

No. 22-448

IN THE
Supreme Court of the United States

CONSUMER FINANCIAL PROTECTION BUREAU, ET AL.,
Petitioners,

v.

COMMUNITY FINANCIAL SERVICES ASSOCIATION OF
AMERICA, LIMITED, ET AL.,
Respondents.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

**BRIEF OF MILITARY AND VETERANS
ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici consist of non-profit, non-partisan organizations that serve and advocate for millions of military servicemembers, veterans, and their families across all fifty states. Signatories to this brief include:

- Military Officers Association of America;
- Blue Star Families;
- National Military Family Association;
- Blinded Veterans Association;
- Coast Guard Chief Petty Officers Association;
- Iraq and Afghanistan Veterans of America;
- Jewish War Veterans of the U.S.A.;
- Military Chaplains Association;
- Military Order of the Purple Heart;
- Naval Enlisted Reserve Association;
- Service Women's Action Network;
- The Society of Federal Healthcare Professionals;
- United States Army Warrant Officers Association;
- Veterans Education Success; and
- Vietnam Veterans of America.

Additionally, two experts on the military community and consumer protection join in their individual capacity:

- Hollister K. Petraeus, former Assistant Director, CFPB (Office of Servicemember Affairs) (2011-2017); and

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici curiae* states that no counsel for a party authored this brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amici* or their counsel made such a contribution.

- Colonel Paul E. Kantwill, U.S Army (Ret.), former Assistant Director, CFPB (Office of Servicemember Affairs) (2016-2018); principal architect of the 2015 DoD Final Rule Implementing the Military Lending Act.

Amici are deeply committed to the financial wellbeing of servicemembers, veterans, and their families and have worked on a wide range of initiatives, policies, and laws that promote financial wellbeing. Moreover, *amici* and their members have seen and experienced firsthand how the regulatory and enforcement activities of the Consumer Financial Protection Bureau (CFPB) benefit the military community. *Amici* have a strong interest in the stable funding and operation of the CFPB, particularly as it affects servicemembers, veterans, and their families.

SUMMARY OF ARGUMENT

Before servicemembers are deployed overseas, they must prepare in numerous ways for the mission ahead. This preparation includes rigorous physical training, medical evaluations, and weapons inspections. Just as importantly, mission readiness requires servicemembers and their families to ensure that servicemembers' personal affairs and households continue running smoothly in their absence. Such financial readiness allows servicemembers to focus fully on their immediate tactical duties by minimizing distractions involving financial problems that they may face or that their family may be experiencing thousands of miles away.

As the frequency and length of military deployments have increased since 2001, the significance of financial readiness has only grown. The U.S. Department of Defense (DoD) formally recognizes financial readiness as a core pillar of operational readiness and therefore

issues detailed instructions on financial readiness for all parts of the military. Congress, for its part, has also enacted several laws to improve military consumer protection and to provide financial support and training to servicemembers and their families. Congress has also enacted laws to protect the financial wellbeing of veterans and their families so that the stress of returning to civilian life is not compounded by financial challenges.

Towards those ends, Congress created the CFPB and in the statute required that the CFPB Director establish an Office of Service Member Affairs, “which shall be responsible for developing and implementing initiatives for service members and their families.” 12 U.S.C. § 5493(e)(1). The CFPB thus plays a critical and unique role in promoting the financial wellbeing of America’s 16.5 million veterans, over 2 million servicemembers, and their families. Congress gave CFPB enforcement authority over the Military Lending Act and other consequential laws and regulations. At a pragmatic level, the national scope of the CFPB’s work is critical, since servicemembers live and are deployed across the country and overseas. At an individual level, *amici* and their members have seen firsthand how the CFPB combats products and services that target, exploit, and harm the military community.

Amici do not typically weigh in on Supreme Court cases, but the practical impact of the Fifth Circuit’s ruling is simply too consequential to ignore. Namely, if the Fifth Circuit’s ruling stands, it would imperil not only enforcement of the Military Lending Act—which provides vital protections for servicemembers and their families—but also halt the enforcement of many other consumer laws and regulations that protect servicemembers, veterans, and their families. For

current servicemembers and their families, in particular, obliterating the CFPB would undermine servicemembers' financial readiness, and thereby erode mission readiness and the national defense. The stability of CFPB's funding is critical to its work on behalf of the military community. Furthermore, weakening consumer protections for servicemembers would aggravate particular financial problems that often lead to the revocation or denial of security clearances, which are clearly vital for national security purposes. The revocation of security clearances can lead to servicemembers' discharge.

Finally, there is an additional reason why the Fifth Circuit's decision is of concern to *amici*. The U.S. Department of Veterans Affairs (like other federal agencies) relies upon a tapestry of different funding mechanisms and sources—e.g., mandatory and discretionary funding, advanced funding, multi-year funding, as well as permanent appropriations and funds derived from non-treasury sources (as in the case at bar)—in order to provide to veterans a wide range of benefits and services. The Fifth Circuit's decision in this case seems to take issue with multiple widely-used means of Congressional funding—namely permanent appropriations and funding that come from somewhere other than directly from the Treasury—and suggests that the combination of these funding mechanisms renders the CFPB's funding as a whole unconstitutional. By intimating that most funding by Congress must be in the form of annual appropriations, the Fifth Circuit's decision endangers Congress' flexibility in funding federal agencies and ensuring they are able to fulfill their complex and varied legal mandates. In the short term, this holding could create budgetary problems and operational uncertainty for the VA and other federal agencies. In

the long term, depriving Congress of its ability to employ diverse funding mechanisms could impede the work of the VA and other federal agencies. *Amici* respectfully urge the Court to carefully consider the collateral damage of any ruling it might make about how Congress has chosen to fund the CFPB.

ARGUMENT

Consumer protection matters to the military community. It helps ensure the financial readiness that allows servicemembers to concentrate on the mission at hand, thus contributing to operational readiness and the national defense. Strong consumer protection promotes financial wellbeing, which helps veterans in their return to their families and to civilian life. *Amici* respectfully urge this Court to consider the legal and practical import of the CFPB's work as it applies to servicemembers, veterans, and their families.

