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Legal Claims and Defenses to Other Predatory Loans

“When morality comes up against profit, it is seldom that profit loses.”

—Shirley Chisholm, (1924–2005), *Unbought and Unbossed* (1970)

4.1 Overview

Many of the tools in an advocate’s arsenal to attack predatory non-mortgage loans (e.g., payday loans, auto title loans, tax refund loans, and rent-to-own transactions) are the same as those that provide remedies to abusive mortgage loans. For this reason, a discussion of some of the same claims and defenses appears in both this chapter and Chapter 3. Where the cause of action is summarized in Chapter 3, that section should be reviewed for substantive content on the parameters of the claim. This chapter will highlight how those claims arise in the non-mortgage lending context. However, several claims are reviewed only in this chapter because they arise more often in the non-mortgage loan context. For example, usury claims are preempted by federal law when mortgage loans are originated by most lenders. This is not true in the non-mortgage lending market, except as discussed below. Unfair debt collection practices rear their heads more often when the loan is unsecured or secured only by personal property due to exceptions to the coverage of the Fair Debt Collections Practices Act.¹

4.2 Usury

Most states have several different usury statutes.² The oldest of these laws are the so-called “general” usury statutes, which purport to set the maximum rate of interest that can be charged in

¹ Mortgage servicers are exempt when they acquire servicing rights over loans not yet in default. 15 U.S.C. § 1692a (6)(F)(iii).

² For more comprehensive treatment of state usury laws and deregulation of interest rate ceilings, see NCLC’s COC Manual § 2.3. A summary of state usury laws appears in Appendix A of that treatise.

any “loan” transaction in a jurisdiction. More recent and plentiful are the “special” usury laws, such as small loan acts, which are usually structured as exceptions to a general usury ceiling and which govern interest charges only in connection with specified kinds of loans. Finally, there are numerous laws that regulate charges for credit, but which are not called “usury” laws. For example, retail installment sales acts technically limit charges assessed in connection with the sale of goods on credit rather than charges for “loans” covered by usury laws.

Part of the consumer credit market is “deregulated” to some extent in every state, whether by state legislative action or by federal preemption. Even those transactions, however, are subject to some standards.

4.2.1 Usury and Predatory Lending

Usury arises most often in the payday and auto title loan contexts where the lender disguises the loan.³ For example, the payday lender may pretend the loan is a sale-leaseback by “buying” an item of personal property from the consumer and leasing it back for a “rental” payment due in two weeks while holding the personal check. Other variations are used, such as delayed presentment of a check, cash-back ad sales, or catalog sales. The auto title lender may also use the sale-leaseback scheme or structure the transaction as a pawn even though the title to the car may not be the type of personal property that can be pawned under the state’s pawnbroker act.

Once a court clears the smokescreen and finds the transaction to be a loan, several consequences follow. In states where no laws specifically permit these types of high-rate lending, the state small loan law is violated because the usury cap is always exceeded. Other provisions of the small loan law were most likely ignored, such as licensing. In addition, the lender did not give Truth in Lending (TILA) disclosures because it was pretending the transaction was not a loan.⁴ Other claims arise, as discussed later in this chapter.

If the state has enacted a law permitting the high fees and interest rates in the transaction under review, the usury caps that may exist in the small loan law do not apply. However, check to be sure that the provisions of the applicable act were followed and what remedies might exist for violations. In addition, if the lender provided TILA disclosures, the information may be improperly listed or the numbers may be inaccurate.

4.2.2 Which State Law Applies

The first step in analyzing a credit transaction for possible usury is to determine which statute governs the transaction. In most states, whichever law applies will depend on the type of credit extended and the type of creditor.⁵

³ For a description of payday loans, auto title loans, and disguised loans, see Chapter 2, above.

⁴ For the consequences of failing to give TILA disclosures, see § 5.7, below.

⁵ Chapter 7 contains a step-by-step analysis of loan documents with consideration of usury and other claims. Federal preemption is discussed in more depth later in § 7.4.1.

Different installment sales acts govern sales of different kinds of goods: motor vehicles; mobile homes; and “other goods.” The financing of insurance premiums is often separately regulated. In addition, open-end credit, usually associated with credit cards, is probably regulated by a different statute than closed-end credit, and may be affected by federal preemption. Finally, the usury law may differentiate between loans based on the size of the amount borrowed.

