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THE HIGH COST OF LOW SUPERVISION: HOW SERVICEMEMBERS WILL INEVITABLY PAY FOR THE CFPB'S REACTIVE APPROACH TO THE MILITARY LENDING ACT

*"The last thing you want is a young sailor programming
a Tomahawk missile in the Persian Gulf who is worrying
about whether his car is being repossessed back home."*

Chalker W. Brown, Retired Navy Captain ¹

I. INTRODUCTION

When one considers the stressors military members endure, thoughts often turn to the prospect of being deployed and the constant background threat of combat.² However, it is not uncommon to encounter a servicemember who is also shouldering the growing weight of payday loan debt.³ Following up on military complaints of abusive lending practices, the Department of Defense ("DOD") released a landmark report that brought to light the severity of the payday lending market.⁴ Not only were lenders found to be knowingly exploiting military members because of their unique characteristics, but the DOD also discovered that lenders were threatening servicemembers' livelihoods by stating they would report their debts to commanding officers.⁵ This kind of threat carried the potential consequence of losing a security clearance and possibly being discharged from the military.⁶

1. See Diana B. Henriques, *Seeking Quick Loans, Soldiers Race into High-Interest Traps*, N.Y. TIMES (Dec. 7, 2004), <https://www.nytimes.com/2004/12/07/business/seeking-quick-loans-soldiers-race-into-highinterest-traps.html> (providing this quote from Captain Brown).

2. See generally Maj Pflanz & Scott Sonnek, *Work Stress in the Military: Prevalence, Causes, and Relationship to Emotional Health*, 167 MIL. MED. 877, 878 (2002) (presenting information about occupational stressors impacting servicemembers).

3. See DEP'T OF DEFENSE, REPORT ON PREDATORY LENDING PRACTICES DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS 10-15 (2006), http://archive.defense.gov/pubs/pdfs/report_to_congress_final.pdf (reporting on the widespread use of payday loans by military members).

4. *Id.*

5. *Id.* at 42.

6. See *id.* at 42-43 ("Some had experienced disciplinary action as a result of their attempt to solve financial difficulties through predatory loans. The extent of the disciplinary

Servicemembers should not have to navigate the lending industry on top of the sacrifices they have already made to serve our country. To explore the variables creating this problem and then analyze reactive federal actions, this Note proceeds in five parts. Part II provides background information about payday loans and their relationship with the military.⁷ Within this background, there is also a review of the Military Lending Act (“MLA”) and a discussion about whether authority to regulate MLA compliance was granted to the Consumer Financial Protection Bureau (“CFPB”). Part III illustrates the CFPB’s move under the Trump Administration from a proactive approach, where monitoring and supervising MLA compliance was considered part of the Bureau’s powers, to a reactive approach, where there is no longer an agreement about this previous authority.⁸ Part IV argues that the CFPB’s reactive approach will diminish the effectiveness of the MLA, increase abusive and deceptive practices, and subsequently harm servicemembers.⁹ Part V concludes by determining that the CFPB should continue authority over the MLA compliance as a practical matter to safeguard the military from predatory lending.¹⁰ In light of the CFPB currently maintaining a reactive approach, this section also recommends that the states pick up where the Bureau leaves off to mitigate the targeting of military members.

II. PREDATORY LENDING AND THE MILITARY

A. *The Burden of Payday Loans*

Payday lenders regularly promote their short-term loans as a convenient and quick way for consumers to bridge the gap between an unexpected expense and their next paycheck.¹¹ Consider an individual who needs to borrow a small sum of \$200. The borrower can walk into any payday lender storefront, like Veterans First Financial Services,¹² and

action went from letters of reprimand and non-judicial punishment, to loss of promotions and separation from the military.”).

7. See *infra* Part II.

8. See *infra* Part III.

9. See *infra* Part IV.

10. See *infra* Part V.

11. See Bart J. Wilson et al., *An Experimental Analysis of the Demand for Payday Loans*, 10 BE J. OF ECON. ANALYSIS & POL’Y (2010) (providing an in-depth empirical overview of the positive and negative consequences that flow from payday loans).

12. See STEVE TRIPOLI & AMY MIX, NAT’L CONSUMER LAW CTR., IN HARM’S WAY—AT HOME: CONSUMER SCAMS AND THE DIRECT TARGETING OF AMERICA’S MILITARY AND VETERANS 25 (2003) (“The Internet home page of Veterans First Financial Services features

receive the loan on the spot.¹³ This transaction routinely involves the individual post-dating a check two weeks out for the full amount of the credit, plus any fees and interest.¹⁴ Easy enough. However, the convenience of this fast cash is often outweighed by a significant cost to the consumer.¹⁵

The servicemember who merely wanted to borrow \$200, and perhaps pay some low fees and interest, will often end up in a debt trap because of the payday loan advancement.¹⁶ These short-term lenders have been documented to impose annual rates as high as 780%.¹⁷ When the borrower's next check is unable to cover the growing cost of the first debt, oftentimes the borrower will be trapped into rolling over another loan.¹⁸ Not surprisingly, payday loan borrowers typically take on five or more loans per year once they are caught in this trap.¹⁹ This predatory and cyclic relationship between lender and borrower places the consumers in a financial situation where they cannot stay afloat.²⁰

In 2006, the DOD released a report highlighting the vulnerability of the military population to payday lending.²¹ This study revealed many variables that make servicemembers especially attractive to predatory lenders.²² For example, individuals frequently enlist at a young age,

an undulating American flag, and at the top an eye-grabbing, full-color display of military insignias in motion across the screen. A three-part message flashes over those insignias: 'You've worked hard—invest your money the way YOU want—If you're a retired veteran, VFFS, Inc., can help!'').

13. *See id.* at 12 (describing how a servicemember can obtain a payday loan with relative ease).

14. *Id.* at 40.

15. *See* DEP'T OF DEFENSE, *supra* note 3, at 5 (discussing an example where an Air Force member borrowed \$500 and fell into a debt trap where she ended up owing \$12,750 after multiple debt rollovers).

16. *See* DEP'T OF DEFENSE, *supra* note 3, at 14 ("Borrowers become trapped in repeat borrowing or renewals of loans in order to keep the check used to obtain the loan from bouncing, a key reason that payday loans are debt traps.').

17. Henriques, *supra* note 1 (stating that some lenders around military bases have been shown to charge rates as high as 780%).

18. *See* OZLEM TANIK, CTR. FOR RESPONSIBLE LENDING, PAYDAY LENDERS TARGET THE MILITARY: EVIDENCE LIES IN INDUSTRY'S OWN DATA 2 (2005) (providing an example of how a borrower often needs to roll over an old loan into a new loan in order to pay mounting fees and interest).

