



Lending to Servicemembers

Summary

Lending to Service members rules are primarily made up of two different acts – The Servicemembers Civil Relief Act (SCRA) and the Military Lending Act (MLA). One of the primary issues with these two acts is that they are often confused for each other. Both acts provide protections for active duty servicemembers but the scope of whom and what is covered and when the coverage extends are different. The simplest way of discerning between the two rules is to ask, “Is the servicemember active duty at origination or after they’ve already entered into an agreement?” Additionally, banks need to be aware that the scope of SCRA protections are much broader than the MLA and should therefore, be discussed separately in policies, procedures and training, even if there is a singular policy related to lending to servicemembers.

Servicemembers Civil Relief Act: [50 USC 3901-4043](#)

The Servicemember Civil Relief Act or SCRA protections include the 6% interest rate reduction cap, foreclosure protections, education loan protection, motor vehicle lease relief, prohibitions against evictions, protections related to life insurance and more. Like the Military Lending Act, it relates to credit obligations, but it also applies to rent and leases. Therefore, when determining SCRA compliance, the bank must look at not just consumer loans but commercial loans, loans where the servicemember is a guarantor or co-signer and safety deposit box leases. The SCRA, like the MLA, relates to active duty service members and their dependents. However, the act is looking at servicemembers who go on active duty AFTER they’ve entered into an obligation.

The Servicemembers’ Civil Relief Act tends to impact banks on a day-to-day process level in two major ways - It limits the types of actions the bank can take on active duty servicemembers and secondly, allows for active duty service members to request an interest rate reduction during their time of service. The first part includes automatic protection against actions like evictions, foreclosures and repossessions covered servicemembers. For the second major part of SCRA, the servicemember must specifically request the interest rate reduction and give evidence that they are active duty. It’s worth noting that a servicemember who is considered missing in action is considered active duty for these protections.

Scope:

The SCRA protections extend to active duty military members and includes servicemembers who are in the federal military service including members of the Army, Navy, Marine Corps, Air Force, Coast Guard and all commissioned officers on active service with the Public Health Service or National Oceanic and Atmosphere Administration, reservists and members of the national guard. For members of the Army, Navy, Marines, Air Force or Coast Guard, active duty is defined as full-time active duty including training, annual training and attendance, while attending a school designated as a service school but it doesn’t actually include full-time National Guard duty. National Guard members are only considered active duty if such duty is authorized by the President or the Secretary of Defense for at least 30 days (consecutively). Dependents of active duty military members may also be covered for almost all of the SCRA protections except for the six percent interest cap protection.

Protections under the SCRA are for active duty servicemembers (and their dependents) who enter into the obligation prior to their active duty status. If they were active duty at origination, these protections do not apply under the SCRA. Many banks do have their own policies for servicemembers that apply to any active duty member of the military but the SCRA is more limited in scope. As to how to verify whether someone is active duty and so a particular protection applies, the bank may accept a copy of the active duty orders for the 6% interest rate reduction or any other appropriate indicator of military service, including a certified letter from a commanding officer. For other protections, however, use the Department of Defense [SCRA database](#) on the DoD website to verify active duty status prior to taking any action that may be prohibited under this Act. Servicemembers can request a reduction in rate at any time, but not later than 180 days after the end of the active duty service.

Protections Impacting Banks

A large number of protections apply to servicemembers under the SCRA. Servicemembers may waive these protections however, the waiver must be executed while on active or after receiving active duty orders and not at origination. In addition, a creditor is not allowed to change the terms of an obligation or refuse to extend new credit to a servicemember because of the individual exercising their rights under this rule.

