

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING

File No. 2015-CFPB-0008

In the Matter of:

FORT KNOX NATIONAL
COMPANY, a Kentucky
corporation, and MILITARY
ASSISTANCE COMPANY, LLC, a
Kentucky limited liability company.

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the business practices of Military Assistance Company, LLC, a subsidiary of Fort Knox National Company (Respondents, as defined below) and has identified the following law violations. Until March 2014, Respondents processed payroll deductions – called allotments – for Servicemembers, as that term is defined below. Respondents routinely charged various monthly fees against excess allotment funds that had accumulated in Servicemembers' accounts. Respondents charged such fees – totaling millions of dollars – without adequately disclosing the existence of the fees before charging them, or notifying Servicemembers when they incurred the fees. This conduct was unfair, deceptive, and abusive in violation of sections 1031 and 1036 of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531, 5536. Under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

I
Jurisdiction

1. The Bureau has jurisdiction over this matter under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

II
Stipulation

2. Respondents have executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated April 15, 2015 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondents have consented to the issuance of this Consent Order by the Bureau under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondents admit the facts necessary to establish the Bureau’s jurisdiction over Respondents and the subject matter of this action.

III
Definitions

3. The following definitions apply to this Consent Order:
 - a. “Affected Consumers” includes any Servicemember who paid Respondents a Residual-Balance Fee on or after September 27, 2010.
 - b. “Board” means the duly-elected and acting Board of Directors of Respondent Fort Knox National Company.
 - c. “Clearly and prominently” means:
 - i. In textual communications (e.g., printed publications or words displayed on the screen of an electronic device), the disclosure must be of a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background on which it appears;

- ii. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the disclosure must be delivered at a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;
 - iii. In communications disseminated through video means (e.g., television or streaming video), the disclosure must be in writing in a form consistent with subsection (i), and must appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it;
 - iv. In communications made through interactive media such as the internet, online services, and software, the disclosure must be unavoidable and presented in a form consistent with subsection (i);
 - v. In communications that contain both audio and visual portions, the disclosure must be presented simultaneously in both the audio and visual portions of the communication; and
 - vi. In all instances, the disclosure must be presented before the consumer incurs any financial obligation, in an understandable language and syntax, and with nothing contrary to, inconsistent with, or in mitigation of the disclosures used in any communication with the consumer.
- d. “Effective Date” means the date on which the Consent Order is issued.
 - e. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his or her delegatee.
 - f. “In proximity,” in the context of communications made through interactive media such as the internet, online services, and software, means on the same webpage, online service page, or other electronic page, and proximate to the triggering representation, and shall not be accessed or displayed through hyperlinks.
 - g. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought

against Respondents based on substantially the same facts as described in Section IV of this Consent Order.

- h. “Relevant Period” includes the period from September 27, 2010 to the Effective Date.
- i. “Residual Balance” means excess allotment funds in a Servicemember’s account.
- j. “Residual-Balance Fee” means and includes any of the following:
 - i. a Creditor-Letter Fee in the amount of \$5 per letter that Respondents charged until September 2012 against a Servicemember’s Residual Balance when Respondents sent a written communication to a Servicemember’s current or past creditor, typically once per month, indicating that the Respondents continued to receive that Servicemember’s allotment designated for payment to that Creditor despite it appearing that the Creditor had been paid in full;
 - ii. a Dormant Fee in the amount of \$12-\$20 per month that Respondents charged against a Servicemember’s Residual Balance when there had been no bill-payment activity for six or more months;
 - iii. a Servicemember-Letter Fee in the amount of \$5 per letter that Respondents charged until September 2012 against a Servicemember’s Residual Balance when Respondents sent a letter to an address on file for a Servicemember, typically once per month, in order to inform that Servicemember of the Residual Balance and advising the Servicemember to take action on the Residual Balance; and
 - iv. a Write-Off Fee that Respondents charged against a Servicemember’s Residual Balance that equaled the remaining balance in the Servicemember’s account.
- k. “Respondents” means Fort Knox National Company and Military Assistance Company, LLC, and their successors and assigns.
- l. “Servicemembers” means and includes active and retired members of the United States military and federal civil service employees.