19. *See* KEITH ERNEST, JOHN FARRIS & URIAH KING, CTR. FOR RESPONSIBLE LENDING, QUANTIFYING THE ECONOMIC COSTS OF PREDATORY PAYDAY LENDING 2 (2004) ("Ninety-one percent of all payday loans are made to borrowers with five or more payday loans per year.').

20. *See* Henriques, *supra* note 1 (explaining how the short-term loan fees kept taking large chunk of the military couple's paycheck, requiring them to borrow more debt).

21. DEP'T OF DEFENSE, *supra* note 3.

22. *See* DEP'T OF DEFENSE, *supra* note 3, at 4 (listing characteristics that lenders have in common for preying on the military).

before they have had much financial responsibility.²³ Upon enlistment, they receive a steady paycheck from the government.²⁴ Even when the economy ebbs, lenders can rely on these consistent checks that rarely waver.²⁵ Additionally, servicemembers are subject to regular location changes which can put a strain on finances when spouses have to seek new employment.²⁶ Factors like these, coupled with a strict military culture of financial responsibility, can place a burden on servicemembers that encourages them to take out quick loans in times of financial struggle.²⁷

B. The Military Lending Act and the Consumer Financial Protection Bureau

In 2006, Congress passed the MLA to combat the issues presented by the DOD's 2006 study.²⁸ A vital provision of the MLA is that servicemembers and their immediate family members cannot be charged annualized interest rates that exceed 36%.²⁹ This requirement is especially notable for short-term payday loans because this special military annualized rate includes all additional fees.³⁰ Since most payday loans earn a considerably higher interest rate, servicemembers are no longer

23. See DEP'T OF DEFENSE, *supra* note 3, at 4 ("Predatory lenders seek out young and financially inexperienced borrowers . . .").

24. See DEP'T OF DEFENSE, *supra* note 3, at 10 (suggesting that lenders often target servicemembers because of their financial inexperience combined with their steady jobs).

25. See DEP'T OF DEFENSE, *supra* note 3, at 4 ("They are paid regularly and are not likely to be downsized, outsource, or quit their employment.").

26. See James Hosek & Shelley MacDermid Wadsworth, *Economic Conditions of Military Families*, THE FUTURE OF CHILDREN 41, 41 (2013) ("[T]he military requires service members to move frequently, spouses' careers are regularly interrupted, and employers are hesitant to offer them jobs that require a large investment in training or a long learning curve.").

27. See DEP'T OF DEFENSE, DIRECTIVE 1344.9, INDEBTEDNESS OF MILITARY PERSONNEL 2 (2003), https://biotech.law.lsu.edu/blaw/dodd/corres/pdf/d13449_102794/d13449p.pdf (stating under the policy servicemembers are to pay their debts in a "proper and timely manner").

28. See CONSUMER FIN. PROT. BUREAU, CFPB LAWS AND REGULATIONS, MILITARY LENDING ACT 1 (2016), https://files.consumerfinance.gov/f/documents/092016_cfpb_MLAExamManualUpdate.pdf [hereinafter CFPB MLA LAWS AND REGULATIONS] (describing the intent behind the Military Lending Act).

29. 10 U.S.C. § 987(b) (2012).

30. 10 U.S.C. § 987(i)(4) (2012) (defining "annual percentage rate"); see also CONSUMER FIN. PROT. BUREAU, CFPB LAYS OUT GUIDELINES FOR PROTECTING SERVICEMEMBERS IN THE PAYDAY LENDING MARKET (2013), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-lays-out-guidelines-for-protecting-servicemembers-in-the-payday-lending-market/> [hereinafter CFPB GUIDELINES] ("Payday lenders must cap the APR – which incorporates all fees and costs associated with the loan – at 36 percent when lending to servicemembers.").

considered an attractive target for predatory lenders as long as there is a way to enforce the MLA regulations.³¹

Following the devastating impacts of the 2008 financial crisis, Congress responded with the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”).³² Dodd-Frank enacted the CFPB to supervise and enforce consumer financial laws.³³ Specifically, the statute says that the CFPB “shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”³⁴ Within the CFPB’s authority is also the ability to penalize non-bank financial institutions, like payday lenders, that engage in “unfair, deceptive, or abusive acts or practices.”³⁵ Before Dodd-Frank, no single federal agency had the sole responsibility for managing consumer risk.³⁶

Dodd-Frank also confirms that the Bureau can administer periodic exams for “(a) assessing compliance with the requirements of Federal consumer law; (b) obtaining information about the activities and compliance systems or procedures of such person; and (c) detecting and assessing risks to consumers and to markets for consumer financial products and services.”³⁷ It is important to note, however, that Dodd-Frank did not explicitly require the CFPB to ensure financial institutions adherence to MLA regulations.³⁸ In fact, Dodd-Frank does not address the

31. See CFPB GUIDELINES, *supra* note 30 (listing ways in which the CFPB will curb predatory lending practices used frequently with military members).

32. See RAJ DATE, CONSUMER FIN. PROT. BUREAU, LESSONS LEARNED FROM THE FINANCIAL CRISIS: THE NEED FOR THE CFPB (2011), <https://www.consumerfinance.gov/about-us/newsroom/lessons-learned-from-the-financial-crisis-the-need-for-the-cfpb/> (explaining how Dodd-Frank changed the realm of consumer risk monitoring).

33. Dodd-Frank Wall Street Reform & Consumer Protection Act (“Dodd-Frank”) § 1021(a), 12 U.S.C. § 5511(a) (2012) (stating the CFPB’s purpose); see also CONSUMER FIN. PROT. BUREAU, CONSUMER FINANCE TOOLKIT FOR LAW SCHOOL CLINICS (2014) (providing information that explains the supervisory role of the CFPB).

34. Dodd-Frank § 1021(a), 12 U.S.C. § 5511(a).

35. Dodd-Frank § 1031, 12 U.S.C. § 5531; see also Joshua L. Roquemore, Note, *The CFPB’s Ambiguous “Abusive” Standard*, 22 N.C. BANKING INST. 191, 191–208 (2018) (exploring CFPB’s role in challenging abusive acts by financial institutions).

36. See Kelly T. Cochran, *The CFPB at Five Years: Beyond the Numbers*, 21 N.C. BANKING INST. 55, 55–56 (2017) (explaining how the CFPB was formed for the focused need of regulating consumer financial risk); see also DATE, *supra* note 32 (“Prior to the crisis, no single agency had effective tools to regulate and oversee the whole consumer finance market, and consumer protection was not anyone’s top priority.”).

