfpb-chief-rohit-chopra-confirmed-7357369/>; see also Aisha Smith & Douglas Thompson, *CFPB Director Chopra's Emerging Vision - Supervision Focus & Potential Rule Makings*, JD SUPRA (Mar. 8, 2022), <https://www.jdsupra.com/legalnews/cfpb-director-chopra-s-emerging-vision-2962146/>.

²¹⁰ See *The Consumer Financial Protection Bureau's Semiannual Report to Congress: Hearing Before the Comm. on Banking, Hous., & Urb. Affs.*, 116th Cong. 8 (2019) (statement of Kathy L. Kraninger, Director, Consumer Fin. Prot. Bureau), <https://www.congress.gov/116/chrg/CHRG-116shrg36014/CHRG-116shrg36014.pdf> (“When Congress created the Consumer Financial Protection Bureau in 2010, it did not give it the authority to supervise for compliance with the Military Lending Act (MLA). In 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority.”).

²¹¹ See Memorandum from Kathy L. Kraninger, Dir., Consumer Fin. Prot. Bureau, to Nancy Pelosi, Speaker, U.S. House of Representatives (Jan. 16, 2019) [hereinafter Memo from Kraninger to Pelosi], https://files.consumerfinance.gov/f/documents/cfpb_MLA-legislative-proposal-to-Pelosi.pdf (proposing legislative language for 12 U.S.C. § 5514 that would give the CFPB more explicit statutory backing to provide active “supervision”).

²¹² See *id.*; Memorandum from Kathy L. Kraninger, Dir., Consumer Fin. Prot. Bureau, to Michael Pence, Vice President, President of the United States Senate (Jan. 17, 2019), https://files.consumerfinance.gov/f/documents/cfpb_MLA-legislative-proposal-to-Pence.pdf (proposing same legislative language given to Nancy Pelosi).

proactive enforcer of the Military Lending Act.²¹³ However, this legislation has not been passed, and there is no indication that it is on track to become law anytime soon.²¹⁴

Updating the legislative language of § 5514, or any other statute relating to the CFPB's statutory authority, would be the most straightforward approach to forcing the CFPB's hand, but it may not completely solve the problems seen today.²¹⁵ The new legislation might be more of a moral victory than anything else because Corday showed the CFPB could actively monitor Military Lending Act violations without the new statutory language.²¹⁶ In reality, as long as an agency is spearheading Military Lending Act enforcement, the effectiveness of the Act will always be somewhat attached to the CFPB's leadership.²¹⁷ However, the new language would help Military Lending Act proponents hold the CFPB more accountable.²¹⁸ Plain, unambiguous language regarding the CFPB's supervision and enforcement role of the Act would help establish a new minimum level of agency action, ensuring that the protection provided to servicemembers does not change as radically between CFPB directors as seen thus far.²¹⁹

Another proposition would be for a party, perhaps a class comprised of active-duty servicemembers, to bring an action against the CFPB for nonenforcement, demanding that the CFPB enforce the Act's

²¹³ See O'Donnell, *supra* note 135 (explaining how "CFPB Director Kathy Kraninger and her congressional critics" were "clashing" over the CFPB's ability to actively supervise and enforce Military Lending Act violations).

²¹⁴ See generally 12 U.S.C. § 5514 (reviewing the statute shows that no new language has been added since Kraninger sent memos proposing new statutory language to Pelosi and Pence).

²¹⁵ See Cornelius, *supra* note 129, at 437 (explaining Corday's proactive approach and interpretation of the CFPB's legislative backing during the Obama administration).

²¹⁶ See *id.*

²¹⁷ See Sharon B. Jacobs, *The Administrative State's Passive Virtues*, 66 ADMIN. L. REV. 565, 623 (2014) ("Agency restraint, no less than judicial restraint, is a fact of the legal landscape We see agencies deferring decisions either wholesale or in part, and making minimalist decisions, strategically, but for reasons that are consistent with their missions and statutory mandates and designed to preserve, rather than frustrate, expertise.").

²¹⁸ See, e.g., O'Donnell, *supra* note 135 (providing an example of people challenging the CFPB's stance on Military Lending Act supervision).

