

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 Duke Street, Alexandria, VA 22314

DATE: March 2016 **NO:** 16-RA-04

TO: Federally Insured Credit Unions

SUBJ: Guidance on Regulatory Changes Affecting Military Members

ENCL: [Complying with Recent Changes to the Military Lending Act Regulation](#)

Dear Board of Directors and Chief Executive Officer:

This letter features guidance to help your credit union comply with the U.S. Department of Defense's rule changes for lending to active-duty members of the U.S. military, their families and dependents.

Background

In October 2015, I notified you of the Department of Defense's amendments to the Military Lending Act Final Rule¹ and noted that NCUA staff was developing guidance.

Today I'm pleased to provide you with the enclosed guidance on *Complying with Recent Changes to the Military Lending Act Regulation*. The enclosure explains the types of credit that will be affected, the new consumer protections that will be provided, and the steps you will need to take to comply with the revised regulation.

One important exception involves payday alternative loans (PALs). If your credit union offers PALs in accordance with NCUA's regulation, under the Military Lending Act you can exclude one application fee in a rolling 12-month period from the military annual percentage rate.

Effective Dates

Compliance with most of the changes will be required starting October 3, 2016. Before that effective date, NCUA staff will issue revised examination procedures in connection with the Military Lending Act.

¹ To review NCUA's October 2015 Regulatory Alert titled *Regulatory Changes Affecting Military Members*, click [here](#). To reference the Department of Defense's Final Rule, click [here](#).

Compliance with related changes for credit card accounts will be required a year later, starting October 3, 2017.

If you have any questions, please contact NCUA's Office of Consumer Protection at (703) 518-1140 or ComplianceMail@ncua.gov, your regional NCUA office, or your state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman

Complying with Recent Changes to the Military Lending Act Regulation

If your credit union provides consumer credit to active duty Service members, their family members or dependents, you likely will have to comply with a final rule the Department of Defense (DOD) has issued establishing new requirements for most non-mortgage related consumer credit transactions (Final Rule).¹ The Final Rule amends the regulation DOD promulgated under the part of the John Warner National Defense Authorization Act for Fiscal Year 2007 called the “Military Lending Act” (MLA).² The Final Rule expands coverage of the current regulation to include many non-mortgage related credit transactions covered by the Truth in Lending Act (TILA),³ as implemented by Regulation Z.⁴ It provides safe harbor methods for identifying borrowers covered by the Final Rule, prohibits the use of certain practices, and amends the content of the required disclosures. The Final Rule also contains new provisions about administrative enforcement, penalties and remedies.

The purpose of this document is to notify you of the amendments to the MLA regulation so you can take action to ensure compliance with the Final Rule. The Final Rule has different effective dates and compliance dates for specific provisions, as discussed in the Effective Dates section of this document.⁵

I. Overview

Initially, the MLA and its implementing regulation only applied to high-cost payday loans, vehicle title loans and refund anticipation loans involving covered borrowers. To more effectively provide the protections intended to be afforded to Service members and their dependents, DOD amended its regulation primarily to extend the protections of the MLA to a broader range of closed-end and open-end credit products. The Final Rule expands coverage to include many non-mortgage related consumer credit transactions covered by TILA and Regulation Z, including credit card accounts and payday alternative loans (PALs) federal credit unions make under NCUA’s regulation. (See **Covered Transactions** section in this document.)

¹ See Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 80 FR 43560 (Jul. 22, 2015).

² See 10 U.S.C. § 987.

³ See 15 U.S.C. § 1601, *et seq.*

⁴ See 12 CFR Part 1026.

⁵ This document is intended to provide general information about the Final Rule, but only the Final Rule can provide comprehensive and definitive information regarding its requirements. Citations provided reflect 32 CFR Part 232 as amended effective October 1, 2015.

A key provision of both the initial regulation and the Final Rule sets a maximum “military annual percentage rate” (MAPR) of 36 percent for credit extended to Service members and their dependents. Importantly, the MAPR used for purposes of the MLA regulation includes application fees and certain other fees not counted as finance charges when calculating the annual percentage rate under TILA and Regulation Z.

The Final Rule excludes from the finance charge used for the MAPR an application fee imposed in connection with a short-term, small amount loan extended under certain conditions. The exclusion applies once in a rolling twelve-month period. The exclusion provides a way for federal credit unions to continue making PALs to covered borrowers with a MAPR of 36 percent or below.⁶ The Final Rule’s other requirements and restrictions apply to those loans. (See **MAPR Limits** in the **General Requirements** section in this document.)