37. Dodd-Frank § 1024, 12 U.S.C. § 5514(b).

38. *Id.*

MLA at all.³⁹ Nevertheless, Dodd-Frank did establish the Office of Service Member Affairs (“OSA”), which is incorporated within the CFPB.⁴⁰ As a result, it seems practical that OSA, and therefore the CFPB, take on the duty of examining payday lenders for MLA compliance to meet the goal of helping servicemembers through unique financial challenges.⁴¹ In 2013, the MLA was amended further to grant enforcement authority to specified agencies in the Truth in Lending Act, one of which was the CFPB.⁴² Following this amendment, the Bureau interpreted the meaning of enforcement to permit periodic examinations of financial institutions for MLA compliance.⁴³

III. RECENT DEVELOPMENTS ON THE INTERPRETATION OF CFPB’S AUTHORITY

A. *The CFPB’s Shift from Proactive to Reactive Enforcement*

In July 2013, Richard Cordray became the first director of the CFPB, following his appointment to the position in January 2012.⁴⁴ Cordray’s interpretation of the CFPB’s authority was one of proactive supervision to safeguard consumers.⁴⁵ One of the first steps he took was prioritizing payday lenders as a risky non-bank to supervise.⁴⁶ He expressed understanding towards consumers who utilized lending services and cautiously acknowledged there could be appropriate times for a small

39. *Id.*

40. Dodd-Frank § 1013, 12 U.S.C. § 5493(3).

41. See HOLLY PETRAEUS, CONSUMER FIN. PROT. BUREAU, BEHIND THE NUMBERS: SERVICEMEMBERS COMPLAINTS (2014), <https://www.consumerfinance.gov/about-us/blog/behind-the-numbers-servicemember-complaints/> (“[O]ur job is to keep an eye on the consumer financial issues causing servicemembers, veterans, and military families to come to us for help.”).

42. See CFPB MLA LAWS AND REGULATIONS, *supra* note 28, at 2 (discussing statutory amendments to the MLA in 2013).

43. See *Bureau Reportedly Stepping Away from MLA Oversight*, NAFCU (Aug. 14, 2018), <https://www.nafcu.org/newsroom/bureau-reportedly-stepping-away-mla-oversight> (describing how examinations of lenders were regularly performed by the Bureau).

44. See Cochran, *supra* note 36, at 2 (“Richard Cordray was confirmed by the Senate as the Bureau’s first director on July 16, 2013 . . .”).

45. See Cochran, *supra* note 36 (noting the supervisory role the CFPB took on following the agency’s formation).

46. See RICHARD CORDRAY, CONSUMER FIN. PROT. BUREAU, DIRECTOR RICHARD CORDRAY REMARKS AT THE PAYDAY FIELD HEARING (2014), <https://www.consumerfinance.gov/about-us/newsroom/director-richard-cordray-remarks-at-the-payday-field-hearing/> (“In January 2012, we added payday lenders to our program of supervising financial institutions. It was, in fact, one of the first things we did after I took over as the Director of the Consumer Bureau.”).

loan, such as an unanticipated trip to the hospital.⁴⁷ However, the CFPB observed that payday loans were overwhelmingly luring consumers into debt traps rather than being used as a short-term emergency solution.⁴⁸ The Bureau unearthed that one payday lender, Ace Cash, had training manuals that even highlighted how consumers would inevitably fall into this debt cycle.⁴⁹ Cordray advocated that this predatory behavior needed to be proactively managed through periodic supervisory examinations to keep consumers from entrapment.⁵⁰

In an additional effort to protect particularly vulnerable populations, Cordray created dedicated offices for servicemembers, the elderly, students, and low-income individuals.⁵¹ Most notable here is the OSA, which works alongside the DOD to supervise military financial practices.⁵² When the OSA began accepting complaints in 2013, military-specific issues quickly outnumbered other categories of complaints received by the CFPB.⁵³ Within those complaints by servicemembers, debt collection rose to the top.⁵⁴

With the CFPB acting as one of the primary watchdogs for MLA compliance, the Bureau found as a whole servicemembers were in debt about \$5 million in a one-year span paying off the fees and interest of their short-term loans.⁵⁵ Additionally, CFPB investigations uncovered a

47. *See id.* (reporting on times when a consumer is “in a pinch” and may need to take out a short-term loan).

48. *See id.* (“We found that too often payday consumers are getting caught in a revolving door of debt.”).

49. *See* CONSUMER FIN. PROT. BUREAU, CFPB TAKES ACTION AGAINST ACE CASH EXPRESS FOR PUSHING PAYDAY BORROWERS INTO CYCLE OF DEBT (2014), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-ace-cash-express-for-pushing-payday-borrowers-into-cycle-of-debt/> (discussing the steps shown in the payday lender’s training manual to persuade the consumer to take on more debt) [hereinafter CFPB TAKES ACTION].

50. *See* CORDRAY, *supra* note 46 (illustrating ways the Bureau’s supervisory work has worked to halt predatory lending).

51. *See* Cochran, *supra* note 36, at 6 (providing more detail about the four offices).

52. *See* Cochran, *supra* note 36, at 7 (“The Office of Servicemember Affairs also works closely with the Department of Defense and several other federal agencies on a broad range of activities concerning servicemembers, guard and reserve members, and veterans, as well as engaging in a number of Bureau education initiatives and assisting the Office of Consumer Response and Office of Enforcement in monitoring complaints.”).

53. *See* HOLLY PETRAEUS, CONSUMER FIN. PROT. BUREAU, ARE UNPAID DEBTS A MILITARY CAREER-KILLER? (2015), <https://www.consumerfinance.gov/about-us/blog/are-unpaid-debts-a-military-career-killer/> (reporting that complaints by servicemembers and their families have largely outgrown other categories of complaints).

54. *Id.* (stating that within military complaints, debt collection issues were frequent).

