

BUCKLEY

Military Lending Practice

Congress has created a number of unique financial protections for members of the military, many of which apply regardless of whether a financial institution is aware of a customer's military status. The Department of Justice and federal banking agencies have aggressively enforced these laws — the Servicemembers Civil Relief Act and the Military Lending Act —with consumers and class action lawyers also looking to advance novel claims under them. Financial penalties associated with SCRA and MLA violations can be costly, to say nothing of the public relations challenges that can arise from allegations that a company may have mistreated servicemembers. More than half the states have also enacted similar laws offering protections to servicemembers and members of the National Guard.

Buckley lawyers have deep experience with military lending laws and have defended financial institutions in several market-setting regulatory and enforcement actions, regularly obtaining positive results for our clients. Our comprehensive approach to addressing SCRA allegations has proven successful in reducing what, at the outset, appeared to be thousands of potential SCRA errors in some instances to only a handful of violations. Not only do we understand the law as written, but also our extensive work on military lending gives us insights into regulatory expectations, industry best practices, and creative strategies to obtain the best possible outcome for our clients. We appreciate that reputational considerations associated with military lending can create challenges and provide companies with both legal and strategic advice that is sensitive to these dynamics.

We also provide ongoing regulatory guidance to identify risks and prevent enforcement actions before they arise. Buckley lawyers serve as outside compliance counsel to banks, mortgage lenders and servicers, motor vehicle finance companies, insurers, and other consumer financial services companies on dozens of military lending matters. We advise clients with military lending issues such as designing new credit and deposit products, addressing the MLA's preclusion on mandatory arbitration clauses, creating legally compliant policies and procedures, providing training to senior management and front-line employees, conducting internal and due-diligence reviews, and responding to consumer complaints and regulatory inquiries.

When disasters strike — hurricanes, earthquakes, terrorist activity— governors call upon members of the National Guard to provide essential services, and state laws provide an inconsistent patchwork of both SCRA-like protections and specific protections to support those called to state service. Buckley attorneys monitor state legislative and regulatory developments and routinely advise clients regarding compliance with these laws.

Examples of our military lending representations include:

- **Residential mortgage foreclosure:** We represented two nationwide banks

in the first major SCRA foreclosure actions arising from the financial crisis, in which DOJ developed the legal interpretations and remediation methodology that remain the core of all governmental SCRA foreclosure actions; multiple cases settled collectively, without admission of fault. As part of our work, we also helped these banks implement the injunctive relief provisions of these settlements and construct SCRA Compliance Programs to meet their obligations. We also represented a major mortgage servicer in negotiating and implementing a foreclosure lookback and remediation under the supervision of its federal banking regulator, allowing the bank to avoid a public enforcement action.

- **Interest rate benefit:** We defended a major federal and private student loan servicer in the first-ever application of the SCRA's interest rate benefit and default judgment provisions to a student loan servicer, including addressing multiple novel questions of law; the matter settled to resolve all claims without admission of fault. We also directed a major remediation on behalf of a nationwide bank that failed to properly implement the interest rate benefit.
- **Motor vehicle lease termination:** We represented a major captive auto lender in the first-ever DOJ enforcement action addressing the SCRA's early lease-termination provision and the refundability of fees; this landmark settlement established an industry-standard methodology for the calculation of amount subject to refund in similar situations and has been used by the DOJ as a precedent for subsequent lease-termination matters; the matter settled to resolve all claims without admission of fault.
- **Motor vehicle repossession:** We defended a major bank in one of the first-ever DOJ enforcement actions arising from the SCRA relating to automobile repossessions; the matter settled to resolve all claims without admission of fault.
- **Wholesale SCRA compliance review:** We conducted a wholesale review of SCRA and MLA compliance for a nationwide financial services company, including all traditional consumer credit and deposit products, ancillary products, affiliated insurance companies, and account-level reviews, in response to regulatory criticism.
- **Industrywide representation and guidance:** On behalf of the financial services industry, we advised several trade groups in a coordinated effort to analyze changes to MLA regulations and request amendments to bring the regulations in line with industry standards and the realities of the credit market, including participating in meetings with key federal policymakers and enforcement agencies.

- **Policies, procedures, training, and testing:** We have worked closely with dozens of companies to develop SCRA- and MLA-compliant policies and procedures across all consumer product classes, and where needed, have also conducted in-depth training for board members, senior management, and line-level employees, as well as account-level testing for legal and operational compliance.