

Helping Servicemembers Avoid Consumer Credit Traps

by the Standing Committee on Legal Assistance for Military Personnel

The stresses of military life are many. Even in good times, personal financial pressure is one of the greatest challenges facing servicemembers and their families. In a time when the United States is fighting two wars and a world-wide recession lingers, military families are particularly vulnerable to financial problems. A few simple borrowing tips can substantially ease that burden for many, and awareness of laws designed to shield servicemembers from financial abuse can also provide relief. Knowing where to ask for help can also make a difference.

Borrowing Tips

Borrowing money can be confusing, especially to those who are inexperienced with credit. Here are some tips for those considering taking out loans:

- **Debt comes at a cost.** We live in a credit-based society where people routinely borrow money to purchase homes, vehicles, appliances and other consumer goods. While credit is sometimes necessary and beneficial (a home mortgage or a car loan), impulsive or unnecessary credit purchases can put them in a debt hole that is difficult to escape, as accruing interest can rapidly increase the amount owed back to the lender. For many young and financially inexperienced servicemembers, it is easy to overlook the financial burdens that they are creating down the road when they take on consumer debt.
- **Getting help.** There are many resources available to borrowers. Servicemembers and their spouses considering

a loan may contact their local legal assistance office for help. The internet can also be an excellent informational resource. A list of approved credit counseling agencies by state is available through the Department of Justice's (DOJ) website at http://www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm. There are readily available consumer credit counselors willing to assist with what can be a complicated process.

- **Seeing the big picture.** Low monthly payments do not always mean that the loan products are good ones. Borrowers should examine the interest rate or annual percentage rate (APR) that is being offered, the length of the loan term and the size of the lender's fees. Loan rates and fees should be clearly stated, as well as any prepayment penalties for paying off the loan early.
- **Looking around.** Comparison-shopping is a good way to see what other lenders are offering and what other loan products are available. This not only will provide peace of mind, it might result in better loan terms.
- **Reviewing the loan documents.** Reviewing loan documents is necessary to avoid any incorrect or incomplete information. Loan terms written in the documents should always match what lenders' representatives tell borrowers. If the written documents do not contain verbal terms or have different terms from what the borrower is being told, something is wrong.

- **Walking away.** Understanding loan terms is essential, especially when borrowers get to the closings of their loans and the loans are different from what they had expected or seem to be too good to be true. A borrower always has the option to wait and get help before signing documents if something seems amiss.

Payday Loan Protection for Military Personnel

The Department of Defense ("DoD") recognized in 2006 that financial problems among military members were pervasive, and presented Congress with a report outlining predatory lending practices affecting its members. The DoD found that predatory lending practices were not only highly problematic for servicemembers on a personal level, but they also negatively affected military readiness and morale. As a result, Congress enacted Section 670 of the John Warner National Defense Act for Fiscal Year 2007. The Act regulates consumer credit afforded to covered borrowers, which includes active-duty servicemembers, their spouses and certain dependents.

The DoD, and subsequently Congress, found payday loans to be particularly onerous to servicemembers. In order to obtain one of these short-term cash loans, a military borrower would write a personal check to the lender (usually at check cashing stores), postdated to an upcoming payday when the member was expected to repay the loan. The lender typically charged exorbitant fees and interest. Often, the military borrower would not have the funds to pay off the loan when it came due, and would enter

(continued on page 16)

Credit Traps

(continued from page 14)

into another short-term payday loan to pay off their last payday loan, which compiled interest and fees upon interest and fees. This created a spiraling, ever-worsening cycle of debt that caused grave harm to many military families. The Act restricts the terms under which payday loans may be made to covered borrowers, and it subjects lenders who violate the Act's provisions to fines and up to a year in prison.

The Act prohibits payday lenders from charging covered borrowers interest in excess of 36 percent, a figure that includes fees, service charges, renewal charges, and credit insurance premiums in order to prevent the circumvention of the rate cap. This cap affects the hordes of check-cashing stores that have surrounded military bases and often charge annual interest rates of up to 300 percent.

The Act also bans:

- Conditioning a loan on the setting up of an allotment, or payment by automatic payroll deduction, by the military member;
- Conditioning any loans made to servicemembers and military family members on the use of a vehicle title as security;
- The use of access to a member's financial account, such as a check, as security for a loan;
- The use of the proceeds of other credit granted by the same lender to the military member in renewing, repaying, refinancing, rolling over, or consolidating consumer credit;
- Requiring military members to waive their rights under the Servicemembers Civil Relief Act, or any other federal law;
- Any penalties for early payments or the denying of the opportunity for military members to pay the loan off early;
- Provisions in the credit agreement designed to make it more difficult for military members to take a creditor to court; and
- State laws permitting creditors to violate state consumer loan protection laws for nonresident military members.