Section	Protection	Explanation
3913	Adverse Action	Creditor cannot take adverse action against servicemember/covered obligor because they qualify or receive a SCRA protection
3937	Interest Rate Cap	Required reduction of interest to six percent during active duty status and for one year thereafter
3953	Foreclosure	Bank may not foreclose on property during active duty period and for the year after duty ends
3952	Installment Contracts	Bank may not cancel or rescind a contract. This also includes a prohibition against repossession.
3955	Motor Vehicle and Residential Leases	<ul style="list-style-type: none"> ▪ Covered obligors have the right to terminate residential and auto leases based on certain conditions. ▪ Motor vehicles - cancel if 180 days or more or permanent change of station ▪ Lessee can cancel after lessee enters military service or the date lessee receives 90+ day notice

		<ul style="list-style-type: none"> ▪ Notice of termination must be in writing. Car needs to be returned with 15 days of the notice. Delivery must be mail, carrier or hand delivery ▪ Real property - effective 30 days after the next rental payment is due ▪ Motor vehicle - terminated when car is returned and notice is delivered ▪ Arrearages must be paid on a prorated basis, no early termination charge ▪ Rent paid in advance must be refunded
3958	Enforcement of Storage Liens	Bank may not enforce any storage liens (for example, related to nonpayment of safe deposit rental) during active duty and for 90 days after active duty ends without a court order
3951	Eviction From Bank-Owned Property	A landlord may not evict covered obligors during active duty without a court order
3957	Life Insurance Collateral	Creditor as assignee of the policy cannot exercise any rights under the policy as assignees during the servicemember's military service or within one year after service without a court order.
3959	Dependents	When a court provides a stay or other protection under the Act, it is provided to all other obligors.

Interest cap: [50 USC 3937](#)

The cap on loan interest is the most well-known of the SCRA protections required for creditors. However, it is worth noting, this has a slightly smaller scope. The 6% Interest Cap applies to

- Borrowers who are active-duty servicemembers;
- Borrowers who are spouses of an active duty servicemember who is jointly liable on the same obligation as the active duty servicemember
- Who originated loans prior to active duty service; and

- Have requested the protection from the lender in writing

Even if the servicemember has additional loans at the bank, the cap applies only to those loans that were entered into prior to the borrower's active duty service. The term obligation means *any* obligation or liability include mortgages and deeds of trusts but it is also worthwhile to note that a covered servicemember can be "liable" as a co-signer or guarantor and does not have to be a direct "borrower". Any interest above six percent must be forgiven and the amount of periodic payments must be reduced by the interest amount. For example, a creditor may not reduce the interest rate but keep the payment amount the same and simply pay more towards principal. Rate reductions must be maintained during active duty, retroactively from the beginning of service through the end of their service and one year after the end of service for mortgages (See: S.2155, below).

Unlike other sections of the SCRA protections, the creditor is allowed to request reasonable proof (See: McCain Amendment, below) prior to instituting the change. It is, however, worth noting again that the even if the person gives the notice on their last day of active-duty status which started five years ago, the interest rate reduction applies retroactive from the first day of their active-duty status. In addition, be aware that a court can grant relief from this section of SCRA to a creditor but there is no other written exception for a loan that falls within the scope of this section.

It's critically important to note that the SCRA has its own definition of interest which is not just limited to simple interest. Under the SCRA "interest" includes:

- Service Charges
- Renewal Charges
- Fees
- Any other charges (except bona fide insurance) with respect to an obligation of liability

Finally, it is worth noting that knowingly failing to comply with the reduction requirement isn't just a regulatory violation. The penalty is personal liability in the form of up to one year of imprisonment and is therefore, one of the most critical rules that lenders, compliance and bankers in general should be aware of.

Foreclosure/Court Actions: 50 USC 3953

The second most prevalent rule for banks (and also one that caused a lot of issues during the great recession) is the prohibition against foreclosure action and stay of proceedings. This protection applies during the active duty period but also, up to a year after the servicemember is no longer active duty. The most important take-away is that non-Judicial Foreclosures against active duty servicemembers are not valid under this rule and the servicemember is granted specific protections in judicial proceedings. A court is also able under the SCRA to stay of proceedings for any ongoing foreclosures.

The protections in this section do not stop at staying foreclosures, it also gives rights at foreclosure for possible active duty servicemembers. For example, if a defendant (borrower in default) does not appear at a foreclosure proceeding, the creditor must file an affidavit stating whether the borrower is active duty. No judgement can be entered against an active duty servicemember without an attorney representing the servicemember and court order. Foreclosure judgments completed in violation of this rule are subject to be undone (but foreclosure sales are valid if purchased by innocent party). It's also important to note that active duty time is not used to compute statute of limitations. However, the action can proceed against co-defendants with a court's permission.