I. THE CFPB PLAYS A UNIQUE AND ESSENTIAL ROLE IN PROTECTING SERVICEMEMBERS' FINANCIAL HEALTH AND READINESS.

The U.S. Department of Defense (DoD) takes numerous measures to ensure that the nation's troops are at a high state of readiness for any military missions or threats that might arise. Typically, for individual servicemembers, this readiness includes extensive technical training, physical preparation and medical clearance, and weapons and munitions checks – followed by a formal pre-embarkation inspection. *See, e.g.,* U.S. Army, *Readiness and Deployment*

Checklist, DA Form 7425 (Feb. 2015),² U.S. Marine Corps, *Unit Embarkation Handbook*, MCTP 13-10C (Apr. 4, 2018) at 9-9.³

DoD also prioritizes financial readiness as a core pillar of operational readiness and has promulgated detailed instructions and memoranda to each of the military services, the Chairman of the Joint Chiefs of Staff, Combatant Commands, and other DoD entities. *See, e.g.*, DoD, *Military Family Readiness*, DoDI 1342.22 (Aug. 5, 2021) at 16-17.⁴ It is critical to “provide Service members and families with the tools and information they need to develop individual strategies to meet financial goals and achieve financial readiness.” *Id.* DoD delineates specific training, staffing, and certification standards for financial readiness. *Id.* All “Military Departments must provide Service members financial literacy training, in accordance with the personal and professional touchpoints across the military life cycle” Office of the Undersecretary of Defense for Personnel and Readiness, *Directive-type Memorandum (DTM) 19-009—Financial Readiness Common* (Aug. 13, 2019) at 8.⁵ Financial readiness programs and requirements are widespread. *See generally* U.S. Army, *Financial*

² Available at https://carson.armymwr.com/application/files/7215/3358/6894/DA_form_7425_-_Readiness_Deployment_Checklist.pdf.

³ Available at <https://www.marines.mil/Portals/1/Publications/MCTP%2013-10C%20GN.pdf?ver=2020-02-12-095602-143>.

⁴ Available at <https://www.esd.whs.mil/Portals/54/documents/DD/issuances/dodi/134222p.pdf>.

⁵ Available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dtm/DTM-19-009.pdf?ver=2019-08-14-130331-710>.

Readiness Program;⁶ U.S. Air Force, *Personal Financial Readiness Program*.⁷ For example, the U.S. Special Operations Command, which oversees some of the nation's most sensitive military activities, maintains a detailed checklist about pay arrangements, financial planning, and insurance documentation. See USSOCOM, *Preservation of the Force and Family: Pre-deployment checklist*.⁸

Congress, for its part, has enacted several laws to improve consumer protection and provide financial support and training to servicemembers and their families. See, e.g., the Military Lending Act, 10 U.S.C. § 987 *et seq.* In 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. § 1376 (Act), which established the CFPB, 12 U.S.C. § 5491(a). The Act directs the CFPB “to implement and, where applicable, enforce Federal consumer financial law” to ensure, among other things, that “consumers are protected from unfair, deceptive, or abusive acts and practices,” 12 U.S.C. § 5511(a) and (b)(2). The Act also empowers the CFPB to carry out that mandate, by, among other things, promulgating rules “identifying as unlawful, unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service.” 12 U.S.C. § 5531(b); see 12 U.S.C. § 5512(b)(1).

Since its establishment, the CFPB has come to play a critical and distinctive role in promoting financial

⁶ Available at [https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Financial-Readiness-Program-\(FRP\)](https://myarmybenefits.us.army.mil/Benefit-Library/Federal-Benefits/Financial-Readiness-Program-(FRP)).

⁷ Available at <https://www.afpc.af.mil/Airman-and-Family/Financial-Readiness/>.

⁸ Available at https://www.socom.mil/POTFF/Documents/FAMILY_Predeployment%20Checklist_GRAPHIC.pdf.

readiness of America's more than two million servicemembers and their families.⁹

A. Servicemembers and their families are often targeted by the kind of unfair, deceptive, or abusive practices the CFPB was created to correct.

The CFPB focuses on a number of serious problems that servicemembers experience. For example, DoD reported to Congress that “predatory loan practices and unsafe credit products are prevalent and targeted at military personnel.” See U.S. Dep’t of Def., *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* 45 (2006) (2006 DoD Report).¹⁰ According to the DoD, “[m]ilitary families have characteristics that can make them a market of choice for predatory lenders.” *Id.* at 10. For example:

Forty-eight percent of enlisted Service members are less than 25 years old, typically without a lot of experience in managing finances, and without a cushion of savings to help them through emergencies. They are on their own without the guidance or assistance of family, with perhaps

⁹ There are over 2 million servicemembers, including both active duty servicemembers and Selected Reservists. See DoD, *2021 Demographics: Profile of the Military Community*, at ii, <https://www.militaryonesource.mil/data-research-and-statistics/military-community-demographics/>. Collectively, servicemembers have over 3 million family members of *Id.* at 113. There are currently approximately 16.5 million veterans. National Association of American Veterans, *NAAV Veterans Statistics 2023* (Apr. 5, 2023), <https://www.naavets.org/naav-veterans-statistics-for-2023/>. There are 11.9 million veterans with disabilities; 2.1 million veterans with mental health issues; and over 40.4 thousand homeless veterans. *Id.*

¹⁰ Available at <https://apps.dtic.mil/sti/pdfs/ADA521462.pdf>.

their first significant paycheck.