IV
Bureau Findings and Conclusions

The Bureau finds the following:

4. During the Relevant Period, Respondents processed payroll deductions – called allotments – for Servicemembers: Respondents paid creditors on behalf of Servicemembers from their allotments. Accordingly, Respondents offered or provided a consumer-financial product or service and are “covered persons” under the CFPB. 12 U.S.C. § 5481(6)(A), (15)(A)(iv) & (vii).
5. A Servicemember contracted for Respondents’ allotment-processing service either by filling out Respondents’ pre-printed allotment-enrollment form – typically supplied by the Servicemember’s creditor and filled out at the creditor’s place of business – or by completing the enrollment form online through Respondents’ website. In either case, the Servicemember supplied information such as the creditor to receive the allotment payments, the amount of each monthly payment, and the number of months for which payments should be made. The enrollment instructions directed the Servicemember to add a payment processing charge – imposed and collected by Respondents – to the monthly creditor payment to arrive at the allotment amount.
6. Servicemember allotments were deposited into a bank account controlled by Respondents, from which Respondents paid the Servicemembers’ creditors. But on many occasions, excess allotment funds accumulated in Servicemember accounts – for example, when a Servicemember did not discontinue an allotment after the obligation to a creditor had been paid off – resulting in Residual Balances.
7. Respondents routinely charged various monthly fees against these Residual Balances, affecting about thirty percent of Servicemembers using their services. During the Relevant Period, Respondents charged tens of thousands of Servicemembers Residual-Balance Fees totaling millions of dollars without adequately disclosing such fees before

charging them, or notifying Servicemembers when they incurred such fees. Many Servicemembers paid hundreds of dollars in such Residual-Balance Fees.

8. Until April 2014, printed information about Respondents' allotment-processing services did not adequately disclose the Residual-Balance Fees. The allotment-enrollment form included "Terms & Conditions," which were viewable on Respondents' website as well. Respondents also posted a number of "Frequently Asked Questions" on the website. Although both the Terms and Conditions and the Frequently Asked Questions referenced certain charges that a Servicemember could incur if he or she had a Residual Balance, neither disclosed the Residual-Balance Fees.
9. When Respondents charged Residual-Balance Fees against Servicemember accounts, they did not notify the Servicemembers of those charges. Respondents sent monthly letters to Servicemembers who had accumulated Residual Balances, informing them of the amounts of the Residual Balances and providing instructions on how to retrieve the funds. But, until April 2014, the letters did not state the amounts or types of Residual-Balance Fees to which Servicemembers would be subject. Although Servicemembers could access their allotment accounts online through Respondents' website and view account balances, there was no way for Servicemembers to view online the Residual-Balance Fees charged against those balances. Servicemembers received no electronic or paper account statements from Respondents. Servicemembers could obtain an account history (which reflected fee charges) by contacting Respondents' customer service and in some instances paying a \$25 fee. Accordingly, Servicemembers who incurred Residual-Balance Fees – and did not request an account history – received no notification of those fee charges and may not have been aware that such fees were being deducted from their Residual Balances.

10. Respondents ceased offering the service that is the subject of this Consent Order in March 2014 and since that date have expended substantial resources to return Residual Balances to Servicemembers.
11. Section 1036(a)(1)(B) of the CFPA prohibits “unfair, deceptive, or abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B).
12. An act or practice is unfair if it “causes or is likely to cause substantial injury to consumers” that “is not reasonably avoidable by consumers[] and . . . is not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c)(1). Respondents’ failure adequately to disclose Residual-Balance Fees before charging them and failure to notify Servicemembers when they incurred Residual-Balance Fees caused substantial injuries to Servicemembers that were not reasonably avoidable or outweighed by any countervailing benefits to Servicemembers or to competition. Thus, Respondents engaged in unfair acts and practices in violation of sections 1031(c)(1) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(c)(1), 5536(a)(1)(B).
13. An act or practice is deceptive if there is a misrepresentation or omission of information that is likely to mislead consumers acting reasonably under the circumstances and that information is material to consumers. Respondents’ failure adequately to disclose Residual-Balance Fees before charging them and failure to notify Servicemembers when they incurred Residual-Balance Fees resulted in materially incomplete and therefore misleading statements. These materially misleading statements were likely to mislead Servicemembers acting reasonably under the circumstances. Thus, Respondents engaged in deceptive acts and practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).
14. An act or practice is abusive if it “takes unreasonable advantage of[] (A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; [or] (B) the inability of the consumer to protect the interests of

