

How to Use This Manual

Servicemember protections have taken on a higher priority in the scheme of financial institution compliance in the wake of 9/11 and the hostilities that have followed. Less than a month after the September 11, 2001, attack on the World Trade Center in New York City and the U.S. Pentagon in Washington, D.C., the United States and an international coalition of other countries initiated military actions in Afghanistan. A year and a half later, in March 2003, the U.S. and the United Kingdom, supported by an international coalition that included Australia, Denmark, and Poland, invaded Iraq and overthrew Iraqi leader Saddam Hussein. Although U.S. operations in Iraq have become increasingly controversial as efforts to establish peace and stability have stalled, support for U.S. military personnel has remained strong at home as the burden on servicemembers has increased.

In this environment it is especially important for financial institutions to ensure that servicemembers and their families are treated fairly and receive all the protections they are granted under the law. This manual outlines and analyzes the federal servicemember protections most important to the financial industry.

Chapter 1, The Talent-Nelson Amendment, covers the most recent addition to these laws. Although defense authorization bills don't usually have a direct effect on lenders, that was not the case with the "John Warner National Defense Authorization Act for Fiscal Year 2007," which President Bush signed into law on October 17, 2006. This authorization bill (Public Law 109-364) included one particular section destined to have a significant effect on lender practices. Section 670 ("Limitations on Terms of Consumer Credit Extended to Servicemembers and Dependents") added section 987 to Title 10 of the United States Code and is frequently called the "Military Payday Law," or, after its Congressional sponsors, Senators Jim Talent (R-Mo.) and Bill Nelson (D-Fla.), the "Talent-Nelson Amendment."

The Talent-Nelson Amendment immediately sparked "deep concern" on the part of the banking industry about compliance problems and unintended consequences, and with good reason. The new law is broadly written and includes a raft of requirements and conditions on creditors offering consumer credit to active duty military and their dependents. The statute's provisions include new disclosure requirements, limitations on credit terms, preemption requirements, and a 36 percent rate cap on payday, vehicle title, and tax refund anticipation loans. Although the

banking industry's worries were to a certain extent mollified by the proposed regulations the Department of Defense published on April 11, 2007, (72 Fed. Reg. 18157) to implement 10 USC 987, the new regulations continue to pose many compliance issues for the banking industry and other lenders.

Moreover, the banking industry's "deep concern" about the Talent-Nelson Amendment has been understandably heightened by the possibility that the new provisions may ultimately be applied to all consumers, not just military personnel. In a speech given January 12, 2007, Federal Deposit Insurance Corporation (FDIC) Chairman Sheila Bair emphasized the importance of promoting economic inclusion by making the mainstream financial system available to more consumers. Bair noted that the FDIC has taken "two very important steps in this area — focusing attention on the need for affordable small-dollar loan products and creating the Advisory Committee on Economic Inclusion." In December 2006, the FDIC hosted a conference to highlight what Bair called the "serious gap in consumer lending — the shortage of responsibly priced small-dollar loans." Conference participants developed a "template for an affordable, small denomination loan product, with a savings component." Although the conference focused specifically on meeting the needs of military personnel and their families, Bair said she hoped that the concepts and prototypes discussed at the conference "can be expanded and more broadly adopted by the banking industry. It is clear that many consumers, not just military personnel and their families, have a need for reasonably priced small-dollar loan products." The FDIC also released "Affordable Small Loan Guidelines" for public comment on December 4, 2006.

Chapter 2 covers the Servicemembers Civil Relief Act (SCRA), which was signed into law on December 19, 2003, (Pub. L. No. 108-189, 117 Stat. 2835) and codified at 50 USC app. 501 *et seq.* The SCRA is an important component in the array of servicemember protections financial institutions must incorporate into their compliance programs. Although the SCRA was enacted in 2003, it amended and replaced the venerable Soldiers' and Sailors' Civil Relief Act (SSCRA), parts of which date back to legislation first enacted during the Civil War.

