

## Regulatory Compliance News



**MOUNTAIN WEST**  
Credit Union Association

September 9, 2016

### Compliance News

#### FAQs from the DoD Regarding the Military Lending Act

The following questions and answers represent official interpretations of the Department on issues related to [32 CFR part 232](#). For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at [10 U.S.C. 987](#)); MAPR refers to the military annual percentage rate, as defined in [32 CFR 232.3\(p\)](#); TILA refers to the Truth in Lending Act (codified at [15 U.S.C. 1601](#) et seq.); Regulation Z refers to the regulation, and interpretations thereof, issued by the Consumer Financial Protection Bureau (or the Board of Governors of the Federal Reserve System, as applicable) to implement TILA, as defined in [32 CFR 232.3\(s\)](#); DMDC refers to the Defense Manpower Data Center.

#### 1. What types of overdraft products are within the scope of [32 CFR 232.3\(f\)](#) defining “consumer credit”?

Answer: The MLA regulation generally directs creditors to look to provisions of TILA and its implementing regulation, Regulation Z, in determining whether a product or service is considered “consumer credit” for purposes of the MLA. [\[4\]](#) Also, the supplementary information to the July 2015 Final Rule discusses coverage of overdraft products. The MLA regulation defines “consumer credit” as credit offered or extended to a covered borrower primarily for personal, family or household purposes that is either subject to a finance charge or payable by a written agreement in more than four installments, with some exceptions. The exceptions include: Residential mortgage transactions; purchase money credit for a vehicle or personal property that is secured by the purchased vehicle or personal property; certain transactions exempt from Regulation Z (not including transactions exempt under [12 CFR 1026.29](#)); and credit extended to non-covered borrowers consistent with [32 CFR 232.5\(b\)](#). Although coverage by the MLA and the MLA regulation is not completely identical to that of TILA and Regulation Z, the July 2015 Final Rule amends the definition of consumer credit under the MLA to be more consistent with how credit is defined under TILA. The supplementary information to the July 2015 Final Rule states:

As proposed, the Department is amending its regulation so that, in general, consumer credit covered under the MLA would be defined consistently with credit that for decades has been subject to TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments. [\[5\]](#)

The MLA regulation also defines “closed-end credit” and “open-end credit” with express references to the definitions of the same terms in

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## Regulation Z.

The supplementary information to the July 2015 Final Rule illustrates how to apply these standards specifically with respect to overdraft products and services. [6] It states that consistent with Regulation Z, an overdraft line of credit with a finance charge is a covered consumer credit product when: It is offered to a covered borrower; the credit extended by the creditor is primarily for personal, family, or household purposes; it is used to pay an item that overdraws an asset account and results in a fee or charge to the covered borrower; and, the extension of credit for the item and the imposition of a fee were previously agreed upon in writing. The supplementary information further states that other types of overdraft products not pursuant to a written agreement typically are not covered consumer credit "because Regulation Z excludes from 'finance charge' any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing." [7]

Thus, whether or not a particular overdraft product or service is "consumer credit" under the MLA regulation depends on whether the product or service meets each element of the definition of "consumer credit" and whether an exception applies.

### **2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?**

Answer: No. Section 232.3(f)(1) defines "consumer credit" as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to paragraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional "cash-out" financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

*Source: Federal Register*

### **New NACHA Rule Requires ACH Originators to Provide Third-Party Sender Info**

Effective September 29, 2017, NACHA's newly approved Third-Party Sender Registration Rule will require originating depository financial institutions (ODFIs) to submit and maintain a basic set of information on each third-party sender with which it maintains a relationship. The stated intent of this requirement is to maintain ACH network quality.

The information required for all third-party senders includes:

- The name and principal business location of the Third-Party Sender;
- The routing number used in ACH transactions originated for the Third-

## Operations.

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### **InfoSight Highlight**

#### **Service Denial and Expulsion**

#### **Member Expulsion Requirements for Federal Credit Unions:**

According to [section 1764 of the Federal Credit Union Act](#), a member of a federal credit union may be expelled by a two-thirds vote of the members of a federal credit union present at a special meeting called for the purpose, but only after the member is given the opportunity to be heard.

**A credit union should be mindful that just because it can expel a member, it does not negate the possibility of retribution through a member lawsuit or other negative action.**

Most credit union losses are incurred from unpaid loans. Other losses can be incurred due to returned checks, service fees, etc. In order to expel a member who has caused the credit union a loss, the credit union must have a policy in place.

*A suggested policy may read:*

"For purposes of this policy, cause is defined as causing the credit union a loss in excess of \$50. Any member of [credit union name] who has caused the credit union a loss in excess of \$50 and who either:

- Has not voluntarily repaid the credit union for this loss, or
- Is not in the process of voluntarily repaying the credit union for this loss, may be expelled from membership at the credit union."

A federal credit union has essentially two grounds available to it under the Federal Credit Union Act to expel a member from his or her membership at the credit union. A member can be expelled:

- For "cause"; and
- For "nonparticipation in the affairs of the credit union."