Id. at 10. While new enlistees may not have much financial experience, they “are paid regularly and are not likely to be downsized, outsourced or to quit their employment.” *Id.*

In addition, the fact that military families “are physically concentrated in and around bases” makes them easy to target. See *Protecting Military Servicemembers and Veterans from Financial Scams and Fraud*, Hearing before the H. Comm. Oversight & Reform, 117th Cong. (July 13, 2022) (testimony of James S. Rice, Assistant Director, CFPB) (Rice Testimony 2022), p. 2.¹¹ Military bases are often surrounded by businesses, some of which prey on financially inexperienced servicemembers with money in their pocket for the first time. See e.g., Ron Leiber, *Where Military Paychecks Are Prime Targets*, N.Y. Times (July 1, 2022).¹²

Moreover, when many servicemembers complete basic training, their first duty station is often in areas where a car is needed to get around or leave the base. See Rice Testimony 2022. CFPB research has shown that “young servicemembers tend to take out auto loans soon after joining the military and carry more auto debt than their civilian peers.” *Id.* at p. 2 (citing CFPB, *Financially Fit? Comparing the credit records*

¹¹ Available at <https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-james-s-rice-assistant-director-office-of-servicemember-affairs-before-the-house-committee-on-oversight-and-reform-subcommittee-on-national-security/>.

¹² Available at <https://www.nytimes.com/2022/06/30/your-money/fort-campbell-military-installations.html>.

of young servicemembers and civilians (July 14, 2020)).¹³

Furthermore, because:

[f]requent relocation is part of military life, and permanent change of station orders often mean a new home, new utility connections, and other situations where a servicemember or spouse needs to share personal information like Social Security numbers, credit card numbers, and bank account information to a wide range of actors, ... servicemembers [may be] subject to an increased risk of identity theft, data breaches, and other scams.

Id. at p. 3. This reality makes the CFPB's national scope all the more important, since servicemembers live and are deployed across the country and overseas. Individual states – let alone any given military unit – are not as well positioned to handle these cross-jurisdictional financial issues.

Amici and their members see firsthand how the CFPB combats products and services that exploit and harm the military community. *Amici* regularly hear from its members through surveys and public forums that consumer protection issues remain a foremost concern. The fact that servicemembers and their families are prime targets for scams and deceptive products and services is reflected by the fact that, as of July 2022, servicemembers, veterans, and their families have submitted more than 286,000 complaints to the CFPB (since it began accepting consumer complaints in July 2011). *See Rice*

¹³ Available at www.consumerfinance.gov/data-research/research-reports/financially-fit-comparing-credit-records-young-servicemembers-civilians/.

Testimony 2022, at 2.¹⁴ In 2021 alone, servicemembers submitted more than 42,700 complaints—a 5% increase compared to 2020, and a 19% increase compared to 2019. CFPB, *Office of Servicemember Affairs Annual Report*, January-December 2021 (June 2022).¹⁵

B. CFPB enforces key statutes and regulations that protect servicemembers and their families.

The CFPB’s enforcement ambit spans a range of consequential laws and regulations that protect servicemembers and their families. Moreover, the CFPB has an Office of Servicemember Affairs (OSA) statutorily mandated by the Dodd-Frank Act, 12 U.S.C. § 5493(e)(1).¹⁶

1. Military Lending Act

Chief among these statutes is the Military Lending Act (MLA), 10 U.S.C. § 987 *et seq.* Passed in response to a 2006 DoD report concerning predatory lenders’ targeting of servicemembers and their families, the MLA aims to protect active duty servicemembers and their families in procuring almost any type of “consumer credit,” and contains six core protections for

¹⁴ Available at <https://www.consumerfinance.gov/about-us/newsroom/written-testimony-of-james-s-rice-assistant-director-office-of-servicemember-affairs-before-the-house-committee-on-oversight-and-reform-subcommittee-on-national-security/>.

¹⁵ Available at <https://www.consumerfinance.gov/data-research/research-reports/office-of-servicemember-affairs-annual-report-fy-2021/>.

¹⁶ See generally CFPB, *Serving servicemembers, veterans, and military families* (last visited May 11, 2023) <https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/>.

“covered member[s] of the armed forces or a dependent of such a member.” See 10 U.S.C. § 987(a). The MLA

- (1) “Establishes an annual percentage rate limit of 36 percent, to include all fees and charges, credit insurance, and other ancillary products sold with the extension of credit”;
- (2) “Requires disclosures of annual percentage rate and payment obligations”;
- (3) “Prohibits a lender from requiring a borrower to use a personal check, debit authorization, wage allotment, or vehicle title to secure credit”;
- (4) “Requires states to apply state consumer protections to nonresident Service members and dependents residing within the state”;
- (5) “Prohibits a lender from requiring arbitration, unreasonable legal notice provisions, or waiving rights under law”; and
- (6) “Prohibits a lender from refinancing, renewing, or consolidating existing credit issued by the same lender.”

DoD, *Report on the Military Lending Act and the Effects of High Interest Rates on Readiness* (May 2021) (2006 DoD Report), at p. 3. What makes the MLA particularly effective is section 987(f)(3), which provides that “[a]ny credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.” 10 U.S.C. § 987(f)(3).¹⁷ Congress thus made a clear statement:

¹⁷ The MLA applies to almost all “consumer credit,” which is defined as credit “offered to a covered borrower for personal, family, or household purposes” that is either “subject to a finance charge” or “payable by a written agreement in more than four installments.” 32 C.F.R. § 232.3. The only consumer credit not

lenders and those who would enter into transactions with servicemembers either follow the rules or risk having the entire agreement found null and void.

The MLA is frequently enforced by the CFPB. For example, the CFPB has brought a number of critical actions under the MLA:

- In 2023, the CFPB found that TitleMax violated the MLA by extending thousands of title loans to covered borrowers that: exceeded the MLA’s 36% Military Annual Percentage Rate (MAPR) cap; did not have the disclosures required under the MLA; contained MLA-prohibited arbitration clauses; and contained MLA-prohibited onerous notice requirements. The order required TitleMax to stop its unlawful activities, pay \$5,050,000 in consumer redress, and pay a \$10,000,000 penalty. *See In the matter of TMX Finance LLC*, File No. 2023-CFPB-1 (Feb. 23, 2023) (consent order).¹⁸
- In 2022, the CFPB sued online lender MoneyLion Technologies and 38 subsidiaries for imposing illegal and excessive charges on servicemembers and their dependents. Among other claims, the CFPB alleged that MoneyLion violated the MLA by charging more than the legally allowable 36% rate cap on loans to servicemembers and their dependents, through

covered by the MLA are (1) residential mortgages and other mortgage-secured credit, (2); credit “expressly intended” to finance a motor vehicle and secured by the motor vehicle being purchased; or (3) credit “expressly intended” to finance other personal property and secured by the personal property being purchased. 32 C.F.R. § 232.3(f)(2).