²¹⁹ See *id.*

provisions more aggressively.²²⁰ Although legal actions that call out agencies for nonenforcement are rarely successful, the Supreme Court has heard and enforced them before.²²¹ Yet the judiciary's reluctance towards forcing executive agencies to act and the United States' focus on a clear separation of powers greatly curtails such efforts from being successful, making the already uphill battle extraordinarily steep.²²² Moreover, the CFPB is responding to some complaints that are being filed by servicemembers, so it is not completely avoiding or violating its statutory duty.²²³ Filing an action against the CFPB, therefore, is more of a legal last-resort that would become most viable if the CFPB completely stops enforcing the Military Lending Act's provisions.²²⁴

Another potential solution would be to increase the number of attorneys in the military, known as judge advocates or JAGs (members of the Judge Advocate General's Corps), or contract attorneys through the DOD to help bring more actions against lenders. Although civil actions may not be as effective of a deterrent as criminal penalties, more civil suits with potential punitive damages could help fill the void left by the CFPB's

²²⁰ See, e.g., *Massachusetts v. Env't Prot. Agency*, 549 U.S. 497, 514 (2007) (reviewing an action brought by multiple states, local governments, and organizations against the Environmental Protection Agency).

²²¹ See generally *id.* (showing how the Supreme Court is normally hesitant to act upon agency inaction).

²²² See *id.* at 527 (“As we have repeated time and again, an agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities. . . . That discretion is at its height when the agency decides not to bring an enforcement action.”); Aaron L. Nielson, *How Agencies Choose Whether to Enforce the Law: A Preliminary Investigation*, 93 NOTRE DAME L. REV. 1517, 1520 (2018) (“[N]onenforcement can raise troubling questions. Even apart from separation of powers concerns, nonenforcement implicates basic notions of fairness and administrative regularity. . . . [D]iscretionary authority to determine when the law should and should not be enforced can be put to good ends but is also subject to abuse.”); Cass R. Sunstein, *Reviewing Agency Inaction After Heckler v. Chaney*, 52 U. CHI. L. REV. 653, 661 (1985) (explaining how the Supreme Court’s “decisions reflect skepticism about the appropriateness of judicial supervision of the regulatory process at the behest of statutory beneficiaries”).

²²³ See Flynn, *supra* note 207 (explaining that the CFPB sued LendUp Loans for Military Lending Act violations in December 2020).

²²⁴ See Sunstein, *supra* note 222, at 665 (explaining how “discretionary” decisions are immunized from judicial review” but that does not foreclose judicial review completely, especially if an agency does not adhere to its statutory basis).

lack of supervision and enforcement, as active-duty servicemembers normally make sympathetic plaintiffs.²²⁵ Although this solution would avoid some aspects of the political landscape that the CFPB faces, a major hurdle would be obtaining funds for more judge advocates or DOD contracted attorneys, as there is already insufficient funding for military attorneys.²²⁶ However, if it becomes clear that the CFPB's enforcement tactics vary every time there is a change in leadership, politicians who support the Military Lending Act could argue that federal dollars supporting the CFPB should instead be provided to the DOD for more attorneys who could enforce servicemembers' private right of action.²²⁷

Because the CFPB is a newer agency, its capacities and scope will continue to evolve and proponents of the Military Lending Act, as well as its critics, should watch the CFPB's evolution closely.²²⁸ Based on the United States Supreme Court decision in *Seila Law LLC v. Consumer Finance Protection Bureau*, which was decided in 2020, the CFPB may see changes to its leadership structure or changes in its enacting legislation.²²⁹ In *Seila*, the Supreme Court held that it was unconstitutional for the CFPB to be run by a single director who can only be removed for cause.²³⁰ However, the Court also ruled that removal protection was severable from other aspects

²²⁵ See Cynthia Godsoe, *Perfect Plaintiffs*, 125 YALE L. J. F. 136, 146 (2015) (explaining that sympathetic plaintiffs tend to have “respectable jobs,” like “teachers, nurses, ministers, even soldiers,” and referencing how “[t]wice in the opinion Justice Kennedy applauds plaintiff Ijpe DeKoe, who fought in Afghanistan, for ‘serv[ing] this Nation’”); see also Podgor, *supra* note 184, at 740 (“The lack of sympathy from the general public makes white collar offenders easy targets for increased punishment.”).

