Bureau of Consumer Financial Protection
1700 G Street NW
Washington, D.C. 20552

March 8, 2019

The Honorable Jack Reed
Ranking Member
Senate Armed Services Committee
United States Senate
228 Russell Senate Building,
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Ranking Member Reed and Ranking Member Brown,

Thank you for your letter of March 5, 2019 regarding the Military Lending Act (MLA). The Consumer Financial Protection Bureau is committed to the financial well-being of America's servicemembers, and that commitment includes ensuring that lenders subject to our jurisdiction comply with the MLA. That is why it is so important that Congress explicitly grant the Bureau authority to supervise for compliance with the MLA, to relieve any uncertainty about the Bureau's authority and allow us to ensure that servicemembers and their families are afforded the full protections of the MLA.

My predecessor, Acting Director Mulvaney, concluded that he did not believe that the Dodd-Frank Wall Street Reform and Consumer Protection Act can be properly read to allow the Bureau to exercise its supervisory authority with respect to the MLA. As he explained, such an expansive reading of the statute would undermine Congress's careful delineation of the statutes for which the Bureau was to assess compliance in its examinations and other supervisory activities. I share his view. I have attached here for your review a summary of the legal analysis that has been performed on this topic, and that informed my decision as well as the decisions of my predecessors. As you know, when Congress created the Bureau in 2010, it did not give it the authority to supervise for compliance with the MLA. And, in 2013, when Congress amended the MLA, it explicitly gave the Bureau enforcement authority, but not supervisory authority.

This is why I submitted a legislative proposal to Congress on January 17, 2019 to explicitly grant the Bureau authority to supervise for compliance with the MLA. The requested authority would complement the work the Bureau currently does to enforce the MLA. I have included my legislative proposal with this letter for your consideration. I would be grateful for your support and assistance in advancing legislation through the Senate to address this important issue.

Should you have any questions about this response, please do not hesitate to contact me or have your staff contact Matthew Pippin in the Bureau's Office of Legislative Affairs. Mr. Pippin can be reached at (202) 435-7552.

Sincerely,

Kathleen L. Kraninger
Director

Enclosures

cc: The Honorable Tammy Baldwin
The Honorable Michael Bennet
The Honorable Richard Blumenthal
The Honorable Cory Booker
The Honorable Maria Cantwell
The Honorable Ben Cardin
The Honorable Tom Carper
The Honorable Bob Casey
The Honorable Chris Coons
The Honorable Catherine Cortez Masto
The Honorable Tammy Duckworth
The Honorable Dick Durbin
The Honorable Diane Feinstein
The Honorable Kirsten Gillibrand
The Honorable Kamala Harris
The Honorable Maggie Hassan
The Honorable Martin Heinrich
The Honorable Mazie Hirono

The Honorable Doug Jones
The Honorable Tim Kaine
The Honorable Angus King
The Honorable Amy Klobuchar
The Honorable Patrick Leahy
The Honorable Joe Manchin
The Honorable Ed Markey
The Honorable Bob Menendez
The Honorable Jeff Merkley
The Honorable Chris Murphy
The Honorable Patty Murray
The Honorable Gary Peters
The Honorable Jacky Rosen
The Honorable Bernie Sanders
The Honorable Brian Schatz
The Honorable Chuck Schumer
The Honorable Jeanne Shaheen
The Honorable Kyrsten Sinema
The Honorable Tina Smith
The Honorable Debbie Stabenow
The Honorable Jon Tester
The Honorable Tom Udall
The Honorable Chris Van Hollen
The Honorable Mark Warner
The Honorable Elizabeth Warren
The Honorable Sheldon Whitehouse
The Honorable Ron Wyden

Addendum

The Bureau first considered its authorities with respect to the MLA following the passage of the National Defense Authorization Act for FY 2013 (NDAA), which granted the Bureau the authority to enforce the MLA.[1] However, the NDAA did not grant explicit authority for the Bureau to exercise its supervisory authority with respect to the MLA.[2] The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) defines the Bureau's supervision authority in sections 1024(b)(1) (relating to nondepository institutions) and 1025(b)(1) (relating to large depository institutions and credit unions and their affiliates).[3] Under subparagraph (A) of both sections, the Bureau is authorized to assess compliance with "Federal consumer financial law." The MLA is not a "Federal consumer financial law," as that term is defined in the DFA section 1002(14), and the relevant amendments to the MLA did not define the MLA as a Federal consumer financial law, or specify that it should be treated as such. Accordingly, there has never been any question that the Bureau lacks authority to "assess compliance with the requirements of" the MLA under those subparagraphs.

Because the 2013 amendments did not explicitly grant the Bureau supervisory authority with respect to the MLA, and because the MLA is not a Federal consumer financial law within the meaning of the DFA, if the Bureau has the authority to supervise for MLA compliance, that

---

[1] Pub. L. 112-239, title VI, § 662(b), Jan. 2, 2013, 126 Stat. 1632, codified at 10 U.S.C. § 987(f)(6).

[2] The Bureau's supervisory authority is distinct from its enforcement authority under the Bureau's organic statute, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The nature and scope of the Bureau's supervisory authorities are generally established in subtitle B of Title X, and the nature and scope of its enforcement authorities in subtitle E. The scope of the Bureau's enforcement power is broader than that of its supervisory power in various respects. For instance, the Bureau may enforce the law against, but may not supervise, non-depository financial institutions that are not: mortgage originators, brokers, or servicers; larger participants, as defined by Bureau rule, in a market for consumer financial products or services (such as consumer debt collection); originators of private student loans; payday lenders; or those the Bureau has reasonable cause to determine, by order after notice and opportunity to respond, have engaged or are engaging in conduct that poses risks to consumers in the offering or provision of consumer financial products or services. 12 U.S.C. 5514(a)(1).

