

The Consumer Finance Podcast – MLA & SCRA 101: Servicemember Credit Protections and Compliance Risks

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Guests: Jeremy Sairsingh and Taylor Gess

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Chris Willis (00:05):

Welcome to [The Consumer Finance Podcast](#). I'm Chris Willis, the co-leader of Troutman Pepper Locke's Consumer Financial Services Regulatory Practice. And today is the first of a several-part series to talk about the Military Lending Act and Servicemembers Civil Relief Act, which are an area of major focus by the current federal regulators and an area where clients can sometimes make mistakes. But before we jump into that topic, let me remind you to visit and subscribe to our blogs, [TroutmanFinancialServices.com](#) and [ConsumerFinancialServicesLawMonitor.com](#). And please check out our other podcasts as well, The [FCRA Focus](#), [The Crypto Exchange](#), [Payments Pros](#), and [Moving the Metal](#). All of those are available on all popular podcast platforms. And speaking of those platforms, if you like this podcast, let us know. Leave us a review on your platform of choice and tell us how we're doing. Now, as I said, there's been a major emphasis on protection of service members and their dependents in the current federal administration. And so we thought it would be a great idea to have a several-part series to talk to the audience about the two major federal laws that do protect service members and their dependents on occasion, the Servicemembers Civil Relief Act and Military Lending Act. Joining me to talk about that today and in the upcoming episodes that will be are my colleagues Taylor Gess and Jeremy Sairsingh. Taylor, Jeremy, thanks for being on the podcast today.

Taylor Gess (01:24):

Thanks so much, Chris. It's good to be here.

Jeremy Sairsingh (01:26):

Thanks, Chris. Good to be here.

Chris Willis (01:27):

So let's just start at the basic level. Tell me a little bit about these laws and why now is a good time to have them top of mind from a compliance standpoint.

Jeremy Sairsingh (01:37):

So these statutes, the MLA and SCRA, not to be confused with the FCRA, Fair Credit Reporting Act, are really at their core military readiness statutes. So even though we experience them as consumer finance, they're really national security military readiness laws. Starting with the SCRA, it's really a modern incarnation of protections that go pretty far back, really back to the

Civil War, that were first enacted during World War I, reenacted in World War II, modernized in 2003 to become what we now think of as the SCRA. The SCRA's purpose is not just consumer protection in a modern sense. It was written to strengthen national defense, protect service members, really with that goal of enabling service members to be ready for their military duty. In lending terms, if a borrower takes on credit as a civilian and then gets called away, the SCRA effectively reallocates some of that responsibility to the creditor. So the creditor can't treat that call to service as a collection advantage, for example. In terms of understanding the SCRA's purpose, I've always found it helpful to remember that the law imposes duties on creditors and other parties, but also on the military itself. Service members have to receive written notice of SCRA benefits and are to be provided SCRA information during their initial orientation. So it really goes back to that readiness purpose.

Jeremy Sairsingh (03:00):

Pivoting to the Military Lending Act, the MLA, the statute's more recent, relatively speaking, enacted in 2006 and initially out of concerns around high-cost credit products and they were perceived as targeting service members, affecting readiness and morale. So the context, 2006, this was a peak moment during the second Gulf War, shortly before tens of thousands of troops were deployed in the Iraq surge. So consistent with this background, the focus is on credit extended to active duty military members and their dependents. So if the SCRA is focused on pre-service obligations, the MLA is really looking at the other side of the coin. Now that you're active duty, there are federally imposed limits on the terms that credit can be offered to you. Some of the most prominent being the 36% military annual percentage rate, also required disclosures, and very importantly for litigation risk, the ban on mandatory arbitration.

Jeremy Sairsingh (03:56):

So at the end of the day, both the MLA and SCRA are protections designed with this military readiness principle in mind. And looking at these laws in the context of the current landscape, that purpose really tracks with the current presidential administration's focus on readiness and also Secretary Hegseth's oft-repeated words allowing the military to focus on maximum lethality.

Chris Willis (04:17):

Thanks, Jeremy. And have there been other sort of concrete pieces of evidence that show the risk associated with service member protections under the current not only presidential administration but litigation environment?

Jeremy Sairsingh (04:30):

Yeah, absolutely. So as we've seen a, some would say, a pullback on enforcement of certain consumer financial services laws at the federal level, MLA and SCRA continue to be focus areas for the administration and for the federal financial services regulators.

Chris Willis (04:42):

Okay. So let's start talking a little bit about the basics of these laws. Taylor, let me jump to you and let's start with the Military Lending Act. And let's talk first about what kind of credit is covered by that statute.