Additionally, you must provide specified disclosures under the Final Rule, including all disclosures required under TILA and Regulation Z, a statement of MAPR, and a description of the borrower’s payment obligation. (See **Required Disclosures** in the **General Requirements** section in this document.)

The Final Rule covers credit card accounts. Generally, calculating the MAPR for credit card accounts involves including the same fees included in the finance charge for other types of credit covered by the Final Rule. However, certain fees may be excluded if they are bona fide and reasonable. (See **Bona Fide and Reasonable Fees** in the **General Requirements** section in this document.)

In addition, the Final Rule alters the safe harbor provisions extended to a creditor when checking whether a borrower is a covered person. It allows you to use your own methods of determining coverage. However, the safe harbor rule applies only if you checked coverage by using information from DOD’s Defense Manpower Data Center’s (DMDC) database or from a qualifying nationwide consumer reporting agency record. (See **Covered Borrowers** and **Identifying Covered Borrowers** sections in this document.)

The Final Rule maintains the current rule’s restriction on using allotments to repay credit; using pre-dispute mandatory arbitration agreements for covered transactions; requiring waivers of Servicemembers Civil Relief Act protections; and using burdensome legal notice requirements. (See **Limitations and Restrictions** section in this document.)

Finally, the Final Rule implements MLA provisions prescribing penalties and remedies

⁶ See 12 CFR § 701.21(c)(7)(iii).

and providing for administrative enforcement for violations. A person who violates the MLA is civilly liable for any actual damages, with a \$500 minimum per violation; “appropriate” punitive damages; “appropriate” equitable or declaratory relief; and any other relief provided by law. The person is liable for the costs of the action, including attorneys’ fees, with an exception if the action was filed in bad faith and for the purpose of harassment. Creditors who make mistakes resulting from some bona fide errors may be relieved from liability. The Final Rule provides for administrative enforcement the same as under TILA. (See **Penalties, Remedies, Civil Enforcement and Preemption** section in this document.)

II. Covered Borrowers

What Borrowers Does the Final Rule Cover? Under the Final Rule, the term “covered borrower” includes full-time active duty Service members and those under a call or order of more than 30 days.⁷ It also includes National Guard members pursuant to an order to full-time National Guard duty for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components, as well as members of a reserve component of the Army, Navy, Air Force, or Marine Corps. The Final Rule also protects a covered Service member’s dependents.⁸

Who are a Service member’s dependents? Under the Final Rule, dependents are:

- A Service member’s spouse;
- A Service member’s child who is under the age of 21 or meets certain other conditions;
- A Service member’s parent or parent-in-law residing in the Service member’s household who is (or was, at the time of the Service member’s death, if applicable) dependent on the Service member for more than one-half his or her support; and
- An unmarried person who is not a dependent of a member under any other subparagraph over whom the Service member has custody by court order and who meets certain other conditions.

The additional conditions are discussed below.

When is a Service member’s child who is 21 or older a dependent? A Service member’s child who is 21 or older can be a dependent if the child is (or was, at the time

⁷ The Final Rule adjusts the definition of “covered borrower” to reflect statutory amendments.

⁸ The Final Rule defines “dependent” by reference to subparagraphs (A), (D), (E), and (I) of 10 U.S.C. § 1072(2). Although that provision refers to dependents of former members, 12 CFR § 232.3(g)(4) provides that the term “covered borrower” does not include dependents of a consumer who no longer is a covered member of the armed forces.

of the Service member's death, if applicable) dependent on the Service member for more than one-half of his or her support and:

- Under the age of 23 and enrolled full time at an institution of higher learning approved by the Secretary of Defense; or
- Incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a Service member.

When is someone over whom a Service member has custody by court order a dependent? An unmarried person who is not covered by another category of dependents can be a Service member's dependent if the Service member has custody over the person by court order and the person:

- Is under 21 years of age or under 23 years of age and full time student;
- Is incapable of self-support because of a mental or physical incapacity that occurs while a dependent of a Service member and is (or was at the time of the Service member's death, if applicable) in fact dependent on the Service member for over one-half of the child's support; or
- Resides with the Service member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the relevant "administering Secretary" prescribes by regulation.⁹

III. Covered Transactions

What transactions does the Final Rule cover? The pre-amendment version of the MLA regulation applied only to payday loans, vehicle title loans and refund anticipation loans. The Final Rule encompasses far more categories of consumer credit extended by a creditor.

