Consumer Finance Monitor (Season 3, Episode 7): The Veterans and Consumers Fair Credit Act: A Discussion with the Bill's Drafter

Speakers: Alan Kaplinsky and Chris Peterson

Alan Kaplinsky:

Welcome to The Consumer Finance Monitor Podcast, where we explore important new developments in the world of consumer finance and what they mean for your business, your customers, and the industry. I'm your host, Alan Kaplinsky. I'm the chair of the Consumer Financial Services Group at Ballard Spahr and I'll be moderating today's program.

Alan Kaplinsky:

For those of you who want more information about the topic that we're going to talk about today, or anything else in the world of consumer finance, don't forget about our blog, which is also called The Consumer Finance Monitor. We've been doing our blog since the CFPB got created in 2011 and practically every day, we publish articles of interest on our blog, which does more than just report on the news, but tries to go behind the news and analyze the importance of various developments. We also regularly host webinars that are on subjects of interest to those of you in the industry and so if you want to get on our list for webinars, you should visit us at ballardspahr.com and if you like our podcast, let us know about it. Leave us a review on any platform on which you obtain your podcasts.

Alan Kaplinsky:

So I'm very pleased to have as my guest today, Professor Christopher Peterson, who is the John J. Flynn endowed professor of law at S.J. Quinney College of Law at the University of Utah. Chris is also the financial services director and senior fellow of The Consumer Federation of America and his bio is a mile long, and I'm not going to waste any more time before getting into the subject of today's program, but I certainly invite you to go on the website of the law school, and there, you can read in detail all the accomplishments that ... And I'm going to call him Chris, since I know him as a friend and a colleague, rather than as my professor. So Chris, welcome to our program.

Christopher Peterson:

Well, thank you, Alan. I'm happy to be here. Thanks for the kind introduction, and thanks for having me on your podcast.

Alan Kaplinsky:

Okay. We're going to talk today about a piece of legislation that I know you had some active involvement in, a very important bill that ... Or I should say two bills, one introduced before the House of Representatives, H.R. 5050, and another one introduced before the Senate, Senate Bill 2833, that both happened on November 12 of last year, and it's referred to in both the House and the Senate as the Veterans and Consumers Fair Credit Act. So let's start, Chris, by telling our listeners what's in this bill.

Christopher Peterson:

Well, sure. I mean the key thing that's in the bill is a national usury limit, an interest rate cap of 36% and that's pretty much the only thing that's in the bill. Obviously there's a fair amount of technical detail about how one would go about calculating an interest rate under the law if this bill were to pass, but that is the feature of the statute, a national usury limit that would cap interest rates on most forms of consumer credit at 36%. There are some exceptions, purchase money car loans are exempt.

Purchase money retail financing is exempt, for both of those provided that there's a security interest that secures the loan. Mortgage loans, residential mortgage loans are exempt from the statute. But for the most part, the rest of consumer finance would be covered by the law.

Alan Kaplinsky:

Okay. Well if a layman were to read the bill, that you wouldn't know just from a quick read-through of the bill that it was imposing a 36% rate cap because although the title of Section 2 is called Limitations on Consumer Credit and Maximum Rates of Interest, and it purports to amend the Truth in Lending Act by adding a ... I'm looking at the House bill, a Section 140B called Limitations on Consumer Credit and Maximum Rates of Interest, and then it says, "Application of the Military Lending Act," and then the introduction says, "Except as provided in paragraph (2), section 987(b) of title 10, U.S. code commonly referred to as the Military Lending Act shall apply to a creditor who extends consumer credit to a consumer to the same extent as such section applies to a creditor who extends consumer credit to a covered member or a dependent with respect to a covered member as those terms are defined in section 987." What does all that gobbledygook mean?