¹⁸ Available at <https://www.consumerfinance.gov/enforcement/actions/tmx-finance-llc-2023/>.

a combination of stated interest rates and monthly membership fees. *See Consumer Fin. Prot. Bureau v. MoneyLion Technologies Inc.et al.*, No. 1:22-cv-8308 (S.D.N.Y. Sept. 9, 2022).¹⁹

- In 2021, the CFPB sued FirstCash, Inc. and Cash America West, Inc., alleging that these companies made over 3,600 pawn loans from four of its stores to more than 1,000 servicemembers at rates that exceeded the MLA's 36% interest cap, as well as other violations. *See Consumer Fin. Prot. Bureau v. FirstCash, Inc., and Cash America West, Inc.*, No. 4:21-cv-01251-P (N.D. Tex. Nov. 12, 2021).²⁰
- In 2020, the CFPB issued a consent order against Omni Financial of Nevada, Inc., which specialized in lending to consumers affiliated with the military. The CFPB found that Omni violated the MLA's prohibition against requiring repayment of loans by allotment, among other violations.²¹ While Omni claimed

¹⁹ Available at <https://www.consumerfinance.gov/enforcement/actions/moneylion-technologies-inc-ml-plus-llc-and-other-subsidiaries/>.

²⁰ Available at <https://www.consumerfinance.gov/enforcement/actions/firstcash-inc-and-cash-america-west-inc/>.

²¹ “The allotment system is run by the Department of Defense and dates back to the days before automatic bill-pay and internet banking. The system allows a servicemember to designate a portion of each paycheck to certain recipients other than the servicemember. The allotment system was intended to help ensure that servicemembers could pay their obligations while they were deployed or otherwise unavailable to handle personal finances. Over the years, this has become less necessary as technology has made it easier to make payments automatically or remotely. . . . However, CFPB continues to receive complaints from servicemembers alleging that they were required to repay

that other payment options were available, the CFPB found that Omni employees told servicemembers they were required to repay by allotment (and 99% did so). The consent order required that Omni pay a \$2.175 million civil money penalty²² and imposed injunctive relief. *See In the matter of Omni Financial of Nevada, Inc.*, File No. 2020-BCFP-0028 (Dec. 30, 2020).²³

- In 2020, the CFPB sued LendUp for violating the MLA’s 36% interest rate cap, requiring servicemembers to submit to arbitration, and failing to make required disclosures. LendUp entered into a stipulated judgment requiring \$300,000 in redress, a \$950,000 civil money penalty, corrections to credit agencies, and a broad injunction. In 2021, the CFPB sued LendUp again. *See Bureau of Consumer Fin. Prot. v. Lendup Loans, LLC*, No. 4:20-cv-08583 (N.D. Cal. Jan. 1, 2021).²⁴

loans through allotment.” Rice Testimony 2022, at 8 (citing Patrick Brick, *Protecting servicemembers from abuses of the military allotment system*, CFPB Blog (June 2, 2022), www.consumerfinance.gov/about-us/blog/protecting-servicemembers-from-abuses-of-the-military-allotment-system/).

²² All civil money penalties collected by the CFPB are deposited in the “Civil Penalty Fund,” expenditures from which are restricted “for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws,” 12 U.S.C. § 5497(d)(1)-(2). If victims cannot be located or payment is otherwise impracticable, the funds may be used for consumer education and financial literacy programs. 12 U.S.C. § 5497(d)(2).

²³ Available at <https://www.consumerfinance.gov/enforcement/actions/omni-financial-of-nevada-inc/>.

²⁴ *See Bureau of Consumer Fin. Prot. v. Lendup Loans, LLC* No. 4:20-cv-08583 (N.D. Cal. Jan. 1, 2021). The second suit alleged, among other things, violations of the previous order. The parties

Due to the CFPB's enforcement efforts, the MLA's effectiveness since its passage is well established. A study by the Consumer Federation of America in 2012 showed a 70 percent drop in the number of payday loan outlets surrounding Camp Pendleton in California after enactment of the MLA. Consumer Federation of America, *The Military Lending Act Five Years Later: Impact on Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign Against Predatory Lending* (May 2012), at 9. The same report also found that relief societies reported a "sharp drop in the number of clients needing financial assistance." *Id.* In 2021, DoD itself analyzed the effectiveness of the MLA and concluded that:

[T]he MLA is currently working as intended. . . . Survey results generally reflect decreased use of high-cost credit products and improved financial condition among Service members over time. Engagements with DoD financial educators and counselors indicate [that] fewer seek assistance for financial challenges or debt resulting from high-cost credit products. Military aid societies, which provide financial assistance, similarly report fewer requests for assistance related to high-cost credit products. . . . Overall, the MLA . . . appears to be effective in deterring unfair credit practices, ensuring Service members and families have continued access to affordable and responsible credit, and sustaining financial

entered into a stipulated judgment that resulted in a court order prohibiting LendUp from making new loans and collecting on outstanding debts. *See Consumer Fin. Prot. Bureau v. Lendup Loans, LLC* No. 3:21-cv-06945-JSC (N.D. Cal. Dec. 30, 2021), <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-with-lendup-loans-llc-for-military-lending-act-violations/>.

readiness in support of the Department's National Defense Strategy.

U.S. Dept. of Defense, *Report on the Military Lending Act and the Effects of High Interest Rates on Readiness* (May 2021), at 7. As a result of the MLA, "some online lenders that traditionally targeted the military population and charged exorbitant interest rates have modified their lending practices to comply with the MLA's cost of credit limit." *Id.* at 15.

