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Chairman Brown, Ranking Member Toomey, and other distinguished Members of the Committee, thank you for inviting me to speak to you today about the Veterans and Consumers Fair Credit Act. I first got interested in small-dollar, short-term lending over 15 years ago, when I was running a national military program for the Better Business Bureau. The payday lending industry, which was in its infancy in the 1980s, had exploded by the 1990s, and by the early 2000s it was hard to ignore the fact that payday loans shops were popping up everywhere – to include large numbers of them in military towns.

Two college professors, Chris Peterson and Steven Graves, published an academic study in 2005 of the geographic distribution of payday loan stores across the United States – and found a disproportionate number of them to be gathered outside the gates of military bases "like bears at a trout stream."[1] And the impact that was having on the troops' finances was becoming a military readiness issue – you can't deploy if you're in a financial quagmire, loaded up with multiple payday loans that you can't repay.[2] Some military personnel were literally spending their paydays running from loan shop to loan shop, using what little money they had to pay fees to roll their loans over for another two weeks before starting the whole process again.

The National Defense Authorization Act (NDAA) of Fiscal Year 2006 required the Department of Defense (DoD) to report on the issue of predatory lending to the military. DoD's report concluded that even "with the amount of outreach and

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[1] Graves, Steven M. and Peterson, Christopher L., "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns," Ohio State Law Journal, Volume 66, p. 653, 2005, website: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=694141,

[2] Bynum, Russ, "Military Declares War on Payday Lenders," LA Times, Dec 21, 2003, website: https://www.latimes.com/archives/la-xpm-2003-dec-21-adna-troopspay21-story.html,.

education currently being conducted by the Military Services and through partner organizations, there are hundreds of thousands of Service members using predatory loan products….predatory lending to Service members is best prevented by clear enforceable limitations that can be verified by financial regulators and understood by borrowers. Self regulation, fine print, opt-out provisions and cosmetic 'protections' are not effective."[3]

Congress's answer to DoD's plea was the Military Lending Act of 2006 (MLA), which capped small-dollar, short-term loans to active-duty military and their dependents at a Military Annual Percentage Rate (MAPR) of 36 percent. The MAPR was broader than a simple annual percentage rate (APR) calculation in order to block off work-arounds that lenders had already developed in states that had interest-rate caps, such as: adding various processing fees to the loan; requiring the purchase of expensive loan insurance; and sometimes requiring the purchase of extra products, as well. Some of those products even included an internet service contract or mandatory purchases from a catalog associated with the business. I remember driving by an old abandoned service station out in the country near Fort Bragg, North Carolina in 2001, and wondering why it had a hand-lettered sign out front that said: Catalog Store. Answer: it was a payday lender's attempt to disguise its business in response to North Carolina's 2001 payday lending law.

While it was great to see the MLA enacted in 2006, DoD had a short amount of time to implement it, and so chose to focus on what they considered the three most harmful products: (1) closed-end payday loans with terms of 91 days or fewer and for $2,000 or less; (2) closed-end auto title loans with terms of 181 days or fewer; and (3) closed-end tax refund anticipation loans. While the 2007 MLA Rule largely worked when it came to those three specific products, it didn't take lenders long to figure out that the Rule would be fairly easy to evade. For example, since auto title loans were defined as loans of 181 days or less, lenders simply had to make their loans 182 days and they were not covered by the law. Similarly, payday loans were defined as loans of 91 days or less, so – not

[3] Department of Defense, "Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents," Washington DC, August 3, 2006, website: https://archive.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf

surprisingly – lenders made their payday loans for a slightly longer term in order to escape coverage.

A Consumer Financial Protection Bureau (CFPB) report in 2014 detailed some egregious examples of legal loans that were designed to fall outside of MLA protections, to include: an installment loan to a servicemember in Texas with a 584.72 percent APR, where the borrower of $485 was required to pay $1,428.28 over a period of just less than six months; and an auto title loan in Illinois to the spouse of a servicemember for a 12-month term at an APR of 300 percent (the $2,575 loan, including a $95 lien fee, carried a finance charge of $5,720.24).[4]

