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4000 DEFENSE PENTAGON
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Ms. Amanda Koulousias
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Ms. Koulousias:

The Department of Defense offers the following comments for consideration to the Commission's proposed Military Credit Monitoring Rule (Military Credit Monitoring Rulemaking, Matter No. R811007).

The Department's review of the proposed rule indicates, if adopted, the definition of "active duty military consumer" could result in Service members receiving unequal protections based on their individual component, duty status, or location. As the Department believes the current definition is contrary to Congressional intent, the Department recommends the Commission exercise its discretionary rulemaking authority and adopt the following recommended definition of "*active duty military consumer*" for subsection 609.2(a):

"*Active duty military consumer* means a consumer who is on full-time duty in military service of the United States, which includes full-time training duty; annual training duty; full-time National Guard duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned."

The Department views its recommended definition as consistent with both the compensation statute, "Pay and Allowances of the Uniformed Services" (37 U.S.C. §101(18)), and section 302 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), and allows for equal and consistent application of this important consumer protection.

The Commission proposes to adopt, in section 609.2(a) of the rule, that "active duty military consumer" means "a consumer in military service as defined in 15 U.S.C. 1681a(q)(1) and 1681c-1(k)(1)."

Section 1681a(q)(1) of title 15, U.S. Code provides the statutory definition for "active duty military consumer" as it relates to fraud alerts.¹ In short, section 1681 defines an active duty

¹ "(q) Definitions relating to fraud alerts.

(1) Active duty military consumer. The term 'active duty military consumer' means a consumer in military service who--

(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

(B) is assigned to service away from the usual duty station of the consumer."

military consumer as a consumer who serves the military either on active duty as defined by 10 U.S.C. 101(d) or as a reservist as defined by 10 U.S.C. 101(a)(13) and “is assigned to service away from the usual duty station of the consumer.” Starting in May 2019, section 1681c-1(k)(1) of title 15, U.S. Code provides the definition for consumer reporting agency and related credit monitoring definitions.²

The Department views this definition as problematic for two reasons. First, it narrowly defines an “active duty military consumer” to a certain subset of members on active duty, excluding members of the National Guard from a benefit that Congress intended them to equally receive. Section 1681c-1(i)(1)(A)³ includes National Guard members in the definition of “active duty military consumer.” Accordingly, the Department recommends clarifying the reference to subsection (k)(1); while “security freeze” is defined there, it is actually subsection (i)(1) that includes members of the National Guard as defined by section 101(c) of title 10, U.S. Code as an active duty military consumer.

Second, the statutory requirement for the member to be “assigned to service away from the usual duty station” is severely limiting. For example, an active duty Service member assigned to Fort Bragg in North Carolina would only be eligible for this credit monitoring benefit while assigned away from Fort Bragg, i.e., for training or operational missions. This Service member would not be eligible for the intended credit monitoring for most of her active duty career, as a member is likely to spend most of her career assigned to their “usual duty station.”

Thank you for the opportunity to comment.

C. F. Drummond
Deputy Assistant Secretary of Defense for
Force Education and Training

² “(k) Credit monitoring [Caution: This subsection takes effect one year from the date of enactment, as provided by § 302(c) of Act May 24, 2018, P.L. 115-174, which appears as a note to this section.]

(1) Definitions. For purposes of this subsection:

(A) The term “consumer reporting agency” means a consumer reporting agency described in section 603(p) [15 USCS § 1681a(p)].

(B) The term “proper identification” has the meaning of such term as used under section 610 [15 USCS § 1681h].

(C) The term “security freeze” means a restriction that prohibits a consumer reporting agency from disclosing the contents of a consumer report that is subject to such security freeze to any person requesting the consumer report.”

³ “(j) National security freeze [Caution: This subsection takes effect 120 days after enactment, as provided by § 301(c) of Act May 24, 2018, P.L. 115-174, which appears as 15 USCS § 1681a note.]

(1) Definitions. In this subsection:

(A) The term “active duty military consumer” includes a member of the National Guard.

(B) The term “National Guard” has the meaning given the term in section 101(c) of title 10, United States Code.”