Taylor Gess (04:59):

Sure, Chris. So the MLA, which is also known as the Talent-Nelson Amendment, is implemented by some Department of Defense regulations and interpretive rules. And the type of credit that the MLA applies to is broadly consumer credit, and that definition mirrors consumer credit under TILA and Reg Z. So we're talking about credit that's subject to a finance charge or payable by a written agreement in more than four installments that's for personal, family, or household purposes. The MLA does have some key exclusions, though, for types of credit that the law does not apply to. And so a big one here is purchase money loans for cars or personal property without cash-out components, and also residential mortgages and home equity lines of credit. And then, of course, TILA-exempt transactions would also not fall into the MLA consumer credit definition. And so where that leaves us is the MLA does apply broadly to most types of credit, right? Installment loans, credit cards, lines of credit, payday loans, refund anticipation loans, non-purchase money secured credit, private student loans, and we're noticing a significant trend of earned wage access providers seeing some lawsuits under the MLA and courts taking the position that is credit under the MLA. So we're definitely keeping our eye on that. And something else about the coverage of credit under the MLA is that it applies to creditors as that term is defined under TILA and Reg Z once again, and it also expressly includes assignees. And so I think that's an interesting point to keep in mind. And as Jeremy kind of hinted at earlier, and we'll get into this more in a minute, but the MLA does not apply if the consumer credit is extended before the service member went on active duty or if the service member is no longer on active duty when the credit is extended. So we're kind of looking at the time of the extension for the MLA coverage.

Chris Willis (07:01):

Got it. And Jeremy, I know that the SCRA has its own scope that isn't co-extensive with the Military Lending Act. Would you mind telling us about that?

Jeremy Sairsingh (07:10):

The SCRA is harder to summarize because it's much less of a product coverage statute than the MLA is, is how I would frame it. I would characterize the SCRA as more of a timing and remedy statute. So looking at this from a lending context, I would start with the first question being, was this obligation incurred before military service to distinguish from credit covered by the MLA? The second would be, what is the creditor trying to do now? Is it a repossession? Does it have to do with the interest rate? And then the third is, is this a benefit that the service member has to request proactively, or is it something that the creditor has to do before it takes some action, irrespective of what the consumer, what the service member has requested? The 6% interest rate provision is probably the most well-known and easiest example to start with. If a service member has a pre-service obligation with an interest rate above 6%, the SCRA can

require the creditor to reduce the rate after receiving written notice and military service documentation from the borrower.

Jeremy Sairsingh (08:13):

Going back to the MLA as a contrast, the SCRA covers a broader scope of lending products. Taylor listed some of those. The SCRA can cover credit cards, personal loans, but also auto loans that might be excluded from the MLA, mortgages, even some business credit that would also fall outside the MLA. It's really not a military products statute. It's really about the timing of the debt or obligation and the timing of the service member's service. And it's really important to remember the SCRA is not just about interest caps I've mentioned. For example, mortgage foreclosure is a hot topic. If a mortgage was entered before the service member entered military service, foreclosure generally can't occur without either a court order or a valid waiver executed in a really precise manner required under the SCRA. It's similar for auto repossessions, which is another very hot area of enforcement. If the service member entered the contract before service and made a deposit or installment payment before service, you generally can't repossess during military service without a court order or, again, without a waiver. This is a really important practical contrast to the MLA. A key example being a purchase money auto loan secured by the vehicle may fall outside MLA coverage, but could squarely fall within the SCRA, and those types of obligations are the subject of many SCRA consent orders. So the bottom line for SCRA coverage, I would not only ask, is this product covered, but also where is this account in its lifecycle? Rate reduction versus a fee assessment versus a foreclosure referral could all raise different SCRA questions.

Chris Willis (09:50):

Yeah, thanks a lot, Jeremy. I think that's a great way to think about it. Now that we've sort of talked about what the coverage on the industry side is with respect to these statutes, let's talk about who's covered from the standpoint of the service members and sometimes dependents. So, Taylor, can I talk with you first about the MLA? Who is covered by the MLA? Who's a protected borrower under that statute?