The Final Rule covers "consumer credit." Unless an exception applies, consumer credit means:

[C]redit 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.

⁹ The term "administering Secretaries" is defined in 10 U.S.C. § 1072(3).

Categories of credit that may meet the definition of “consumer credit” include (but are not limited to):

- Credit card accounts;
- Installment loans and small dollar loans, including PALs federal credit unions make under NCUA’s regulation; and
- Overdraft lines of credit with finance charges, per Regulation Z.¹⁰

Regulatory Tip: Unless a specific exception applies, any form of consumer credit that meets the specified criteria is covered.

What consumer credit is not covered? The Final Rule does not apply to five categories of transactions:

- A residential mortgage transaction, which is any credit transaction secured by an interest in a dwelling;¹¹
- A transaction expressly for financing the **purchase** of a motor vehicle secured by the purchased vehicle;
- A transaction expressly for financing the **purchase** of personal property secured by the purchased property;
- Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR § 1026.29, which addresses State-specific exemptions) or otherwise is not subject to disclosure requirements under Regulation Z; and
- Any transaction in which the borrower is not a covered borrower.

Which entities does the Final Rule consider to be creditors? The Final Rule defines “creditor” as an entity or person engaged in the business of extending consumer credit. It includes their assignees. A creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a creditor under Regulation Z.¹²

IV. General Requirements

A. MAPR Limits

What limits apply to the MAPR? The Final Rule limits the MAPR you may charge a covered borrower. You may not impose an MAPR greater than 36 percent on closed-end credit or in any billing cycle for open-end credit. Also, you may not impose any

¹⁰ See 12 CFR § 1026.4(c)(3).

¹¹ A dwelling-secured transaction includes a transaction to finance a dwelling’s purchase or initial construction; a refinance transaction; a home equity loan or line of credit; and a reverse mortgage. It does not include a timeshare interest.

¹² See 12 CFR § 1026.2(a)(17)(v).

MAPR unless it is agreed to under the terms of a credit agreement or promissory note, it is authorized by state or federal law, and is not otherwise prohibited by the Final Rule.

Is the MAPR the same as the Annual Percentage Rate? No. MAPR differs from the Annual Percentage Rate (APR) found in TILA and Regulation Z. MAPR includes the following items when applicable to an extension of credit:

- Any premium or fee for credit insurance, including any charge for single premium credit insurance;
- Any fee for a debt cancellation contract or debt suspension agreement;
- Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and
- Except for a “bona fide fee” (other than a periodic rate) excluded under special rules for credit card accounts:
 - Finance charges, as defined by Regulation Z,¹³ associated with the consumer credit;
 - Any application fee charged to the covered borrower (except in connection with a short-term, small amount loan as discussed later in this document); and
 - Any participation fee, except as provided in special rules for certain open-end credit (discussed later in this document).

Subject to the bona fide fee exception, applicable *only* to credit card accounts, MAPR includes all the above even if Regulation Z excludes the item from the finance charge.

Bona Fide and Reasonable Fees

What is a “bona fide fee?”

To exclude certain fees when calculating the MAPR for credit card accounts (but *not* other credit products), the fees must be bona fide and reasonable.

Regulatory Tip: You can only exclude bona fide fees from the MAPR for a credit card account. Also, credit insurance premiums, debt cancellation or debt suspension fees, and charges for credit-related ancillary products sold in connection with a credit card account cannot be bona fide fees.

- To determine whether a charge is a bona fide fee, compare it to similar fees typically imposed by other creditors for the same or a substantially similar product or service. For example: Compare a cash advance fee to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent.

¹³ See 12 CFR § 1026.4.

- Do not compare a cash advance fee to a foreign transaction fee, because the foreign transaction fee involves exchanging the consumer's currency for local currency and does not involve providing cash to the consumer.

Is there a safe harbor for determining whether a fee is bona fide? Yes. A fee is considered reasonable if it is less than or equal to the average amount of a fee charged for the same, or a substantially similar, product or service charged during the preceding three years by five or more creditors having U.S. cards in force of at least \$3 billion. The \$3 billion threshold can be met considering either outstanding balances or loans on U.S. credit card accounts initially extended by the creditor.