Christopher Peterson:

Well, I don't think it's ... It's hard to absorb all that just by listening but it's a cross-reference to 10 U.S.C. 987 which is the section of federal law that codifies the Military Lending Act so this statute is very much drawn on the previously existing interest rate limitation that Congress imposed back during the George W. Bush administration. So recall back then we were in the Iraq War and Congress was very concerned that high cost lenders that the Pentagon, not me here, but the United States Department of Defense had characterized as predatory, that they were ripping off their service members, they were having trouble with their Marines in Camp Pendleton, the soldiers up in Fort Drum in Upstate New York and across the country, getting into trouble with extremely high interest rate loans that made it difficult for them to retain their military talent and the folks that were supposed to protect us. So Congress passed the Military Lending Act which caps interest rates at 36% and it has a pretty expansive definition of what goes into that interest rate cap. The Veterans and Consumers Fair Credit Act incorporates that by reference. It simply is a cross-reference, pretty common in the federal code.

Alan Kaplinsky:

Any reason why it was done in that fashion rather than ... I think I've seen earlier versions of a federal usury cap or ... It doesn't incorporate by reference, it just comes out and imposes a usury cap.

Christopher Peterson:

Yeah. Well I think it's probably fair to say that I wrote it that way because I was trying to make it easier for financial institutions to comply. So the Veterans and Consumers Fair Credit Act, if you go check out one of my most recent law review articles co-authored with a good friend of mine Colonel Paul Cantwell who was the ... He was a colonel and was my boss when I worked at the Pentagon on the Military Lending Act. We included an appendix to our last law review article that I think you'll note has an awful lot of similarity between this ... The Veterans and Consumers Fair Credit Act and the proposed bill in our law review article.

Christopher Peterson:

The reason that I went that direction is that I wanted to make it simple. A lot of laws, it's so complicated, everybody has a hard time complying. This one is actually quite simple. Every bank in America, every financial institution that engages in consumer credit, has to have some program through which they comply with the Military Lending Act's interest rate cap. If we're going to have a usury limit, it makes sense to just have one in that price range and not require banks to have duplicative, overlapping compliance programs, software, servicing rules that are redundant and don't really provide any better consumer protection for people.

Christopher Peterson:

Obviously a lot of consumer advocates and academics and frankly a supermajority of the public support traditional interest rate limits like this, but I don't think that the public or consumer advocates really care too much about a lot of the particular details and the Military Lending Act did a pretty good job, especially in its 2015 implementing regulations, of getting a lot of that right so why make it more complicated than is necessary. Let's just have a cross-reference that incorporates previously existing practices that were set up by a respected institution, the Department of Defense, and provide those same kind of protections for everybody.

Alan Kaplinsky:

But Chris, when the Military Lending Act was enacted, it was in reaction to a very significant event, namely the Iraq War, which ensued in the aftermath of the ... A lot of terrorist events, most notably the attack on the Twin Towers in New York and a lot of people went into active duty military service and there was a good rationale for enacting the Military Lending Act, that is you didn't want people to be distracted by financial concerns if they were going off to protect our country in the military and sometimes very often going overseas but how do you apply that rationale which was limited to a particular segment of society, to everybody? This would apply to every Tom, Dick and Harry, right? Doesn't matter whether they've been in the military, whether they're in it now. Doesn't matter if they're a veteran, it would cover veterans of course because they're a consumer. I don't see that linkage. I see a disconnect.

Christopher Peterson:

Well I guess ... First point, I think I would push back a little bit on whether or not the war itself was the particular rationale for the underlying law itself. It may have created some of the political conditions that allowed the law to pass, but it does not strike me that now that the Iraq War has wound down and maybe on the horizon we finally see an end to the War in Afghanistan perhaps. It's not as though the Department of Defense is shifting its position. DOD is one of the largest employers of people across the country, they have a lot of expertise in knowing what things work well for their people and what things don't, and their position, again and again, has been triple digit interest rate high cost loans are not good for the troops. They hurt their morale, they hurt their well-being, they make it harder to get them to focus on their work and it risks the loss of their security clearances and even dishonorable discharges. That's why DOD has been emphatic that it supports the Military Lending Act despite all the pushback it's gotten from financial institutions.