55. *See* CONSUMER FIN. PROT. BUREAU, CFPB REPORT FINDS LOOPHOLES IN MILITARY LENDING ACT RULE UP COSTS FOR SERVICEMEMBERS (2014) (“Servicemembers paid about \$5

number of lending violations from lending to servicemembers.⁵⁶ For example, in 2013, Cash America was fined for acts such as exceeding the 36% annualized rate cap for military individuals and engaging in robo-signing where borrowers were not given the opportunity to adequately review critical legal documents.⁵⁷ Perhaps one of the more intriguing discoveries from the CFPB's supervisory investigation was that Cash America intentionally destroyed incriminating records before the arrival of the CFPB review team.⁵⁸ After this suit, Cordray stated at a Payday Field Hearing that the penalty imposed on Cash America was intended to be a message to all lenders that they could no longer skirt compliance.⁵⁹

In October 2017, following these discoveries of intentional predatory practices, the CFPB announced a payday lending rule ("Payday Rule") to provide even more safeguards against consumer harm.⁶⁰ Provided in this rule is the "full-payment" test.⁶¹ Under this test, lenders must first determine if the borrower can pay off the loan while also maintaining life's necessities.⁶² The CFPB stated that this rule came into fruition following years of research on borrowing behavior and determining which variables needed the most oversight to reduce risk.⁶³ The Payday Rule was set to take effect in August 2019.⁶⁴

million in fees for these products.") [hereinafter CONSUMER FIN. PROT. BUREAU FINDS LOOPHOLES].

56. *Id.* (reporting on lending violations).

57. *See* CONSUMER FIN. PROT. BUREAU, CONSUMER FINANCIAL PROTECTION BUREAU TAKES ACTION AGAINST PAYDAY LENDER FOR ROBO-SIGNING (2013), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-takes-action-against-payday-lender-for-robo-signing/> ("Robo-signing generally refers to a practice where important documents that require careful review and a signature from a knowledgeable individual are instead signed by someone else, a machine, or by someone who does not follow appropriate procedures.").

58. *Id.* (reporting that Cash America was fined \$19 million for destroying records prior to the Bureau's examination).

59. *See* CORDRAY, *supra* note 46 (stating the Bureau will continue to research the payday lending industry and close loopholes as needed).

60. *See* CONSUMER FIN. PROT. BUREAU, CFPB FINALIZES RULE TO STOP PAYDAY DEBT TRAPS (2017), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps/> (explaining how a stronger payday rule will put an end to debt traps).

61. *Id.* (detailing how the full-payment test works).

62. *Id.* ("Lenders are required to determine whether the borrower can afford the loan payments and still meet basic living expenses and major financial obligations.").

63. *Id.* (stating what the Bureau has discovered through its proactive supervision of payday lenders).

64. *Id.* ("The rule takes effect 21 months after it is published in the Federal Register . . .").

Cordray resigned in November 2017 to run for Governor of Ohio.⁶⁵ Within a few hours of Cordray's resignation, President Trump appointed Mick Mulvaney, the Director of the Office of Management and Budget, as the acting CFPB director.⁶⁶ Mulvaney quickly made it publicly known that he did not agree with the CFPB's proactive approach to consumer protection.⁶⁷ Instead, he stated that the CFPB was overstepping the authority it was given in Dodd-Frank.⁶⁸ In agreement with this reactive approach, Mulvaney announced that the Bureau would look at revising the Payday Rule, calling it "overreaching."⁶⁹

After releasing his statements reconsidering the Payday Rule, the CFPB began dropping a number of pending lawsuits against predatory lenders.⁷⁰ One of the cases the CFPB considered needless was the suit against Golden Valley Lending.⁷¹ This high-profile case alleged that Golden Valley had been charging consumers upwards of 950% interest rates on short-term loans.⁷² The CFPB also dropped its case against World Acceptance Corporation.⁷³ The allegations in that case state that the lender was intentionally trying to trap borrowers into a debt cycle to

65. See Renae Merle, *The CFPB Now Has Two Acting Directors. And Nobody Knows Which One Should Lead the Federal Agency*, THE WASH. POST (Nov. 24, 2017), https://www.washingtonpost.com/news/business/wp/2017/11/24/the-cfpb-now-has-two-acting-directors-and-nobody-knows-which-one-should-lead-the-federal-agency/?utm_term=.7f4878b0399c (providing Cordray's resignation date).

66. *Id.*

67. See Glenn Thrush, *Mulvaney, Watchdog Bureau's Leader, Advises Bankers on Ways to Curtail Agency*, N.Y. TIMES (Apr. 24, 2018), <https://www.nytimes.com/2018/04/24/us/mulvaney-consumer-financial-protection-bureau.html> (reporting on ways Mulvaney has reigned in the Bureau's power to eliminate proactive measures).

68. See Chris Arnold, *Trump Administration Plans to Defang Consumer Protection Watchdog*, NPR (Feb. 12, 2018), <https://www.npr.org/2018/02/12/584980698/trump-administration-to-defang-consumer-protection-watchdog> ("In a message accompanying the plan for the years 2018 through 2022, Mulvaney wrote, 'we have committed to fulfill the Bureau's statutory responsibilities but go no further.'").

69. See Yuka Hayashi, *CFPB to Reconsider Obama-Era Payday-Lending Rule*, WALL ST. J. (Jan. 16, 2018), <https://www.wsj.com/articles/cfpb-to-reconsider-obama-era-payday-lending-rule-1516137329> (reporting on why Mulvaney thinks the payday lending rule needs to be revised).

70. See Ian McKendry, *Payback: Dems Give CFPB's Mulvaney the Cordray Treatment*, AM. BANKER, Feb. 13, 2018 (reporting on dropped lawsuits against multiple payday lenders).

71. *Id.* (naming Golden Valley Lending as one of the payday lenders involved in the dropped lawsuits by Mulvaney).

72. *Id.* ("Golden Valley — which is said to have made loans with interest rates as high as 950% a year . . .").

73. See Kate Berry, *CFPB Drops Probe into Lender That Gave to Mulvaney's Campaigns*, AM. BANKER, Jan. 23, 2018 ("World Acceptance Corp., based in Greenville, S.C., said in a press release Tuesday that it had received a letter from the consumer agency 'indicating the investigation into the company's marketing and lending practices has been completed.'").

acquire an additional profit.⁷⁴ While the CFPB concluded there was no need to pursue an enforcement action against World Acceptance, the Bureau's action raised speculation about its motivation, especially considering the fact that World Acceptance had donated to Mulvaney's past political campaign.⁷⁵

In August 2018, Mulvaney announced that the CFPB would suspend periodic supervisory exams related to MLA violations as another overstep of authority from Dodd-Frank.⁷⁶ Despite this change in interpretation of the Bureau's authority, Mulvaney maintained that he urged Congress to pass a measure in order for the CFPB to resume examinations.⁷⁷ This suggests that Mulvaney does want to protect servicemembers against financial struggles; however, he notably criticized Cordray for being too aggressive with MLA regulations despite concerns from military advocate groups that the MLA needs to be strengthened even more.⁷⁸ These supervisory examinations, administered under Cordray, returned an estimated \$130 million in relief to servicemembers and their families.⁷⁹

IV. THE CFPB NEEDS TO MAINTAIN A PROACTIVE APPROACH TO MLA COMPLIANCE

A. *Under a Reactive Approach, the Intended Effect of MLA Regulations Will Be Weakened*

Without supervision and examination, it is unlikely that payday lenders will proactively choose to abide by the MLA regulations that they

74. *See id.* (stating that the probe was initiated after reports that the lender was trying to profit from "repeat borrowers").