Different kinds of lenders, such as banks, savings and loan associations, credit unions, finance companies, industrial banks, small loan licensees, and licensed pawnbrokers, may be subject to different statutes. In addition, if a lender is not properly licensed, the special usury statute may not permit it to lend at the allowable rates.

4.2.3 Federal Preemption of State Usury Laws

In a few instances, federal consumer protection laws preempt some inconsistent or less protective state laws regulating credit charges, as is the case with the federal rebate law, which limits the use of the Rule of 78.⁶ Otherwise, preemption of non-mortgage usury law generally affects the amount of interest or other charges a lender may assess and the terms and conditions in the loan, and applies only to federally-insured depository lenders.⁷ Hence the character of the lender is the controlling factor.⁸

All national banks and, as of 1980, all other federally-insured lenders located in states that did not opt out of the Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA) may lend at rates up to the federal alternative ceiling. Federal credit unions may also charge the current annual rate set by the National Credit Union Administration, which at the date of this handbook’s publication is 18%.⁹ National banks invoking the most-favored lender doctrine in the state in which they are chartered may issue loans at the highest rate allowed by state law to any lender making comparable loans. Other federally-insured depository lenders also now claim most-favored lender status under DIDMCA, and to date courts have generally accepted that claim.

The troubling aspect to the special status afforded these lenders is the concept of exportation. Depository institutions may charge the highest rate of interest allowed by the law of the state in which the institution is chartered for the particular type of loan in question. The financial institution can then “export” that rate of interest to other states where it has no branches and may disregard usury caps in those non-home states. If the bank has branched beyond its

⁶ See 15 U.S.C. § 1615 (codified as part of the Truth in Lending Act). The Rule of 78 is a creditor-friendly formula used to calculate rebates of unearned interest in precomputed loans and unearned credit insurance premiums upon prepayment or acceleration. For an explanation of the Rule of 78 and its legal status, see NCLC’s COC Manual § 5.6.3.3.

⁷ Depository institutions may use the federal definition of interest found in an interpretive ruling issued by the Comptroller of the Currency. See 12 C.F.R. § 7.4001, *reprinted in* NCLC’s COC Manual Appendix C.2.

⁸ See NCLC’s COC Manual Ch. 3. A federal preemption chart appears above at § 3.2.5.

⁹ To follow changes in the maximum rate that credit unions may charge, see NCLC’s COC Manual § 3.6.

home state borders it may nevertheless ignore the non-home state's usury laws if it makes certain crucial lending decisions in the home office, according to an unpublished letter issued by the Comptroller of the Currency.¹⁰ Exportation threatens to swallow the efforts of states to limit the cost of the new fringe loan products, such as payday, auto title, and tax refund anticipation loans. It is already responsible for high credit card costs nationwide.

In addition to interest rates, national banks, federal savings associations, and their operating subsidiaries claim the right to preempt state law governing the terms and conditions of the loan. For an in depth discussion of the extent of this preemption, Chapter 3 of NCLC's COC Manual is a must read.

Note that preemption of non-mortgage usury applies only to federally-insured depository lenders. It does not extend, for example, to finance companies or other non-depository lenders or even to state depository lenders that lack federal insurance, although it may extend to non-bank subsidiaries of savings and loan associations and national banks.

4.2.4 Determining Whether the Interest Exceeds the Legal Limit

After deciding the maximum charges that the creditor could assess under the applicable usury ceiling, the next step is to calculate the actual interest charged in the transaction.¹¹ In addition to checking the creditor's math, the transaction must be scrutinized to determine whether the lender has properly included all fees that are legally categorized as interest in the stated interest on the contract.

The definition of interest, beyond the obvious "charge for the use of money," is sometimes a complicated issue because it varies from statute to statute. Generally, fees for lender services (service charges, document preparation fees, etc.) are interest unless otherwise excluded by statute.¹² Credit insurance premiums may be treated as interest if excessive or illegal. For example, if the seller required the buyer to purchase credit insurance, either the entire premium cost or just the seller's commission may be interest. Or, if the premium exceeded the state maximum, the excess premium may be interest.¹³ The inflated cash price of goods may be interest. Unearned interest or credit insurance premiums that a creditor does not rebate upon prepayment should be included as interest in a rate calculation.¹⁴

Once the amount of interest charged or collected in connection with a contract has been determined, the last step to proving an interest overcharge is to show that the interest assessed by the creditor is excessive. Since most usury ceilings are expressed as rates, the easiest way to demonstrate an overcharge is normally to calculate the highest permissible interest charge

¹⁰ *Id.* §§ 3.4.5, 3.4.6.