2. Other federal statutes

The CFPB also enforces a number of other statutes and regulations that have proven especially important in protecting servicemembers and their families, including the Consumer Financial Protection Act (CFPA), 12 U.S.C. § 5481 *et seq.*; the Electronic Fund Transfer Act (EFTA) 15 U.S.C. § 1693 *et seq.*, Regulation Z (implementing the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*) 12 C.F.R. § 1026.1 *et seq.*; and Regulation V, 12 C.F.R. § 1022.42 *et seq.* (implementing the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*).

The CFPB has brought a number of enforcement actions under these statutes and regulations. For example:

- As noted above, in 2023, the CFPB found that TitleMax violated both the MLA and the CFPA by charging servicemembers for an insurance product that provided no coverage on about 15,000 loans. In doing so, the CFPB found that TitleMax understated the finance charges and annual percentage rates of those loans, violating the Truth in Lending Act and CFPA. The order required that TitleMax pay \$5,050,000 in redress, and a \$10,000,000 penalty, and to stop certain activities.

See *In the matter of TMX Finance LLC*, File No. 2023-CFPB-1 (Feb. 23, 2023) (consent order).²⁵

- As noted above, in 2022, the CFPB sued online lender MoneyLion Technologies for certain MLA violations. In addition, the CFPB alleged that MoneyLion violated the CFPA by refusing to allow customers to exit its membership programs and stop paying monthly fees. This case remains pending. *Consumer Fin. Prot. Bureau v. MoneyLion Technologies Inc.et al.*, No. 1:22-cv-8308 (S.D.N.Y. Sept. 9, 2022).²⁶
- As noted above, in 2021, the CFPB sued FirstCash, Inc., for certain MLA violations. In addition, the CFPB alleged FirstCash violated a prior 2013 order for misconduct and consequently the CFPA. The Bureau's complaint seeks redress for consumers, injunctive relief, and a civil money penalty. *Consumer Fin. Prot. Bureau v. FirstCash, Inc., and Cash America West, Inc.*, No. 4:21-cv-01251-P (N.D. Tex. Nov. 12, 2021).²⁷
- As noted above, in 2020, the CFPB issued a consent order against Omni Financial of Nevada, Inc., for violating the MLA. In addition, the CFPB found that Omni violated the EFTA's prohibition against requiring that consumers preauthorize electronic fund transfers as a condition of receiving credit. 15 U.S.C. § 1693. The CFPB further found that these

²⁵ Available at <https://www.consumerfinance.gov/enforcement/actions/tmx-finance-llc-2023/>.

²⁶ Available at <https://www.consumerfinance.gov/enforcement/actions/moneylion-technologies-inc-ml-plus-llc-and-other-subsidiaries/>.

²⁷ Available at <https://www.consumerfinance.gov/enforcement/actions/firstcash-inc-and-cash-america-west-inc/>.

violations of EFTA constituted violations of the CFPB, 12 U.S.C. § 5481 *et seq.* The consent order required that Omni pay a \$2.175 million penalty and imposed injunctive relief. *See In the matter of Omni Financial of Nevada, Inc. a/d/b Omni Financial and Omni Military Loans*, File No. 2020-BCFP-0028 (Dec. 30, 2020) (consent order).²⁸

In other cases, the CFPB has been able to protect servicemembers and their families against predatory conduct that the MLA does not reach.

- In 2019, the CFPB found that Easy Military Travel misrepresented the true cost of credit in violation of the CFPB. Specifically, Easy Military Travel charged certain finance fees but failed to include that fee in the finance charge or the annual percentage rate. Moreover, company representatives quoted falsely low monthly interest rates. The CFPB also found that the company violated the Truth in Lending Act and Regulation Z, as well as the Telemarketing Sales Rule. The consent order required restitution to servicemembers and their families (via a suspended judgment of \$3,468,224), a civil money penalty, and prohibition on future lending targeted to servicemembers and their families. Harmed individuals and families may be eligible for relief from the CFPB's Civil Penalty Fund. *See In the matter of Edmiston Marketing, LLC d/b/a Easy Military Travel, Brandon Edmiston*, File No. 2019-BCFP-0011 (Nov. 25, 2019) (consent order).²⁹

²⁸ Available at <https://www.consumerfinance.gov/enforcement/actions/omni-financial-of-nevada-inc/>.

²⁹ Available at <https://www.consumerfinance.gov/enforcement/actions/edmiston-et-al/>.

- In connection with Easy Military Travel loans for airline tickets, in 2019, the CFPB found that another company, USA Service Finance, LLC, engaged in deceptive practices in violation of the CFPB by overcharging servicemembers and their families for a debt-cancellation product. The CFPB also found that company violated Regulation V, which implements the Fair Credit Reporting Act, because it never established, reviewed, or updated any written policies or procedures regarding the accuracy and integrity of consumer information furnished to consumer reporting agencies. The consent order required restitution, a monetary penalty, prohibition of certain activities, and new or updated company policies. *See In the matter of USA Service Finance, LLC*, File No. 2019-BCFP-0010 (Nov. 25, 2019) (consent order).³⁰
- In 2016, the CFPB took action against Navy Federal Credit Union for making false threats about debt collection to its members, which include active-duty military, retired servicemembers, and their families. The CFPB found that it violated the CFPB to make deceptive representations about its intent to take legal action against delinquent debtors (and about the effect of delinquency or repayment on customers' credit ratings) and to contact customers' military chains of command. The Credit Union also violated the CFPB by unfairly restricting customers' electronic account access—blocking debit cards, ATM usage, and online account functions—when the consumers had an overdrawn deposit account or delinquent credit account. The Credit Union was required to correct

³⁰ Available at <https://www.consumerfinance.gov/enforcement/actions/usa-service-finance-llc/>.

its debt collection practices, give approximately \$23 million in redress to victims, and pay a \$5.5 million penalty. *See In the matter of Navy Federal Credit Union*, File No. 2016-CFPB-0024 (Oct. 11, 2016) (consent order).³¹