In addition, the related disclosure is also well-known by banks. Banks originating loans insured by HUD, such as FHA loans, must provide a notice to borrowers who default on these loans, informing them of the rights available to servicemembers under the SCRA. The notice must:

- Be sent to all homeowners who are in default on a residential mortgage
- Include the toll-free military one-source number to call if servicemembers or their dependents require further assistance (1-800-342-9647); and
- Be made within 45 days from the date a missed payment was due, unless the homeowner pays the overdue amount before the expiration of the 45-day period.
- [Mortgagee Letter 2006-28](#)

Besides foreclosure actions, all contracts and leases are subject to being stayed (postponed) by a court. When an action is stayed, the creditor cannot assess fees against a person with military status. The creditor is also not allowed to rescind the contract unless approved by a court. Once again, it is worth noting that knowingly foreclosing on active duty servicemember has personal liability in the form of up to one year of imprisonment and the bank and the individual can be fined.

S.2155

Finally, be aware that S.2155 (The Economic Growth, Regulatory Relief and Consumer Protection Act) made the extension for foreclosure protection permanent in Section 313. This section makes the temporary extension of foreclosure protection in the SCRA permanent. This is a rule that has sunset and been reinstated multiple times since 2012. The default protection period was 90 days however; it is one year after active duty status effective May 24, 2018.

McCain Amendment

The John S. McCain National Defense Authorization act for Fiscal year 2019 included an amendment related to that interest rate reduction allowance. In order to receive the protection, servicemembers were always required to send a written request and give a copy of their military orders in order for the bank to be *required* to lower the interest rate (including late fees) to 6% and forgive any interest over that amount during the entire duration of the servicemember's active duty. It is important to note that this may not be your bank's policy – many banks will offer interest reduction and forgiveness upon request by an active duty servicemember even if the servicemember doesn't send a written request. That being said, the actual requirement is for the servicemember to provide those two items. The amendment in the McCain Act expanded the type of proof of service that a servicemember can provide in lieu of sending orders. The example of acceptable proof in the amendment is certified letters from the servicemember's commanding officer. However, the amendment is far more open ended than that and includes any "acceptable" proof of military service. This change to the rule was effective on August 13, 2018.

Extension of Protections: [2020 Amendment](#)

The 2020 Amendment to the Servicemember Civil Relief Act extended lease protections under the Act for servicemembers under a stop movement order in response to local, national, or global emergency. The amendment was in response to the 2020 COVID-19 pandemic which effected a servicemember's ability to relocated and/or execute orders. This amendment allows servicemembers to who engaged in a lease upon receipt of military orders for a permanent change of station, including deployment, to terminate the lease in the event that a stop movement order is issued by the Secretary of Defense in response to local, national or global emergency and this allowance is effective

for an indefinite period or for a period of not less than 30 days. This includes a lease for residential, professional, business, agricultural, or similar purpose, to include a motor vehicle lease.

Military Lending Act: 32 CFR 232

The Military Lending Act (MLA): provides protections to servicemembers and their families; sets a 36% percent MAPR cap on covered transactions; requires disclosures to inform covered persons of their rights; and prohibits banks from requiring arbitration. The MLA changed pretty dramatically in October 2016. Prior to the amendment, the rule was very limited in scope and related to short-term loans, tax relief loans and pay-day loans. Today, the Military Lending Act applies to active duty service members and their dependents in relation to consumer credit. We've talked about the exceptions to the MLA requirements before – notably real property-secured loans and purchase money loans. MLA protections include the Military APR rate cap, the disclosure about the Military APR rate cap and other general prohibitions related to the note. The important thing to remember when thinking about MLA requirements is that the timing scope relates to origination whereas SCRA requirements are during the life of the loan.