Christopher Peterson:

That rationale that triple-digit interest rate loans don't really work well for people, that they tend to be unaffordable and that they can cause harmful financial consequences is not limited just to the military. There are a lot of people in important roles in society who we also need to do well and we need to succeed. Do we also not want our teachers, childcare givers, post office workers, construction workers, everybody across the country contributes and all Americans including especially our veterans, many of whom are returning from those same wars that you mentioned. They all deserve protection from unreasonable prices that tend to cause financial harm for people.

Alan Kaplinsky:

So this bill, assuming it was signed and become enacted ... Or passed by the House and the Senate and signed by the president would immediately ... Am I right? It would be effective immediately, I didn't see an effective date in the bill.

Christopher Peterson:

No, the version that ... Obviously this bill has a ways to go and I'm sure it will be subject to amendments but the version of the bill that last left my desk includes a rule-making process and there's a timeframe for ... The CFPB would be the regulatory authority and would have to implement the regulation and would have to coordinate it with the Department of Defense to make sure that the MLA, the Military Lending Act regulations and the CFPB's Veterans and Consumers Fair Credit Act regulations are dovetailed with each other and reinforce and are consistent. So no, there would be a rule-making process that would have to go into effect. It would not be immediate and industry would have some opportunities to be heard and to try to help shape those rules which is exactly what you would want. You need to make sure that ... It would be a significant change especially for some of the highest cost lenders. They'd need some time to bring their businesses into compliance and to get feedback.

Alan Kaplinsky:

Chris, I think you wouldn't have to worry about them because it will put them all out of business. The payday lending rule that was originally promulgated by Director Cordray didn't impose a usury cap as such, but imposed a lot of other requirements and the word is it was going to wipe out a good part of that industry and there was a segment of the population whose credit rating is so poor and so marginal that lenders can't profitably lend at a rate of 36%. They just can't do it and so ... Although you purport to be looking out for the best interests of consumers here, it seems to me that if everybody complies with this law, you're not going to have legitimate lenders. You're going to have people going on the internet, getting loans, God knows where they are being made from, probably offshore, maybe Indian tribes, maybe offshore Indian tribes. There will still be money being lent but there will be more exorbitant rates than ever because you will have wiped out practically all the legitimate competition. How could this be a good thing, Chris?

Christopher Peterson:

Well Alan, you live in Philadelphia. Pennsylvania already has an interest rate cap that all the folks in Philadelphia and Pittsburgh and throughout the middle of Pennsylvania do just fine with and in New York there's an interest rate cap, they're not drowning themselves in the Hudson River in New York City because they don't have access to their payday loans but let me respond specifically to your question. There are many alternatives that continue to exist, that would continue to be viable under this bill.

Christopher Peterson:

So first off let's bear in mind that every credit card in America including subprime credit cards that target consumers with very low credit scores, sometimes with a security deposit, sometimes without, but every credit card in America has a built-in payday loan where the borrower can borrow from five dollars to up to the available balance of the line of credit and then pay it off within a grace period for no price, no interest whatsoever if they're not carrying a month to month balance. So everybody, every bank in America that offers credit cards and credit unions are all in the payday loan business depending on how you define that term.

Christopher Peterson:

So let's not scare people by suggesting that there won't be widespread credit that's available and credit cards could still function just fine under the Military Lending Act. They don't have interest rates above 36%. Second, the federal credit unions have a payday alternative loan program with an annual interest rate of 28% plus a small application fee. Those are still permissible under both the Military Lending Act and would continue to be after the Veterans and Consumers Fair Credit Act went into place. Third there are a lot of finance companies, fintech companies, and installment loan companies that consistently have made loans with interest rates below 36%, LendingClub, Omni Military Loans is an example of a niche military loan company that still makes loans to military service members in compliance with the Military Lending Act. Their website still says they still make loans of between $500.00 to $10,000.00 to the military.

Christopher Peterson:

I would also add fourth, there are a lot of charitable community and poverty assistance organizations that are out there that target people who are really struggling and can provide free or low cost loans to consumers that are struggling.

