

CFPB Enforces Rules on Military Payday Loans

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

9.0—Miscellaneous

A 2006 study by the Department of Defense found that payday, car title, and other predatory lenders target military personnel through their “proximity and prevalence around military installations, or through the use of affinity marketing techniques, particularly on-line.” The study concluded that predatory lending has impacted military personnel to the point that it “undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer force.” One particular area of concern is that when a service member gets into serious financial difficulty this can have a seriously adverse impact on his or her ability to obtain and maintain required security clearances.

¹I invite the reader’s attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

In 2007, Congress enacted important new restrictions on payday and other predatory lending practices, as applied to active duty service members and their dependents. Please see Law Review 0742 (Sept. 2007), by LCDR Ted Cook, JAGC, USN for the details on this law.

The responsibility for enforcing this law and many other consumer-protection laws in the financial sector now belongs to the Consumer Financial Protection Bureau (CFPB). On November 20, 2013, the CFPB sent out the following press release about its action to enforce the rules on military payday loans with respect to a company called Cash America International, Inc.:

FOR IMMEDIATE RELEASE:

November 20, 2013

CONTACT:

Office of Communications

Tel: (202) 435-7170

CONSUMER FINANCIAL PROTECTION BUREAU TAKES ACTION AGAINST PAYDAY LENDER FOR ROBO-SIGNING

Cash America to Refund up to \$14 Million for Robo-Signing and Illegally Overcharging Servicemembers

Washington, D.C. – The Consumer Financial Protection Bureau (CFPB) today took its first enforcement action against a payday lender by ordering Cash America International, Inc. to refund consumers for robo-signing court documents in debt collection lawsuits. The CFPB also found that Cash America – one of the largest short-term, small-dollar lenders in the country – violated the Military Lending Act by illegally overcharging servicemembers and their families. Cash America will pay up to \$14 million in refunds to consumers and it will pay a \$5 million fine for these violations and for destroying records in advance of the Bureau’s examination.

“This action brings justice to the Cash America customers who were affected by illegal robo-signing, and shows that we will vigilantly protect the consumer rights that servicemembers have earned,” said CFPB Director Richard Cordray. “We are also sending a clear message today to all companies under our watch that impeding a CFPB exam by destroying documents, withholding records, and instructing employees to mislead examiners is unacceptable.”

Payday loans are often described as a way for consumers to bridge a cash flow shortage between paychecks or the receipt of other income. They can offer quick access to credit, especially for consumers who may not qualify for other credit. Many payday loans are for small-dollar amounts that must be repaid in full in a short period of time.

Cash America is a publicly traded financial services company headquartered in Fort Worth, Texas that provides consumer financial products and services, including payday loans, lines of

credit, installment loans, and pawn loans. With hundreds of retail locations across more than 20 states, it is one of the largest payday lending companies in the United States. Cash America's Chicago-based subsidiary, Enova, offers online loans in 32 states under the brand name CashNetUSA.

Today's action is the Bureau's first public enforcement action against a payday lender; its first public action under the Military Lending Act; and the first public action for a company's failure to comply fully with the CFPB's supervisory examination authority.

Violations

After a routine CFPB examination of Cash America's operations, the CFPB found multiple violations of consumer financial protection laws, including:

- **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. Robo-signing can result in inaccurate court affidavits and pleadings, which may cause consumers to pay false debts, incorrect debts, or legal costs and court fees. For nearly five years, Cash America's debt collection subsidiary in Ohio, Cashland Financial Services, Inc., had been preparing, executing, and notarizing documents filed in its Ohio collections litigations without complying with state and court-required signature rules. The CFPB estimates that about 14,000 consumers paid money as a result of debt collection litigation which may have involved reliance on improper court filings. Specifically:
 - Employees manually stamped attorney signatures on legal pleadings, military-status affidavits, and consumer account paperwork without prior review; and
 - Legal assistants notarized documents without following proper procedures.
- **Illegally overcharged servicemembers:** Cash America violated the Military Lending Act, which restricts the rate on certain types of loans given to servicemembers to 36 percent. Cash America extended payday loans exceeding that rate to more than 300 active-duty servicemembers or dependents.
 - **Impeded the CFPB exam:** During a routine examination of Cash America that began in July 2012, the company, among other things, carelessly destroyed records relevant to the Bureau's onsite compliance examination. Specifically, Cash America's online lending subsidiary, Enova Financial:
 - Instructed employees to limit the information they provided to the CFPB about their sales and marketing pitches;
 - Deleted recorded phone calls with consumers;
 - Continued to shred documents after the CFPB told them to halt such activities; and
 - Withheld a report related to robo-signing practices.

Enforcement Action

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB has the authority to take action against institutions for violations of federal consumer financial protection laws. To ensure that all impacted consumers are repaid and that consumers are no longer subject to these illegal practices, Cash America has committed to:

- **Refund consumers:** Cash America has already voluntarily paid back roughly \$6 million to military borrowers and victims of the robo-signing practices. Through today's CFPB order, they have committed to offer an additional \$8 million to consumers, for a total refund of up to \$14 million. Consumers who were subject to debt collection lawsuits in the state of Ohio from 2008 through January 2013 are eligible. More information is available at: www.consumerfinance.gov/blog/our-first-enforcement-action-against-a-payday-lender
- **Dismiss pending collections lawsuits:** Within months of the CFPB discovering the robo-signing, Cash America dismissed pending collections lawsuits, terminated all post-judgment collections activities, cancelled all judgments obtained, and corrected information it furnished to credit bureaus for the nearly 14,000 wrongful cases filed in Ohio.
- **Pay a \$5 million fine:** Cash America will pay a \$5 million civil money penalty in connection with these serious violations. Cash America's preemptive refunds to consumers and other actions after the Bureau discovered the conduct were considered when determining the civil money penalty amount.
- **Improve internal compliance systems:** Cash America will develop and implement a comprehensive plan to improve its compliance with consumer financial protection laws, including the Military Lending Act.

The CFPB has authority to oversee the payday loan market and began its supervision of payday lenders in January 2012. In addition, the CFPB has taken a number of steps to learn more about the marketplace for payday loans, and released a report on payday loans earlier this year. That report found that payday products can lead to a cycle of indebtedness for many consumers. In early November, the CFPB began accepting consumer complaints about payday loans. More information is available at: <https://www.consumerfinance.gov/payday-rule/>

The full text of the CFPB's Consent Order is available at:

http://files.consumerfinance.gov/f/201311_cfpb_cashamerica_consent-order.pdf

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The Consumer Financial Protection Bureau is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives. For more information, visit consumerfinance.gov.

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This article is one of 1800-plus “Law Review” articles available at www.roa.org/page/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Officers Association
1 Constitution Ave. NE
Washington, DC 20002