- In 2015, the CFPB found that a payroll service company violated the CFPA by charging various monthly fees against excess allotment funds that had accumulated in servicemembers' accounts without adequately disclosing the existence of the fees beforehand or notifying servicemembers when they incurred the fees. The CFPB secured \$3,065,149 in relief for harmed servicemembers. *See In the matter of Fort Knox National Company and Military Assistance Company, LLC*, File No. 2015-CFPB-0008 (Apr. 20, 2015) (consent order).³²
- In 2014, the CFPB and several states obtained approximately \$92 million in debt relief (and other relief) for about 17,000 servicemembers and other consumers. The action focused on businesses' activity of financing, purchasing, and servicing of open-end financing agreements primarily entered into by servicemembers to finance purchases of computers, cameras, cell phones, and other consumer goods from third parties. The CFPB determined that this practice violated Regulation Z because the businesses failed to accurately disclose the finance charge and annual percentage rate or to accurately disclose related calculations in billing statements. These deceptive disclosures also violated the CFPA. *See In the matter of Colfax*

³¹ Available at <https://www.consumerfinance.gov/enforcement/actions/navy-federal-credit-union/>.

³² Available at <https://www.consumerfinance.gov/enforcement/actions/military-assistance-company/>.

Capital Corporation, et al., File No. 2014-CFPB-0009 (July 29, 2014) (consent order).³³

- In 2013, the CFPB found that U.S. Bank’s Military Installment Loans and Educational Services (“MILES”) program, an automobile loan program that targeted active-duty military, violated Regulation Z for failing to accurately disclose the finance charge, annual percentage rate, payment schedule, and total of payments for MILES loans. These practices also violated the CFPB because they failed to accurately disclose these financial terms and were deceptively marketed. *See In the matter of U.S. Bank National Association*, File No. 2013-CFPB-0003 (June 26, 2013) (consent order).³⁴ The CFPB ordered U.S. Bank and a partner to return about \$6.5 million to servicemembers. *See CFPB, CFPB Orders Auto Lenders to Refund Approximately \$6.5 Million to Servicemembers* (Jun. 27, 2013).³⁵

C. CFPB enforces key statutes and regulations that protect veterans and their families.

The CFPB also enforces a number of other statutes and regulations that have proven to be particularly important in protecting veterans and their families, including, for example Regulation Z (implementing the

³³ Available at <https://www.consumerfinance.gov/enforcement/actions/colfax-capital-corporation-culver-capital-llc-ronald-wilson-william-collins/>.

³⁴ Available at <https://www.consumerfinance.gov/enforcement/actions/us-bank-national-association/>.

³⁵ Available at www.consumerfinance.gov/about-us/newsroom/cfpb-orders-auto-lenders-to-refund-approximately-6-5-million-to-servicemembers/.

Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*), 12 C.F.R. § 1026.1 *et seq.*, the CFPA,³⁶ and Section 626 of the Omnibus Appropriations Act of 2009, and its implementing regulation, the Mortgage Acts and Practices Rule (MAP Rule or Regulation N), 12 C.F.R. § 1014.

The CFPB's critical role in protecting America's veterans is reflected in the many impactful enforcement actions it has taken against those who prey on veterans. For example:

- The CFPB found that RMK Corp. had violated the CFPA and MAP Rule by using the names, logos, and seals of the U.S. Department of Veterans Affairs (VA) and Fair Housing Administration (FHA) in its mortgage advertisements that it sent to tens of thousands of veterans and servicemembers (which falsely implied that they were sent, endorsed, or sponsored by the VA or FHA). The advertisements also violated the CFPA and the Truth in Lending Act because they contained misrepresentations about the monthly rate of the advertised mortgages, including whether the advertised interest rates were fixed or variable. The CFPB required RMK to pay \$250,000 in civil money penalties and to comply with applicable federal laws. *See In the matter of RMK Corp. d/b/a Majestic Home Loans or MHL*, 2015-CFPB-0007 (Apr. 9, 2015) (consent order).³⁷ In February 2023, the CFPB permanently banned RMK Financial Corporation from the mortgage lending industry and issued a \$1 million penalty. *In the matter of RMK Corp. d/b/a Majestic Home*

³⁶ 12 U.S.C. § 5481 *et seq.*

³⁷ Available at <https://www.consumerfinance.gov/enforcement/actions/rmk-financial-corporation/>.

Loans or MHL, File No. 2023-CFPB-0002 (2023) (consent order).³⁸

- In October 2020, the CFPB found that a company called Low VA Rates, LLC, sent consumers mailers for VA-guaranteed mortgages that contained false, misleading, or inaccurate statements, in violation of the CFPB, the MAP Rule, and Regulation Z. The company advertised VA-guaranteed mortgages that, among other things, promoted products that were not actually available, failed to properly disclose rates and repayment terms, and used misleading descriptions of rates and the savings or financial benefits available to consumers. The consent order required a \$1,800,000 civil money penalty and imposed requirements to prevent future violations. *See In the matter of Low VA Rates, LLC*, File No. 2020-BCFP-0018 (Oct. 26, 2020) (consent order).³⁹ This was the ninth case stemming from a CFPB investigation into multiple companies that used deceptive mailers to advertise VA-guaranteed mortgages. *See CFPB, Consumer Financial Protection Bureau Settles with Ninth Mortgage Company to Address Deceptive Loan Advertisements Sent to Servicemembers and Veterans* (Oct. 26, 2020).⁴⁰
- In January 2019, the CFPB found that a credit broker violated the CFTA by making multiple

³⁸ Available at <https://www.consumerfinance.gov/enforcement/actions/rmk-financial-corp-majestic-home-loan-mhl/>.

³⁹ Available at <https://www.consumerfinance.gov/enforcement/actions/low-va-rates-llc/>.