Credit Card Reform

President Obama recently signed into law a bill that limits the interest and fees that credit card companies can charge all consumers, including servicemembers. This new law takes effect in February 2010. It bars credit card companies from increasing interest rates until the consumer is more than 60 days late on their bill. The credit card company must reinstate the original interest rate when the individual successfully makes the minimum monthly payments over six consecutive months. The law will also eliminate the concept of universal default, where a credit card company might raise the interest rate on the consumer's credit card account merely because the consumer has defaulted on some other debt obligation.

The credit card reform legislation increases the level

(continued on page 17)

Credit Traps

(continued from page 16)

of notice that a credit card company must provide to make changes to a credit card account. Account holders will be entitled to 45 days' notice before the credit card company can increase interest rates and finance charges. Additionally, credit card companies must provide notice of all significant changes in terms to the account holders, who will have the right to cancel their account before the new terms go into effect.

Credit Repair Scams

With credit availability at an all-time low, lenders are tightening their standards. As a result, borrowers' credit ratings are taking on added significance. In these circumstances, military borrowers may feel intense pressure to present a strong credit score, and many of them turn to credit repair agencies for help.

Not all credit repair agencies are scammers. But a number of them do prey on the vulnerability of individuals with poor credit histories. Their advertisements pervade television, the radio and the internet, promising to rid consumers of their debts and fix all of their bad credit problems. Essentially, these scams involve the agencies collecting a significant fee before they actually perform any services, which in the end may amount to nothing or very little. It is important for servicemembers and their spouses to know that credit repair agencies cannot perform miracles, and a good rule of thumb, just as with loans, is that if it sounds too good to be true, it probably is.

A legitimate function of a credit repair agency would be the reinvestigation of a credit infraction claim, in which the credit repair agency attempts to have inaccurate information

deleted from a report. While this may be a useful service to some, it is one that a service member or spouse can perform on his or her own at no charge. An individual can do anything a credit repair agency can do. Indeed, more often than not, there is nothing that a credit repair agency can do that the service member and spouse could not do on their own, or with the help of a free military JAG legal assistance attorney.

Warning signs that may indicate caution is needed regarding a particular credit repair agency:

- Requesting payment for credit repair prior to performing any services;
- Failing to inform potential customers of their legal rights and what they may do on their own;
- Discouraging customers from contacting credit bureaus on their own;
- Suggesting that a customer can create a new credit report, credit identity or Social Security Number; or
- Suggesting that the agency can remove accurate or timely information from a consumer's credit report.

Accurate information cannot generally be removed from a credit report. A borrower who has missed making timely payments in the past is accountable for it, and credit reports are intended to accurately report the bad with the good. Any company that suggests it will get accurate information removed from a credit report is misstating the truth.

Individuals are legally entitled to a free credit report each year through <http://www.AnnualCreditReport.com>. This website is the only federally approved website where consumers may obtain a free credit report. Information is also available on the Federal Trade Commission's (FTC) website at <http://www.ftc.gov/freereports>. If inaccurate

information appears in the report, the individual should request a dispute form from the credit-reporting agency and dispute the information in writing, with appropriate supporting documentation. After conducting an investigation, the credit reporting agency must provide the results free of charge and must remove any information that it determines is inaccurate or which the creditor fails to verify. An individual can also contact the creditor directly to dispute the inaccurate information appearing in his or her credit report and ask the creditor to correct it. If these methods fail, an individual can provide a statement of their position and the credit reporting agency must show that the creditor's information is disputed and show the individual's position alongside the creditor's. More information on disputing inaccurate information is available on the FTC's website.

Servicemembers Civil Relief Act

In 2003, Congress replaced the Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA") with the Servicemembers Civil Relief Act ("SCRA"). The SCRA was intended to ease the stresses on active-duty servicemembers and their families resulting from various civil and financial obligations, such as repayment of credit cards, rental agreements and certain judicial proceedings, with the goal of allowing servicemembers to devote their attention to defending the nation.

The following are examples of how the SCRA can aid qualifying military personnel:

- **6% Limit on Credit Obligations.** The SCRA states that interest from credit obligations arising prior to active duty, including credit card payments, cannot exceed 6% during that individual's time on active duty. That excess interest cannot later be

(continued on page 21)

Credit Traps

(continued from page 17)

recouped; it is permanently forgiven.

- **Housing Protections.**

Subject to certain rules and restrictions, a servicemember who is deployed for longer than 90 days or whose station is permanently changed has a right to terminate a housing lease. The termination is not effective immediately, however, as he or she must

provide written notice to the landlord and pay rent for a short while afterwards, depending upon the terms of the lease. One further protection relating to rental agreements is that active duty servicemembers and their families are protected from eviction from housing leases up to \$2,720.95 per month.

- **Judicial Proceedings.**

The SCRA created new protections for servicemember defendants, including: 1) protection against the entry

of default judgments; 2) stays of proceedings when servicemembers have notice; and 3) stays of execution of judgments, attachments and garnishments.

The SCRA is complex, and numerous qualifications exist for eligibility. The servicemembers or their family members can consult with their local Armed Forces Legal Assistance Program attorneys for information and advice before making any decisions to act based on a belief of such eligibility.