²²⁶ See Megan Eckstein, *Navy, Marine Corps JAG Reviews Highlight Needed Education, Organizational Improvements*, USNI NEWS (Jan. 13, 2020, 4:01 PM), <https://news.usni.org/2020/01/10/navy-marine-corps-jag-reviews-highlight-needed-education-organizational-improvements> (explaining that while those in the Navy and Marine Corps “legal community are doing good work, the services . . . have significant gaps between the resourcing this small community gets and the hefty demands placed on them,” as they are “pressed for money”).

²²⁷ See Reise, *supra* note 201 (explaining how there is going to be large changes to Military Lending Act enforcement strategies due to the change in presidential administrations).

²²⁸ See *infra* notes 229–34 and accompanying text.

²²⁹ See generally *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183 (2020) (ruling on a challenge to the constitutionality of the CFPB's structure and for-cause removal protection provided to its director).

²³⁰ See *id.* at 2197 (“We hold that the CFPB's leadership by a single individual removable only for inefficiency, neglect, or malfeasance violates the separation of powers.”).

of the Dodd-Frank Act that established the CFPB, so the CFPB was still deemed a constitutional entity.²³¹ The Court stated that changing the CFPB's leadership structure, making it a multimember board rather than a single director, is a viable option moving forward, and there have been multiple politicians calling for such a change.²³² Potential changes to the CFPB's structure and future challenges to its legislative backing could affect how the Military Lending Act is enforced in the future, as directors could be quickly removed for not enforcing the Act in accordance with the president's wishes.²³³ Ultimately, the effectiveness and usefulness of the Military Lending Act is currently attached to the tenacity in which the CFPB enforces the Act's provisions, but there are ways to address this flippancy.²³⁴

IV. THE MILITARY LENDING ACT'S EFFECTIVENESS: WHY IT MATTERS

The Military Lending Act's impact on all American citizens, rather than just military families, may be difficult to appreciate at first glance. However, analyzing and refining the Military Lending Act is important because its ability to protect servicemembers from predatory lenders is directly attached to military readiness. Additionally, the Act also affects civilians and the usury laws that may or may not apply to them in the future.

²³¹ *See id.* at 2211 (“[W]e find the Director’s removal protection severable from the other provisions of Dodd-Frank that establish the CFPB . . .”).

²³² *See id.* (“As in every severability case, there may be means of remedying the defect in the CFPB’s structure that the Court lacks the authority to provide. Our severability analysis does not foreclose Congress from pursuing alternative responses to the problem—for example, converting the CFPB into a multimember agency.”); Berry, *supra* note 202 (“Republican lawmakers . . . continued to criticize the statutory mandate of the CFPB that established a single-director leadership structure. They have repeatedly called for the agency to be run by a five-member commission.”).

²³³ NOGA MORAG-LEVINE, CONSTITUTIONAL LAW & REGULATORY STATE 453–54 (Wolters Kluwer, 4th ed. 2018) (“In looking at the regulatory state, one fact is certain: the President seeks to assert control of agency action. . . . [T]he President can take the formal, visible, and effective step of replacing recalcitrant agency officials with individuals more amenable to administration views . . .”).

²³⁴ *See Merle, supra* note 140 (“Several lawmakers noted that the bureau had not fined or sued a single company during the past five months of Mulvaney’s leadership. Under its previous leadership, the CFPB announced three or four cases a month.”).

A. Military Readiness and Economic Crises Are Significantly Intertwined

As seen with the 2008 recession and the COVID-19 pandemic, economic crises and fiscal hardships can cause people, including servicemembers and their dependents, to make imprudent financial decisions.²³⁵ In the early weeks of the COVID-19 pandemic, military families began to see their income diminish due to military spouses either losing their jobs outright or having to take significant pay-cuts.²³⁶ Each branch of service provides its active-duty members access to relief funds to weather such situations, but the relief organizations have limited funding.²³⁷ As the economic impact from the pandemic remains unclear, servicemembers and their dependents may turn to payday lenders or other

²³⁵ See Saunders, *supra* note 18 (warning servicemembers that, due to COVID-19, “Times are tough everywhere in America right now. It is increasingly likely that this will be the hardest winter most of us have ever experienced. Don’t take out a predatory loan and make it worse.”).