Christopher Peterson:

I also might add ... Here I'm a little bit nervous about some of the payroll access services that allow people to get their accrued wages earlier in the payment cycle. I don't see these as a long-term solution to insolvency but they can help be a useful tool in managing poverty in some situations and would still continue to be permissible after the Veterans and Consumers Fair Credit Act went into effect.

Christopher Peterson:

I also mention six would be pawn shops. Pawn shops have been offering pawn credit for literally thousands of years in human civilization and they can function at interest rates of 36% or below and do so in a lot of states. Arkansas has a very low interest rate cap in its state constitution. Some states it's a bit higher than 36%, some states it's quite a bit higher, and there would definitely be an adjustment period for pawn shops but they will still be able to extend emergency credit to people who are willing to pawn a valuable good.

Christopher Peterson:

I'll stop there. That's only six or seven examples of credit that would still be widely available. That's what people do in states that already have usury limits which includes about ... Roughly 25% to a third of the American population, plus many of the largest and most sophisticated countries around the world, including France, Germany, Korea, Japan, they don't have payday loans in those states and I suspect that they are better off for it.

Alan Kaplinsky:

I'm focused very much on people in the U.S. and while the things that you mentioned are certainly various credit alternatives, they don't necessarily have any relevance to the segment of the population that today is dependent upon paying higher rates, either payday loans or high rate installment loans. They don't have the credit score that would enable lenders to lend to them at credit card rates. So a lot of ... A great many of the consumers who patronize payday lenders and have been going to them for years, they don't have credit cards. They don't qualify for credit cards. Even subprime credit cards. They don't belong to credit unions. They are not eligible to get a marketplace loan from one of these online, very legitimate lenders that you mentioned who lend below a 36% APR. So what do they do? What I believe they do and what I've heard they do is they will go online and they will borrow money off the internet at rates that are sometimes above 1000% APR because they can't get money anywhere else. Sometimes it will be an offshore lender, sometimes it will be a tribal lender or somebody affiliated with a tribe. All these ... They're not going to be shut down, these offshore lenders. They're going to continue to exist and so ...

Alan Kaplinsky:

You may think that the people who are currently going to high rate installment lenders and payday lenders are going to very easily access other sources of credit and they will all of a sudden be able to qualify for credit at 36% or below, but honestly Chris, I think that's a fantasy. That's not reality, at least from what I've heard.

Christopher Peterson:

Well look, Alan, I think that we have some factual disagreements. I think that there are a lot of credit cards that are designed and in fact target people that have very low credit scores. Some of these cards, they can be pretty rough cards. I'm not trying to apologize for all of the practices but it's clear that they charge interest rates that are far lower than the typical payday loan interest rates do but they manage to nonetheless be profitable because they're cheaper to underwrite, you only have to underwrite the one time and then obviously there's some ongoing quality control but the administrative costs are sunk and you get a long-term relationship with the borrower. They also make revenue from swipe fees, that's how they pay for some of the rewards programs in higher end products.

Christopher Peterson:

These are designed for people that have credit scores all the way down to the 300, 400 FICO range. Don't take my word for it Alan, next time you're on the internet, go take a look at NerdWallet.com. Don't have any connection with NerdWallet myself but they list several examples in their credit cards for people with bad credit, there are products that are out there.

Christopher Peterson:

As far as membership in federal credit unions, that's part of the problem. People are less likely to join federal credit unions because they get trapped into these debt cycles that go on and on where there are aggressive collection practices that make them less creditworthy and they don't really qualify not because ... Simply because they're taking on these high risk contracts.

Christopher Peterson:

Then last as far as the circumventing ... Well listen, I'm no friend to illegal payday lenders that work on the internet, I worked on some cases that ... When I was at the CFPB that were focused on that. They're some of the worst actors in the marketplace and perhaps that's one place where you and I could potentially agree. I do think we need to have a robust enforcement program at the CFPB and at the Department of Justice. Back during the Obama administration, several individuals that were in charge of some of the largest online payday loan companies that were making loans in violation of state interest rate caps are still in prison for violating the federal racketeering statutes. So it does strike me that it's a very reasonable policy to move forward with.

