

## Unfair Loan Interest Charged Against Service Members: Act Before it's Too Late

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Law Review Subject Index Code(s)

4.0 -- Soldiers' and Sailors' Civil Relief Act (SSCRA) and the Servicemembers' Civil Relief Act (SCRA) Generally

4.1 -- Right to Interest Rate Reduction Upon Mobilization

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A December 2022 article published by CBS claimed that activated members of the National Guard and Reserves are paying millions of dollars in interest on loans that they are not required to under the law.<sup>3</sup> Under the Servicemembers Civil Relief Act (SCRA), activated members of the National Guard and Reserves are entitled to a reduction of *pre-service* liabilities' interest rate to 6% per year.<sup>4</sup> These protections also apply to active duty service members and active duty commissioned officers of the Public Health Service (PHS) or the National Oceanic and Atmospheric Administration (NOAA) who took out loans prior to initiating their active duty contract. This applies to debts such as mortgages, car loans, student loans, credit cards, and personal loans – and also applies to debt held jointly with a spouse.<sup>5</sup>

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find approximately 1500 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country, along with a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. In our "state laws" section, we have an article for each state about the state laws that grant paid military leave and other benefits, over and above USERRA, to employees of the state and (often) to employees of the state's political subdivisions.

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<sup>3</sup> Khristopher J. Brooks, *U.S. military personnel are often wrongly charged extra interest on loans*, MONEY WATCH (Dec. 7, 2022, 5:59 PM), <https://www.cbsnews.com/news/national-guard-reserve-interest-rate-reduction-cfpb/>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## How to Reduce Your Loan Interest to 6%

If you have pre-service obligations that carry an interest rate over the 6% cap, the CFPB explains that “you must notify your lender in writing and include a copy of your orders to active duty service or a letter from your commanding officer that shows the date you began active duty service.”<sup>6</sup> After making a proper request, the lender **must** reduce your pre-service obligation interest rate to 6% for the entire time you are on active duty. For some loans, including mortgages, the 6% rate cap applies for an additional year at the end of active duty service.<sup>7</sup>

The lender is not allowed to add the additional interest above 6% back onto your loan after you leave active duty. They also are not permitted to revoke your loan or credit amount, change the terms of your credit, or refuse to grant you credit because you exercised your SCRA rights.<sup>8</sup>

Additionally, the following “predatory lending” practices are illegal regarding loans to a military consumer:

- Creditors cannot “roll over” or refinance the same loan between the same creditor and borrower.
- Creditors cannot require borrowers to waive any state or federal law, including provisions of the Servicemembers Civil Relief Act.
- Creditors cannot require borrowers to submit to arbitration or other onerous legal notice provisions.
- Creditors cannot require a borrower to issue a check as a means of access to the borrower’s financial accounts or require a borrower to provide a vehicle title as loan security.
- Creditors cannot insert into credit agreements any unreasonable notice requirement as a prerequisite to the consumer’s right to bring legal action against the creditor.
- Creditors cannot require a borrower to create a voluntary allotment for the benefit of the creditor as a loan prerequisite.
- Creditors cannot charge a penalty for prepayment of a loan, in whole or in part.<sup>9</sup>

## Request Your Rate Reduction Sooner Rather than Later

You can apply for a rate reduction while on active duty and up to 180 days after released from active duty.<sup>10</sup> Following that request, the lender must apply the rate reduction for the entire

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<sup>6</sup> *The Servicemembers Civil Relief Act (SCRA)*, CFPB, <https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/the-servicemembers-civil-relief-act-skra/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Law Review 13162.

<sup>10</sup> *I’m in the military, are there limits on how much I can be charged for a loan like a mortgage, student loan, auto loan, or credit card balance?*, CFPB (Sept. 3, 2020), <https://www.consumerfinance.gov/ask-cfpb/im-in-the-military-are-there-limits-on-how-much-i-can-be-charged-for-a-loan-en-893/>.

time you serve on active duty, meaning that they will refund you the amount you overpaid on interest.<sup>11</sup> However, if you miss that deadline to apply, you will no longer be refunded the amount you overpaid.

## **Military Lending Act Protections**

The Military Lending Act (MLA) is a separate provision which covers some debts that are taken on **during** active duty service, including reserve or National Guard duty of 30 days or more.<sup>12</sup> This Act caps interest at 36% Military Annual Percentage Rate (MAPR).<sup>13</sup> The MLA applies not only to the service member, but also the spouse and certain dependents.<sup>14</sup> The calculation of the 36% rate includes the following costs:

- Finance charges
- Credit insurance premiums
- Add-on credit-related products sold in connection with the credit
- Fees like application fees, participation fees, or fees for debt cancellation contracts, with some exceptions.<sup>15</sup>

The MLA **applies** to the following types of debt:

- Payday loans
- Credit card debt
- Vehicle title loans
- Unsecured open lines of credit
- Refund anticipation loans
- Installment loans
- Pawn loans
- Deposit advance products<sup>16</sup>

The MLA **does not apply** to the following types of debt:

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<sup>11</sup> *Id.*

<sup>12</sup> *Financial Protections for Your Service Member*, MILITARY ONESOURCE (Apr. 15, 2020, 5:03 PM) <https://www.militaryonesource.mil/relationships/support-community/financial-protections-for-your-service-member/>.

