

Coronavirus Update  
Payday Loans: An Anchor not a Lifesaver

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The corona virus CoViD-19 has shut down businesses and slowed the economy. Another three million people have recently claimed unemployment benefits. The bills of course, keep coming. The payday lender offers cash fast, with no qualifying and virtually no questions asked. Desperate people may be tempted, viewing the loan as a lifesaving infusion of cash instead of what it really is, an anchor that will drag you down.

A payday loan is a very short term loan, often just a couple of weeks until your next payday; thus, the name. At the end of a short loan period, the money must be repaid, with interest, usually at exorbitant rates. Annual percentage rates (APRs) of 390% are common. So is failing to disclose the interest rate. The vast majority of payday loans, as you might expect, are not in fact repaid on time; instead, the lender offers another loan to help cover the first one, and so on and so forth as the borrower goes deeper into debt. The payday loan is even worse than normal if you don't know when your next paycheck will be coming.

In accordance with the Military Lending Act (10 USC 987) and its implementing regulation (32 CFR 232), it is unlawful to make a payday loan to a military service member, or to the member's dependents, with an APR in excess of 36%. In fact, the MLA covers most types of loans, except mortgages, and loans to buy personal property where the credit is secured by the property you are buying, like a vehicle or home appliance. Loans made in violation of the MLA are void and unenforceable.

Loan contracts covered by the MLA are subject to additional limitations, some of which are listed below:

- The lender is prohibited from requiring the borrower to waive rights under the Servicemembers Civil Relief Act (SCRA) or any other right to recourse under state or federal law;
- The lender is prohibited from requiring the borrower to submit to mandatory arbitration;
- The lender is prohibited from demanding unreasonable notice from the borrower as a condition of initiating legal action, and
- The lender is prohibited from charging a penalty for prepayment of the debt.

Further, lenders who knowingly violate the MLA commit a federal criminal offense, punishable by a fine and up to a year in prison. Lender civil liability includes actual damage caused (but not less than \$500 for each violation), punitive damages, court costs, and attorney fees. The lender who merely makes a clerical error will not be held liable; however, ignorance or misunderstanding of the law is no excuse.

In some states, such as North Carolina, payday loans exceed the allowed state APR and are therefore illegal under state law as well as the MLA. Georgia has gone so far as to enact a statute specifically prohibiting high interest payday laws ( OCG 16-17-1 et seq).

Service members and military dependents who have already made a payday loan are encouraged to discuss their legal options with their installation legal assistance attorney and report the matter on line to the Consumer Finance Protection Bureau, and as appropriate, to the state attorney general or banking commission.

Economic victims of CoViD-19 are encouraged to explore financial issues and options with the personal finance consultants on base and with the Navy and Marine Corps Relief Society.

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