75. *Id.* ("The decision immediately drew criticism from consumer advocates, who charged that acting CFPB Director Mick Mulvaney, who is from South Carolina, had received at least \$4,500 from World Acceptance's political action committee when he was a lawmaker.").

76. *See* Glenn Thrush, *Mulvaney Looks to Weaken Oversight of Military Lending*, N.Y. TIMES (Aug. 10, 2018), <https://www.nytimes.com/2018/08/10/us/politics/mulvaney-military-lending.html> (reporting that Mulvaney contends that the Bureau can only go as far as the law allows).

77. *Id.* ("Mr. Mulvaney is urging Congress to quickly pass a measure that would give him the power to resume supervisory examinations . . .").

78. *Id.* ("The proposal surprised advocates for military families, who have urged the government to use its powers to crack down harder on unscrupulous lenders.").

79. *Id.* ("[T]he consumer agency has returned more than \$130 million to service members, veterans and their families . . .").

had been actively fighting during Cordray's time at the CFPB.⁸⁰ The payday lending industry is a large and lucrative business, with estimated loans of \$46 billion per year and \$7 billion in fees per year.⁸¹ Unsurprisingly, the payday lending industry has spent millions on lobbying groups and political campaigns that help their bottom line.⁸² For instance, payday lenders often criticized the CFPB under Cordray, saying that the heightened restrictions would eventually create "credit deserts" for consumers.⁸³ An advocate for payday lending further stated that over forty million Americans utilize short-term payday loans as their only source of credit.⁸⁴ This statement, however, just highlights the importance of ensuring that lenders are not abusing a vast number of consumers with their deceptive lending practices.⁸⁵

As previously discussed with the CFPB dropping a lawsuit against World Acceptance Corporation, it is important to also recognize that this payday lender donated over \$60,000 to Mulvaney's past congressional campaigns.⁸⁶ While the amount may seem low in the grand scheme of political funds, it is worth noting that Mulvaney stated that he gives priority in scheduling meetings to those who have contributed to his endeavors.⁸⁷ Some are concerned that because Mulvaney took these

80. See Renae Merle, *I Have Not Burned the Place Down': Trump Appointee Defends His Leadership of Consumer Watchdog*, THE WASH. POST (Apr. 11, 2018), https://www.washingtonpost.com/news/business/wp/2018/04/11/mick-mulvaney-to-defend-leadership-of-consumer-watchdog-before-house-committee/?utm_term=.079df0499f73 (providing statements from opponents who stress that the payday industry will not "snap into full compliance").

81. See Stacy Cowley, *Payday Lending Faces Tough New Restrictions by Consumer Agency*, N.Y. TIMES (Oct. 5, 2017), <https://www.nytimes.com/2017/10/05/business/payday-loans-cfpb.html> ("The operators of those stores make around \$46 billion a year in loans, collecting \$7 billion in fees.").

82. See Blake Ellis & Melanie Hicken, *Payday Lenders Throw Millions at Powerful Politicians to Get Their Way*, CNN MONEY (Dec. 18, 2014), <https://money.cnn.com/2014/12/18/pf/payday-lenders-contributions/index.html> (discussing the ties between payday lenders and political campaigns).

83. See Cowley, *supra* note 81 ("The new restrictions 'will create credit deserts for many Americans who do not have access to traditional banking,' said Edward D' Alessio, the executive director of Financial Service Centers of America, an industry trade group.").

84. See Sabri Ben-Achour & Jana Kasperkevic, *Payday Loan Business Facing Tougher Rules*, MARKETPLACE (Oct. 5, 2017), <https://www.marketplace.org/2017/10/05/your-money/payday-loans-regulation> ("Forty million Americans rely on small dollar loans to make ends meet," said Trent Duffy, a spokesman for the Community Financial Services Association.").

85. See *generally* CORDRAY, *supra* note 46 (discussing the effects of predatory lending on consumers).

86. See Thrush, *supra* note 67 (stating that Mulvaney received \$63,000 from payday lenders).

87. See Thrush, *supra* note 67 ("If you're a lobbyist who never gave us money, I didn't talk to you. If you're a lobbyist who gave us money, I might talk to you.").

campaign contributions from payday lenders when he was running for Congress, he may be more inclined to continue to ease payday lending restrictions.⁸⁸

Especially troubling is what effect these past donations will have on servicemembers who have been regularly exploited by these lenders.⁸⁹ By rolling back the MLA supervision, it is almost certain that a large number of payday lenders will exploit loopholes or fail to comply with the MLA, as they have demonstrated in the past.⁹⁰ Military advocacy groups have illustrated how if there is any “wobble-room,” lenders will find it.⁹¹ For example, the first iteration of the MLA did not include loans that had terms longer than 91 days.⁹² Lenders easily adjusted their lending contracts to the lengthen the loan period for higher profit yield.⁹³ In another instance, Ohio lenders restructured under the guise of “mortgage lenders” to circumvent compliance with regulations.⁹⁴ These actions undermine the intention Congress had in passing the MLA to safeguard the military.⁹⁵

B. The Reactive Approach Increases Financial Harm to the Military

When Mulvaney announced that the CFPB would no longer conduct supervisory exams for MLA compliance, forty-nine Senators

88. See Thrush, *supra* note 67 (reporting on concerns about Mulvaney’s intention with the CFPB when he was the acting CFPB director).

89. See CONSUMER FIN. PROT. BUREAU FINDS LOOPHOLES, *supra* note 55 (discussing how lenders have exploited MLA loopholes to take advantage of military members).

90. See CONSUMER FIN. PROT. BUREAU FINDS LOOPHOLES, *supra* note 55 (providing examples on how creditors have gotten around previous payday rules).

91. See Jeff Guo, *Many States Have Cracked Down on Payday Loans. Here’s How Lenders Still Get Away with It*, THE WASH. POST (Feb. 9, 2015), https://www.washingtonpost.com/blogs/govbeat/wp/2015/02/09/many-states-have-cracked-down-on-payday-loans-heres-how-lenders-still-get-away-with-it/?utm_term=.267d6f566925 (“If there’s any wiggle room, if there’s a license that allows you to continue doing what you were doing, then lenders will gravitate to that,” explained Tom Feltner of the Consumer Federation of America, a watchdog group.”).