Regulatory Tip: A bona fide fee can be reasonable even if it is higher than the average amount calculated under the safe harbor provision, depending on other factors related to the account. Similarly, a bona fide fee is not unreasonable solely because other creditors do not charge a fee for the same or substantially similar product.

Can you charge fees during a no-balance billing cycle? It depends. You cannot charge fees when there is no balance in a billing cycle, except for a participation fee that does not exceed \$100 per year. The \$100 per annum fee limitation does not apply to a bona fide and reasonable participation fee.

What is a reasonable participation fee? A participation fee may be reasonable if the amount reasonably corresponds to:

- The credit limit in effect or credit made available when the fee is imposed;
- The services offered under the account; or
- Other factors relating to the account.

Is a bona fide fee for a credit card account always excluded from the MAPR? No. In most cases it is excluded, but there is a situation where a bona fide fee is included in the MAPR. Specifically, if you impose a fee that is *not* a bona fide fee (other than a periodic rate or a fee for credit insurance products or credit-related ancillary products), and you impose a finance charge to a covered borrower, you must include the **total** amount of fees—**including** any bona fide fees and any fee for credit insurance products or credit-related ancillary products—in the MAPR.

B. Payday Alternative Loans

Does the Final Rule exclude PALs from coverage? No. Therefore, PALs are subject to the Final Rule's requirement, including the 36 percent MAPR cap.

Does an application fee for a PAL a federal credit union makes to a covered borrower count towards the MAPR? Yes, with an important exception—for a

“short-term, small amount loan” the Final Rule lets federal credit unions exclude from the MAPR one application fee in a rolling 12-month period. The Final Rule defines a “short-term, small amount loan” to mean a closed-end loan that meets certain conditions:

- The loans must be made under and in accordance with a federal law that expressly limits the rate of interest a federal credit union or other insured depository institution may charge, provided the limitation is comparable to a limit of 36 percent APR;
- The loan must be made in accordance with a regulation prescribed by an appropriate federal agency (or jointly by several federal agencies) implementing the federal law described above; and
- The federal law or agency regulation must limit the maximum maturity term to not more than 9 months; and
- The federal law or agency regulation must impose a fixed numerical limit on any application fee that may be charged to a consumer who applies for such a closed-end loan.

Federal credit unions making PALs in accordance with NCUA’s current regulation, 12 CFR § 701.21(c)(iii), qualify for the exception and can exclude the permissible application fee from the MAPR once in a rolling twelve-month period.¹⁴

Is a federal credit union’s PAL made in accordance with NCUA’s regulation exempt from all provisions of the Final Rule? No. The exception applies only for purposes of calculating the MAPR.

Does the Final Rule allow federal credit unions to make a PAL with a term up to nine months, instead of up to six months, as provided in NCUA’s regulation? No. The Final Rule lists criteria a federal law or agency rule must meet in order for loans subject to them to be eligible for the exception. The Final Rule does not change the provisions of the underlying federal law or agency regulation.

¹⁴ Federal credit unions still must comply with NCUA’s PAL regulation, which currently limit interest on such loans to 1,000 basis points above the maximum interest rate for other loans set by the NCUA Board. At its June 18, 2015, meeting, the NCUA Board kept the maximum interest rate on other loans at 18 percent. Federal credit unions can take advantage of the once-per-year application fee exception because NCUA’s interest limit is “comparable” to the 36 percent rate cap under the MLA regulation. The Final Rule does not extend the application-fee exception to state-chartered credit unions, as they are not subject to a federal interest rate cap.

C. Required Disclosures

What disclosures does the Final Rule require you to make to covered borrowers?

You must provide to each covered borrower the following:

- A statement of the MAPR applicable to the extension of credit;
- Any disclosure Regulation Z requires made in accordance with the applicable Regulation Z provisions;¹⁵ and
- A clear description of the payment obligation, which can be either a payment schedule for closed-end credit, or account opening disclosures consistent with Regulation Z for open-end credit, as applicable.

What information must the statement of the MAPR contain? The statement of the MAPR need not contain the MAPR for the transaction as a numerical value or dollar amount of charges in the MAPR. Instead, it must describe the charges you may impose, consistent with the Final Rule and terms of the agreement, to calculate the MAPR. The Final Rule provides a model statement. You may use the model statement or a substantially similar statement. You may include the statement of the MAPR in the transaction agreement. You need not include it in advertisements.