²³⁶ See Karen Jowers, *Why Are so Few Military Families Seeking COVID-Related Financial Help from These Relief Societies?*, MIL. TIMES (May 18, 2020), <https://www.militarytimes.com/pay-benefits/2020/05/18/why-are-so-few-military-families-seeking-covid-related-financial-help-from-these-relief-societies/> (“According to the . . . COVID-19 Military Support Initiative, in the week ending March 31, 37 percent of the 1,234 military spouses who responded had lost the job they held prior to the COVID-19 crisis, had to reduce their hours or were unable to work.”).

²³⁷ See *2019 Navy-Marine Corps Relief Society Year in Review Infographic*, NAVY-MARINE CORPS RELIEF SOCIETY, https://www.nmcrs.org/page/-/Infographic_2019_Financials_14FEB20v2.pdf (last visited Feb. 26, 2022) (showing that in 2019 there was an approximately 2 million dollar difference in inflow funds to the Navy-Marine Corps Relief Society versus outflow funds); see also Scott Maucione, *Military Relief Organizations Bracing for Surge in Requests from Coronavirus*, FED. NEWS NETWORK (Apr. 8, 2020, 6:09 PM), <https://federalnewsnetwork.com/defense-main/2020/04/military-relief-organizations-bracing-for-surge-in-requests-from-coronavirus/> (“[The] Army Emergency Relief, the Air Force Aid Society, Coast Guard Mutual Assistance and the Navy-Marine Corps Relief Society — all of which rely on donations to serve troops — say they have provided assistance to some military families in response to the disease; however, they expect the worst to come.”).

types of creditors for financial help.²³⁸ Although seeking help from lenders is not a problem in itself, economic downturns create great opportunity for predatory lending because a borrower's bargaining power diminishes as the financial burdens pile up.²³⁹ For example, auto loan complaints to the CFPB regarding abusive lending practices have skyrocketed since March 2020, which is when most COVID-19 related shutdowns began.²⁴⁰ Although civilians and military members both face financial hardships during economic downturns, the mission of the United States military puts an additional emphasis on why servicemembers need protection during these challenging times.²⁴¹

Economic strife has tangible effects on national security, and this reality is a critical reason for ensuring the Military Lending Act is made as useful as possible and properly enforced.²⁴² When countries struggle with economic problems or social unrest, war and violence become more

²³⁸ See Peter Nesvold, *The Financial Devastation of COVID-19: Here's How to Help (and Find Help)*, FORBES (Aug. 18, 2020, 2:46 PM), <https://www.forbes.com/sites/peternesvold/2020/08/18/the-financial-devastation-of-covid-19-heres-how-to-help-and-find-help/?sh=117e65fd4f73> (“[T]he financial devastation of the COVID-19 coronavirus continues to compound. Among the collateral damage, the great pandemic of 2020 has created a new category of financially vulnerable Americans — millions of people, once financially secure, who face rapidly dwindling resources and mounting uncertainty about the financial path forward.”).

²³⁹ See Suzanne Martindale, *Opinion: Protections Needed Against Predatory Lenders During COVID-19*, THE MERCURY NEWS (June 11, 2020, 6:10 AM), <https://www.mercurynews.com/2020/06/11/opinion-protections-needed-against-predatory-lenders-during-covid-19/> (“A recent Wall Street Journal investigation uncovered marketing pushes from shady financial firms . . . offering high-cost loans to consumers affected by COVID-19. . . . Unfortunately, some borrowers don't learn until later that they're going to be charged triple-digit interest rates that they cannot afford.”).

²⁴⁰ See Ed Mierzwinski, Lucy Baker, Gideon Weissman, & R.J. Cross, *Auto Loan Complaints Rise: Pandemic Worsens Existing Consumer Problems with Car Buying in CFPB Data*, U.S. PIRG, <https://uspirg.org/feature/usp/auto-loan-complaints-rise> (last visited Jan. 9, 2021) (“From March through July of 2020, consumers submitted more than 2,800 auto loan and lease complaints — more than any other five-month period in the history of the Consumer Complaint Database.”).

²⁴¹ See DEP'T OF DEF., *supra* note 13, at 86–87 (“A service member saddled with debt, fear, and considerable stress, could suddenly find his integrity compromised. His job performance will probably suffer, and he most likely will lose his security clearance and be temporarily removed from his assignment.”).