Both of the above grounds for member expulsion

Party Sender;

- The Company Identification(s) of the Third-Party Sender.

It seems reasonable to assume the ODFI already has this information on file. If the ODFI does not provide services to any third-party senders, it will be required to submit a statement to that effect.

The rule becomes somewhat more complex in its requirement to similarly register "nested" third-party senders, i.e. third parties that are transacting via a relationship with another third-party sender, rather than with the ODFI itself.

The ODFI will be further obligated to provide more detailed supplemental information on third-party senders within ten banking days of written notice, in cases where NACHA believes a given third-party sender "poses an escalated risk" to the network.

While the rule makes no mention of [Same Day ACH](#) (slated to launch September 23, 2016), it seems reasonable to assume that such added protections take on added importance in a same-day environment. More generally, the rule helps to address the increasing role of third-party senders in the system and the concern voiced by regulators like the FFIEC and OCC regarding those risks.

Additional Information:

- [NACHA Press Release: NACHA Announces Approval of Rule that Establishes Third-Party Sender Registration Requirements](#)
- [Third-Party Sender Registration Information](#)

## CUNA Advocacy Update

The Regulatory Advocacy Report is now combined with CUNA's Legislative Update into a comprehensive CUNA Advocacy Update. The new [Advocacy Update](#) is published at the beginning of every week, and keeps you on top of the most important changes in Washington for credit unions--and what CUNA is doing to monitor, analyze, and influence government agencies and federal law.

Prior CUNA Regulatory Advocacy Reports have been archived and are available [here](#).



[Training & Events Calendar](#)

### September 12

Webinar: [New Customer Due Diligence Rules for Beneficial Ownership: Implementation Game Plan](#)

### September 13

Webinar: [Navigating Compliance Issues for Promotions, Bonuses, Contests & Sweepstakes](#)

### September 19

Webinar: [HMDA Roadmap Part 1: Impact, Important Changes &](#)

involve different procedures and methods to actually accomplish the expulsion.

[InfoSight \(AZ, CO, WY\)](#)

## Compliance Videos

### Same Day ACH Preview

In this newly released video Amy Smith, VP and Executive Director of The Clearing House Payments Authority, provides background information on the current batch-and-forward ACH payment system and introduces the "Phased Approach" of the Same Day ACH program, which will begin in September of 2016. You will want to pay special attention to Amy's suggestion to review current ACH files you may be transmitting. View the video [here](#).

### Military Lending Act

This video provides an overview of the key changes made to the Military Lending Act that credit unions are going to need to consider and implement prior to the compliance effective date of October 3, 2016. View the video [here](#).

### 2016 Q3 Review

Glory LeDu, Manager of League System Relations provides an [overview](#) of the compliance challenges your credit union is facing now in the 3<sup>rd</sup> quarter of 2016.

## Advocacy Highlight

### Amendments to TRID Rule

The CFPB has issued a proposed rule regarding Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z). This Rule is commonly referred to as the "TRID" rule (TILA-RESPA Integrated Disclosures), "KBYO" (Know Before You Owe) Rule, or "TILA-RESPA" Rule, finalized in January 2015 and became effective October 3, 2015.

This proposed rule attempts to remediate numerous operational and technical issues with the original TILA-RESPA rule but is not intended to open up the rule for significant policy changes.

The proposed amendments memorialize the Bureau's informal guidance on various issues and include clarifications and technical amendments. The Bureau is also proposing tolerance provisions for the total of payments, an adjustment to a partial exemption mainly affecting housing finance agencies and nonprofits, extension of coverage of the integrated disclosure requirements to all cooperative units, and guidance on sharing the disclosures with various parties involved in the mortgage origination process.

## Implementation Considerations for Lenders

### **September 20**

Webinar: Director & Officer Liability: Rules, Risks & Trends

### **September 22**

Webinar: Best Practices for Garnishments & Levies

### **September 27**

Webinar: Mobile Remote Deposit Strategies: Technology, Deployment Models & Risks

### **September 28**

Webinar: Clarifying Signature Card Confusion for Personal & Business Accounts

### **October 4**

Webinar: Handling Dormant Accounts, Unclaimed Property & Escheatment

### **October 5**

Webinar: Essential Compliance Regulations for Deposit Operations

### **October 6**

Webinar: Avoiding the Top 10 Legal & Compliance Mistakes in the E-Statement Process

### **October 20**

Webinar: Conducting the 2016 ACH Audit

### **November 3**

Webinar: Cyber Series – Member Authentication & Validation

### **November 15**

Webinar: Recognizing & Responding to Elder Fraud: What Every Staff Member Should Know

### **November 15-16 – Phoenix**

IRA School: Essentials & Advanced

### **December 14**

Webinar: Essential Compliance Training for the Board & Senior Management

### **December 15**

Webinar: Powers of Attorney In-depth: Good Faith, Fraud & Fiduciary Capacity

### **December 21**

Webinar: Emerging Need & Regulatory Expectations for Enterprise Risk Management Framework

### **2016 Compliance Schools Registration**

Compliance expert, Gaye DeCesare, NCCO, CUCE, BSACS, will be the instructor for both locations, giving attendees a solid understanding of the regulations and laws affecting their regulatory compliance responsibilities.