¹¹ *Id.* § 10.5.4.

¹² *Id.* §§ 7.2, 7.3.

¹³ *Id.* § 8.5.

¹⁴ *Id.* § 10.3.5.3.

under the controlling statutory rate formula given the principal amount of the loan and the length of time the loan or credit has been outstanding. This calculation can be performed on a hand-held financial calculator or through the use of a computer program.¹⁵

Some usury statutes require proof of usurious intent, but in almost all states if usury appears on the face of the contract, the requisite usurious intent is merely the intent of the lender to charge the interest that, in fact, was contracted for. This intent may be presumed from the contract.¹⁶

4.2.5 Remedies

The remedies available to victims of illegal overcharges are primarily determined by individual state statutes. Often a statute will declare a usurious loan void as to all or part of the interest, while leaving the principal obligation intact. Frequently, these statutes impose penalties on the creditor in the form of an award to the borrower of double to triple the interest or the usurious portion of the interest. Some statutes declare usurious loans to be completely void and may require the return of all monies paid. Equitable remedies, such as enjoining a repossession, may also be available.¹⁷

Statutes of limitations for an affirmative usury claim vary under these laws. Since most states recognize the doctrine of recoupment, a usury claim can be raised defensively in a debt collection action at any time.

4.3 The Truth in Lending Act (TILA)¹⁸

Chapter 5 is devoted to a more in-depth analysis of this important federal consumer protection disclosure statute. This section is intended to whet your appetite.

4.3.1 Overview

The Truth in Lending Act (TILA) was created to guarantee the accurate and meaningful disclosure of the costs of consumer credit. In general, TILA applies to each individual or business that offers or extends credit when four conditions are met: (1) the credit is offered or extended to consumers; (2) the offering or extension of credit is done regularly; (3) the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and

¹⁵ Two such programs can be accessed from the CD-ROMs accompanying NCLC's COC Manual, NCLC's TIL Manual, and NCLC's Consumer Law in a Box. The Windows version is included in the CD-ROM accompanying this handbook.

¹⁶ See NCLC's COC Manual § 10.5.5.

¹⁷ *Id.* § 10.8.

¹⁸ 15 U.S.C. §§ 1601–1666j.

(4) the credit is primarily for personal, family, or household purposes. Some credit transactions are exempt from TILA, however, including student loans, public utility credit, and some non-mortgage credit transactions over \$25,000.¹⁹

TILA requires that certain key terms of a credit transaction be disclosed in a consistent manner. On closed-end credit, these include: the finance charge (the cost of credit as a dollar amount); the annual percentage rate (APR) (the cost of credit on a yearly percentage-rate basis); the amount financed; and the total of payments. These terms must be disclosed in a clear and conspicuous manner. The APR and the finance charge are the most important disclosures required by TILA and, consequently, they must be disclosed more conspicuously than any others. Chapters 5 and 7, below, contain sample TILA disclosures.²⁰

For open-end credit (typically credit card accounts), TILA requires that the following be disclosed before the first transaction by which the consumer becomes obligated on the account: (1) the finance charge accrual date; (2) the periodic rate; (3) the method of determining balances on which the finance charge is computed; (4) the method of determining the dollar amount of any finance charge; (5) other charges imposed on the account that are not finance charges; (6) the existence or possibility of a security interest; and (7) the consumer's and the creditor's billing error responsibilities.

The accurate disclosure of the finance charge is at the heart of TILA, and TILA contains detailed rules for determining which charges must be included in the finance charge. The basic definition of finance charge under TILA is a broad "all-inclusive" one designed to give consumers a bottom-line dollar amount representing the cost of credit. With some significant exceptions, the finance charge includes any charge, payable directly or indirectly by the consumer, imposed directly or indirectly by the creditor, as an incident to or a condition of the extension of credit.

4.3.2 Remedies

A violation of the disclosure provisions of TILA for non-home-secured credit entitles the consumer to statutory damages of double the finance charge (with a minimum of \$100 and a maximum of \$1,000), actual damages, reasonable attorney fees, and costs. TILA also authorizes class actions. The statute of limitations is one year for affirmative cases, but violations of TILA may be raised defensively at any time.²¹

¹⁹ See NCLC's TIL Manual Ch. 2.