Covered Borrower: 32 CFR 232.2

It's important to note that when discussing the MLA, a covered borrower is not solely military servicemembers. Dependents, who are family members, as specifically defined in the regulation are also covered borrower. Covered Members are any member of the armed forces who is on active duty or active Guard and Reserve Duty. "Dependent" defined in [10 U.S.C. 1072\(2\) \(A\), \(D\), \(E\) or \(I\)](#) and includes and active duty servicemember's"

- Spouse
- Parent or Parent-in-law who depends on support and resides in household
- Unmarried person placed in the legal custody of the member
- Child or Ward:
 - Under the age or 21;
 - Under the age of 23 and a full-time college student; OR
- A child/ward who is incapable of supporting themselves because of a mental or physical incapacity
- The Ward must also be unmarried

It is important to note that there are nuances to all of these dependents and it is worthwhile to look through the definition when extending these requirements and/or adding these family members to the bank's policies and procedures.

Determination of Identification: 32 CFR 232.5

A very common question is how the bank is supposed to determine whether a borrower is a "covered borrower" especially in situations where the covered borrower is a dependent and not the active duty servicemember themselves. The bank can use any method they choose to determine whether a consumer is a covered borrower but, banks are granted a safe harbor if they use one or both of the two methods below:

- The MLA database (maintained by the DOD); **and/or**
- Consumer reports from a nationwide consumer credit reporting agency to verify borrower status and comply with recordkeeping requirements

It's also necessary to point out that prior to 2016, banks utilized a covered borrower statement in order to comply with MLA. This is no longer required and more importantly, does not provide any safe harbor protection. So, it's really important to note that the credit can verify a servicemember's active duty service however they like including a statement from the borrower. However, if the bank chooses to use one of the two prescribed methods, here, and keep

a record of that determination, the bank will have a safe harbor which assumes compliance with conclusively determining whether a borrower is a covered borrower.

As to timing, the safe harbor applies as long as the determination is made at or prior to origination and that determination is less than 60 days old at the time origination. If the loan origination process takes longer than 60 days, the bank will need to pull a second determination in order to receive the optional safe harbor under this section. It is worth emphasizing that the retention of this record for the life of the loan is required to meet the safe harbor criteria.

Covered Transactions: [32 CFR 232.3](#)

When the MLA was initially implemented by the Department of Defense in 2007, the Military Lending Act protections applied to three narrowly defined “consumer credit” products:

- closed-end payday loans for no more than \$2,000 and with a term of 91 days or fewer;
- closed-end auto title loans with a term of 181 days or fewer; and
- Closed-end tax refund anticipation loans.

Previously, there were plenty of creditors who didn’t have products that fall under these requirements but today, the Act relates to consumer credit, in general. MLA protections apply to any “credit offered or extended to a covered borrower primarily for personal, family or household purposes that is subject to a finance charge or payable by a written agreement in more than four installments.” “Consumer Credit” is defined in a manner essentially the same way as Regulation Z defines it (with some notable exceptions). This means that the final rule applies to many consumer loans – vehicle title loans, installment loans, unsecured open-end lines of credit, payday loans, refund anticipation loans, credit cards and deposit advance loans.

There are, as noted, some important exclusions from MLA coverage. First and foremost, residential mortgage transactions are excluded from coverage. That includes not just purchase mortgage transactions but also, initial construction loans, refinances, home equity loans, home equity lines of credit and reverse mortgages. In addition, purchase money loans for both motor vehicles and personal property are excluded. In order to be excluded, the loan has to be used to purchase the property and must also be secured by that same property. As one would expect, loans that are exempt from Regulation Z, for example, business-purpose loans, are also exempt from the MLA requirements. One frequently asked question on the C/A hotline is whether lot loans or land-only loans are excluded. The answer is “no” because lot loans are not specifically excluded in the act. In addition, lot loans don’t fall under the exception for residential mortgage transaction because the definition of “residential mortgage transaction” in the Act only includes loans that are secured by a dwelling.

