

Is your lender violating the Military Lending Act?

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In recent months, the Military Lending Act (MLA) and its enforcement have been in the news. The current Director of the Consumer Finance Protection Bureau (CFPB) says her agency does not have the authority to investigate financial institutions for MLA compliance absent consumer complaint, a position contrary to that taken by the original CFPB Director. As a result, MLA investigation and enforcement are now entirely dependent on the CFPB receiving consumer complaints. But how many consumers are going to complain about the violation of a statute they know nothing about, implemented by a regulation they never heard of?

So, what follows is a primer concerning the MLA, its history and purpose, the types of loans covered, requirements and prohibitions it imposes on lenders, and how consumers can recognize and complain about a suspected violation.

History and Purpose. Recognizing that troops are often targeted by predatory lenders, and that such predation adversely affects not only individual victims, but also the national defense, Congress passed and President George W. Bush signed into law the Military Lending Act (10 USC 987). This 2006 law prohibited certain lending practices in covered loans made to service members or their dependents. Within broad guidelines, the MLA gave the Secretary of Defense (SECDEF) discretion to determine what loans were covered, how the interest rate was to be calculated, what disclosures lenders need to make, and what contracts these rules applied to.

What Loans are Covered? The SECDEF's original implementing regulation only covered a very narrow range of contracts. After years of study and experience, the SECDEF amended its regulation in 2016 (32 CFR 232) to cover any credit extended primarily for personal, family, or household purposes that is: (a) subject to a finance charge; i.e., interest is charged, or (b) payable by a written agreement in more than four installments. As a result, the MLA now covers a wide variety of credit, including installment loans, personal loans, credit cards, refund anticipation loans, payday loans, and, essentially, every type of loan or credit (with two important exceptions) extended to a service member or dependent. This regulation applies to covered loans and finance contracts entered into after October 3, 2016, and to credit card transactions after October 3, 2017.

There are two important exceptions to MLA coverage: (a) mortgages, and (b) contracts where "the loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured;" i.e., the typical scenario wherein the consumer obtains a loan to purchase a car or other property and the contract provides that the lender can repossess that property for failure to make the required payments.

What requirements and prohibitions are imposed on covered loans and lenders?

The MAPR. Covered loans may not charge a military annual percentage rate of interest (MAPR) exceeding 36%. In calculating the MAPR, the lender must include the cost of other credit related products, including, but not limited to, application fees, a debt cancellation policy, credit life policy, or debt suspension policy. Failure to include these costs in calculating the MAPR, falsely understate the actual rate. If the listed rate of interest in your contract is at or near 36%, and the lender asks you to pay other fees (excluding late fees), that have not been included in calculating that rate, it is likely that the actual MAPR is illegally high. (If state law imposes a lower maximum interest rate, the contract must comply with that state law as well.)

Forced Arbitration. Many contracts require consumers to give up their right to sue the lender or to be a member of a class action lawsuit; instead agreeing to resolve all disputes through arbitration. Most of the time, such contracts are between two parties of vastly unequal bargaining power; for example, a consumer contract with a bank, lender, or credit card issuer. As a condition of purchasing the loan, or financing the sale, the consumer must agree to binding arbitration even before there's any dispute. Such pre dispute, or "forced" arbitration provisions are prohibited in contracts covered by the MLA.

Onerous Notice. MLA covered contracts can not require unreasonable notice from the borrower as a condition of to sue the lender. In other words, the contract can not load up unreasonable obstacles preventing consumers from suing.

Prepayment Penalties. In MLA covered contracts, borrowers can pay off the loan early if they wish to, without fear of any prepayment penalty.

Waiver of SCRA or Other Rights. In MLA covered contracts, the borrower can not be required to waive rights under the Servicemembers Civil Relief Act (SCRA), or rights under other state or federal laws, as a condition of obtaining credit

Car title loans prohibited. "Car title loan" refers to the practice of pledging the title of a vehicle already owned free and clear as security for obtaining a personal loan unrelated to the purchase of the vehicle. Example: borrower obtains a personal loan of \$3,000, to be repaid in monthly installments. The contract provides that if the borrower fails to make payments on time, the lender can seize and sell the vehicle.

Rollover loans prohibited. The lender can't give you another loan to pay for a prior loan. This type of transaction frequently occurs in the context of a payday or other high interest, short term loans. Example: Sally pays \$20 to borrow \$300 for two weeks. After two weeks she must repay the \$300. However, two weeks later she is unable to repay the loan, so she pays another \$20 to obtain another two week loan from the same lender. The proceeds from the second loan are used to pay the debt on the first loan.

Creditor access to borrower financial account prohibited. Sometimes finance contracts give the lender access to the borrower's bank or other financial account as security. For example, a contract might provide that, if the borrower is late on a payment, the creditor can reach into the borrower's checking account, or credit card account, to extract payments. Such a scheme is prohibited in contracts covered by the MLA.

What are the penalties for violating the MLA? Knowing violation of the MLA is a crime punishable by a fine and up to a year in jail. Any promissory note or contract violating the MLA is void from its inception. The parties revert to the status prior to the loan: the borrower must repay the loan, but no interest can be charged, and any interest already paid must be returned to the borrower. Furthermore, in a suit brought by the borrower, the lender violating the MLA is liable to pay actual damages or \$500 per violation. The lender may also be required to pay punitive damages and shall be required to pay court costs and attorney fees of the prevailing plaintiff.

If your lender is violating the MLA, or if you suspect that your lender is doing so, help is available. Your military legal assistance attorney can provide information and assistance. Furthermore, you can complain on line directly to the CFPB, <https://www.consumerfinance.gov/> an organization whose enforcement actions have already retrieved over \$12.4 billion from law breaking businesses and put it into the hands of victimized consumers. Based on your complaint, the CFPB may determine that the lender's practices violate the MLA, demand documents from the business, and sue to obtain money damages for all aggrieved consumers.

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