²⁰ See §§ 5.5.1.1, 7.1.3.

²¹ 15 U.S.C. § 1640.

4.4 Unfair and Deceptive Acts and Practices (UDAP) Statutes

As is the case with mortgage lending, other overreaching consumer credit transactions can often be challenged under state unfair and deceptive acts and practices (UDAP) law, provided the statute does not exclude the type of transaction or creditor involved.²² UDAP statutes are also discussed in Chapter 6, below, and that chapter should be consulted in relation to non-mortgage loan cases as well.

Because most UDAP acts are so broad, the UDAP claims that a consumer could raise are limited only by the advocate's creativity. Here are a few examples:

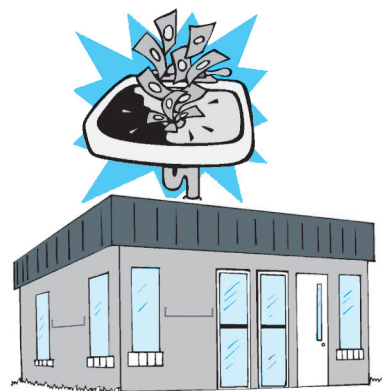
- Disguising a small payday loan as check cashing or a sale-leaseback or other sham and failing to disclose the interest rate and charges constitutes a UDAP violation.
- Filing criminal bad-check charges based upon a check used to secure a payday loan that was returned for insufficient funds when the state criminal law did not apply raises a UDAP claim.²³
- Where a tax preparer brokers a tax refund loan and receives an undisclosed commission from the lender, a UDAP claim should be raised.
- Disclosing a charge but listing it as a “carrying charge” rather than as “interest” states a UDAP claim.

“Half the truth is often a great lie.”

—Benjamin Franklin (1706–1790),
Poor Richard's Almanac, (July 1758)

4.5 Fiduciary Duty

Traditionally, there has been no special duty read into the creditor-debtor relationship. However, the presence of certain factors in the relationship may give rise to special duties to the borrower, up to and including a fiduciary duty.²⁴ If a lender acts in the role of advisor and knows or should have known the borrower trusted him, a quasi-fiduciary relationship of trust and confidence may be created, which at least gives rise to a duty of disclosure.



²² See NCLC's UDAP Manual § 2.2.1.

²³ See NCLC's COC Manual § 7.5.5.

²⁴ *Id.* § 12.9.

One form of credit transaction that may give rise to a fiduciary duty is the tax refund anticipation loan or RAL.²⁵ These loans are usually made by a bank or finance company through a tax preparation service. When the tax return is prepared, the taxpayer assigns his or her tax refund to the lender in exchange for immediate cash payment. Typically the lender charges a flat fee, and, depending on the amount of the refund, the effective interest rates on these short-term loans could be over 100%. In addition to possible usury claims and Truth in Lending claims against the lender, the tax preparer may have breached its fiduciary duty by failing to disclose the profits it receives from the RAL and other disadvantages to the consumer.

4.6 Fraud/Misrepresentation

Fraud and misrepresentation claims may provide significant recovery to a consumer because of the opportunity to obtain punitive damages. In addition, these causes of action may also provide a means to hold a lender or assignee of the loan liable even though the lender may claim that the fraud was committed by an unrelated party or the holder may argue that it is immune due to the holder-in-due-course doctrine. These defenses can be defeated where the party being sued either knew of or participated in the fraud or where a statute or contract clause abrogates the holder-in-due-course status. Chapter 3, above, should be consulted for a longer discussion of fraud and misrepresentation. Chapter 10, below, contains theories to expand liability to a wide net of players.

The downside to fraud and misrepresentation claims is the usual rule that the burden is on the plaintiff to prove the elements of these torts by clear and convincing evidence. In contrast, most UDAP statutes are subject to the usual standard of proof, preponderance of the evidence. Advocates, though, should check to see if the UDAP remedies are more restrictive than the damages available for the torts of fraud and misrepresentation.

4.7 Licensing Violations

As discussed in § 3.16, above, non-depository lenders (typically lenders other than banks) are often regulated by state licensing statutes.²⁶ Special usury statutes governing licensed creditors usually specify the permissible terms of individual credit transactions. These laws also include significant penalties for creditors that either fail to obtain a required license or violate their licenses by ignoring statutory consumer protections. Since obtaining the requisite license may be a precondition to lending under some special usury statutes, failure to do so may give rise to a usury claim under the statute.

