

THE MILITARY LENDING ACT

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The Military Lending Act (“MLA”) was initially created to protect military members and their families from certain lending practices. Since its enactment, however, new regulations have significantly increased its scope and applicability. These regulations directly affect credit union operation, policies, and procedures, meaning that credit unions must be aware of MLA’s nuances. This outline seeks to highlight the key aspects of the MLA (10 U.S.C. § 987), including recent legislation expanding the scope of the Act (32 C.F.R. § 232.1 *et seq.*).

I. Applicability. The MLA applies to extensions of “consumer credit” to “covered members” and their dependents.

A. “Consumer credit” means:

1. Credit extended primarily for personal, family, or household purposes; and
2. Subject to a finance charge or payable by a written agreement in more than four installments. 32 C.F.R. § 232.3.
3. However, it does not include residential mortgages, vehicle-secured purchase loans, loans secured by the personal property being purchased, or transactions exempt under Regulation Z. 32 § C.F.R. § 232.3.

B. “Covered member” means a member of the armed forces who is:

1. On active duty under a call or order that does not specify a period of 30 days or less; or
2. On active Guard and Reserve Duty. 10 U.S.C. § 987(i).

- C. “Dependents” include spouses, children, parents, in-laws, and unmarried individuals in custody of covered members. 10 U.S.C. § 1072(2).
1. “Children” include only:
 - a. A child under 21.
 - b. A child under 23 enrolled full-time at a college or university who is dependent on the member for over one-half of the child’s support.
 - c. A child with a physical or mental disability who is dependent on the member for over one-half of the child’s support.
 2. “Parents” and “in-laws” include only those who are dependent on the member for over one-half of the parent or in-law’s support and are residing in the member’s household.
 3. “Individual in custody” means an individual who:
 - a. Is placed in custody of a member for at least 12 months;
 - b. Who meets one of the three categories under “children,” listed above in I (C)(1);
 - c. Is dependent on the member for over one-half of his or her support;
 - d. Lives with the member; and
 - e. Does not meet the criteria to be considered another type of “dependent.”

II. Annual Percentage Rate.

- A. Military Annual Percentage Rates (MAPRs) may not exceed 36%. 10 U.S.C. § 987(b).
- B. How MAPRs are calculated:
 1. Closed-end credit (32 C.F.R. § 232.5):
 - a. Calculated the same way an APR is calculated under Regulation Z.
 - b. Must also include credit insurance premiums or fees, debt cancellation or debt suspension fee, fees for “add-on”

products sold in connection with the credit transaction, finance charges, and application fees.

2. Open-end credit (32 C.F.R. § 232.5):
 - a. Calculated the same way a billing cycle APR is calculated under and required by Regulation Z.
 - b. Must also include credit insurance premium or fees, debt cancellation or debt suspension fees, fees for “add-on” products sold in connection with the credit transaction, finance charges, and application fees.
 - c. If there is no balance during a billing cycle, a creditor may not impose any fee. The only exception to this is that a creditor may impose a participation fee that does not exceed \$100 annually.
3. Federal credit unions and insured depository institutions are permitted to exclude an application fee when making a short-term, small amount loan.
 - a. This only applies to closed-end loans subject to federal law (other than the MLA) that expressly limit the rate that a Federal credit union or insured depository institution may charge on an extension of credit. The limitation, however, must be comparable to an APR limit of 36% and must be made in accordance with the requirements of the applicable Federal regulatory agency or Federal law.
 - b. The maximum maturity term must not exceed 9 months and must contain a fixed numerical limit on an application fee for the loan to be considered a short-term, small amount loan.
 - c. The application fee may not be charged more than once in any rolling 12-month period in order to be excluded. 32 C.F.R. § 232.3(t).
4. Bona fide fees do not need to be included in the MAPR calculation for credit card accounts under open-end consumer credit plans.
 - a. This exclusion does not apply to periodic rates, nor does it apply to credit insurance premiums, debt cancellation or debt suspension fees, or any ancillary product fees.

- b. Bona fide fees are those that are reasonable when compared to fees typically imposed by other creditors for the same or a substantially similar product or service. 32 C.F.R. § 232.4(d).