²⁴² See BUDDIN & DO, *supra* note 3 (explaining how financial issues negatively affect a servicemember's ability to perform his or her job).

likely.²⁴³ From civil wars to full-scale invasions, history has shown that humans begin to act more rashly and are more willing to utilize force when money becomes an issue for a country or its people.²⁴⁴ For this reason, the United States needs to ensure it can maintain military readiness during economic downturns, so the nation can effectively deploy the military as the situation demands.²⁴⁵

To be as effective as possible, the United States military must ensure that its warriors have their personal affairs in order, including their finances, during economic downturns.²⁴⁶ Military readiness is hampered in two ways when servicemembers find themselves in a debt trap or worried about personal finances.²⁴⁷ First, servicemembers can lose their security clearance, normally causing them to lose their job in the military, and personnel loss creates skill gaps and manpower concerns.²⁴⁸ Second, servicemembers can worry about their finances to such an extent that it

²⁴³ See Stephen M. Walt, *Will a Global Depression Trigger Another World War?*, FOREIGNPOLICY.COM (May 13, 2020, 7:57 AM), <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/> (“Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value.”); see also David Kampf, *How COVID-19 Could Increase the Risk of War*, WORLD POL. REV. (June 16, 2020), <https://www.worldpoliticsreview.com/insights/28843/how-covid-19-could-increase-the-risk-of-war> (“[W]idening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade. This assault on open trade and globalization is just one aspect of a decaying liberal international order, which . . . has largely helped to preserve peace between nations since World War II.”).

²⁴⁴ See Walt, *supra* note 243 (explaining how Saddam Hussein’s invasion of Kuwait was a prime example of how a country with an economy in “terrible shape” will wage war to improve its economic outlook); Zoe Marks, *Poverty and Conflict*, GRSDC APPLIED KNOWLEDGE SERVS. (Oct. 2016), <http://bit.ly/2LCooCF> (explaining that poverty increases the chances of civil war and violence, as “[h]igh rates of unemployment and inequality, combined with low levels of education and development, are thought to soften the ground for recruitment and provide motives to fight”).

²⁴⁵ See MORE DOD ACTIONS NEEDED, *supra* note 9 (explaining the “adverse effects” of servicemembers having “serious financial problems,” which affects the individual servicemember and his or her unit).

²⁴⁶ See *id.*

²⁴⁷ See *Debt Holds U.S. Troops Back*, *supra* note 9 (explaining how servicemembers were not able to deploy to Iraq and Afghanistan due to personal finance issues); DEP’T OF DEF., *supra* note 13, at 86–87 (explaining how massive debt and personal finance issue affects a servicemember’s job performance).

²⁴⁸ See *Debt Holds U.S. Troops Back*, *supra* note 9.

tangibly affects their job performance, causing serious repercussions in an occupation that revolves around potential life or death decisions.²⁴⁹ Because ensuring national security is the armed forces' primary mission, servicemembers need the Military Lending Act to help protect them from predatory lenders when they, and the nation as a whole, are financially wounded.²⁵⁰ Otherwise, military members may not be able to faithfully defend their country, which is a disservice to the United States and its citizens.²⁵¹ The Act should continue to be actively enforced and refined to make its provisions as effective as possible, especially during times of financial crisis, because the Act affects the United States' ability to defend its citizens.²⁵²

B. The Military Lending Act Could Pave the Way for a Similar Civilian Solution

Currently, the Military Lending Act only protects active-duty servicemembers and their dependents, but the protections it provides could one day be shared by civilians as well.²⁵³ Some commentators have called for the Act to apply to everyone in the United States.²⁵⁴ All states

²⁴⁹ See DEP'T OF DEF., *supra* note 13, at 86–87.

²⁵⁰ See *Our Story*, U.S. DEPT. OF DEF., <https://www.defense.gov/our-story/> (last visited Feb. 26, 2022) (“The Department of Defense “provide[s] the military forces needed to deter war and ensure our nation’s security.”).

²⁵¹ See MARTIN E. DEMPSEY, AMERICA’S MILITARY - A PROFESSION OF ARMS 3 (2012) (“As we go forward, we must continue to uphold the values that underpin our profession to maintain and enhance the *trust* of those we serve, our civilian leaders in government, and the American people.”).