92. See CONSUMER FIN. PROT. BUREAU FINDS LOOPHOLES, *supra* note 55 (illustrating that the current rules do not cover loans greater than 91 days).

93. See CONSUMER FIN. PROT. BUREAU FINDS LOOPHOLES, *supra* note 55 (explaining how easily lenders can circumvent the previous MLA restrictions).

94. See Guo, *supra* note 91 (providing an example where lenders find holes in the MLA for increased profit).

95. See CFPB GUIDELINES, *supra* note 30 (asserting that Congress passed the MLA to protect the financial well-being of servicemembers); see also FDIC COMPLIANCE EXAMINATION MANUAL, <https://www.fdic.gov/regulations/compliance/manual/complianceexaminationmanual.pdf>.

directed a letter to the CFPB analogizing the reactive approach to the Armed Forces no longer using radar technology.⁹⁶ In agreement, retired Army Colonel and former assistant director for OSA, Paul Kantwill, warned that reactive enforcement comes around when “the harm has already occurred.”⁹⁷ That is, once the CFPB reacts to a consumer’s complaint, the borrower is likely already trapped in a debt cycle that is negatively impacting their life in a number of ways.⁹⁸

Not only is financial fitness drilled into military culture, the Uniform Code of Military Justice explicitly details how incurring large amounts of debt is considered a military offense.⁹⁹ Failure to pay down debts can negatively impact a servicemember’s credit score, which can result in the loss of a security clearance.¹⁰⁰ Overwhelming debt is one of the most common reasons why a servicemember’s clearance is revoked.¹⁰¹ When this happens, the individual then has to be shuffled around into other jobs.¹⁰² Consequently, the economic issues of servicemembers directly affects the readiness of the military.¹⁰³ If a servicemember’s financial problem becomes too significant, the individual can be ultimately discharged from the military.¹⁰⁴ As stipulated in the 2006

96. See Evan Weinberger, *Senate Dems Blast CFPB Changes to Military Lending Supervision*, 30 BANKING REP. (BNA) No. 33 (Aug. 23, 2018) (reporting on the letter sent to Mulvaney).

97. *Id.*

98. *Id.*

99. See DEP’T OF DEFENSE, *supra* note 3, at 14 (“Military borrowers are required to maintain bank accounts in order to receive direct deposit of military pay and are subject to the Uniform Code of Military Justice that penalizes deliberately writing a check not covered by funds on deposit.”).

100. See PETRAEUS, *supra* note 53 (explaining that negative information on a credit report can result in a servicemember’s security clearance being pulled).

101. See Gideon Weissman & Ed Mierzewski, *Protecting Those Who Serve: How the CFPB Safeguards Military Members and Veterans from Abuse in the Financial Marketplace*, U.S. PUB. INT. RESEARCH GROUP, at 9 (June 2017), <https://uspig.org/reports/usp/protecting-those-who-serve> (“Negative information on credit reports can result in reduced military clearance levels, important for a military career.”).

102. *Id.* (“Former Navy Master Chief Petty Officer Terry Scott has said, ‘the number one reason our sailors are forced from one job to another is because they lose their security clearance . . . and the number one reason they lose their security clearance is because of financial difficulties.’”).

103. See *id.* (discussing how the Pentagon has consistently stated the need for financial well-being to maintain military readiness).

104. See DEP’T OF DEFENSE, *supra* note 3, at 64 (“[M]ilitary personnel that do not meet their financial commitments may be subjected to confinement, clearance, court martial, transfer, or even discharge.”).

DOD report, this immense pressure is precisely what predatory lenders prey on.¹⁰⁵

More recently in 2012, a study found that servicemembers were significantly more likely to use non-bank borrowing in a five-year span compared to their civilian counterparts.¹⁰⁶ As previously discussed, there are variables like young age, financial inexperience, and frequent location changes that set-up the military to be a susceptible population for predatory lending.¹⁰⁷ The Wounded Warrior Project also observed that a particular subset of veterans who suffer from mental illness following their time in the service are especially vulnerable to payday lending.¹⁰⁸ These are all factors that are largely out of a servicemember's control.¹⁰⁹ Beyond that, however, there are deceptive abusive lending practices to exploit those characteristics that will likely flourish given the CFPB proposition of minimal regulatory supervision.¹¹⁰

In a way, payday lenders play “good cop, bad cop” when targeting servicemembers. When acting as a good cop, they project an image that they are a “friend” of the military despite no evidence to suggest this is accurate.¹¹¹ For example, the CFPB discovered a payday lender using official logos of the Department of Veterans Affairs on its advertisements.¹¹² In other promotions, a payday lender also included photographs

105. See DEP'T OF DEFENSE, *supra* note 3, at 64 (reporting on military characteristics lenders exploit).

106. See Weissman & Mierzwinski, *supra* note 101, at 8 (reporting 35% vs. 30%).

107. DEP'T OF DEFENSE, *supra* note 3.

108. See Weissman & Mierzwinski, *supra* note 101, at 10 (“According to the Wounded Warrior Project, scammers target veterans for a few reasons: guaranteed government income, veterans’ willingness to trust companies representing themselves as friends of the military, and, in some cases, physical and mental problems that veterans may have developed during their service.”).

109. See DEP'T OF DEFENSE, *supra* note 3, at 64 (reporting on military characteristics that servicemembers do not have control over).

110. See TRIPOLI & MIX, *supra* note 12 (illustrating the prolific number of payday lenders and the measures that take to target the military).

111. See generally Jessica Silver-Greenberg & Peter Eavis, *Service Members Left Vulnerable to Payday Loans*, N.Y. TIMES (Nov. 21, 2013), <https://dealbook.nytimes.com/2013/11/21/service-members-left-vulnerable-to-payday-loans/> (reporting on ways payday lenders try to tailor their business to appear like they are associated with the military).