III. Identifying a Covered Borrower.

- A. Creditors may use their own methods to determine whether a consumer is a covered borrower-but CUs should **steer clear** of this option.
 1. This is not recommended because only two methods, provided below, entitle a creditor to be protected under the safe harbor.
 2. This means creditors should not continue to rely on a service member's statement to determine whether he or she is a covered borrower, as this safe-harbor method is only valid through October 3, 2016.
- B. Creditors may obtain safe harbor protection only if they follow one of two methods for conducting a covered-borrower check:
 1. Conducting a search on the Military Lending Act website database, with the search including the consumer's last name, date of birth, and Social Security number; or
 2. Obtaining a consumer report from a nationwide consumer reporting agency or a reseller of such consumer reports, as a reseller is defined under the Fair Credit Reporting Act. 32 C.F.R. § 232.5.
 3. The MLA website can be located at:
<https://mla.dmdc.osd.mil/mla/welcome.xhtml>.
- C. Creditors must also comply with record keeping requirements. 32 C.F.R. § 232.5.
- D. Creditors may rely on an initial determination of the status of a consumer, *i.e.* a covered borrower, when:
 1. The consumer initiates the transaction, or 30 days prior;
 2. The consumer applies to establish the account, or 30 days prior; or
 3. The creditor develops or processes a firm offer of credit, including the consumer's status as a covered borrower, and the consumer responds within 60 days of the offer. 32 C.F.R. § 232.5.

IV. Disclosures.

- A. A creditor must disclose the following information to a covered borrower before or when he or she becomes obligated on the transaction or establishes an account:
 - 1. A statement containing the applicable MAPR;
 - 2. Any disclosures required by Regulation Z; and
 - 3. A clear description of what the covered borrower is obligated to pay. 32 C.F.R. § 232.6.
 - a. A payment schedule satisfies this requirement for a closed-end credit transaction.
 - b. An account-opening disclosure satisfies this requirement for an open-end credit transaction.
- B. There is no longer a “clearly and conspicuously” requirement, nor is there a requirement that a creditor provide the periodic rate and total amount of charges included in the MAPR.
- C. The MAPR statement and description of the payment obligation must be disclosed both in writing and orally.
- D. For an oral disclosure, a creditor may provide the information either:
 - 1. In person; or
 - 2. By a toll-free number that is included on the MAPR statement or application form. 32 C.F.R. § 232.6(d).
- E. Creditors are not required to provide a Statement of Federal Protections.
- F. For a multiple-creditor transaction, only one creditor must provide the required disclosures. If this is the case, creditors should ensure they explicitly address which creditor will provide the disclosures.
- G. Disclosures are required for refinancing or renewal of covered loans only when the transaction would be considered a new transaction under Regulation Z.
- H. 32 C.F.R. § 232.6(c)(3) provides a model disclosure statement that creditors may use. The model statement is included at the end of this outline.

V. Limitations and penalties.

- A. Under the MLA, a creditor may not:
1. Require waiver of a borrower's right to legal recourse under state or federal law.
 2. Require the borrower to submit to arbitration.
 3. Demand unreasonable notice from the covered buyer before he or she takes legal action.
 4. Use a check or other method of access to a deposit, savings, or other account maintained by the borrower. However, there are three exceptions to this rule. A creditor may:
 - a. Require an electronic fund transfer for repayment unless prohibited by law;
 - b. Require the consumer to enroll in direct deposit for his salary as a condition of eligibility for consumer credit unless prohibited by law; or
 - c. Take a security interest in the deposited funds after the creditor extends credit in an account connected to the consumer credit transaction.
 5. Require a mandatory allotment to repay the obligation.
 6. Prohibit prepayment or impose prepayment penalties. 32 C.F.R. § 232.8.
 7. Two other limitations under the MLA are not applicable to credit unions, as credit unions are exempt from those two specific limitations. The inapplicable limitations are:
 - a. A creditor may not rollover, renew, repay, refinance, or consolidate consumer credit to the same covered borrower if that creditor has previously extended a deferred presentment transaction or a payday loan; and
 - b. A creditor may not use a vehicle title as a security for the loan obligation.
- B. If a creditor violates any of the above limitations, he may be subject to criminal or civil liability, unless the creditor can show by a preponderance of the evidence that the violation was unintentional and resulted from a bona fide error. 32 C.F.R. § 232.9.

VI. Take-away points for credit unions.

- A. The MLA now covers substantially more transactions than it did when it was initially enacted, so credit unions must ensure they have a compliance system for the newly included transactions.
- B. Credit unions should utilize one of two provided methods to determine whether the individual is a “covered member.” This will ensure they can take refuge under the safe harbor if needed. Credit unions should not continue to rely on a service member’s statement to determine his or her status.
- C. Credit unions should use the model disclosure statement language provided below and found in 32 C.F.R. § 232.6(c)(3) to avoid any inadvertent drafting errors.
- D. Credit unions must check all existing policies and procedures to ensure they are updated based on the recent expansion of the MLA.

Model MAPR disclosure statement:

Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36 percent. This rate must include, as applicable to the credit transaction or account: The costs associated with credit insurance premiums; fees for ancillary products sold in connection with the credit transaction; any application fee charged (other than certain application fees for specified credit transactions or accounts); and any participation fee charged (other than certain participation fees for a credit card account).

32 C.F.R. § 232.6(c)(3).