Primer on the Military Lending Act

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Overview

- Background on the Office of Servicemember Affairs
- The Military Lending Act
- Questions

Background on the Office of Servicemember Affairs (OSA)

OSA mission #1: Financial Education

Order at: https://pueblo.gpo.gov/CFPBPubs/CFPBPubs.php
Misadventures in Money Management (MiMM)

OSA mission #2: Monitor complaints

OSA mission #3: Improve consumer protection
The Military Lending Act (MLA)

MLA authorities

- 10 U.S.C. § 987
- 32 C.F.R. Part 232
- DOD Interpretive Rules
  - 2016 (Q&A #1)
  - 2017 (Q&A #2)

MLA Purpose

“The purpose of this part is to impose limitations on the cost and terms of certain extensions of credit to Service members and their dependents, and to provide additional protections relating to such transactions in accordance with 10 U.S.C. 987.” (32 C.F.R. 232.1)(emphasis added).
What is the history of the MLA?

- 2006: DOD issued report on the effect of high-cost credit to servicemembers
- 2007: MLA final regulations (72 FR 50580)
- 2010: Congress created the CFPB (Pub. L. No. 111-203)
- 2013: DOD issues Q&A #1 (81 FR 58840)
- 2016: DOD issues Q&A #2 (82 FR 58739)

What are the MLA basic protections?

- Limits many loans made to servicemembers, spouses and some dependents to a 36% Military Annual Percentage Rate (MAPR) (232.4(b))
- Mandatory written and oral loan disclosures (232.6(d))
- Preempts all inconsistent federal/state laws, but not laws that provide additional protections (232.7)
- No automatic loan rollovers with exceptions* (232.8(a))
- No waiver of federal/state legal rights under other laws (e.g. SCRA) (232.8(b))
- No requirement to use arbitration (232.8(c))
- No unreasonable notice as a condition for legal action (232.8(d))
- No auto title loans, except with a chartered or licensed depository institution (232.8(f))
- No mandatory allotments (232.8(g))
- No prepayment penalties (232.8(h))
What loans are covered by the MLA?*

- Payday loans
- Deposit advance loans
- Vehicle title loans
- Overdraft lines of credit
- Student loans
- Credit cards
- Many other loans that either have a finance charge or are payable in more than 4 installments

What loans are NOT covered by the MLA?

- All business loans (32 CFR 232.3(f)(1))
- Residential mortgage loans (32 CFR 232.3(f)(2)(i))
- Loans to buy vehicles when the credit is secured by the vehicle one is buying (32 CFR 232.3(f)(2)(ii))
- Loans to buy personal property when the credit is secured by the property one is buying (32 CFR 232.3(f)(2)(iii))
- Certain other loans that are exempt from the Truth in Lending Act (32 CFR 232.3(f)(2)(iv))
- Loans in which the creditor avails itself of the MLA’s safe harbor provision (32 CFR 232.3(f)(2)(v))

What remedies are available under the MLA?

- Criminal misdemeanor for knowing violations* (232.9(a))
- Preservation of other remedies (232.9(b))
- Loan contract is void ab initio (232.9(c))
- Arbitration agreement unenforceable (232.9(d))
- Potential civil liabilities (232.9(e)(1))
  - Actual damages, but < $500 damages per violation
  - Punitive damages
  - Equitable or declaratory relief
  - Any other relief provided by law
- Attorney’s fees and court costs** (232.9(e)(2))
Who enforces the MLA?

- Criminal misdemeanors: DOJ (232.9(a))
- Private cause of action (232.9(e))
- Civil enforcement: (232.10)
  - CFPB
  - FDIC
  - FRB
  - NCUA
  - OCC
  - FTC

MLA jurisdiction and statute of limitations

- Jurisdiction: in any appropriate U.S. district court or any other court of competent jurisdiction (232.9(e)(5))
- Statute of limitations (232.9(e)(g)(l)(ii))
  - 2 years after the date of discovery by the plaintiff; or
  - 5 years after the date on which the violations occurs

How to spot a potential MLA violation

1. Does the transaction include a finance charge or is it payable in more than 4 installments?  
   - No
   - Yes

2. Was the account opened or the transaction dated prior to 10/03/2016 (10/03/2017 for credit cards)?  
   - Yes
   - No

MLA does not apply
How to spot a potential MLA violation (cont’d)

1. Was the client serving on active-duty or the dependent of an AD service member at the time of the transaction or account opening?
   - No: MLA does not apply
   - Yes: MLA does not apply

2. Is the credit primarily for personal, family, or household use?
   - No: MLA does not apply
   - Yes: MLA does not apply

3. Is the credit a mortgage for purchase, construction, or refinancing? A reverse mortgage, or a home equity loan or line of credit?
   - No: MLA does not apply
   - Yes: MLA does not apply

4. Is the credit expressly intended to finance the purchase, construction, or refinancing of personal property and the loan is secured by that personal property?
   - No: MLA does not apply
   - Yes: MLA does not apply

5. Was the secured transaction include an extension of credit in an amount greater than the purchase price of the vehicle or personal property?
   - No: MLA does not apply
   - Yes: MLA does not apply

6. Does the extension of credit that is greater than the purchase price in an amount related to the vehicle or personal property?
   - No: MLA does not apply
   - Yes: MLA does not apply

*Examples: Negative equity on trade-ins, service contracts, extended warranties, optional vehicle accessories
How to spot a potential MLA violation (cont’d)

Was the extension of credit related to the vehicle or property securing the credit?

No: MLA does not apply

The MLA may apply: Contact the OSA at military@cfpb.gov

*Examples: Credit/disability insurance, Guaranteed Asset Protection (GAP) insurance, cash out as part of financing.

Questions?