[3] Section 1024(b)(1) is quoted below, and section 1025(b)(1) is identical except that it contains the additional or alternative language indicated in brackets:

> (b) Supervision.—
> (1) In General – The Bureau shall [have exclusive authority to] require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) [(a)] for purposes of –
> (A) assessing compliance with the requirements of Federal consumer financial law[s];
> (B) obtaining information about the activities [subject to such laws] and [the associated] compliance systems or procedures of such person[s]; and
> (C) detecting and assessing [associated] risks to consumers and to markets for consumer financial products and services.

authority must be found elsewhere in the DFA. In scrutinizing this question, the Bureau has focused on subparagraph (C) of Sections 1024(b)(1) and 1025(b)(1), which grant the Bureau authority to supervise for the purposes of "detecting and assessing [associated] risks to consumers and to markets for consumer financial products and services."[4] Whether the Bureau is empowered to launch examinations specifically to look for MLA violations or impose supervisory remedies – thereby exercising its supervisory authority – in the course of "detecting and assessing [associated] risks to consumers" under subsections (C) is a complicated question of statutory interpretation.

One possible reading of the statute would allow that the Bureau may seek to uncover and remedy violations of the MLA in the course of exercising its authorities pursuant to 1024(b)(1)(C) and 1025(b)(1)(C). Under such an understanding, the Bureau would in effect be looking for and identifying the relevant conduct – such as, for example, an interest rate that exceeded a 36% annual cap – as involving "risks to consumers," observing that this conduct violates the MLA, and seeking to remedy these risks and violations through its supervisory powers. Following this theory, the Bureau revised its *Supervision and Examinations Manual for Short-Term, Small-Dollar Lending Procedures* in September 2013 to state that examiners should "review for MLA violations and their related risks to consumers."[5]

However, this reading of the statute has a number of risks. First, it could be argued that in treating MLA violations in this manner, the Bureau is in effect circumventing the statutory provision that confines the Bureau's authority to assess compliance to Federal consumer financial law, as defined in the DFA. Moreover, there is an additional concern that the Bureau's supervision authority with respect to large banks and affiliates in section 1025 is narrower than its authority over nonbanks in section 1024, as the language in Section 1025(b)(1)(C) limits the Bureau specifically to "associated" risks. It is reasonable to conclude that this refers to risks that are associated with the requirements of Federal consumer financial law, a term whose definition was carefully delineated by Congress and which does not include the MLA. In addition, such an expansive reading of the statute could conceivably be used to justify the Bureau's supervision over a wide variety of laws that are not defined in the DFA as Federal consumer financial laws under a similar "risk to consumers" theory. This expansion of the Bureau's authority would clearly circumvent the limits Congress intended to write into the DFA.

---

[4] See note 3 above.

[5] CFPB Supervision and Examinations Manual, Short-Term, Small-Dollar Lending Procedures (Sept. 17, 2013) at 4.

Consumer Financial Protection Bureau
January 17, 2019
Enclosure

Consumer Financial Protection Bureau Proposed Amendment to the Consumer Financial Protection Act to Clarify Bureau Authority to Exercise Its Supervisory Authority to Assess Compliance with the Military Lending Act

SECTION 1. SHORT TITLE.

This Act may be cited as the "_____".

SEC. 2. BUREAU SUPERVISORY AUTHORITY WITH RESPECT TO MILITARY LENDING ACT COMPLIANCE.

The Consumer Financial Protection Act of 2010 is amended—

(a) in section 1024 (12 U.S.C. 5514)—

(1) in paragraph (b)(2), by inserting "and subsection (g)" after "exercise its authority under paragraph (1)";

(2) in paragraph (d), by inserting "subsection (g) and" after "and except as provided in";

(3) after subsection (f), by inserting subsection (g), as follows: "(g) Supervision with respect to Military Lending Act compliance.-- Notwithstanding any other provision of law, the Bureau shall have nonexclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a)(1) for purposes of --

(1) assessing compliance with the requirements of section 987 of title 10, United States Code;

(2) obtaining information about the activities and compliance systems or procedures of such person; and

(3) detecting and assessing risks to consumers and to markets for consumer financial products and services.";

(b) in section 1025 (12 U.S.C. 5515)—

(1) in paragraph (b)(4), by inserting "or subsection (f)" after "paragraph (1)";

(2) after subsection (e), by inserting subsection (f), as follows: "(f) Supervision with respect to Military Lending Act compliance. -- Notwithstanding any other provision of law, the Bureau shall have nonexclusive authority to require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of –

(1) assessing compliance with the requirements of section 987 of title 10, United States Code;

(2) obtaining information about the activities subject to such law and the associated compliance systems or procedures of such persons; and

(3) detecting and assessing associated risks to consumers and to markets for consumer financial products and services."

(c) in section 1026 (12 U.S.C. 5516)—

(1) in paragraph (c)(1), by inserting "and section 987 of title 10, United States Code" after "Federal consumer financial law"; and

(2) in paragraph (d)(2)(A), by inserting "or section 987 of title 10, United States Code" after "Federal consumer financial law".