²⁵ For further discussion of RALs and other tax refund schemes, see *id.* § 7.5.4 and NCLC's TIL Manual § 4.4.5.2.

²⁶ See NCLC's COC Manual § 9.2.4.5.

Examples of licensed, non-depository creditors in addition to finance companies are pawnbrokers, insurance premium finance companies, payday lenders, auto title lenders, and motor vehicle sales finance companies. Usually, these creditors may not engage in their particular business without complying with state licensing or registration requirements unless a statutory exemption applies.

The effects of failure to obtain a proper license vary and are reviewed in § 3.16, above.

“Freedom is the right to be wrong, not the right to do wrong.”

—John G. Diefenbaker (1895–1979) Canadian prime minister

4.8 Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692–1692p

The Fair Debt Collections Practices Act (FDCPA) imposes restrictions on a debt collector’s efforts to obtain payment and on choice of venue.²⁷ Use of the FDCPA occurs more frequently in the non-mortgage lending context if a third party is collecting the debt. Generally, mortgage servicers are exempt because they acquire servicing rights over loans not yet in default.²⁸ State debt collection acts should be consulted because many of them do cover the behavior of the lender itself when collecting a debt.²⁹

The term “debt collector” is defined by the federal statute. It generally includes: debt collection agencies; creditors using false names or collecting for other creditors; collection attorneys; purchasers of delinquent debts; repossession companies; and suppliers or designers of deceptive forms. The FDCPA generally excludes creditors collecting their own debts.

The FDCPA establishes general standards of proscribed conduct, defines and restricts abusive collection actions (in detail), and provides specific rights for consumers. General standards of proscribed conduct protect a consumer from invasion of privacy, harassment, abuse, false or deceptive representations, and unfair or unconscionable collection methods. The specific debt collection actions prohibited include late night or repetitive phone calls, false threats of legal action or criminal prosecution, and communication with most third parties regarding the debt.

Furthermore, the FDCPA gives the consumer the right to require by letter that a collector stop all collection contacts. It requires the collector to deal with a consumer’s attorney when the

²⁷ See NCLC’s Fair Debt Manual for a complete discussion of this Act, sample pleadings, and case summaries.

²⁸ Because post-default acquisition of mortgage servicing rights is becoming increasingly common, however, it is essential to determine when the servicer acquired the mortgage debt. NCLC’s Foreclosures Manual Ch. 6.

²⁹ NCLC’s Fair Debt Manual Appx. L.

SAMPLE CONSUMER “CEASE” LETTER

Sam Consumer
10 Cherry Lane
Flint, MI 10886

January 1, 2007

NBC Collection Agency
1 Main Street
Flint, MI 10887

Dear Sir or Madam:

I am writing to request that you stop communications to me about my account number 000723 with Amy’s Department Store as required by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(c). [NOTE: Delete reference to the Fair Debt Collection Act where the letter is to a creditor instead of to a collection agency.]

I was laid off from work two months ago and cannot pay this bill at this time. I am enrolled in a training program which I will complete in March and hope to find work that will allow me to resume payments soon after that. Please note that your letters mistakenly list the balance on the account as \$245. My records indicate that the balance is less than that. [Or: I have paid this bill in full already. Or: I don’t owe this bill. You are contacting the wrong person.]

You should be aware that your employees have engaged in illegal collection practices. For example, I received a phone call at 6:30 a.m. from one of them last week. Later that day I was called by the same person at my training program, which does not permit personal phone calls except for emergencies. My family and I were very upset by these tactics.

I will take care of this matter when I can. Your cooperation will be appreciated.

Very truly yours,

Sam Consumer

consumer has one. It gives a consumer the right to require a collector to verify the existence, legality, or amount of the disputed debt that it is attempting to collect.³⁰ And it requires that each communication from a debt collector to a consumer disclose that it is from a debt collector.

Where there is abusive lending, there may be abusive collections tactics. For example, FDCPA claims may arise where a collector threatens criminal prosecution on a payday loan when a post-dated check is dishonored.³¹

³⁰ The Fair Credit Reporting Act may be implicated where a creditor or collector reports inaccurate information regarding a debt. See NCLC’s FCR Manual Ch. 4.