Christopher Peterson:

A speed limit that tries to force the market into safer credit and then start handing out some speeding tickets and reckless driving tickets to extend the metaphor to folks that aren't willing to act in a civilized and reasonable way. Alan, you don't have to take my word for it. I get that not everybody agrees but just bear in mind that the Veterans and Consumers Fair Credit Act has been widely endorsed by virtually every consumer rights organization in the country, also civil rights organizations including the NAACP, the Leadership Conference on Human Rights. It's also been endorsed by over 25 military and veterans organizations including the Military Officers Association of America, the National Military Families Association, Veterans for Education Success and the Veterans of Foreign Wars. It's also been endorsed by most of the major Christian faith organizations in the country including the National Baptist Convention, the Conference of Catholic Bishops, the National Association of Evangelicals, the Southern Baptist Ethics and Religious Liberty Commission as well as the Episcopalian Church and in addition to all of that, there is a supermajority of Americans that support this basic approach. Not just Democrats and not just Republicans, a supermajority in fact of Republican primary voters support re-establishing traditional interest rates that put a speed limit on abusive lending in our society. You don't have to trust me. That's what the public, that's what the faith leaders, that's what our military community, that's what they want.

Alan Kaplinsky:

Except for the sake of argument, go this far if you would, that there will be some people, some ... I don't know what percentage of the population, but there will some people that are going to be locked out of getting let's call it legitimate credit that complies with the 36% rate cap and I guess ... I don't want to put words in your mouth, Chris, but what you're telling me is that's a sacrifice that you and all these other advocacy groups are willing to make in order to make interest rates lower for another larger segment of the population you claim that's being overcharged right now, being charged ... Interest rates that are unconscionably high, where exorbitant profits are being made. So is that the trade-off, that you're willing to abandon one segment of the population?

Christopher Peterson:

I don't think that I'm abandoning anybody. I think I'm actually protecting those folks and that's what the policy would do. What's more, there's no credit scoring system in the pawn shop market. If people have valuable items to pawn, jewelry, a shotgun, there is a source of credit that people have used for thousands of years that can be done at relatively low prices. Look I'm not saying that pawn shops are cheap, they're not, but they are a much safer loan in comparison to some of these debt trap, triple digit interest rate products because the borrower has to pre-plan their exit strategy from the debt. They select the thing that they can live without and the lender has some security so they know that if you don't come back and you decide that you can't pay or you lose your job, that the lender is not going to be out to lunch either. That's why pawn shops have been successful for so long. So when you say that we're not going to provide credit to them, that's just simply not the case.

Christopher Peterson:

Also, bear in mind, my concern is this. If you have someone who has such a low credit score or has such an entire lack of income that they don't qualify for even those mainstream products that are designed for people that are in those situations including secured credit cards for people with low to fair scores or payday alternative loans from credit unions and what's more if they don't have any valuable assets to pawn, at that point, you're not helping them by making them a 400%, 500% interest rate loan. That person needs assistance, they need counseling, they need very likely food stamps. That's what we should be doing to try to take care of these people.

Christopher Peterson:

From my perspective it's not so much that we are abandoning a segment of society. We're just putting a speed limit. It's true that there are probably some people out there that would like to drive down the freeway at 250 miles an hour and I guess if your point is, "Well they might be able to get to their destination safely and it's an inconvenience for them to actually have to drive at 60 or 65 miles an hour." Well maybe so but I guess I'm willing to accept that because recklessly driving down the road is dangerous for the person who's driving at 250 miles an hour and for everybody that's in their vicinity and if they've got kids in the backseat especially for them. I want people to be safe and I want our products to actually work for Americans. That's why myself and a supermajority of Americans think we need some reasonable limits.

Alan Kaplinsky:

So let's talk about the politics of it. The bill has been introduced. Hasn't gotten any traction yet. Do you think ... Anything's going to happen this year or this just putting down a marker in case the Democrats prevail in the House and Senate in November and we have a Democratic president?

