



# The Service Member: A Protected Class in Consumer Finance\*

Bob Barnett

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On October 3, 2016, the amendments to the Military Lending Act will become effective. This will be the latest in a series of protections and benefits that have been added to general consumer finance law protections and applied specifically to certain members of the military. With these changes, it is fair to say that our military men and women are treated well by our government.

A serious problem had arisen among servicemen and women over the past number of years that this law is designed to resolve. Outside the gates of many military bases sprung up a phalanx of businesses that made use of various questionable lending tactics that in one way or another produced circumstances that put the servicemen and women in serious financial straits. Most of those tactics will now be impossible to use legally or without exposure to serious enforcement efforts by federal regulators.

## Military Lending Act

Amendments to the Military Lending Act become effective on October 3, 2016.<sup>1</sup> Thereafter, if a consumer is an active duty member of the armed forces or is on active Guard or Reserve duty, he or she has certain rights protected by statute if he or she borrows through payday loans, auto title loans, tax refund anticipation loans, credit cards or similar loans:

- Interest is capped at 36%, and that includes calculations for interest, fees, credit service charges, credit renewal charges, credit insurance premiums and other fees for credit-related products sold in connection with the loan;
- Creditors must tell the service member the interest rate and other fees in writing, and also do so orally, at least generically, before issuing the loan;

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\*The information contained in this newsletter does not constitute legal advice. This newsletter is intended for educational and informational purposes only.

<sup>1</sup>The effective date for credit cards is October 3, 2017, with the possibility that it might be extended an additional year.

- “Roll-over” of loans is restricted;
- No mandatory arbitration, waiver of consumer protection laws, or mandatory allotments are permitted; and
- No prepayment penalties are permitted.

The new rules require creditors to identify borrowers who are covered under the provisions and directs them to access a database maintained by the Defense Manpower Data Center at the Department of Defense to do so. They may rely upon the answer they receive from DMDC in response to their access, or as an alternative, they may utilize a national credit reporting agency military status report to provide the information. Most lenders will utilize one of the CRAs to acquire credit related information for the prospective borrower and the agencies are offering MLA identification in addition to their other products.

Certain other persons are covered under the new rules, including spouses and dependents of covered service members.

Extensive collaboration between the Department of Defense and the private sector has resulted in various options that are now, or will soon be, available to lenders to engage with the Department information to see if a consumer is covered. In addition, the regulations promulgated to implement the amendments to the Act have now been explained more fully by a Federal Register-published set of interpretations from the Department of Defense. Since the interpretations were only recently published, and since the complexities involved in onboarding the DMDC database to the websites of the national credit reporting agencies was greater than anticipated, it is possible that there will have to be a period after the effective date during which examiners will be checking the effort lenders are making to implement the rule rather than the specific issues of compliance with details of the rule.

### Servicemembers Civil Relief Act

The Servicemembers Civil Relief Act provides housing and other protections that are not covered by the Military Lending Act. It protects active duty service members, including National Guard and reserve members who have been activated by the Federal Government. Some of the provisions apply to family members, but that differs from provision to provision.

Among the protections are:

- Creditors must reduce interest rates to 6% or less for liabilities incurred before the member entered active duty, and if the debt is a mortgage, the reduced rate extends for one year after active duty. Credit cards, car loans, some student loans and similar loans are also subject to that limitation. The 6% rate does not apply, however, to debts incurred while on active duty;
- SCRA requires a lender to get a court order to permit it to try to foreclose on a servicemember’s home, and provides protection from that if the servicemember can show that he or she has been unable to meet the obligations because of military service. Evictions are also restricted;
- Civil court matters can be postponed for 90 days or longer;

- Servicemembers who are small businessmen or women may protect the assets of their businesses from being available to satisfy creditors while you are on active duty;
- Servicemembers may terminate leases for residences, cars, and cell phones in certain situations;
- Income taxes may be deferred; and
- A servicemember's life insurance may not be terminated or require extra premiums because you are in the military.

Unlike the MLA, a servicemember may waive his or her rights under SCRA, but those waivers must be in writing and signed after the individual enters military service.

#### Other benefits and compensation

In addition to these and other benefits, veterans can get zero down financing at low rates for mortgages through the Veteran's Administration loan programs. While pay levels have been raised substantially during the past number of years, the benefits and perquisites remain. For example, members get use of tax-free commissary privileges, subsidized child care, free gyms, 30 days paid annual leave, 12 federal holidays, unlimited sick leave, free health care during and after service, subsidized education, a defined benefits retirement program paid for entirely by the government, pay increases even when the private sector does not get them, and miscellaneous bonuses and special pay for certain members.

Many of the members serve in the line of fire action and for them, there is a modest hazardous pay increment, but it is as nothing when a bullet is zooming in on you. For those not in the combat zones (and while that fluctuates, those not in the range of those bullets is about 60 — 75% of the military<sup>2</sup> all of the benefits except for those incremental pay deltas are in place.

The result is that the U.S. military men and women are treated much better than they used to be, and at this point, are treated fairly well. We are lucky to have that as the case, since with appealing jobs such as those that now exist in the service, our services have the opportunity to be selective, a trait that is necessary with the increasingly technical and complex military that must exist. While there is no way to accurately measure the abilities of one set of national forces versus another, based on our recent experiences it seems clear that the American servicemember is at least as good as his or her counterpart in any other nation, and probably considerably better than those in most any nation.

*Bob Barnett is a partner with the law firm of **Barnett Sivon & Natter, P.C.***

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<sup>2</sup>That number is hard to find. See such articles as "***The Military Isn't A Low Wage Option For Stupid People,***" the Federalist; "***U.S. Soldiers Are Paid Significantly More than Civilians with Similar Skills and Education,***" Mises Institute