Regulatory Tip: The Final Rule contains the following model statement of the MAPR—

“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).”

What form must the disclosures take and how must you deliver them? The disclosures must be written and provided in a form the covered borrower can keep. *In addition to the written disclosures*, you must orally provide the information in the statement of MAPR and in the description of the payment obligation. You may do so in

¹⁵ You must provide the Regulation Z disclosures to the covered borrower before consummation of a closed-end transaction and before the first open-end transaction. See 12 CFR § 1026.17(b) and 12 CFR § 1026.5(b)(1)(i).

person or via a toll-free telephone number. If applicable, the toll-free telephone number must be on the application or on the written disclosures.

You must provide the disclosures for a refinance or renewal of a covered transaction if it is considered a new transaction for which Regulation Z requires disclosures.

Where there is more than one creditor, who must provide the disclosures? Where there are multiple creditors, only one must deliver the disclosures. The creditors may agree which one will provide them.

V. Identifying Covered Borrowers

How can my credit union identify covered borrowers? The Final Rule permits your credit union to use its own method of determining whether a member is a covered borrower. It also provides a **safe harbor** allowing a credit union to conclusively determine whether a member is a covered borrower by using information obtained either from the DMDC's MLA webpage, currently available [here](#), or a nationwide consumer reporting agency.

Regulatory Tip: Currently, for a covered transaction, you can use the covered borrower identification statement to determine whether a member is a covered borrower. You will continue to have a safe harbor using this method through October 2, 2016. After then, you can continue to use this method, but without a safe harbor.

What rules apply to using the DMDC database? You may obtain the safe harbor protection if you verify the status of a member by using information relating to that consumer, if any, obtained directly or indirectly from the DMDC database. A database search requires the borrower's last name, date of birth and Social Security number.

When must your credit union make a database search? You search the database before the transaction occurs or an account is opened. After a member enters into a transaction with your credit union, **you must not** access the database to

determine whether a borrower was a covered person as of the date of the transaction or the date the account was opened.

Can a credit union use information from a nationwide consumer reporting agency? Yes. To determine whether a member is a covered borrower, a credit union may verify the status of the member by using code or other indicator describing that

status on a consumer report it obtains from a nationwide consumer reporting agency or a reseller of such reports.¹⁶

What records must my credit union keep to use the safe harbor provision? To be protected by the safe harbor provision, you must create a record in a timely manner and maintain it. The final rule does not specify how long you must retain the records.

What are the timing requirements for determining covered borrower status? You may determine covered borrower status, and keep the record of information obtained, only at the time:

- A member initiates the transaction, or 30 days before that time;
- A member applies to establish the account or 30 days before that time; or
- The credit union develops or processes a firm offer of credit that includes the status of the member as a covered borrower, so long as the member responds to the offer within 60 days after the credit union gives the member the offer.

Regulatory Tip: If the member responds later than 60 days after you provided a firm offer of credit, you cannot rely on your initial determination about covered borrower status. Instead, you can treat the response like the member is initiating a transaction or applying to establish the account.

VI. Limitations and Restrictions

Does the Final Rule restrict terms and conditions other than MAPR? Yes. In extending covered credit to a covered borrower, you cannot:

- Require the covered borrower to waive right to legal recourse under any other state or federal law, including the Servicemembers Civil Relief Act;
- Require the covered borrower to submit to arbitration or other burdensome legal notice provisions, in the case of a dispute;
- Demand unreasonable notice from the borrower as a condition for legal action;
- Require the covered borrower to establish an allotment to repay the obligation;¹⁷
- Prohibit the covered borrower from prepaying the consumer credit, or charge a prepayment penalty;¹⁸ or
- Use a check or other method to access an account, except if the MAPR is 36

¹⁶ The terms “consumer reporting agency” and “reseller” are defined in the Fair Credit Reporting Act and its implementing regulation, Regulation V, 12 CFR Part 1022.

¹⁷ An exception allows military welfare societies and service relief societies to establish an allotment to repay the obligation. See 32 CFR § 232.8(c).