⁴⁰ Available at <https://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-settles-ninth-mortgage-company-address-deceptive-loan-advertisements-sent-servicemembers-and-veterans/>.

misrepresentations to veterans about, for example, how much interest they would pay and when they would receive their funds. The CFPB permanently banned the broker from brokering, offering, or arranging agreements under which veterans purport to sell a future right to their pensions. He paid only a nominal penalty due to his penury, so the CFPB Civil Penalty Fund allocated approximately \$9 million to the veterans harmed. *See In the matter of Mark Corbett*, File No. 2019-BCFP-0002 (Jan. 23, 2019) (consent order). The CFPB has filed suit against several other persons and entities for similar acts.⁴¹

This robust docket underscores the significance of having a lead federal agency that coordinates consumer protection investigations and enforcement actions and has substantive expertise in laws that protect the military community. These cases also reveal the benefits of the CFPB's Civil Penalty Fund, which allows the CFPB to compensate harmed servicemembers when a bad actor cannot or will not. All told, the CFPB has become an indispensable agency for protecting the legal rights and financial readiness of servicemembers, veterans, and their families. The stability of the CFPB's funding is, therefore, vital to the tremendous work it does on behalf of servicemembers, veterans, and their families.

⁴¹ See CFPB, *Consumer Financial Protection Bureau, South Carolina, and Arkansas File Suit Against Brokers of High-Interest Credit Offers* (Feb. 20, 2020), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-south-carolina-arkansas-file-suit-against-brokers-of-high-interest-credit-offers/>.

D. The Fifth Circuit’s ruling would seriously undermine protections for servicemembers and their families, and thereby, military readiness.

If this Court affirms the Fifth Circuit’s decision, it could imperil all of the CFPB’s enforcement of consumer financial protection laws and regulations it has undertaken since its inception—much of which are vital for servicemembers, veterans, and their families. It would also halt numerous ongoing enforcement activities and regulatory developments that directly affect military families across the country.

The net result of stopping the CFPB’s essential work would be to seriously undermine consumer financial protection for servicemembers and decrease financial readiness in several tangible ways:

First, it would likely increase distractions for troops on the battlefield and diminish morale. For instance, civilian and military leadership have repeatedly highlighted that “predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force.” 2006 DoD Report at 9. The Commandant of the Marine Corps stressed “financial readiness directly impacts unit readiness and, consequently, the corps’ ability to accomplish its mission.” *Id.* at 82. Likewise, the Chief of Naval Operations underscored that he was “concerned with the number of sailors who are taken advantage of by predatory lending practices,” which harm “the Navy’s ability to accomplish its mission.” *Id.* at 84. DoD urged Congress to act, given that “predatory lending undermines military readiness, harms the morale of troops and their families, and adds to the cost of fielding an all-volunteer fighting force.” *Id.* at 9.

Congress, too, has recognized that predatory lending poses “a real threat to our national defense.” *A Review of the Department of Defense’s Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*, Hearing Before the S. Comm. On Banking, Hous., & Urban Aff., 109th Cong. 1 (2006) (“2006 Senate Hearing”) (statement of Sen. Elizabeth Dole); *see also id.* (statement of Chairman Shelby) (“As long as certain unscrupulous lenders continue to employ predatory practices, our servicemen and women suffer and the toll on our readiness will increase.”)

Second, undermining consumer financial protections for servicemembers exacerbates financial problems that lead to the revocation or denial of security clearances, which are obviously vital for handling sensitive information and working in classified environments. For various reasons (e.g., risk of blackmail and indicia of imprudent judgement), a servicemember in financial distress may “lose his security clearance” or “be temporarily removed from his assignment.” *Id.* at 86–87 (App. 5) (statement of Capt. Mark D. Patton). Indeed, in 2006, “[f]inancial issues account[ed] for 80 percent of security clearance revocations and denials for Navy personnel,” *A Review of the Department of Defense’s Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents*, Hearing Before the S. Comm. on Banking, Hous. & Urban Aff., 109th Cong. 1, p. 45 (2006) (statement of Sen. Richard C. Shelby). “Between 2000 and 2005, revoked or denied security clearances for Sailors and Marines due to financial problems increased 1,600 percent.” *Id.* at 86. As one Senator pointed out, this is “an unacceptable loss of valuable talent and resources” *Id.*

In 2018, DoD implemented new security clearance guidelines by which it now “continuously monitor[s] the financial status of servicemembers with security clearances.” Anthony Camilli and Joshua Friedman, *WARNO: New security clearance guidelines make it more important than ever for servicemembers to monitor their credit*, CFPB Blog (Aug. 20, 2018).⁴² Consequently, “[i]f servicemembers are unable to keep up [financial] obligations, a blemish on their credit report can [not only] lead to security clearance revocation [but] even potential discharge from service.” See *Prepared Statement of James S. Rice before the Committee on Veterans’ Affairs*, United States Senate, Apr. 19, 2023 (Rice Statement 2023). Protecting servicemembers from predatory practices that could undermine their security clearance is key for maintaining military intelligence and readiness.

Moreover, eroding the CFPB’s rulemaking, enforcement, and educational activities related to servicemembers would also increase the demands placed upon direct service organizations like several of the undersigned *amici*. The need for those programs would only expand in the absence of concerted federal action.

II. THE DEPARTMENT OF VETERANS AFFAIRS IS FUNDED IN A RANGE OF WAYS, SOME OF WHICH COULD BE CALLED INTO QUESTION BY THIS CASE.

Amici have extensive experience with the U.S. Department of Veterans Affairs (VA), which “provides a broad range of benefits to uniformed services veterans and certain family members,” including

⁴² Available at www.consumerfinance.gov/about-us/blog/warno-new-security-clearance-guidelines-make-it-more-important-everservicemembers-monitor-their-credit.