There also was no specific guidance as to who would actually enforce the MLA - which meant that, effectively, nobody did, allowing lenders who chose to flout the law to do so with impunity. So Congress through the 2013 NDAA made several amendments to the MLA, to include establishing that MLA enforcement authority would go to those Federal agencies that were already charged with enforcing the Truth in Lending Act. It also directed DoD to review the 2007 Rule with a view toward revising and improving it. The DoD MLA Rule of 2015 extended MLA coverage to almost all forms of consumer credit, with just a few exceptions, and closed off the loopholes that had been exploited by lenders.[5][6]

I still remember the furious opposition from the payday lending industry in response to the proposed DoD rule. They submitted multiple comments on the Advance Notice of Proposed Rulemaking indicating that they were unwilling to lend at anything close to 36% APR and predicting dire financial outcomes for servicemembers who would no longer have access to their valuable services. According to them the MLA changes would spell disaster for large numbers of

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[4] Consumer Financial Protection Bureau Report: "The Extension of High-Cost Credit to Servicemembers and their Families," December 2014, website: https://files.consumerfinance.gov/f/201412_cfpb_the-extension-of-high-cost-credit-to-servicemembers-and-their-families.pdf

[5] Department of Defense, 32 CFR Part 232 "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; Final Rule," Federal Register Vol. 80 Number 140, July 22, 2015, website: https://www.govinfo.gov/content/pkg/FR-2015-07-22/pdf/2015-17480.pdf

[6] Consumer Financial Protection Bureau factsheet, "What is the Military Lending Act and What Are My Rights?," April 2018, website: https://files.consumerfinance.gov/f/documents/cfpb_military-lending-act-know-your-rights_handout.pdf

military families, who would be cast into financial ruin through the lack of short-term credit offerings. But did that happen?

Per the DoD, as evidenced in a report they just published last month in response to a request in the 2021 NDAA, the answer appears to be "no." [7] I'll let the report speak for itself: "The Department believes the MLA is currently working as intended and that Service members continue to have ample access to necessary credit. Survey results generally reflect decreased use of high-cost credit products and improved financial condition among Service members over time." "In issuing its 2015 regulations, the Department recognized that some lenders may choose to no longer offer some of the now-broader scope of credit products to covered borrowers, while others may amend their terms and conditions to apply. Nevertheless, the Department believed such a step was necessary to protect Service members and their families and that they would still have adequate access to credit. Several years after the implementation of those regulations, these borrowers continue to enjoy access to compliant credit products to meet their needs. They also have access to no-cost loans or grants from military aid societies that can address a number of financial needs."

I also took a look at the annual reports of two military aid societies – Army Emergency Relief (AER) and the Navy-Marine Corps Relief Society (NMCRS) – for the last eight years to see if they had experienced a big surge in aid applicants or in the amount of financial aid they granted, which could be indicators of post-MLA financial distress. AER stated in its 2015 report[8] that it had given an average of $77 million in assistance annually since 2008. Rather than increasing since then, that number was reported as $70 million or less per year in 2016 through 2020, and the number of aid recipients served annually has not risen, declining from a high of 54,000 in 2013 to 40,000 in 2019.

The NMCRS annual reports show that their highest annual amount of financial aid was given in 2013 and 2014 ($48.5 million each of those years), with a steady

[7] Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness, "Report on the Military Lending Act and the Effects of High Interest Rates on Readiness," May 2021, website: https://finred.usalearning.gov/assets/downloads/FINRED-MLA_ReportEffectsHighInterestRatesOnReadiness-May2021.pdf

[8] https://www.armyemergencyrelief.org/resource/2015-annual-report/

decline each year since, down to $43.4 million in 2018. The number of aid applicants/recipients annually has also declined steadily, from a high of over 65,000 in 2013 to 51,085 in 2018. Certainly none of their reported statistics show a large increase in requests for aid after MLA implementation. When NMCRS President Admiral Steve Abbot (US Navy, Retired) testified before this committee almost 10 years ago, he spotlighted the success of the MLA at that time, as evidenced by the fact that NMCRS's annual assistance specifically to those stuck in what he called "the payday loan trap" went from a high of $1.4 million in 2006 to just $168K in 2011.[9] He expressed a desire that the provisions of the MLA be extended to retirees and veterans, which you are, of course, contemplating today.