The SCRA generally seeks to strengthen the national defense by providing for temporary suspension of legal proceedings and financial transactions that may adversely affect the rights of servicemembers during their military service. Although the SCRA clarified a number of the provisions of the Soldiers' and Sailors' Civil Relief Act, the SCRA remains a sizable legislative package that includes a wide range of provisions, many of which are not directly relevant to financial institutions. However, several of the changes made by the 2003 legislation are of particular interest to depository institutions. For example, federal financial institution regulators have highlighted the following changes:

- The act retains the 6 percent cap on interest rates for obligations incurred by a servicemember before entering military service applicable under the SSCRA. The act explicitly states that any amount of interest above 6 percent is forgiven, not deferred. The House committee report explains that this resolves “lingering questions about Congressional intent” under the former law.
- The act extends eviction protections to cover units renting for \$2,400 or less (double the pre-existing limit). Since 2004, the cap has been adjusted for inflation. (As of January 1, 2007, the monthly maximum amount is \$2,720.95.)
- Servicemembers may terminate residential leases (now including those executed after entering military service) and, for the first time, motor vehicle leases. For a residential lease, the servicemember may terminate a lease executed (i) before entering military service, or (ii) afterwards, if the servicemember receives a permanent duty change order or is deployed for at least 90 days. For a motor vehicle lease, the servicemember may terminate a lease executed (i) before entering military service for at least 180 days, or (ii) afterwards, if the member receives orders for a permanent change of station outside of the continental U.S. or deployment for at least 180 days.
- If a servicemember is personally liable for an obligation of the servicemember’s trade or business, and the servicemember’s assets are “not held in connection with the trade or business,” they are not available to satisfy the obligation during his or her military service. But the holder of the obligation may ask the court to modify this relief “as justice and equity require.”

Federal regulators have also acknowledged that financial institutions may want to extend benefits that go beyond those required by the SCRA. For example, the Office of Thrift Supervision said in OTS Memorandum 189 that it will consider an institution’s decision to extend such benefits “appropriate provided the institution implements such a program safely and soundly. Institutions should monitor their portfolios and the performance of loans affected by the SCRA, or any voluntary relief, analyze the impact of these programs, and adjust loan loss allowances accordingly.”

Chapter 3 covers the Uniformed Services Employment and Reemployment Rights Act (USERRA), another statute that provides important servicemember protections that financial institutions must factor into their compliance planning. USERRA was enacted in 1994 in part to clarify prior laws relating to the reemployment rights of service members, rights that were first

contained in the Selective Training and Service Act of 1940. USERRA's immediate predecessor was the Vietnam Era Veterans' Readjustment Assistance Act of 1974, commonly referred to as the Veterans' Reemployment Rights Act, which was amended and recodified as USERRA. Although USERRA was enacted in 1994 as an amendment to earlier military laws to strengthen the protections of civilian job rights and benefits for veterans of the first Gulf War, the Department of Labor's (DOL's) USERRA regulations did not become effective until January 2006. Among other things, DOL's regulations comply with an amendment made to USERRA by the Veterans Benefits Improvement Act of 2004 (VBIA), which imposed a new requirement that "Each employer shall provide to persons entitled to rights and benefits under [USERRA] a notice of the rights, benefits, and obligations of such persons and such employers under [USERRA]."

With over 500,000 members of the National Guard and Reserve mobilized since President Bush's declaration of a national emergency following the attacks of September 11, 2001, financial institutions and other employers need to be cognizant of their responsibilities under USERRA.

Chapter 4 covers the active duty alert requirements of the Fair Credit Reporting Act (FCRA), which became a key component of that law's anti-identity theft provisions when President Bush signed the Fair and Accurate Credit Transactions Act (FACT Act) into law on December 4, 2003. One of Congress's main goals in enacting the FACT Act revisions to the FCRA was to enhance the ability of consumers to combat the nation's growing identity theft problem. Chapter 4 discusses the FCRA's active duty alert requirements as well as the other FACT Act anti-identity theft provisions that interact with those requirements.

Section 112(b) of the FACT Act requires the FTC to prescribe regulations to define what constitutes appropriate proof of identity for purposes of FCRA sections 605A (fraud alerts and active duty alerts), 605B (consumer report information blocks), and 609(a)(1) (truncation of social security numbers). On October 29, 2004 (effective December 1, 2004), the FTC issued final rules establishing the "appropriate proof of identity" for these provisions. The FTC's regulations also establish (1) definitions for the terms "identity theft," "identifying information," and "identity theft report" and (2) the duration of an active duty alert.

The federal financial institution regulatory agencies and the Federal Trade Commission proposed rules and guidelines on July 18, 2006, (71 Fed. Reg. 40786) to implement FACT Act sections 114 and 315 with regard to identity theft red flags and address discrepancies. Not surprisingly, one of the red flags in the new rules is the presence of an active duty alert.