Christopher Peterson:

Politics are a bit of a mystery to me but I will say that it has got some traction in the sense that it's a bipartisan bill. There's a sponsor on both sides of the aisle. The lead sponsor on the Democratic side in the House is Representative Jesus "Chuy" Garcia from near Chicago and also on the Republican side Representative Glenn Grothman who is very conservative, Tea Party, devout Republican and a good guy, and he has joined together across party lines because I actually believe that there is more of a constituency for this than a lot of people realize.

Christopher Peterson:

It's certainly the case that in the past, the Senate Banking Committee and the House Financial Services Committee are often dominated by ... Let's be candid, representatives and senators that take a lot of campaign contributions from folks in industries that will be affected by this type of a law, and that can make it hard to get to them. There are a lot more lobbyists up there on Capitol Hill for the financial services industry than all of the different consumer, civil rights, faith organizations, military, service member organizations combined. That being said, I think it's a mistake to think that at some point, we as a society can't get our laws to come into focus or into resolution with what it is that a supermajority of the public would support. I do think that there is some potential for the law and I do think that there's support for it on both sides of the aisle.

Alan Kaplinsky:

Do you think it will happen this year or do you think we're talking about a similar bill getting introduced next year? Give me an idea of what you think about the timing.

Christopher Peterson:

Well I'm not ruling anything out. Obviously I support the legislation and so I'm not going to make the path to passing it harder by casting aspersions on its potential for success but I do think that there is the support for it on the part of Chairwoman Maxine Waters from California. She is ... I've heard her speak on the subject and she seems to be supportive of it and whether or not there are sufficient votes to get it out of the House Financial Services Committee remains to be seen. I suspect that there's a good chance there will be and then if it manages to get to the floor of the House, I think all bets are off because a lot of rank and file Democrats and Republicans, their reaction to this kind of bill is different than the one that we have been talking about. For them, they hear the number of 36% and that seems like, "Wait a minute. That's way too high." Once they understand that all across America, average interest rates at storefront pay day lenders are about 400 to 420%, they start to realize that we need to have a uniform speed limit across the country.

Christopher Peterson:

I also believe that you may find that there are more people in the financial services industry that actually support this kind of approach than might be apparent at first glance. The trade associations tend to be reactionary and not support any regulation or rules of any type, but if you go talk to actual bankers and credit union managers and attorneys for them, a lot of them, when they're not on public record, will say, "You know what? We need to have some reasonable limits, and this isn't such a bad approach because it strikes a pretty reasonable balance and it also is done in a way that ... We got 10 years of experience as an industry complying with the Military Lending Act itself. So if we were going to do something on a nationwide basis, this is not such an unreasonable way to move forward."

Alan Kaplinsky:

So let me give you a hypothetical in the credit card area because let's put aside the high interest rate lenders, like payday lenders. Let's just talk about credit card issuers. This would cover extensions of credit on credit cards regardless of whether the credit card is used to make a purchase or if it used to obtain a cash advance. Am I also right, it covers a lot more than finance charges. It covers all kinds of other fees and charges with a few minor exceptions.

Alan Kaplinsky:

It seems to me that it's very conceivable that during a particular month, the APR on a credit card could easily be above 36%, because of the fact that you're talking about various cash advance fees, which would be a finance charge, or other fees and charges ... If that's the numerator and the denominator is not a large number, not a large amount being borrowed for a short period of time, you're talking about some very legitimate lending that's going to get very significantly cramped to put it mildly. Am I right?

Christopher Peterson:

You're right on the math, I think you're wrong on the law. So in the Military Lending Act, the Department of Defense made an exception for credit cards for non-periodic fees. Under the Military Lending Act regulation if the fee is bonafide and reasonable, then a non-periodic credit card fee could be excluded from calculation of the annual percentage rate limit. The rationale for that was that ... Credit cards are used for a lot of things that are both for credit, credit-related and also service-related. So for example, suppose that you had a balance transfer fee or you had a fee for foreign currency conversion. Obviously it's customary to charge some fee for converting one type of currency to another. It might make sense to impose that fee on a non-periodic basis and also collect it at the time that you're collecting some interest rate on the balance over that particular billing cycle.