In 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (July 2015 Final Rule). In August 2016, the Department issued a first set of interpretations of that regulation in the form of Q&A. Then in December 2017, the Department issued a second set of Q&A interpretations to amend the first set. Effective February 28, 2020, the Department withdrew the amended question and answer number 2 (Q&A #2 December 2017), which discussed when credit is extended for the purpose of purchasing a motor vehicle or personal property and the creditor simultaneously extends credit in an amount greater than the purchase price of the motor vehicle or personal property.

In withdrawing this amended question and answer, the Department is reverting back to the original Q&A #2 from August 2016. The Department also added a new Q&A in relation to use of ITINs to identify covered borrowers in the Department’s database. See generally [here](#):

2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to “consumer credit” under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?

Answer: No. Section 232.3(f)(1) defines “consumer credit” as credit extended to a covered borrower primarily for personal, family or household purposes that is subject to a fiancé charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to subparagraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property where the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of the personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional “cash out” financing is not eligible for the exception under 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

21. Does a creditor qualify for the safe harbor set forth in 32 CFR 232.5(b)(2)(i)(A) if the creditor uses an Individual Taxpayer Identification Number (ITIN) to search the Department’s database to conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 USC 987 and the requirements of 32 CFR 232.5(b)?

Answer: Yes. The Department recognizes that while all members of the Armed Forces will have a Social Security Number (SSN), a limited population of dependents, who meet the definition of a covered borrower in 32 CFR 232.3(g) may not qualify for a SSN due to their citizenship status. An ITIN is a tax processing number issued by the Federal government in lieu of a SSN. ITINs are only available for certain nonresident and resident aliens, their spouses and dependents who cannot obtain a SN and can be used in searches for the Department’s database. Since all covered borrowers will have a SSN or ITIN, the Defense Manpower Data Center (DMDC) MLA database contains ITINs for covered borrowers who are not eligible to obtain a SSN. Therefore, for purposes of 32 CFR 232.5(b)(2)(i)(A), an ITIN is a “Social Security number.”

Requirements & Limitations

Military Annual Percentage Rate (MAPR): [32 USC 232.6](#)

The most notable requirement under MLA is the MAPR Disclosure. The MAPR is a 36% cap on the interest rate, as well as, certain fees and charges for MLA-covered loans. Lenders are required a disclosure about the rate cap regardless of whether the specific transaction being originated or any products at the bank don’t even come close to a 36% MAPR. The statement must be given at or before the borrower becomes obligated on the loan.

MAPR is the Military Annual Percentage Rate. This is important because it’s the maximum amount of interest, fees and charges that can be charged to a covered borrower. And of course, just like our regular APR, it’s going to include other costs. So, these costs are going to include:

- Credit Insurance premiums and fees for debt cancellation or debt suspension agreements
- Fees for credit-related ancillary products sold in connection with the credit transaction or account
- Finance charges associated with consumer credit
- Certain application and participation fees, including annual fees

The MAPR is capped at 36 percent. This seems like a lot but remember all those costs need to be included and it's important to remember this regulation is not just looking at traditional banks but also pay day lenders and those kinds of high-cost creditors, in addition to credit card products. A statement of the MAPR and the model statement both have to be given in a written format and orally. The bank can give the covered borrower those oral disclosures by:

- Telling them in person; or
- Giving them a toll-free number they can call to get the disclosure

As noted above, the MLA does apply to credit cards. However, it does give some leeway to credit cards, including that the rule was effective of October 2017 instead of October 2016. In addition, the MAPR excludes reasonable and bona fide credit charges such as:

- Periodic Interest
- Credit Insurance Premiums
- Fees for debt cancellation contract or debt suspension agreement
- Any fee for a credit-related ancillary product sold in connection with the credit transaction.
- Like-Kind Fees

To determine whether a bona-fide fee is “reasonable”, a creditor should compare the fee to fees typically imposed by other creditors. There is a safe harbor wherein a bona fide fee is reasonable if the amount is less than or equal to the average amount for the same (or similar service) fee charged by 5 or more creditors who have a portfolio of at least \$3 billion in outstanding balances.

Other Disclosures

The creditor must also give any disclosures required by Regulation Z in order to comply with the Military Lending Act, including a payment description. A payment schedule or simply, the account-opening disclosures required by Regulation Z satisfy this disclosure requirement.