“payments to disabled veterans; health care; education benefits; housing assistance; and burial benefits.” Congressional Research Service, *U.S. Department of Veterans Affairs: Who Is a Veteran?*, R47299 (Nov. 2, 2022). The VA’s mission includes operating “the largest integrated health care network in the United States” and “improv[ing] the Nation’s preparedness for response to war, terrorism, national emergencies, and natural disasters by developing plans and taking actions to ensure continued service to Veterans” VA, *About the Department*.⁴³

As Petitioners point out, Pet. 13-14, Congress has historically employed funding mechanisms that vary widely in terms of duration, form, source, and specificity. Like other federal agencies, the VA relies upon a tapestry of these diverse funding mechanisms and sources. In order to provide veterans with a wide array of benefits and services, the VA depends on mandatory and discretionary appropriations, advanced appropriations, permanent appropriations, revolving funds, trusts, special funds, etc., including funds derived from non-treasury sources. See, e.g., Congressional Research Service, *Department of Veterans Affairs FY2023 Appropriations*, R47423 (Feb. 14, 2023), at pp. 3-4.

The VA has long been funded by a variety of mechanisms, which continue to this day. Some have emerged over the century-long history of the VA, stemming back to when it was called the War Risk Bureau circa World War I, and in response to the dynamic challenges that veterans face (after different wars) and Congress has periodically addressed (through funding new programs and benefits). Indeed, one longstanding revolving fund for VA loans was

⁴³ Available at <https://department.va.gov/about/>.

originally established by Congress 72 years ago. See VA, *Legislative History of the VA Home Loan Guaranty Program* (Aug. 23, 2006) at 6.⁴⁴ While not dispositive of the separation-of-powers question presented, it would be surprising to suddenly discover that funding streams that have existed for the VA for decades might suddenly be unconstitutional. See generally *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, at 610–11 (1952) (Frankfurter, J., concurring) (stressing historical practice in construing presidential power); *Mistretta v. United States*, 488 U.S. 361, 401 (1989) (“traditional ways of conducting government . . . give meaning’ to the Constitution [and separation of powers]”) (quoting *Youngstown*, 343 U.S. at 610 (Frankfurter, J., concurring)); *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981) (“[p]ast practice does not, by itself, create power, but ‘long-continued practice, known to and acquiesced in by Congress, would raise a presumption that the [action] had been [taken] in pursuance of its consent’”); Curtis A. Bradley & Trevor W. Morrison, *Historical Gloss and the Separation of Powers*, 126 Harv. L. Rev. 411-485 (2012). If applied in the VA context, the Fifth Circuit’s drastic remedy in this case is all the more surprising.

Some of the funding methods relied upon by the VA could be implicated by the Fifth Circuit’s hazy rationale for striking down the CFPB’s funding structure as unconstitutional. As Petitioners point out, the “court of appeals did not specify what more it thought was required for [] a law to qualify as a[] [constitutional] ‘appropriation.’” Pet. 7-8. “Instead, the court listed certain features of the Bureau’s statutory funding mechanism that, in its view, collectively

⁴⁴ Available at <https://www.benefits.va.gov/homeloans/documents/docs/history.pdf>.

rendered that mechanism unconstitutional.” Pet. 7 (citing App. 33a-37). These features included, among other things, the availability of funds that are outside of annual appropriations, or funds which are “permanently available,” particularly for an agency with a “capacious portfolio of authority.” App. 33-35a, 37a.⁴⁵

The Fifth Circuit’s ruling could potentially sweep in certain VA funding streams and the programs that rely upon them. For example, the VA has a number of important and substantial revolving funds, *see generally* VA, II *Financial Policy* 2 (Mar. 2023),⁴⁶ which are a “form of permanent appropriation receiving authority to spend their collections and do not generally receive [Congressional] appropriations.” VA, *Audit of VA’s Consolidated Financial Statements for Fiscal Years 2013 and 2012* (Nov. 27, 2013) at 14-15.⁴⁷ The VA Home Loan Guaranty Program discussed above has been helping both veterans and servicemembers secure home loans since 1951. This revolving fund allows the VA to work with a private lender to guarantee the loan, and will also pay the debt

⁴⁵ As Petitioners point out, the Fifth Circuit “also acknowledged that Congress has established several other agencies that, like the CFPB, are funded through sources other than time-limited spending bills. But in the Fifth Circuit’s view, the various features it had identified meant that CFPB’s ‘funding structure goes a significant step further than that enjoyed by the other agencies.’” Pet. 9. That is cold comfort for a federal agency, like the VA, which has broad authority and diverse programmatic offerings which also rely upon some forms of permanent or non-annual appropriations.

⁴⁶ Available at <https://www.va.gov/finance/docs/va-financial-policyvolumeiichapter02.pdf>.

⁴⁷ Available at <https://www.va.gov/oig/pubs/VAOIG-13-01316-22.pdf>.

to the lender if the veteran or servicemember defaults on that loan. See VA, *Legislative History of the VA Home Loan Guaranty Program*, *supra* at 6. The Service-Disabled Veterans Insurance Fund, enacted in 1951, provides insurance for veterans with service-connected disabilities. The Servicemen's Group Life Insurance Fund, enacted in 1965, provides life insurance for active duty, ready and retired reservists, cadets attending service academies, and ROTC. The Canteen Services Revolving Fund, enacted in 1958, operates the canteen services at VA hospitals. See Pub. L. No. 85–857, 72 Stat. 1248 (Sept. 2, 1958). See generally VA, *100th Anniversary of VA Life Insurance* (2014);⁴⁸ VA, *Financial Policy*, Vol. II, Chapter 2F, Appendix B (Apr. 26, 2021). Calling these funds into question would be disruptive and deleterious for the VA and other federal agencies.

Specifically, if the Fifth Circuit's fuzzy logic were applied to the VA, it could create budgetary problems and operational uncertainty in the short term. In the long term, those conditions could progressively impede the critical work of the VA, thereby creating problems for military families.

More broadly, to the extent the Fifth Circuit's legal analysis suggests that only annual appropriations are constitutional, it would strip Congress of its flexibility in devising the diverse array of funding mechanisms it currently uses to ensure that federal agencies are able to fulfill their complex and varied legal mandates.

For all these reasons, *amici* respectfully urge the Court to reverse the Fifth Circuit's decision. At the very least, the Court should carefully consider the

⁴⁸ Available at https://benefits.va.gov/benefits/infographics/pdfs/timeline_100.pdf.

collateral damage of any ruling it might make about the CFPB.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Respectfully submitted,

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