- Phoenix, AZ: [October 12-13](#) (*seats still available*)

## **CUNA Webinars**

**July 7, 2016 - July 7, 2017**

Among other changes, the proposal:

- Creates tolerances for the total of payments. The Truth in Lending Act establishes certain tolerances for accuracy in calculating the finance charge and disclosures affected by the finance charge. In light of changes to certain underlying regulatory definitions made by the TILA-RESPA Rule, the proposal establishes express tolerances for the total of payments to parallel the existing provisions regarding the finance charge.
- Adjusts a partial exemption that mainly affects housing finance agencies and nonprofits. The existing rule provides a partial exemption for certain non-interest bearing subordinate lien transactions that provide down payment and other homeowner assistance (housing assistance loans). The Bureau has learned that the exemption may not be operating as intended and is proposing two amendments to expand the reach of the partial exemption.
- Provides a uniform rule regarding application of the integrated mortgage disclosure requirements to cooperative units. Under the existing rule, coverage of cooperative units depends on whether cooperatives are classified as real property under State law. Because State law sometimes treats cooperatives differently for different purposes, there may be uncertainty and potential inconsistency among market actors. The proposal requires provision of the integrated disclosures in transactions involving cooperative units, whether or not cooperatives are classified under State law as real property.
- Provides guidance on sharing disclosures with various parties involved in the mortgage origination process. The Bureau is proposing further guidance concerning the sharing of disclosures with sellers and various other parties, including real estate agents, involved in the origination process in light of privacy concerns. The proposal incorporates and expands upon previous webinar guidance in the Official Interpretations (commentary) to the regulation to provide greater clarity.

[Here](#) is the summary of the proposed rule. Submit comments [here](#) on or before October 18, 2016.

### **CUNA Letter Urges DoD to Delay MLA Effective Date**

In a recent [letter](#) to the Department of Defense, CUNA is urging a minimum six-month delay to the October 3 effective date of the Military Lending Act (MLA) regulation.

While CUNA appreciates the DoD's compliance guidance published on August 26, in light of the fact that it is only one month from the October 3 effective date, CUNA is concerned the guidance may be too little, too late. Based on their review of the guidance, it appears



## CUNA Comment Calls – Due Dates on Proposed Rules

**September 19, 2016~CFPB**

[CFPB Small Dollar Proposal](#)

**October 31, 2016~CFPB**

[RFI for Small Dollar Proposed Rule](#)



### Compliance Calendar

**September 23**

- [Same-day ACH \(NACHA\) – Phase 1 of the Implementation Period for the Rule](#)

**October 3**

- [DOD Military Lending Act Regulation - Effective Date](#)

**October 3**

- [NACHA's Network Quality Rule](#)

**October 10**

- Columbus Day – Federal Holiday

**October 24**

- 5300 Call Report Due to NCUA

**October 31**

- [Credit Card Quarterly Submission Due to CFPB](#)

**November 6**

- Daylight Savings Time Ends

**November 11**

- Veterans' Day – Federal Holiday

**November 24**

- Thanksgiving Day – Federal Holiday

**December 26**

- Christmas Day – Federal Holiday

to provide some helpful information regarding certain provisions of the regulation. However, there are a number of areas and issues on which credit unions need clarification that were not addressed in the guidance, such as the definition of the term “ancillary product,” which is critical to accurately determining the Military APR. Therefore, CUNA urges the DoD to delay the MLA rule’s effective date for a minimum of six months to ensure credit unions and other lenders are fully capable of compliance.

Absent a delayed effective date, CUNA asks the DoD to establish a safe harbor of at least six months for lenders that are working to comply with the rule but are unable to do so by October 3. The safe harbor should permit such lenders to continue operating—entirely or partially—under the regulation’s requirements prior to the July 2015 amendments. Since the DoD does not examine financial institutions, it is critical that the DoD pledge to work with the federal financial regulators to ensure the safe harbor will be observed by lenders’ prudential regulators.

*Source: CUNA Advocacy*

### Effective Dates New and Revised Rules

**September 23, 2016~NACHA**

[Same-day ACH \(NACHA\) – Phase 1](#)

**October 3, 2016~DoD**

[Limitations on Terms of Consumer Credit Extended to Service Members & Dependents](#)

**December 1, 2016~DOL**

[New Overtime Rules](#)

**January 1, 2017~CFPB**

[HMDA – Regulation C](#)

**January 1, 2017~NCUA**

[Member Business Loan Rule](#)

**April 10, 2017~DOL**

[Fiduciary](#)

**September 15, 2017~NACHA**

[Same-day ACH \(NACHA\) – Phase 2](#)

Please respond to [Mark Robey](#) with any questions or concerns regarding content of this newsletter.

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