³¹ One court found that the transaction did not involve the passing of a bad check because the lender knew the consumer did not have sufficient funds at the time of the loan to cover the cash advanced. See NCLC’s COC Manual § 7.5.5.

A successful plaintiff may recover actual damages, statutory damages of up to \$1,000, attorney fees and costs, and perhaps punitive damages and injunctive relief under the FDCPA. Class actions are also authorized. The statute of limitations is one year in affirmative cases.

4.9 Racketeering and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961–1968

The elements of RICO are discussed above in § 3.8. RICO provides powerful civil remedies to those who have been subjected to the collection of an “unlawful debt,” which is defined as any usurious debt bearing interest of at least twice the enforceable rate.³²

RICO claims have been successful in combating fringe lending and disguised credit, such as payday loans that are often touted as merely check cashing but may actually constitute loans made at more than twice the legal interest rate.³³

Abusive debt collection tactics may also give rise to a RICO claim based on extortionate collection of credit and mail fraud. For example, in one successful case using RICO, the collection efforts included giving the borrowers a “things to remember” list advising that if the borrower dropped out of sight, the creditor would find her or him; that there was no place to hide; that for at least seven years, the creditor would be a “daily concern” until the borrower paid; that the creditor employed off-duty police officers to track down borrowers; and that bankruptcy will not save the borrower. Collection letters sent and marked to the borrowers’ homes and places of employment and containing pejorative language and veiled threats may state a claim under RICO.³⁴

4.10 The Talent/Nelson Military Lending Act, 10 U.S.C. § 987

Congress enacted legislation in 2006³⁵ that caps the interest rate on loans to military service-members and their dependents at 36% and also bans mandatory arbitration in these loans.³⁶ The “Talent/Nelson” provision covers consumer credit extended on or after October 1, 2007. Residential mortgages and purchase money loans secured by a car or other personal property, however, are excluded. While the Servicemember Civil Relief Act presently requires creditors to reduce the interest rate to 6% on any obligation incurred by a servicemember *before* active

³² The use of RICO claims in predatory lending cases is discussed further in NCLC’s COC Manual §§ 12.6, 10.8.5.3. For a detailed analysis of RICO in consumer cases generally, see NCLC’s UDAP Manual §§ 9.2, 9.3.

³³ See NCLC’s COC Manual § 7.5.5.

³⁴ *Id.* § 11.6.

³⁵ A fuller discussion of this law appears in NCLC’s COC Manual § 2.3.3.12.

³⁶ The “Talent/Nelson Amendment” (added by Senators Jim Talent (R-Mo.) and Bill Nelson (D-Fla.)) was included as section 670 in the 2007 defense authorization bill, H.R. 5122. It will be codified at 10 U.S.C. § 987. An article on

duty, these new protections cover active duty members of the armed forces, including those on active Guard and Reserve Duty, and their dependents.

The statute imposes the 36% cap on the “annual percentage rate of interest” (APRI)—a hybrid term that incorporates the Truth in Lending Act (TILA) concept of “annual percentage rate” (APR), but adds in the term “interest.” The law also requires certain oral and written disclosures. In addition, the law forbids several practices that have been used by payday and other predatory lenders to exert control over their borrowers. For example, the law bans rollovers and refinancing by the same lender, check holding, allotments of military paychecks, auto title lending, access to a servicemembers’ bank accounts, and prepayment penalties.

A violation of the law’s requirements is a misdemeanor. More significantly, the law makes any contract containing a prohibited provision void, not simply voidable, which should make it enforceable through a state law contract claim or defensively.³⁷

the new law is included on the CD-ROM accompanying this handbook. Passage of the law was preceded by the *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* issued by the Department of Defense (DOD). The report is available at www.usa4militaryfamilies.dod.mil/dav/lsn/LSN/BINARY_RESOURCE/BINARY_CONTENT/2141721.pdf. The statute gave the Department of Defense (DOD) the authority to promulgate regulations to implement the Act and to define key terms. Under draft regulations published in April 2007, 72 Fed. Reg. 18,157 (Apr. 11, 2007), the law will apply only to payday, vehicle title, and refund anticipation loans. DOD expects to issue final regulations before the statute’s effective date of October 1, 2007. The following discussion assumes that the final regulations will vary little from the draft ones.

³⁷ Some courts have held that violations of the Servicemember Civil Relief Act, which is silent on this point as well, can be raised both affirmatively and defensively. See NCLC’s Fair Debt Manual § 9.12.10.