A common question is whether the disclosures are needed for loan renewals. The answer is “no” because the MLA follows the Regulation Z rules about disclosures and subsequent transactions. So, if there is a subsequent transaction for Reg Z – for example, a refinance or an assumption or adding an adjustable rate feature – that would trigger MLA requirements, as well, as Regulation Z disclosure requirements.

Limitations: [32 CFR 232.8](#)

The Military Lending Act also prohibits certain actions by creditors.

Prohibited Activities
Creditors cannot require waiver of rights
Cannot require arbitration
Cannot require unreasonable notice
Cannot use a check to generate payments (Can have preauthorized payments)

Cannot require an allotment
Cannot prohibit prepayment

As noted above, the MLA also prohibits mandatory arbitration clauses and, any clause that calls for a waiver of the borrower's rights under SCRA. There is a rollover prohibition related to creditors not being allowed to rollover an obligation to repay the creditor however the rollover prohibitions don't apply to banks. In addition, there was a lot of confusion about whether the MLA prohibited right of set-off/offset in the note or whether it prohibits taking a deposit account as collateral. It specifically does not in the rule and in the subsequent [FAQs](#) put out in 2017, as long as, such action is not otherwise prohibited by other federal and state laws.

Liability: [32 CFR 232.9](#)

For all lending and compliance personnel, it's critical to note that knowingly violating the provisions of the Military Lending act can lead to civil and criminal violations including a misdemeanor conviction and fines. If the Military lending act is violated, the contract (note) is void. Civil liability for violating the Military Lending act includes actual damages, punitive damages, equitable relief, any other relief provided by law and the cost of the court case in addition to FIRREA penalties. It's important to note that the penalties here aren't just regulatory. Violations of the MLA give rise for borrowers to recover civil damages. It's also important to note that the regulatory agencies can enforce the MLA, including the CFPB.

Military Lending FAQ Questions

Question 1:

Regarding the Military Lending Act change in February 2020, are loans that involve purchasing personal vehicle from a dealer that includes GAP or VSI no longer considered loan subject to the MLA?

Question 2:

When is the SCRA Notice required to be sent?

Question 3:

If an applicable loan is delinquent but the delinquency is later satisfied after the first notice was sent, is there a time period a new notice does not need to be sent if the loan becomes delinquent again (similar to the 180 days' timeframe allowed by RESPA)?

Question 4:

We have a customer who told us he has re-enlisted in the military and is home for a few months before being shipped overseas. The DOD database and his credit report do not show he is active duty. Should we follow the guidelines for MLA just on the customer's word or do we use the DOD search?

Question 5:

Does an SCRA search need to be conducted when an unsecured loan is charged off?

Lending to Servicemembers FAQ Answers

Answer 1:

There is much confusion about this because there were rules issued in 2015, 2017 and 2020 that seem to indicate contradictory things. That being said, the 2020 rule regarding vehicle purchase loans that are secured by the vehicle are no longer subject to the MLA.

The 2015 Rule added an exception to covered loans under the MLA so that a loan to purchase a vehicle, secured by the same vehicle would not be considered a covered loan and would therefore not be subject to the MLA. The 2017 Rule confused things by indicating that the loan to purchase a vehicle that was secured by the same vehicle was not considered a covered loan, therefore not subject to the MLA, UNLESS it also financed any credit-related product or service (such as GAP or VSI), in which case the vehicle and credit-related product loan would then be a covered loan and subject to the MLA. The 2020 Rule clarified the existing rules to indicate that a loan to purchase a vehicle that was secured by the vehicle, irrespective of whether or not it also financed a credit-related product or service would not be a covered loan and would not be subject to MLA.

References:

"(2) Exceptions. Notwithstanding paragraph (f)(1) of this section, consumer credit does not mean: (ii) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;"

2015 Final Rule: <https://www.federalregister.gov/d/2015-17480/p-734>

"2. Does credit that a creditor extends for the purpose of purchasing a motor vehicle or personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(ii) or (iii) where the creditor simultaneously extends credit in an amount greater than the purchase price of the motor vehicle or personal property?"