Christopher Peterson:

Under the Military Lending Act's implementing regulations, financial institutions that have a card program are able to exclude some of those fees provided they are bonafide and reasonable from calculation of the cap. In the Veterans and Consumers Fair Credit Act, it's even more permissive. So one of the other things that gives me less heartburn about non-periodic fees, so these are fees that are not the interest rate but are just fees that come along from time to time, annual fees. One thing that gives me a little less heartburn about that is that the CARD Act from 2009 has some pretty good protections that are practical and that the country has come to live with. In the Veterans and Consumers Fair Credit Act, non-periodic credit card fees are excluded from calculation of the MAPR provided that they comply with the CARD Act's fee harvester 25% rule. This is a rule that in effect says, don't quote me on it but says in effect that you can't have non-periodic fees take up more than 25% of an available line of credit during the first year of a credit card origination. So provided that you comply with that one, which look, every credit card provider essentially does unless one of them is making a mistake, then you don't have to worry about this cramping that you're talking about in the credit card markets.

Alan Kaplinsky:

Yeah, but what about a minimum finance charge? With somebody ... I mean today, people use credit cards to make a $5.00 purchase. Sometimes even less and it always seems like I'm standing in line behind them. It's hard for me to believe they don't have the cash to pay that but every often under state law, credit card issuers, they are allowed to assess a minimum finance charge. In many cases, that minimum finance charge, if factored into the MAPR, is going to bring you above that 36% APR because the amount borrowed is so small.

Christopher Peterson:

Well look. There may be some compliance challenges with that and it would be interesting to see what the bureau would do with that particular issue. That's one of the benefits of a notice and comment rulemaking process, the industry can sort of raise concerns and then hopefully have some smart lawyers who sit around, figure out how to deal with it, how to accommodate it when they can, but let me just say this. If that is the best reason that we can come up with for not imposing a national interest rate limit that would push back on the triple digit interest rate loans, then I'm not too worried about the debate. I get that financial institutions may want to ... Had to sign a business strategy that has a minimum finance charge in some circumstances. Is it possible that for these very small transactions and very small, relatively small amount of money, they might have to at the end of the day trim that particular fee and try to make up for it in some other way, whether that's just raising the interest rate which is also a simple way to do it.

Christopher Peterson:

Bear in mind there are credit cards out there that have no fees whatsoever. Is it okay for me to say I think I'm a little bit of a fan of the Goldman Sachs Apple card. I'm sure there are some things that I could scratch my head about, but one of the things about that card that I like is that it's just such a vanilla product. They only charge interest, there are no fees, at least the last time I looked at it. No fees at all. So if Goldman Sachs can manage to calibrate their risk-based pricing based purely on an interest rate with no fees whatsoever I suspect that there a lot of other banks that could do along with them.

Christopher Peterson:

What's more and also may be worth mentioning I don't believe Goldman Sachs has ever exceeded or violated the military lending act. It still reaches pretty far into a lot of markets out there. So I do think that there is a path forward for financial institutions that are responsible to be very successful with this kind of a law.

Alan Kaplinsky:

Now is ... Let me just clarify something with you, Chris. The Military Lending Act does a number of other things in addition to imposing a 36% cap on the APR or the MAPR. It bans the use of arbitration. It does other things. Would this bill, these companion bills, deal with that too?

Christopher Peterson:

There's a list of other practices that are restricted aside from the interest rate limit in the Military Lending Act that are not ported over and included in the current version of the Veterans and Consumers Fair Credit Act either in the House bill or the Senate bill so for example there's a restriction on remotely created checks is how the Department of Defense worded it. There's a restriction on some kinds of rollovers. I think that a lot of the compliance challenges that came out of the Military Lending Act's rulemakings were tied to those limitations and I'm not entirely convinced that all of those limitations provide that much bang for your consumer protection buck so to speak. So frankly I just want to make it as easy as possible for financial institutions to comply.

Christopher Peterson:

So the Veterans and Consumers Fair Credit Act is focused very much on the usury limit core feature of the law. It does have ... We could talk about what some of the remedial provisions are, the remedies, but a lot of these other restrictions are not included in the bill.