112. See CONSUMER FIN. PROT. BUREAU, CFPB TAKES ACTION AGAINST MORTGAGE LENDER FOR DECEPTIVE ADVERTISING (2015), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-mortgage-lender-for-deceptive-advertising/> (“The company’s typical advertisement for VA mortgages featured the Department of Veterans Affairs seal and logo at the top of the page and described its loan products as part of a ‘distinctive program offered by the U.S. government.’”).

of men and women dressed in military uniform.¹¹³ Similarly, another payday lender stated in a publication, “[m]ost of our loan specialists are former military personnel who have been in your shoes.”¹¹⁴ Another way lenders have promoted this military affiliation is through the naming of their storefronts.¹¹⁵ Stores such as “Force One Lending Inc.,” “Pioneer Military Lending,” and “Veterans First Financial Services” are ubiquitous around military bases.¹¹⁶ These examples illustrate some of the ways that payday lenders create an image as the good guys who are simply lending a hand to servicemembers.¹¹⁷

Once lenders have trapped individuals into a debt cycle, they switch over to a bad cop role and aggressively remind servicemembers of their financial responsibilities.¹¹⁸ The CFPB discovered that payday lenders would threaten to report unpaid debts to the borrower’s military superiors.¹¹⁹ Even though lenders are barred from calling commanding officers by the Fair Debt Collection Practices Act, there are numerous reported complaints of them threatening this exact tactic.¹²⁰ This fear of reprimand is often enough to pressure a servicemember into taking on another loan to pay down a previous debt.¹²¹ Another instance found a payday lender, Ace Cash Express, using legal jargon to intimidate military borrowers into rolling over loans.¹²² Without supervision by the CFPB, payday lenders may abuse their lending practices under the

113. See Silver-Greenberg & Eavis, *supra* note 111 (explaining how predatory lenders use advertising to target servicemembers).

114. See Silver-Greenberg & Eavis, *supra* note 111 (“‘We know the military because we are former military,’ Omni says on its website. ‘Most of our loan specialists are former military personnel who have been in your shoes.’”).

115. See TRIPOLI & MIX, *supra* note 12, at 17 (listing payday lenders with military sounding names).

116. See Henriques, *supra* note 1 (providing the example where Camp Pendleton’s zip code has more payday lenders than any other zip code in CA).

117. See TRIPOLI & MIX, *supra* note 12, at 17–19 (providing more discussion of perceived military affiliations).

118. See DEP’T OF DEFENSE, *supra* note 3, at 10 (explaining how lenders have used military financial culture to threaten servicemembers).

119. See PETRAEUS, *supra* note 53 (“[W]e received reports that some debt collectors are threatening servicemembers by claiming that they will report unpaid debt to their commanding officer.”).

120. 15 U.S.C. § 1692 (2012); see also PETRAEUS, *supra* note 53 (reminding that debt collectors don’t have the authority to contact your security clearance manager about debts).

121. See Silver-Greenberg & Eavis, *supra* note 111 (“The service members said they were told that if they fell behind, the lenders would go to their commanding officers.”).

122. See CFPB TAKES ACTION, *supra* note 49 (“Collectors would use legal jargon in calls to consumers, such as telling a consumer he could be subject to ‘immediate proceedings based on the law’ even though ACE did not actually sue consumers or attempt to bring criminal charges against them for non-payment of debts.”).

assumption that the servicemember is not likely to file a complaint with the CFPB given their predicament.¹²³

V. RECOMMENDATION & CONCLUSION

Although there is a debate about whether the CFPB has authority to perform supervisory examinations for MLA compliance, the Bureau should revert back to the proactive approach based on its working relationship with the DOD and the positive strides that the Bureau has made in protecting servicemembers from predatory payday lenders.¹²⁴ However, in December 2018, the Senate confirmed Kathleen Kraninger as the new director of the CFPB, and she is likely to continue with the current reactive approach to regulation.¹²⁵ When interviewed about the CFPB's weakened surveillance at her initial confirmation hearing, Kraninger maintained that she did not disagree with any of Mulvaney's policies to date.¹²⁶ In the event that the reactive approach is here to stay for some time, it is then up to the states to protect their citizens from predatory practices.¹²⁷

In an effort to mitigate consumer financial risk, states have already looked to strengthen their state lending policies.¹²⁸ For instance, in late 2018, South Dakota's ballot on lending regulation was approved to enforce an interest rate cap where the state previously had no restrictions.¹²⁹ Additionally, in Colorado, an initiative on the ballot for November 2018 aimed to thwart interest rates that exceeded 36%, conveniently falling in line with the MLA regulation.¹³⁰ However, there is

123. DEP'T OF DEFENSE, *supra* note 3, at 10.

124. See Kate Berry, *Pentagon, Others Baffled by CFPB Plan to Cease Military Lending Exams*, AM. BANKER, Oct. 11, 2018 ("To roll back a series of well-thought-out protections allows for the potential of great harm to military members that cannot be remedied by enforcement and regulations later on.").

125. See Emily Sullivan, *Senate Confirms Kathy Kraninger as CFPB Director*, NPR (Dec. 6, 2018), <https://www.npr.org/2018/12/06/673222706/senate-confirms-kathy-kraninger-as-cfpb-director> (reporting on Kraninger's confirmation).

126. See Ailsa Chang, *Senate Banking Committee Approves CFPB Nominee Kathleen Kraninger*, NPR (Aug. 23, 2018), <https://www.npr.org/2018/08/23/641359610/senate-banking-committee-approves-cfpb-nominee-kathleen-kraninger> (discussing how Kraninger supports "curbing CFPB's powers").

127. See Lalita Clozel, *States Preparing to Pick up Slack if CFPB Backs Down*, AM. BANKER, Aug. 31, 2017 (explaining how states are bolstering their oversight of financial institutions).

128. *Id.*

129. *Id.* (discussing South Dakota's ballot approval).

130. See Brian Eason, *Payday Loans Have Average Interest Rates of 129% in Colorado. A Ballot Measure Proposes Capping Them*, THE DENVER POST (Feb. 21, 2018),

concern about what returns will come from these strengthened policies.¹³¹ For example, one state restricted how many loans an individual could borrow within a specific time period.¹³² Facially, this seemed like a solution to address lenders who intentionally profit from borrowers rolling over loans in a short period of time.¹³³ Unfortunately, as soon as the restricted time period elapsed, the borrowers then took out a loan to cover previous debts, only this time the loans were larger with higher interest rates.¹³⁴ As previously discussed, this kind of behavior has already been recognized where payday lenders have intentionally looked for ways to circumvent MLA regulations to target servicemembers.¹³⁵ While these state level policies may help to restrict abusive practices of predatory lenders, the past has shown there still needs to be proactive monitoring to determine when loopholes are being exploited.¹³⁶

Even before Cordray's departure from the Bureau, states were recognizing the need to take on supervisory authority given the Trump administration's criticism of the agency's approach.¹³⁷ Aligned with their concerns, a number of states took it upon themselves to create "mini-CFPBs."¹³⁸ In these states, their attorneys general allocate time and

<https://www.denverpost.com/2018/02/21/payday-lenders-colorado-interest-rate-limits/> ("A ballot initiative filed this month with the Colorado secretary of state's office would cap the annual interest rates for payday loans at 36% — a dramatic reduction from the 129 % such lenders charge on average now."); *see also* LAUREN SAUNDERS, NAT'L CONSUMER LAW CTR., WHY 36%? THE HISTORY, USE, AND PURPOSE OF THE 36% INTEREST RATE CAP (2013), <https://www.nclc.org/images/pdf/pr-reports/why36pct.pdf> ("A 36% rate gives lenders an incentive to offer longer term loans with a more affordable structure and to avoid making loans that borrowers cannot afford to repay.").