<sup>13</sup> *Id.*

<sup>14</sup> *What is the Military Lending Act and what are my rights?*, CFPB, [https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/military-lending-act-mla/#:~:text=Your%20rights%20under%20the%20MLA,rate%20\(with%20some%20exceptions\)](https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/military-lending-act-mla/#:~:text=Your%20rights%20under%20the%20MLA,rate%20(with%20some%20exceptions).).

<sup>15</sup> *Id.*

<sup>16</sup> *See Financial Protections for Your Service Member*, MILITARY ONESOURCE (Apr. 15, 2020, 5:03 PM) <https://www.militaryonesource.mil/relationships/support-community/financial-protections-for-your-service-member/>; *What is the Military Lending Act and what are my rights?*, CFPB, [https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/military-lending-act-mla/#:~:text=Your%20rights%20under%20the%20MLA,rate%20\(with%20some%20exceptions\)](https://www.consumerfinance.gov/consumer-tools/educator-tools/servicemembers/military-lending-act-mla/#:~:text=Your%20rights%20under%20the%20MLA,rate%20(with%20some%20exceptions).).

- Residential mortgages (any credit transaction secured by an interest in a dwelling), including financing to buy or build a home that is secured by the home, mortgage refinances, home equity loans or lines of credit, or reverse mortgages;
- A loan to buy a motor vehicle when the credit is secured by the motor vehicle you are buying; and
- A loan to buy personal property when the credit is secured by the property you're buying, like a home appliance.<sup>17</sup>

Additionally, "[l]enders must disclose both orally and in writing that the Military Annual Percentage Rate is to be applied to the credit being offered, along with a clear description of payment terms. Lenders may not require your service member to waive their legal rights or to submit to arbitration. Lenders also cannot require repayment by military allotment."<sup>18</sup>

Do note however that even though this "protection" at 36% exists for new credit, that is not necessarily a "good" interest rate by any means, so take on debt at that rate with caution.

### **The Impact of Excessive Debt on Service Members**

On top of the normal stress felt by people faced with large amounts of debt, service members can face additional penalties if that debt becomes excessive and/or delinquent, including losing their security clearance, being denied promotions, and even the possibility of dismissal.<sup>19</sup>

The federal government published a document called the Security Executive Agent Directive which outlines its expectations for individuals who seek security clearances. Relevant to financial considerations is Guideline F which states "Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information."<sup>20</sup> Guideline F also lists specific actions that could jeopardize a service member's security clearance:

- Inability to satisfy debts
- Unwilling to satisfy debts regardless of ability to do so
- History of not meeting financial obligations
- Deceptive or illegal financial practices
- Consistent spending beyond one's means

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> George Morris, *Debt and Your Military Security Clearance*, INCHARGE DEBT SOLUTIONS (Dec. 13, 2021), <https://www.incharge.org/military-money/military-life/bad-credit-and-your-security-clearance/#:~:text=Members%20of%20the%20military%20dealing,in%20extreme%20circumstances%2C%20face%20dismissal.>

<sup>20</sup> OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, SECURITY EXECUTIVE AGENT DIRECTIVE 4: NATIONAL SECURITY ADJUDICATIVE GUIDELINES (2017).

- Failure to file or fraudulently filing taxes
- Unexplained affluence
- Borrowing money to fund gambling
- Concealing gambling losses<sup>21</sup>

### **A note to Lenders**

We urge you, consistent with a recent CFPB report, to eliminate the administrative burden for service members who are eligible for SCRA interest reduction. Instead of requiring service members to apply for the interest reduction, lenders could easily refer to the Defense Manpower Data Center to see which of their customers are on active duty, and cap their interest rates on their behalf.

### **A note to Service members**

If you feel like your MLA rights are being violated, you may report your concern to the CFPB at <https://www.consumerfinance.gov/complaint>.

Ask your Legal Assistance office or installation financial readiness office for information and assistance if needed.

“Service members and their family members have access to personal financial counselors who provide assistance with developing spending plans, managing personal finances, financial planning and debt reduction. Free personal financial counseling is available through installation Military and Family Support Centers, and personal financial counselors through the Military and Family Life Counseling Program. Military OneSource has financial counselors available 24/7 at 800-342-9647.”<sup>22</sup>

### **Please join or support ROA**

This article is one of 2,000-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA) initiated this column in 1997, and we add new articles each month.

ROA is more than a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national

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<sup>21</sup> *Id.*

<sup>22</sup> *Expanded Credit Protections for Service Members and Their Families*, MILITARY ONESOURCE (Apr. 3, 2020, 7:40 PM), <https://www.militaryonesource.mil/financial-legal/personal-finance/expanded-credit-protections-for-service-members-and-their-families/>.

security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's national defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, ESGR volunteers, DOL investigators, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to their membership status, or lack thereof, in our organization, but please understand that ROA members, through their dues and contributions, pay the cost of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any of our country's eight uniformed services,<sup>23</sup> you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership.<sup>24</sup> Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to persons who are serving or have served in the Active Component of the armed forces, as well as the National Guard and Reserve.

If you are eligible, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448. If you are not eligible, please contribute to help us continue our vital work. You can send us a contribution at:

Reserve Organization of America  
1 Constitution Avenue NE  
Washington, DC 20002<sup>25</sup>

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<sup>23</sup> Congress recently created the United States Space Force as the 8<sup>th</sup> uniformed service.

<sup>24</sup> If you are under the age of 35, you can become an associate member for free for five years or when you turn 35, whichever comes first.

<sup>25</sup> You can also contribute on-line at [www.roa.org](http://www.roa.org).