Answer: The answer will depend on what the credit beyond the purchase price of the motor vehicle or personal property is used to finance. Generally, financing costs related to the object securing the credit will not disqualify the transaction from the exceptions, but financing credit-related costs will disqualify the transaction from the exceptions."

2017 Final Rule: <https://www.federalregister.gov/documents/2017/12/14/2017-26974/military-lending-act-limitations-on-terms-of-consumer-credit-extended-to-service-members-and>

"In withdrawing the amended Q&A #2, published on December 14, 2017, because of unforeseen technical issues between the amended Q&A #2 and 32 CFR 232.8(f), the Department, absent of additional analysis, takes no position on any of the arguments or assertions advanced as a basis for withdrawing the amended Q&A #2 from the December 14, 2017 Interpretive Rule."

2020 Final Rule: <https://www.federalregister.gov/d/2020-04041/p-14>

Answer 2:

The SCRA notice is required to be provided within 45 days of a default on a mortgage loan.

Reference:

"All mortgage loans, including conventional mortgages and mortgages insured by HUD, are subject to the notification requirement. The notice is required to: (1) Be sent to all homeowners who are in default on a residential mortgage; (2) include the toll-free Military OneSource number (800-342-9647) to call if servicemembers or their dependents require further assistance; and (3) be made within 45 days from the date a missed payment was due, unless the homeowner pays the overdue amount before the expiration of the 45-day period."

<https://www.federalregister.gov/d/E7-5412/p-7>

Answer 3:

There is not a similar 180-day provision in the Servicemembers Civil Relief Act (SCRA) rule, so it would need to be sent each time.

Reference:

The notification required in subparagraph (A) shall be made-

(i) in a manner approved by the Secretary; and

(ii) before the expiration of the 45-day period beginning on the date on which the failure referred to in such subparagraph occurs.

12 USC §1701x(5)(B):

[http://uscode.house.gov/view.xhtml?req=\(title:12%20section:1701x%20edition:prelim\)%20OR%20\(granuleid:US-C-prelim-title12-section1701x\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:12%20section:1701x%20edition:prelim)%20OR%20(granuleid:US-C-prelim-title12-section1701x)&f=treesort&edition=prelim&num=0&jumpTo=true)

Answer 4:

The brief answer to your question is that you do not have to apply MLA to this loan because of a safe harbor provision in the MLA, but you will want to consider the broader fair lending implications of your decision.

The MLA applies only to consumer credit extended to a "covered borrower." While a creditor may apply its own method to assess whether a consumer is a covered borrower, MLA provides a safe harbor if the creditor verifies the applicant's service status through: (1) the DOD database; or (2) a consumer report obtained from a national consumer reporting agency. In this case, since neither the DOD database nor the credit report shows that the applicant is a covered borrower, the standard practice would be to not apply MLA.

If you are considering applying MLA because the applicant is telling you he is on active duty, make sure you consider the broader fair lending implications of your decision. If your bank has faced the issue of applying MLA solely on an applicant's representation that he or she is a covered borrower before, you will want to make sure you act consistently to avoid a fair lending violation. As with all matters related to fair lending, the best practice is to document the reasons behind your decision for the file.

Reference:

Covered borrower means a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(3) of this section) of a covered member.

32 CFR § 232.3(g) https://www.ecfr.gov/cgi-bin/text-idx?SID=03ade3b83c2858a5c58ca70a78c232cd&mc=true&node=se32.2.232_13&rgn=div8.

Methods to check status of consumer—(i) Department database—(A) In general. To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the database maintained by the Department, available at <https://www.dmdc.osd.mil/mla/welcome.xhtml>. A search of the Department's database requires the entry of the consumer's last name, date of birth, and Social Security number.

32 CFR §232.5 (b)(2): https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=0d6867744278c2984d212fd076cdf891&mc=true&n=pt32.2.232&r=PART&ty=HTML#se32.2.232_15

Answer 5:

It is not a requirement to do an SCRA search prior to charging off a loan, however the bank should consider a search prior to repossessing any applicable collateral under the Act.