131. *See* CORDRAY, *supra* note 46 (providing examples of state policies and subsequent reactions by lenders).

132. CORDRAY, *supra* note 46.

133. *See* CORDRAY, *supra* note 46 (illustrating how the pitfalls some state policies experience when the lender recognizes a way to go around the law).

134. *See* CORDRAY, *supra* note 46 ("[T]his tells us that even if state law precludes consumers from taking out another payday loan immediately, the pressure of their circumstances — now intensified by the heavy expense of the payday loan itself — tends to force consumers to find their way back to the payday lender about as soon as the law permits.").

135. *See* CONSUMER FIN. PROT. BUREAU FINDS LOOPHOLES, *supra* note 55 (discussing how lenders have exploited MLA loopholes to take advantage of military members).

136. CORDRAY, *supra* note 46.

137. *See* Chris Bruce, *States Flexing Enforcement Muscle on Prospect of CFPB Pullback*, 109 BANKING REP. (BNA) No. 9 (Sept. 6, 2017) (explaining why states decided there was a need to provide more resources to monitor consumer financial risk); *see also* Kate Berry, *Can State AGs Really Serve as 'Mini CFPBs'?*, AM. BANKER, Aug. 20, 2018 ("Some states, meanwhile, already ramped up their financial consumer protection efforts before President Trump came to office.").

138. *See* Berry, *supra* note 137 (reporting on whether states have the ability to fill in the Bureau's gaps on consumer issues); *see also* Clozel, *supra* note 127 ("The consumer

resources to make monitoring of financial laws a priority.¹³⁹ For example, in Pennsylvania, the attorney general specifically recruited a consumer protection attorney to head the state's Consumer Financial Protection Unit.¹⁴⁰ Maryland has also created a dedicated unit for these consumer issues and is expected to budget \$1.2 million for this office.¹⁴¹ An established mini-CFPB is a place where states could readily incorporate and codify the importance of MLA regulation for their citizens.¹⁴² This would be especially important for states that have a large military population.¹⁴³ For instance, in Virginia's mini-CFPB, the attorney general has illustrated in news releases the priority of ensuring that servicemembers are safeguarded from predatory lending even if the supervision has been weakened within the CFPB.¹⁴⁴ Hopefully the work of these offices will draw attention to the need for consumer risk monitoring at the federal level.¹⁴⁵ After all, there are some actions that the state simply cannot take on due to a limited budget and resources.¹⁴⁶

If the CFPB continues with the reactive approach, military personnel serving our country will suffer harm before there are any

protection fight has become particularly resonant under the Trump administration, as many advocates fear that once CFPB Director Richard Cordray leaves the new leader will dial back the CFPB's activities.”).

139. See Berry, *supra* note 137 (“The AGs sent Mulvaney a letter in December warning the Trump administration appointee that they stood ready to ramp up efforts if the CFPB let down its guard.”).

140. See Bruce, *supra* note 137 (“Attorney General Josh Shapiro in July unveiled a new Consumer Financial Protection Unit to give Pennsylvania consumers more protection and tapped Nicholas Smyth, a CFPB veteran, to head the new office.”); see also Clozel, *supra* note 127 (stating that the Pennsylvania unit will make a priority to focus on the four dedicated offices established in the Bureau – seniors, students, low income, and servicemembers).

141. See Berry, *supra* note 137 (“Maryland has created a new Financial Consumer Protection Commission chaired by Gary Gensler, a former Goldman Sachs executive and head of the Commodity Futures Trading Commission in the Obama administration. The state legislature is expected to set aside \$1.2 million to create 10 positions for the unit.”).

142. Berry, *supra* note 137.

143. See generally TRIPOLI & MIX, *supra* note 12 (illustrating the importance of protecting military members from predatory lenders).

144. See Berry, *supra* note 137 (“In 2015, Virginia Attorney General Mark Herring created a special unit targeting predatory lenders. Virginia has doubled the number of attorneys focused specifically on consumer protection to ten from five and added eighteen additional personnel including dispute resolution specialists and paralegals.”).

145. See Berry, *supra* note 137 (illustrating how the states can provide a lot of help in this area but there still needs to be a strong federal supervision of this kind of financial risk).

146. See Berry, *supra* note 137 (“But the states also are less likely to take action against companies for violations of fair-lending laws or disparate impact, which are resource-intensive, require expensive statistical analysis and could lead to more litigation.”).

enforcement measures brought against lenders.¹⁴⁷ Based on considerable research by the DOD and additional studies by other groups, there is no doubt that servicemembers will be one of the most significantly affected populations due to this lack of supervision.¹⁴⁸ While it does not appear that the Bureau will be returning to the proactive approach in the near future, states are wise not to wait around for a different administration to potentially change course.¹⁴⁹ Now is the time for states to be strengthening their lending policies and restricting predatory lenders.¹⁵⁰ Furthermore, even if the CFPB does return to the proactive approach, establishing mini-CFPBs at the state level may be what is necessary to provide the ultimate protection.¹⁵¹ Those payday lenders who set up shop in droves around military bases¹⁵² may be more cautious about their daily transactions if they know there is a ground-level supervisory team surveilling them for potential violations.¹⁵³

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147. See Weinberger, *supra* note 96 (discussing how a reactive response comes too late in regard to the individual's financial harm).

148. See DEP'T OF DEFENSE, *supra* note 3, at 5 (providing information on why the military targeted by payday lenders); see also TRIPOLI & MIX, *supra* note 12 (more explanation on military financial harm).

149. See Berry, *supra* note 137 (discussing the changes states have made in reaction to the CFPB's new approach for lenders).

150. See generally Berry, *supra* note 137 (illustrating how states are proactively bolstering their predatory lending regulations).

151. See Berry, *supra* note 137 (discussing the strengths of mini-CFPBs).

152. 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 (2005) ("Payday lenders crowd around the gates of military bases like bears on a trout stream.").

153. See generally *id.* (discussing how lender violations flourish when there is a lack of supervision).