the consumer in selecting or using a consumer financial product or service." 12 U.S.C. § 5531(d)(2).

15. Respondents took unreasonable advantage of Servicemembers' lack of understanding of the material risks, costs, or conditions of Respondents' allotment product or service. Some Servicemembers may not have understood that they would be charged Residual-Balance Fees if they accrued a Residual Balance because Respondents did not adequately disclose specific fees and did not notify Servicemembers when they had incurred specific fees. Respondents took unreasonable advantage of this lack of understanding, charging Servicemembers millions of dollars in Residual-Balance Fees.
16. Respondents' also took unreasonable advantage of Servicemembers' inability to protect their interests in selecting or using Respondents' allotment product or service. Many Servicemembers were unable to take steps to avoid Residual-Balance Fees because Respondents did not adequately disclose the circumstances under which such fees were charged and did not notify Servicemembers when they incurred such fees. Servicemembers may have been unaware that Respondents were deducting such fees from Residual Balances. Respondents took unreasonable advantage of this inability on the part of Servicemembers' to protect their interests, charging them millions of dollars in Residual-Balance Fees.
17. Thus, Respondents engaged in abusive acts and practices in violation of sections 1031(a) and 1036(a)(1)(B) of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

ORDER

V

Conduct Provisions

IT IS ORDERED, under sections 1053 and 1055 of the CFPA, that:

18. Respondents and their officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, may not violate Sections 1031 and 1036 of the CFPA, 12 U.S.C. §§ 5531, 5536, including as follows:

- a. Respondents, and their officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering, or performance of allotment-processing, payment-processing, or bill-payment services to consumers are restrained and enjoined from:
 - i. Misrepresenting, or assisting others in misrepresenting, expressly or impliedly, the types or amounts of any fees or costs associated with any such services; or
 - ii. Representing, in any manner, expressly or impliedly, the benefits or costs of any such services without disclosing clearly and prominently, and in proximity to the representation, all material terms, conditions, obligations, fees, and costs relating to the use of such services, including all fees and costs to which a consumer may be subject; or
 - iii. Failing to notify consumers of fees or charges against their accounts.
- b. Respondents, and their officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering, or performance of allotment-processing, payment-processing, or bill-payment services to consumers are restrained and enjoined from enrolling any consumer in, or imposing a cost on any consumer for, any product or service without first:
 - i. Disclosing clearly and prominently, and in proximity to the representation, all material terms, conditions, and obligations relating to the cost, use, and receipt of such product or service; and
 - ii. Securing that consumer's express informed consent to enroll in, or purchase, the product or service.

VI
Order to Pay Redress

IT IS FURTHER ORDERED that:

19. A judgment for equitable monetary relief is entered in favor of the Bureau and against the Respondents in the amount of \$3,065,149.55.
20. Within ten (10) days of the Effective Date, Respondents must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, \$3,065,149.55 in full satisfaction of the judgment as ordered in Paragraph 19 of this Section.
21. Any funds received by the Bureau in satisfaction of this judgment will be deposited into a fund or funds administered by the Bureau or to the Bureau's agent according to applicable statutes and regulations to be used for redress for injured consumers, including, but not limited to, refund of moneys, restitution, damages, or other monetary relief, and for any attendant expenses for the administration of any such redress.
22. If the Bureau determines, in its sole discretion, that redress to consumers is wholly or partially impracticable or if funds remain after redress is completed, the Bureau may apply any remaining funds for such other equitable relief (including consumer information remedies) as determined to be reasonably related to the violations described in Section IV of this Consent Order. Any funds not used for such equitable relief will be deposited in the U.S. Treasury as disgorgement. Respondents will have no right to challenge any actions that the Bureau or its representatives may take under this paragraph.
23. Payment of redress to any Affected Consumer under this Order may not be conditioned on that Affected Consumer's waiving any right.
24. In the event of any default on Respondents' obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on