Taylor Gess (10:12):

Sure, Chris. So the MLA protections apply to covered borrowers. And a covered borrower is an individual who at the time he or she becomes obligated on the consumer credit is an active duty member of the armed forces, and that includes Army, Navy, Marines, Air Force, Coast Guard, and Space Force, or a dependent of an active duty member. And so there's a few things to unpack here, I think, Chris, right? So what does active duty mean, and what is a dependent? Active duty is being on a call or order that doesn't specify a period of 30 days or less, and that includes National Guard and Reserve duty. And when we start talking about what a dependent is, I think that's a word that can mean a lot of different things, but under the MLA at a high level, a dependent is a spouse of the service member, parents and parents-in-law that are dependent on the service member for half of their support and that live in the service member's household, and children that are under 21 or under 23 and enrolled in full-time school and, again, dependent on that member for over one half of the child's support. And then there is another bucket for children that are dependent on the member for over half their support and that are

incapable of self-support because of a mental or physical incapacity that occurs either while that child is under 21 or under 23 and in full-time school.

Chris Willis (11:39):

Okay, that's good to know, Taylor, but how is a creditor supposed to know? I mean, you could maybe identify the consumer as a service member by asking them, but how do you know if it's a dependent?

Taylor Gess (11:50):

Yeah, Chris, it's complicated. That threshold question of who's covered by the statute is difficult, and we see people sometimes have some trouble navigating that, but I think it's important to keep in mind the Department of Defense regulations, they don't require a specific method of determining if someone is a covered borrower, but they do provide some safe harbors for these creditors. And so the creditor can, at the time the account is created or the transaction is entered, check the Department of Defense database so they can search the consumer's last name, date of birth, and social security number to see if that person comes up. Another safe harbor is obtaining a consumer report from a nationwide CRA or reseller that has a code or some other type of indicator about the consumer's covered borrower status. And so that check on active duty status needs to be done at the time the credit is extended on a transaction or when a consumer applies to open an account or in the 30 days before that extension of credit or account establishment. And this is kind of a little tricky, but transaction and account aren't defined terms under the MLA, but we generally take transaction to refer to closed-end credit and account to refer to open-end credit as we think about those terms under Reg Z. And I guess, Chris, just to be clear, a creditor can access the Department of Defense database at some sort of later point in time, but checking it after the extension of credit or account opening just wouldn't satisfy those safe harbor requirements. And there are some record-keeping obligations as well.

Chris Willis (13:31):

And just to be clear, my understanding is that the database you're referring to here is a distinct one from the SCRA database because this one has the dependents in it that are the covered borrowers under the Military Lending Act. Right, Taylor?

Taylor Gess (13:41):

Yes, that's right, Chris.

Chris Willis (13:42):

Thanks, Taylor. Jeremy, are there other considerations, practical or logistical, associated with the issue that Taylor and I have just been talking about?

Jeremy Sairsingh (13:49):

Well, Taylor mentioned the safe harbor under the MLA for identifying covered borrowers, and you can't overemphasize how useful a tool that is in identifying the covered borrowers. The DoD database draws from the DEERS system, which is essentially a personnel records system operated by the Department of Defense, and that feed pulls in who is a dependent and who is active duty in a way that you wouldn't otherwise be able to identify, say, just from looking at someone. You might not look at someone and say, "Well, this person is a covered Military Lending Act borrower," if it's the father-in-law of an active duty soldier. So historically, there were some, lenders, that would rely on just asking, "Hey, are you in the military?" And because of the expansion of coverage to dependents, it's ill-advised to rely on anything other than the safe harbors. Also, the timing rules that Taylor mentioned are really important and also retaining records. You could perform the check that you're required to perform, but if you don't retain the record and keep it in your system for the required period of time, you have no proof that you did the covered borrower check at origination. Likewise, when the covered borrower check needs to occur can depend on the type of product that we're talking about. So a traditional open-end credit card account typically only requires a single check at or shortly before account opening, as described in the MLA rule. Same goes for most installment loans where you would also check at the point of origination, but the waters muddy really quickly as products get more complicated. For example, if there are multiple closed-end loans under a single agreement, that could affect when covered borrower checks need to occur.

Chris Willis (15:36):

Yeah, that's good advice, Jeremy. Thank you for that. We do this conversation now. We've talked about the coverage of who's protected by the Military Lending Act. Who in turn is protected by the Servicemembers Civil Relief Act? And Jeremy, let me start with you on that.

