

January 11, 2019

AB 3212 – Service Member Protections

AB 3212, chaptered on September 19, 2018 and effective January 1, 2019, amends sections of the California Military and Veterans Code¹ to expand protections for service members and reservists in the context of credit extension and collection.

Many of the changes extend the periods of time during which service members are protected from collection activity, or allow service members to defer payments on certain types of credit. The bill also requires lenders to acknowledge a service members' request for relief, or to provide specific challenges to the validity of the request, within 30 days after the relief request is received. In certain situations, the bill also imposes criminal liability on a lender that fails to comply with the requirements of the law.

The discussion in this Bulletin is limited to provisions of AB 3212 that apply to institutional lenders.

Extensions of the Duration of Available Protections

(1) Section 402 applies to court actions against a service member. It has

¹ All statutory references are to the California Military and Veterans Code unless otherwise indicated.

been amended by AB 3212 to state that if the defendant is in the military service, the court *shall* grant a stay for a minimum of 90 days upon application of the defendant's attorney, or on its own motion if the court determines that there may be a defense to the action that cannot be presented without the presence of the defendant, or if the defendant's counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists. A defendant is "in the military service" if he or she is currently full-time active duty for a period in excess of seven days in any 14-day period, or was in the service within the preceding 120 days.

(2) Section 403 has been amended to provide that, in any court action in which a service member is involved either as a plaintiff or defendant, the court *shall* stay the action during the period of military service and for 120 days thereafter upon application by the service member, and *may* stay the proceedings on its own motion unless it determines that the ability of the service person to prosecute or defend the action is not materially affected by the military service.

Section 403 was further amended to allow a court to stay the execution of a judgment against a service member, or

the attachment or garnishment of assets of a service member, during the period of military service and 120 days thereafter.

A service member who has been granted a stay may apply for an additional stay "based on continuing material effect of military duty," and if the stay is denied, the court shall appoint an attorney to represent the service member in the proceeding.

In each of these two situations, the period of the stay was previously limited to the period of military service plus 60 days.

(3) Section 405 provides that no obligation of a service member incurred before the service member's current period of military service may bear interest at a rate greater than 6 percent, unless a court determines the ability of the service member to pay a greater rate is not materially affected by reason of the service.

Section 405 has now been amended by AB 3212 to state that interest at a rate greater than 6 percent that would otherwise have been incurred is forgiven and all periodic payments shall be reduced by the forgiven amounts allocable to that period.

(4) Section 406 limits the ability to evict a service member or his/her dependents from their dwelling without a court order. Prior law extended this protection to 30 days after the service member's release from active service. AB 3212 amended Section 406 to extend the

protection to 120 days after the service member's release from service.

(5) Section 408 previously provided that it applied only to obligations secured by real property owned by a service member *at the commencement of service and still owned by the service member, whose obligations were incurred prior to the period of military service.*

AB 3212 amended Section 408(a) to delete the italicized language above, apparently to broaden the protections of Section 408 to include real property acquired by the service member during the period of service.

Section 408(c) has also been amended to provide that no foreclosure or similar proceeding is valid if made during the period of service plus one year, unless the proceeding is conducted by agreement between the parties or pursuant to a court order. (Formerly, the protection terminated nine months after the period of service ended.)

(6) Section 409.1 previously provided that a lien on personal property could not be enforced against a service member during that person's period of military service and three months thereafter. AB 3212 amended Section 409.1(b) to extend the post-service standstill to 120 days.

(7) Section 800 addresses the issue of reservists who have been called to active duty. A reservist may defer payments on deeds of trust, credit cards, retail installment contracts and student loans. To qualify for the deferment, the reservist or his/her agent must deliver a written

request (electronic communications suffice) and a copy of the reservist's orders to the lender. A financial institution may require proof from the reservist's employer that the employer does not provide continuing income to the reservist, including the reservist's military pay, in excess of 90 percent of the reservist's monthly salary and wage income before the call to active duty.

The deferral period is the lesser of 180 days or the period of active duty plus 60 calendar days and applies only to payments due subsequent to the notice to the lender. The total period of deferment shall not exceed 180 days within a 365-day period.

A lender that defers payments on a closed-end credit obligation or an open-end obligation with a maturity date shall extend the term of the obligation by the amount of months the obligation is deferred. If a lender defers payments on an open-end obligation without a maturity date, the lender may restrict the availability of additional credit during the term of the deferral.

Lenders' Obligations When Service Members Request Relief

AB 3212 imposes new requirements on lenders to respond promptly to a service member's request for relief.

If the lender believes the request is incomplete or that the service member is not entitled to the relief requested, within 30 days of receipt of the request, the lender must acknowledge the request

and set forth the lender's basis for believing the request is incomplete or insufficient, or that the service member is not entitled to the requested relief. The lender must clearly identify the specific information that the lender believes is missing from the request, and provide contact information.

If the lender does not timely respond to the service member's request for relief, the lender waives any objection to the request, and the service member is entitled to the requested relief.

CBA, its member institutions and their contracted lobbyists raised concerns about various sections of AB 3212. Some amendments were taken by the author but many were rejected and the bill passed out of the legislature with bipartisan support. Christina Spagnoli was CBA's lead lobbyist on AB 3212.

The information contained in this CBA Regulatory Compliance Bulletin is not intended to constitute, and should not be received as, legal advice. Please consult with your counsel for more detailed information applicable to your institution.

© This CBA Regulatory Compliance Bulletin is copyrighted by the California Bankers Association, and may not be reproduced or distributed without the prior written consent of CBA.