



CFPB Announces Broad Military Lending Act Compliance Sweep

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On December 4, 2020, the Consumer Financial Protection Bureau announced the filing of a lawsuit against an online lender for allegedly violating the Military Lending Act (“MLA”). The CFPB’s complaint alleges that the lender entered into loan agreements with covered borrowers that exceeded the MLA’s 36% military annual percentage rate (“MAPR”) cap, contained provisions requiring borrowers to submit to arbitration in case of a dispute, and failed to provide all of the MLA’s required disclosures. The complaint requests various forms of relief, including that the lender pay compensation for unjust enrichment, pay damages and other monetary relief to consumers, rescind consumer credit agreements that were void *ab initio* (from the beginning), and permanently enjoin the lender from collecting debts arising from the void *ab initio* agreements, or from selling or assigning such debts.

While the complaint’s allegations are instructive, perhaps even more significant is the CFPB’s indication that the December 4th complaint is just the beginning. Specifically, the CFPB’s press release states, “[t]oday’s action is part of a broader Bureau sweep of investigations of multiple lenders that may be violating the MLA.” This broad sweep runs contrary to 2018 statements from former CFPB director Mick Mulvaney that the CFPB would no longer be examining supervised entities for compliance with the MLA. The CFPB also has not yet received the regulatory clarity sought from Congress by director Kathy Kraninger in 2019 as to the scope of the CFPB’s authority when it comes to the MLA. Despite its previously articulated position that the agency was unsure of the scope of its authority when it comes to the MLA, the CFPB has chosen to move forward with identifying and addressing alleged MLA violations. Moreover, it would appear that more of these types of actions will be coming soon.

The CFPB’s announcement of its broad MLA sweep means that it’s a good time to “clean house” on your company’s MLA compliance. Key steps to take include:

- **Ensure you have a process for determining “covered borrower status.”** The MLA applies to consumer credit transactions with “covered borrowers.” Accordingly, creditors need to determine whether an applicant is a “covered borrower” (generally speaking, active duty servicemembers and their dependents are “covered borrowers”). To obtain a safe harbor for covered borrower status determinations, creditors must directly or indirectly (perhaps through a service provider) verify the applicant’s covered borrower status through the Department of Defense’s MLA database. Creditors may also verify the consumer’s covered borrower status by using a consumer report obtained from a nationwide consumer reporting agency that has a statement, code, or

indicator concerning the consumer's status. Doing so, and keeping a record of the findings, provides creditors with a safe harbor.

- **Comply with the 36% MAPR cap.** The MLA imposes a 36% MAPR cap. The MAPR is an all-inclusive APR that eliminates some finance charge exceptions under Regulation Z. For example, the MAPR calculation must include (a) fees/premiums charged for voluntary credit insurance, debt cancellation contracts, and debt suspension agreements, and (b) fees for any ancillary products sold in connection with the consumer credit.
- **Provide covered borrowers with the required disclosures.** The MLA also mandates that covered borrowers be provided with specified oral and written disclosures.
- **Adhere to other specifically enumerated MLA prohibitions.** The MLA prohibits, among other things, vehicle-title-secured transactions, mandatory arbitration clauses and contractual waivers of rights under any state or federal laws, such as the Servicemembers Civil Relief Act. You should ensure transactions entered into with covered borrowers do not include any of these prohibited terms.

Given the severe penalties associated with violating the MLA and the CFPB's newly announced attention to MLA compliance, if you've been putting MLA compliance on the back-burner, it's time to take another look.

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