Jeremy Sairsingh (15:48):

For the SCRA, coverage is very service-status-driven, much like the MLA, but also it differs in some key respects. The SCRA covers basically members of the uniformed services in military service, so active duty under Title 10 primarily, the Army, Navy, Air Force, Marines, Space Force, Coast Guard. It also covers certain National Guard members under qualifying federal activations. So a state governor ordering the State National Guard to duty wouldn't generally qualify for SCRA coverage, it might under state SCRA equivalent statutes, but not under the federal SCRA. Other categories include federal service by certain commissioned officers in other agencies when on active service. There are also some less frequently cited provisions that extend coverage to U.S. citizens serving with allied forces when prosecuting a war or military action. This provision doesn't get a lot of attention, but I wouldn't be surprised to see a little more renewed interest given the current situation in the Persian Gulf. The important point for creditors is that SCRA status is not something you just check once at origination and forget. I don't want to say you want to forget your covered borrower check on the Military Lending Act side because you need to preserve those records, but ongoing checks become much more relevant under the SCRA. For example, a borrower can take out a loan as a civilian, join or be called to active duty later, and then become eligible for SCRA protections on an existing account.

Chris Willis (17:18):

Jeremy, that's a great summary. And I think it's probably worth underlining the areas where the MLA and SCRA differ in their coverage. Do you mind just briefly summarizing that for the audience? I think that'd be really helpful.

Jeremy Sairsingh (17:30):

Sure. So the SCRA is in some ways a mirror image of the MLA. So under the MLA, if the borrower is not a covered borrower when the transaction is entered into or the account is opened, the original transaction is generally not MLA covered just because the borrower later enters active duty. Under the SCRA though, that later service might be exactly the point at which SCRA rights arise. So a common example would be a soldier enlists and goes to basic training and they're basically active duty from the point they get those orders. In the case of reservists, which is another potentially confusing category, they're SCRA covered when they receive orders for the entire period before they report for duty. And then once they report for duty, they're also covered now as active duty, not as a reservist. Documentation works differently as well. So for the SCRA interest rate cap, the statute contemplates written notice and orders or other military proof of service provided by the borrower. Lenders also use the DoD database through business reviews to identify eligible borrowers for the interest rate reduction. This is referred to as the SCRA safe harbor. But critical point to take away: This safe harbor is limited to the interest rate reduction and is often misunderstood to apply to other SCRA protections. The statute and official guidance make it really clear that the SCRA's DMDC, Defense Manpower Data Center, database safe harbor is applicable only to the interest rate cap and not to SCRA requirements more broadly. And this is really important when it comes to a lot of hard stop actions like repossessions, foreclosures, default judgments. A lender may be totally comfortable with its SCRA interest rate process and still have an SCRA problem if the repossession or foreclosure process doesn't ask the right question at the right time. And there's a long series of consent orders around repossessions that make really clear that SCRA protections are essentially strict liability. If you repossess in a manner that's prohibited by the SCRA, it doesn't help you that at some point you did a DoD database check.

Chris Willis (19:36):

That's a great summary, Jeremy, and I really appreciate it. And I think we've done a really good job of sort of setting the groundwork for our future episodes here by giving the sort of basics of both of these statutes. But we love a good teaser here on *The Consumer Finance Podcast*, and I want to give each of you the opportunity to sort of highlight some of the issues that we'll be talking about in future episodes in this series. Jeremy, would you like to go first?

Jeremy Sairsingh (19:59):

Sure. I think the focus on repossession and foreclosure by the Department of Justice and other regulators, these are fast-moving processes that often involve multiple vendors, a lot of complexity on the compliance side in terms of how to implement processes to avoid that strict liability that I mentioned before. Secondly, I would tee-up product design. This is a topic Taylor and I are frequently advising clients on is when you're designing a consumer financial services

product, you need to be thinking about both potential SCRA and MLA issues early on when you're at the product development stage. And we'll have more to say on that.

Taylor Gess (20:39):

Yeah, Chris, I'll just add I think another thing that we see clients thinking about is how these state law analogs, especially the SCRA analogs, impact product design decisions and servicing decisions.

Chris Willis (20:53):

All right. Thanks a lot, Taylor. We know that there's gonna be some very interesting and important issues for listeners to tune in to our future episodes in this series, too. So thank you and thank Jeremy for being on today's episode. And of course, thanks to our audience for listening as well. Don't forget to visit and subscribe to our blogs, [TroutmanFinancialServices.com](https://www.troutmanfinancialservices.com) and [ConsumerFinancialServicesLawMonitor.com](https://www.ConsumerFinancialServicesLawMonitor.com). And while you're at it, why not visit us on the web at [troutman.com](https://www.troutman.com) and add yourself to our Consumer Financial Services email list? That way we can send you copies of our alerts and advisories, as well as invitations to our occasional industry-only webinars. And of course, watch your podcast feed for a great new episode of this show coming out every Thursday afternoon. Thank you all for listening.

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