²⁵² See *generally* Memo from Kraninger to Pelosi, *supra* note 211 (providing an example of how legislation can be modified to ensure the CFPB actively supervises and enforces the Military Lending Act moving forward).

²⁵³ See 10 U.S.C. § 987(a) (explaining that the statute’s provisions only apply to a “covered member of the armed forces or a dependent of such a member”).

²⁵⁴ See Paul E. Kantwill & Christopher L. Peterson, *All Americans Deserve the Same Protection from Predatory Loans That Service Members Have*, MIL. TIMES (Nov. 6, 2019), <https://www.militarytimes.com/opinion/commentary/2019/11/06/more-protection-is-needed-for-service-members-veterans-and-their-families-from-predatory-loans/> (“[A]rmed with bogus statistics, some auto dealers have been lobbying for a new loophole that would allow them to jack up price of auto loans even higher than currently allowed. Instead, of ignoring these efforts to undermine the bipartisan Military Lending Act, Congress should expand it.”); see also Crowell, *supra* note 19 (advocating for the Military Lending Act’s 36% interest cap to be provided to civilians as well).

already have usury laws, but the lack of a federal standard allows each state to set its own protections, some being more lax than others.²⁵⁵ Some believe the federal government should step in and set more hardline lending protections like those seen in the Military Lending Act because of concerns regarding economic downturns, disproportionate effects on minorities, and many Americans living paycheck to paycheck.²⁵⁶ Tabling the debate about whether or not the government should be able to restrict an individual's ability to contract, the Act has potential for determining what usury caps at the federal level could be helpful and effective versus those that could be harmful or arbitrary.²⁵⁷

Numbers dictate why the Military Lending Act is a good avenue for determining which usury caps could benefit civilians and which ones might be too restrictive.²⁵⁸ The small percentage of the nation's population that makes up the military allows the Act to be tested on a smaller population who arguably should be subject to slightly tighter contractual

²⁵⁵ See Bernardo, *supra* note 167 (“More than half of all U.S. states today have usury laws in place, and each dictates its own maximum legal limit.”); *State Interest Rates and Usury Limits: What You Need to Know*, UPCOUNSEL.COM (Aug. 14, 2020), <https://www.upcounsel.com/lectl-state-interest-rates-and-usury-limits> (“Many state’s laws provide that you cannot lend money at an interest rate in excess of a certain statutory maximum. This is a ‘usury limit.’”).

²⁵⁶ See Sara Nelson-Pallmeyer, *Congress Should Cap Interest on Payday Loans*, MINNPOST.COM (Oct. 11, 2019), <https://www.minnpost.com/community-voices/2019/10/congress-should-cap-interest-on-payday-loans/> (“We advocate placing an interest rate cap on payday and other usurious loans while supporting fair and equitable alternatives. . . . Lenders will still be able to lend and earn a profit, but not at the expense of vulnerable borrowers.”); Jenny Enos, *Race, COVID-19, and Payday Loans: How “Race-Neutral” Policies Reproduce Racism*, EVERYDAY SOCIO. (June 22, 2020), <https://www.everydaysociologyblog.com/2020/06/race-covid-19-and-payday-loans-how-race-neutral-policies-reproduce-racism.html> (“Black households were already 2.5 times more likely to have a payday loan than White households in 2016, well before the COVID-19 crisis.”); URIAH KING ET AL., CTR. FOR RESPONSIBLE LENDING, RACE MATTERS: THE CONCENTRATION OF PAYDAY LENDERS IN AFRICAN-AMERICAN NEIGHBORHOODS IN NORTH CAROLINA 2 (2005) (“Our analysis of North Carolina neighborhoods reveals a powerful relationship between the proportion of African-Americans and the concentration of payday lending stores . . .”).

²⁵⁷ See *infra* notes 258–67 and accompanying text.