any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.

25. Respondents must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondents.
26. Under 31 U.S.C. § 7701, Respondents, unless they already have done so, must furnish to the Bureau their taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
27. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondents must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondents paid or are required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

VII **Reporting Requirements**

IT IS FURTHER ORDERED that:

28. Respondents must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondents; or a change in Respondents' names or address. Respondents must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner.

29. Within 7 days of the Effective Date, Respondents must designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondents.
30. Respondents must report any change in the information required to be submitted under Paragraph 28 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.

VIII

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

31. Within 30 days of the Effective Date, Respondents must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.
32. For 5 years from the Effective Date, Respondents must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section VII, any future board members and executive officers, as well as to any managers, employees, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
33. Respondents must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

IX
Recordkeeping

IT IS FURTHER ORDERED that

34. Respondents must create, for at least 5 years from the Effective Date, all documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
35. Respondents must retain the documents identified in Paragraph 34 for at least 5 years.
36. Respondents must make the documents identified in Paragraph 34 available to the Bureau upon the Bureau's request.

X
Notices

IT IS FURTHER ORDERED that:

37. Unless otherwise directed in writing by the Bureau, Respondents must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re Fort Knox National Company and Military Assistance Company, LLC*, File No. 2015-CFPB-0008," and send them either:
 - a. By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1625 Eye Street, N.W.
Washington D.C. 20006; or

- b. By first-class mail to the below address and contemporaneously by email to Enforcement_Compliance@cfpb.gov:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

XI

XI
Cooperation with the Bureau

IT IS FURTHER ORDERED that:

38. Respondents must cooperate fully to help the Bureau determine the identity and location of, and the amount of refund payable to, each Affected Consumer. Within 14 days of receiving a written request from the Bureau, Respondents must identify and provide in Excel or .csv other easily converted format for each Affected Consumer:
 - a. full name and all other available identifying information;
 - b. last-known contact information, including address(es), telephone number(s), and email address(es); and
 - c. the amount of refund – that is, the total Residual-Balance Fees paid by the Servicemember during the Relevant Period.

Respondents must identify and provide the above information that is in their or their agents' possession or control and must cooperate in the transfer and, if necessary, the clarification of said information so that it is usable by the Bureau.

XII
Compliance Monitoring

IT IS FURTHER ORDERED that, to monitor Respondents' compliance with this Consent Order:

39. Within 14 days of receipt of a written request from the Bureau, Respondents must submit the requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
40. Respondents must permit Bureau representatives to interview any employee or other person affiliated with Respondents who has agreed to such an interview. The person interviewed may have counsel present.
41. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

XIII **Modifications to Non-Material Requirements**

IT IS FURTHER ORDERED that:

42. Respondents may seek a modification to non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.
43. The Enforcement Director may, in his or her discretion, modify any non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XIV **Administrative Provisions**

44. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondents, except as described in Paragraph 45.
45. The Bureau releases and discharges Respondents from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
46. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
47. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondents. If such action is dismissed or the relevant adjudicative body

rules that Respondents did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

48. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
49. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondents wherever Respondents may be found and Respondents may not contest that court's personal jurisdiction over Respondents.
50. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

51. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondents, the Board, or Respondents' officers or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 20th day of April, 2015.

A handwritten signature in blue ink that reads "Richard Cordray".

Richard Cordray
Director
Consumer Financial Protection Bureau