And there is no evidence that I can find that military personnel have turned to loan sharks or the Mob for loans since the MLA took effect – another prediction from the lending industry. Instead they seem to have done what many borrowers have done in states that banned payday lending: found other sources for the money (family, non-profits, credit unions with low-interest, short-term loans, etc.); worked out a delayed payment schedule with their creditors; or decided not to borrow, after all.

Since you are now considering a nationwide interest-rate cap on lending for all Americans, I'd like to talk a bit about the states' efforts in that area. I've already mentioned North Carolina's decision 20 years ago to ban payday lending in their state. There was a very interesting study by the University of North Carolina in 2007 that supported that decision. It concluded that "the absence of storefront payday lending has not made a significant impact on credit availability in North Carolina. The vast majority of households surveyed report being completely unaffected by the ban. We found that households have an array of options they use to manage financial shortfalls, and the absence of a single option – in this case, payday lending, has impacted only a few. For those impacted, over twice as

[9] Testimony of Admiral Steve Abbot, USN (Ret) President, Navy-Marine Corps Relief Society Before the Senate Committee On Banking, Housing and Urban Affairs November 3, 2011, website: https://www.banking.senate.gov/imo/media/doc/AbbotTestimony11311.pdf

many report that the absence of payday lending has had a positive effect on their household rather than a negative one."[10]

Since 2001, 17 other states and the District of Columbia have followed North Carolina's lead with strong protections against payday lending. Most recently, in November 2020 an extraordinary 83% of Nebraska voters approved a ballot measure putting a 36% APR limit on payday loans in their state.[11] And on March 23, 2021, the governor of Illinois signed The Predatory Loan Prevention Act,[12] which was modeled on the Military Lending Act. The Act cited the fact that Illinois families were paying over $500,000,000 per year in consumer installment, payday, and title loan fees, with an average APR of 297%.

It's worth noting that the sky-high interest rates that continue to be charged in those states which have not opted to limit payday loans certainly were not favored by the respondents to a national poll conducted by The Pew Trusts in 2017, where 70% of those surveyed were in favor of more regulation of payday loans. [13]

Short-term, high-interest lenders often portray themselves as good Samaritans offering a helping hand to those who need it during an emergency, but in reality their business is all about offering easy access to credit to anyone with a pay stub and a checking account, regardless of their ability to repay. The last time I went to Fort Campbell Army Post before implementation of the 2015 MLA Rule, I counted an astounding 22 fast-cash lenders in a four-mile stretch on the road from Gate 1 down to Clarksville, Tennessee. Does anyone think all 22 of them were there because their owners were good Samaritans who had rushed to set up outside

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[10] Ratcliffe, Janneke and Manturuk, Kim R., "North Carolina Consumers After Payday Lending: Attitudes and Experiences with Credit Options," University of North Carolina Center for Community Capital, November 2007, website: https://communitycapital.unc.edu/wp-content/uploads/sites/340/2007/11/NC_After_Payday.pdf

[11] Leonhardt, Megan, "Nebraska becomes the latest state to cap payday loan interest rates," CNBC.com, Nov 4, 2020, website: https://www.cnbc.com/2020/11/04/nebraska-becomes-the-latest-state-to-cap-payday-loan-interest-rates.html

[12] Predatory Loan Prevention Act, State of Illinois, March 23, 2021, website: https://www.ilga.gov/legislation/101/SB/PDF/10100SB1792ham003.pdf

[13] The Pew Charitable Trusts, "Americans Want Payday Loan Reform, Support Lower-Cost Bank Loans – Results of a nationally representative survey of U.S. adults," April 19, 2017, website: https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/americans-want-payday-loan-reform-support-lower-cost-bank-loans

Fort Campbell in order to extend a helping hand to the soldiers stationed there? Of course not. They were there because they saw an opportunity to make money by offering instant, easy and expensive loans. And make money they did, under the theory of "if you build it they will come."

I also remember some of the direct-mail solicitations that came to mailboxes at Fort Belvoir, Virginia when I was living there in 2005. They didn't talk about help for emergencies. Instead it was: "Need money for Christmas?"; "Need money for Easter?"; and, my personal favorite: "Don't be the only person at the bachelor party without cash!!" Although I'm sure some people borrow from short-term lenders because of an emergency car repair or family illness, many of them borrow for less compelling reasons and then find themselves trapped in a cycle of debt when they cannot repay on time.