Alan Kaplinsky:

Is there private right of action?

Christopher Peterson:

There is private right of action under the current version of the bill.

Alan Kaplinsky:

What would it provide for?

Christopher Peterson:

[inaudible 00:45:35] fee shifting, same as the Military Lending Act.

Alan Kaplinsky:

I don't recall what that is. Is it double the finance charge or ...

Christopher Peterson:

I think there's a statutory penalty of $500.00 is my recollection. You have managed to catch me, I believe it's $500.00, the statutory penalty, costs and reasonable attorney's fees. You're right that everybody gets to have a day in court that is a covered borrower under the Military Lending Act. It also has a criminal penalty of a one year misdemeanor violation. I query whether or not that's really necessary. I don't believe anybody's ever been prosecuted under it.

Alan Kaplinsky:

It gives ... In addition to the CFPB, which I assume would have enforcement authority, it would confer enforcement authority upon state attorneys general and state departments of banking?

Christopher Peterson:

Yes. The Dodd-Frank act already does that but this does it ... It belts and suspenders in the event that the Dodd-Frank Act is struck down in the Celia Law case. This would be another avenue trying to make sure that the state law enforcement agencies can continue to enforce this important protection.

Alan Kaplinsky:

Why is it ... I know this seems like a minor point but why do you have the word veterans in the title? Because a veteran is a consumer, right? We'll agree to that. It's superfluous, isn't it?

Christopher Peterson:

No it's not. I think that the service that our veterans have given to America is never superfluous, it's something we always need to keep in our mind and I don't believe that simply because service members who are protected by the Military Lending Act and simply because they return back to the states and are discharged with honor that somehow they're less people and that they don't count anymore and that they should still be entitled to the same protections they had when they were active duty service members. Featuring veterans in the title is to make sure that everybody understands that these are people that fought for us so we should not leave them behind. They deserve the same kind of protections that our service members do.

Alan Kaplinsky:

Okay. Well, we have been talking for quite some time about these companion bills that are pending before the House and the Senate that would create a 36% rate cap but it's even more than that because a lot of fees and charges would be thrown into the calculation of this annual percentage rate. Very, very restrictive bills and I've been talking to Professor Chris Peterson, who I guess it's fair to say is the drafter of the bill, certainly a very strong supporter of the bill, and I guess as you probably have figured out, I don't think these bills make sense for not only the industry that I as a lawyer represent but also consumers. I think it would hurt everybody if this ever were to become law but there's room for disagreement on that obviously.

Christopher Peterson:

You know Alan, I appreciate that. I know that we're not going to agree about it but that's part of the reason I wanted to come on your podcast because you and I often have good conversations together and you help keep me honest and I'm hoping to do the same for you and it's important for people who have different perspectives to come together and have constructive dialogue with each other in a civil way and so it's really an honor to be on our podcast and I'm looking forward to continuing our conversations.

Alan Kaplinsky:

Yeah, well, no and thank you very much for taking the time today Chris to join us and I'm sure that if you're right that this bill is going to gain some traction, I'm sure I'll be inviting you back on to talk some more about the bill, perhaps at that point, you'll have more data to support some of the things you said and I'll have more data to support some of the things I said today. Because I think ... This is not anything that Congress should go into willy-nilly. They really ought to look at this very carefully because this is a major change to the laws. There are more restrictive state laws, they will continue to apply, but if there are more liberal state laws, they will get wiped out by the bill.

Alan Kaplinsky:

So let me once again thank Chris. I want to thank all our listeners today. Make sure you visit our website, www.ballardspahr.com, where you can subscribe to the show. You can also subscribe in Apple Podcasts, Google Play, Spotify, or whatever your favorite podcast platform may be and don't forget to check out our blog, also called Consumer Finance Monitor, for daily insights on the consumer finance industry and if you have any questions or suggestions for our show, please email them to us at podcast@ballardspahr.com and stay tuned each Thursday for a new episode of our show. So thank you once again.