²⁵⁸ Cf. INST. OF MED., SMALL CLINICAL TRIALS: ISSUES AND CHALLENGES 34 (Charles H. Evans, Jr., & Suzanne T. Ildstad eds., 2001) (explaining the principles behind using a small subgroup for clinical trials in the medical field).

boundaries than the general population.²⁵⁹ As highlighted by the recent clinical trials relating to the COVID-19 vaccine, researchers normally begin experiments on a small subset of a population to gather data, refining the experiment to best observe outputs and draw sensible conclusions.²⁶⁰ This process is common practice because it is easy to modify an experiment in a controlled setting and with an appropriate sample size; thus, if something goes awry, the issue or concern can be more quickly addressed or corrected.²⁶¹

Servicemembers can serve as a beneficial sample size. In 2019, there were approximately 1.35 million active-duty personnel in the United States military.²⁶² In that same year, the United States total population was approximately 328.24 million.²⁶³ These figures indicate that active-duty servicemembers represent approximately 0.41% of the nation's population.²⁶⁴ Servicemembers, therefore, create a small and manageable sample size that provides ample testing ground for American usury laws.

If lending protections become more restrictive than they should be for servicemembers, it is not a lasting error for the nation's usury

²⁵⁹ See Amanda Barroso, *The Changing Profile of the U.S. Military: Smaller in Size, More Diverse, More Women in Leadership*, PEW RSCH. CTR. (Sept. 10, 2019), <https://www.pewresearch.org/fact-tank/2019/09/10/the-changing-profile-of-the-u-s-military/> (explaining how the United States military is becoming smaller and more racially and ethnically diverse than it has been previously).

²⁶⁰ See INST. OF MED., *supra* note 258, at 34 (“In the early phases of clinical trial development, research participants are often selected from a small subgroup of the population in which the intervention might eventually be used. This is done to maximize the chance of observing the specific clinical effects of interest.”).

²⁶¹ See *id.* at 45–46.

²⁶² *Demographics of the U.S. Military*, *supra* note 99 (“[T]here are about 1.3 million active-duty personnel, or less than one-half of 1 percent of the U.S. population.”); see also DEF. MANPOWER DATA CTR., https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp (search in search bar for “Military and Civilian Personnel by Service”; choose “June 2019” hyperlink; then scroll to bottom of Microsoft Excel report to see total number of active-duty servicemembers) (last visited Feb. 18, 2022).

²⁶³ 2019 U.S. Population Estimates Continue to Show the Nation's Growth Is Slowing, U.S. CENSUS BUREAU (Dec. 30, 2019), <https://www.census.gov/newsroom/press-releases/2019/popest-nation.html>.

²⁶⁴ See *Demographics of the U.S. Military*, *supra* note 99.

experiment.²⁶⁵ The military should have tighter contractual boundaries due to national security concerns, but servicemembers also need to be able to utilize lenders when necessary. Thus, if the restrictions of the Military Lending Act become too limiting and must be partially undone, Congress can update the legislation while the small population of active-duty military personnel utilize the service-specific relief outlets to help in the interim if needed.²⁶⁶ Ultimately, in the battle to find the perfect balance in usury law, the men and women of the United States military are prime candidates to be the first in the fight, something they are proudly accustomed to and amply ready for.²⁶⁷

As the Military Lending Act and CFPB evolve over time, legal scholars and legislators should watch closely to see if the Act is a desirable solution for the rest of the nation. Since 2006, observers have been able to see the usefulness and drawbacks of the Act and how the CFPB currently affects the Act's utility.²⁶⁸ State and federal legislators can take the quantitative and qualitative data from the ongoing case study and determine whether it is something to pursue in the civilian sector.²⁶⁹ Because of the important insights the Military Lending Act can provide for American usury law, all interested parties should try to make the Act as effective as possible.²⁷⁰ If after a true concerted effort it becomes clear

²⁶⁵ *But see Why I Hate the Military Lending Act*, *supra* note 162 (“It may seem odd that I would not like legislation that protects military families and improves their financial situation. However, I think this sort of protection creates just as many problems as it solves.”).

²⁶⁶ *See* Kantwill & Peterson, *supra* note 57 (explaining how the service relief societies provide help servicemembers in times of financial crisis or hardship).

²⁶⁷ *See Who Are The Marines?*, U.S. MARINE CORPS, <https://www.marines.com/about-the-marine-corps/who-are-the-marines.html> (last visited Feb. 26, 2022) (“We are first to fight and determined to succeed.”).

²⁶⁸ *See generally* Kantwill & Peterson, *supra* note 57 (explaining the Military Lending Act's history and effectiveness); Cornelius, *supra* note 129 (explaining how the CFPB has affected the Military Lending Act's effectiveness).