So many of the "testimonials" sent to the CFPB from payday loan customers when the Bureau was looking at payday lending began with the words: "They gave me cash…" That statement always disturbed me because the lenders weren't giving away cash! They were loaning it to those customers at a very high interest rate – and counting on them not being able to pay it back two weeks later. The business model that has made payday lenders rich is having customers pay fees repeatedly to rent the same money over and over again. A CFPB study in 2013 that looked at payday lending over a 12-month period through data on more than 15 million storefront payday loans found that the average payday loan borrower was indebted 199 days per year – certainly not the 2-week period that's advertised! Nearly half of the payday borrowers in the study had more than 10 transactions a year, while 14 percent had 20 or more. For the majority of payday borrowers, new loans were most frequently taken on the same day a previous loan closed, or shortly thereafter.[14]

Now with the introduction of the Veterans and Consumers Fair Credit Act some of you and your colleagues are asking: Why can't we do for all Americans what we're doing for active-duty military and their families? Don't veterans, military retirees, surviving spouses, and all other Americans deserve to be protected from

[14] Consumer Financial Protection Bureau, "Payday Loans and Deposit Advance Products," April 24, 2013, website: https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf

a predatory lending model that charges outrageous interest rates and ensnares them in a debt trap? In 2019 I worked on a bill – the HAVEN Act – that assisted veterans to protect their disability pensions in bankruptcy, and one of the things that I learned doing research for that bill is that veterans are more likely to declare bankruptcy than the general population[15] – so yes, they do need protection from high-interest loans whose costs would eat away at their limited finances. And so do many of their fellow Americans.

I should add that veterans have a higher suicide rate than the general population, too, and financial stress is known as a major contributing factor in suicide. There is research on the topic of suicide specifically as it relates to payday lending. One academic study found that gaining access to payday loans increased suicide attempts by 10%.[16] Another academic study, using the National Center for Health Statistics Multiple Cause of Death Files from 1999-2016, found that the converse can also be statistically shown: in states that banned payday lending, fatal suicide and drug overdose rates significantly decreased relative to those in states that had not banned payday lending. The author found that payday lending bans led to a reduction of 2.1% in suicides and 8.9% in fatal drug overdoses.[17]

I know the lenders can afford to hire the best talent to come to the Hill and persuade you that their products are helpful, not harmful. But I hope you'll listen to the non-profits that work on consumer financial well-being, too. Ask the faith leaders in your state how they feel about the issue. Many of them will tell you of the terrible struggles of members of their congregation ensnared by short-term debt products. And, although it may embarrass them to admit it, some of your constituents will tell you directly how they have been impacted, too. If we judge by the 83 percent of Nebraska voters who chose last year to outlaw payday lending, or the 70 percent of respondents in the national Pew study who supported more regulation of the payday lending industry, you may well find that

[15] Fisher, Jonathan, "Who Files for Personal Bankruptcy in the United States?" Stanford University Center for Economic Studies 17-54, September, 2017, website: https://www2.census.gov/ces/wp/2017/CES-WP-17-54.pdf
[16] Lee, Jaeyoon, "Credit Access and Household Well-being:
Evidence from Payday Lending," University of Chicago, October 9, 2017, website: http://www.apjfs.org/resource/global/cafm/2017_DSC2_3.pdf
[17]Lu, Thanh, "The Effect of Payday Lending Restrictions on Suicide and Fatal Poisonings," Temple University, March 23, 2020.

a large majority of the voters in your state have a decided opinion about high-interest, short-term lending that runs directly counter to the message you're hearing from the lending industry today.

If people truly used payday loans in the way they're touted, as a way to borrow money briefly for a couple of weeks in an emergency, we wouldn't be here having this conversation. But they don't. Many borrowers are using payday loans to cover ordinary living expenses or even discretionary spending, not unexpected emergencies. And as the CFPB study showed, the average borrower pays repeatedly to rent the same money, month after month, for over half the year.

There are so many better ways to borrow money: a credit card, a bank or credit union loan, family, a relief society. It's time for Congress to extend to all Americans the protections that they gave to the military that have worked so well, and set reasonable loan rates of 36% or less that will provide those who need credit a true helping hand and loans that they have the chance to pay off successfully.