

MILITARY ANNUAL PERCENTAGE RATE (MAPR)

Final Rule Effective October 3, 2016 except for credit card accounts

Final Rule Effective for credit card accounts October 3, 2017

The final rule for the Military Lending Act (MLA) expands MLA to a broad range of closed end and open end credit.

“Consumer Credit” definition expands to include credit to a “covered” borrower for personal, family, or household purposes and is subject to a finance charge or payable by a written agreement in more than four installments.

The MLA applies to a borrower who has been determined to be a “covered borrower” at the time they become obligated on a credit transaction or established an account. There is no requirement to monitor covered status. Determination is made at the time of consummation. The rule does not cover existing loans or members who become eligible for the protection after the loan is consummated.

Examples of covered loans:

- payday loans
- vehicle title loans
- tax refund anticipation loans
- deposit advance loans
- installment loans (closed-end loans)
- private student loans
- unsecured line-of-credit and credit cards
- refinance of an auto loan
- refinance of a loan on personal property

Loans exempt from the definition of “Consumer Credit” are:

- residential mortgage loans
- vehicle loans secured by the purchase of the vehicle
- personal property when the credit is secured by the purchased property

“Covered Borrower” means any member of the armed forces or their dependents who is on active duty, or active guard or reserve duty. Dependents are defined as spouse, child (under 21 or 23 if full time student or no age limit if there is mental/physical incapacity); could also be parent or parent in-law (if supported by service member); another adult in legal custody of the service member.

Until October 2, 2016, Credit Unions may use a “covered borrower” identification statement as a safe harbor. After October 3, 2016, for a safe harbor credit unions can use one of the safe harbor methods listed in the final rule: 1) checking member duty status on the DOD data base <https://www.dmdc.osd.mil/mla/welcome.xhtml> or 2) using a consumer report obtained from a reporting agency. However, as of now it’s not clear how a reporting agency will identify covered borrowers or their dependents.

MILITARY ANNUAL PERCENTAGE RATE (MAPR)

Under the existing and final rules, a credit union is prohibited from imposing a MAPR greater than 36 percent for credit extended to a covered borrower. For open-end loans the MAPR limit applies each billing cycle. For closed-end loans the MAPR limit applies at time of consummation.

A charge excluded from the definition of a finance charge under Regulation Z is not necessarily excluded from the MAPR.

- Regulation Z excludes application fees if charged to all applicants for credit. Under MLA, any application fee charged to a covered borrower for consumer credit is included in the MAPR (except for bona fide and reasonable fees charged to a credit card account). However, there is an exception—a federal credit union or insured credit union may exclude an application fee from MAPR for short term, small amount loans (STS loan). This exemption is limited to one application fee in a 12 month period.
- Regulation Z excludes charges for credit insurance or debt cancellation from the APR if the conditions in Regulation Z are met. Under MLA, the charges for credit insurance or debt cancellation are included in the MAPR regardless of the voluntary election of the purchase by a covered borrower.

- Participation fees are generally excluded from the finance charge under Regulation Z. However, a one-time, non-recurring fee charged during the opening of an account is not a fee that is charged on a periodic basis and may not be excluded from the finance charge as a participation fee. Under MLA, any fee imposed for participation in any plan for consumer credit is included in the MAPR except for a bona fide fee charged to a credit card account.

Protection for “Covered Borrowers” under MLA include:

- 36% MAPR limit including all interest and fees for the loan
- Prohibition on mandatory arbitration
- Waiving rights under the Service Members Civil Relief Act
- Changing the definition of credit to bring any closed-end and open-end loans within the scope of the regulation, except for loans secured by real estate or a purchase money loan, including to finance the purchase of a vehicle
- The credit union may only take a security interest in funds deposited AFTER the loan is created

Issues created for Credit Unions as a result of MLA expanded scope of credit transactions

- For loans covered by MLA regulations, specific provisions regarding security interests could limit the amount of funds on deposit that are subject to set-off
- Standard cross collateral clauses typically permit a security interest to be obtained in shares deposited to both prior and after consummation of a loan. Standard cross collateral clauses do not comply with MLA regulations.
- Standard statutory lien provisions permit federal credit unions to apply the balance of shares and dividends in all individual and joint accounts to the loan balance in the event of member default. Standard statutory lien provisions do not comply with MLA.

Because Section 232.9(c) of the MLA regulations provides that any credit or loan agreement with a covered borrower that fails to comply with the regulations is void from inception---- any loan agreement that contains only the standard cross-collateralization language and statutory lien language could be considered void.

Mandatory Disclosures:

- Any disclosure required under Regulation Z (this exists now)
- Statement of the MAPR applicable to the extension of credit (model statement)
- Clear description of the payment obligation and payment schedule or account opening disclosure (this exists now)
- Must be provided in writing and orally. Oral requirement can be met by providing a toll-free number the borrower may call to receive oral disclosures (on the application or on required disclosures)

Model Disclosure

“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 and Annual Percentage Rate of 36%. This rate must include, as applicable to the credit transaction or account: the costs associated with the 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).”

SUMMARY

Credit unions will need to review loan policy to be sure processes are in place to identify “covered borrowers”. Conmar will provide an addendum to existing closed-end loan forms, line-of-credit agreements, and credit card agreements that will modify the cross-collateral and right of offset language in existing forms to comply with MLA. The addendum to loan form will be provided to covered borrowers at consummation of a closed-end loan or at the time an open-end line of credit or credit card account is established.

The information contained in this notice is provided with the understanding that the author and company are not engaged in rendering legal advice. As such, information should not be used as a substitution for consultation with credit union legal counsel.