²⁶⁹ *See Nevada Updates Military Lending Act Provisions*, BUCKLEY LLP: INFOBYTES BLOG (May 31, 2019), <https://buckleyfirm.com/blog/2019-05-31/nevada-updates-military-lending-act-provisions> (“[T]he Nevada governor signed SB 201, which, among other things, updates existing Nevada law referring to the federal Military Lending Act (MLA)[,] . . . adopt[ing] the MLA by referring generally to the federal law and instead specifically adopts the language of certain MLA provisions . . .”).

²⁷⁰ *See id.* (showing that state legislatures are monitoring the Military Lending Act's effectiveness to see if similar provisions should be adopted at the state level).

that the Act is not helpful or unduly hamstrings lenders and borrowers, there would be tangible data and grounded reasoning for not increasing the protections provided by the Act.²⁷¹ Conversely, if it turns out that the Act is extremely effective and provides reasonable contractual boundaries, legislators could then make an educated and rational decision to establish a civilian version of the Military Lending Act that applies nationally.²⁷² However, the experiment will not render useful results if it is ill-conceived or not taken seriously, hampering future legislation from being truly beneficial.²⁷³ Thus, the Military Lending Act should continue to be analyzed, refined, and reviewed, as it is an important piece of legislation that affects civilians more than most realize.

CONCLUSION

The Military Lending Act has been relatively helpful to servicemembers, but it still has room for improvement. The Act must be refined to be as effective as possible and protect servicemembers from the financial predicaments they commonly find themselves in, such as high interest auto loans, because their financial hardships are so impactful to our nation's military readiness. The criminal punishment for violating the Military Lending Act should significantly deter potential violators, and the CFPB should aggressively and proactively find and penalize those who are violating the Act's provisions. Moreover, the effectiveness of the Act

²⁷¹ See Wendy M. Rogovin, *The Politics of Facts: "The Illusion of Certainty,"* 46 HASTINGS L.J. 1723, 1725 (1995) (explaining that "the United States Supreme Court and several federal courts have newly circumscribed congressional activity" by determining that "legislation must be supported by empirical data").

²⁷² See Megan Leonhardt, *Campaign to Cap Payday Loan Interest Rates at 36% Moves Ahead in Nebraska Even as Federal Measures Remain Stalled*, CNBC: MAKE IT (Jan 12, 2021, 9:40 AM), <https://www.cnbc.com/2020/06/25/bid-to-cap-payday-loan-interest-rates-at-36-percent-moves-ahead-in-nebraska.html> ("The Nebraskans for Responsible Lending coalition . . . announced Thursday they had collected enough signed petitions to get an initiative that would cap the annual interest rate on payday loans at 36% onto the November ballot during the 2020 general election.").

²⁷³ See Robert B. Seidman, *Justifying Legislation: A Pragmatic, Institutional Approach to the Memorandum of Law, Legislative Theory, and Practical Reason*, 29 HARV. J. ON LEGIS. 1, 2 (1992) ("The legislative process requires ideas—ideas both about general policy and about how to transform policy into legislation.").

affects the United States' national security interests and potential usury laws at the state and federal level, so its importance should not be underappreciated.

Marine Corps General and former Secretary of Defense James Mattis stated, "Be the hunter, not the hunted: Never allow your unit to be caught with its guard down."²⁷⁴ The Military Lending Act's measured success is no reason to be complacent. Predatory lenders still lay in wait, trying to ensnare servicemembers into costly debt traps.²⁷⁵ Through the Military Lending Act, the nation must protect the financially hunted from these white collar hunters, as servicemembers protect the United States from foes who threaten much more.

²⁷⁴ *17 Brilliant Insights from Legendary Marine General James Mattis, WE ARE THE MIGHTY* (June 1, 2021, 11:49 PM), <https://www.wearethemighty.com/articles/james-mattis-quotes/>.

²⁷⁵ *See Predatory Lending Warning Signs*, MIL. ONESOURCE (Jan. 28, 2020, 6:43 PM), <https://www.militaryonesource.mil/national-guard/financial-management/predatory-lending-warning-signs/> (warning servicemembers about the threat of predatory lenders and to "[p]rotect yourself and your family").