¹⁸ The Federal Credit Union Act and NCUA’s rules and regulations prohibit a federal credit union from imposing a prepayment penalty. See 12 U.S.C. § 1757(5)(A)(viii); 12 CFR § 701.21(c)(6).

percent or lower, you may:

- Require an electronic fund transfer to repay the obligation, unless otherwise prohibited by law;¹⁹
- Require direct deposit of salary as a condition of eligibility for credit, unless otherwise prohibited by law; or
- Take a security interest in funds deposited after the extension of credit in an account established in connection with the credit transaction, unless otherwise prohibited by law.²⁰

Credit unions, whether chartered under federal or state law, are *not* subject to the Final Rule’s prohibition of:

- Rolling over, renewing, repaying, refinancing, or consolidating any consumer credit a creditor extended to the same covered borrower; or of
- Using a vehicle’s title a security for the consumer credit obligation.

Note: NCUA’s prohibition against rollovers for PALs still applies to those loans made by federal credit unions. *See* 12 CFR § 701.21(c)(7)(iii)(4).

VII. Penalties, Remedies, Civil Enforcement and Preemption

What are the consequences of violating the Final Rule? Knowingly violating the MLA or its implementing regulation is a misdemeanor under the criminal code of the United States. Penalties include a fine and imprisonment of not more than one year.

Regulatory Tip: The remedies and rights addressed in the Final Rule are in addition to, and do not prohibit, any other remedies available to a covered borrower under federal or state law or regulation. This includes awards of consequential and punitive damages.

Also, a person who violates the MLA and its implementing regulation is civilly liable to a covered borrower for:

- Any actual damages resulting from the violation, but not less than \$500, for each violation;
- Appropriate punitive damages;
- Appropriate equitable or declaratory relief;
- Costs of the action and reasonable attorney fees as determined by the court, where the covered borrower succeeds in the action; and
- Any other relief provided by law.

¹⁹ *But see* 12 CFR § 1005.10(e)(1).

²⁰ *But see, e.g.,* 31 CFR Part 212.

What effect does violating the Final Rule have on the contract with the covered borrower? Any credit agreement, promissory note, or other contract with a covered borrower is **void from its inception** if it fails to comply with any provision of the Final Rule, or contains a prohibited provision.

What is the applicable statute of limitations? A covered borrower must bring an action within two years of discovering a violation, but not later than five years after it occurs.

Regulatory Tip: Examples of bona fide errors include clerical, calculation, computer malfunction and programming, and printing errors. They **do not** include errors of legal judgment with respect to a person's obligations under the Final Rule.

What defense is there to a claim of violating the Final Rule? A credit union may not be liable for a violation if it shows by a preponderance of the evidence:

- The violation was not intentional; and
- The violation resulted from a bona fide error, notwithstanding the credit union having procedures reasonably adapted to prevent such errors.

If a covered borrower acts in bad faith can a credit union recover court costs? Yes. Where the

court finds a covered borrower brought an action in bad faith and for purposes of harassment, the court may order the borrower to pay the credit union's attorney fees as determined by the court to be reasonable in relation to the work expended and costs incurred.

Does the MLA preempt other state or federal laws, rules, and regulations? Yes, the MLA preempts other state or federal laws, rules and regulations, including state usury laws, to the extent they are inconsistent with MLA or its implementing regulation. However, this preemption does not apply if the law, rule, or regulation provides protection to a covered borrower that is **greater** than the protection given under the MLA and its implementing regulation.

VIII. Effective Dates

When does the Final Rule become effective? The effective date of the Final Rule is October 1, 2015. However, the dates on which credit unions must **comply** with the provisions added or amended by the Final Rule vary.

With respect to "consumer credit" as defined under the **original** regulation, the rules for payday loans, vehicle title loans and tax refund anticipation loans will remain effective until **October 3, 2016**. However, the civil liability provisions are effective as of October 1, 2015, and apply to consumer credit extended on or after January 2, 2013.

Until October 3, 2016, those transactions are the already-covered payday loans, vehicle title loans and tax refund anticipation loans. Starting October 3, 2016, they apply to other covered consumer credit transactions, except credit card accounts are not subject to the penalties until October 3, 2017.

With respect to “consumer credit” as defined under the Final Rule, you must comply with most provisions starting **October 3, 2016**. Most provisions apply to transactions entered into on or after that date. **However, the credit card provisions do not become effective until October 3, 2017.**²¹

The preemption of state laws that are inconsistent with and do not provide greater consumer protections than the Final Rule took effect January 1, 2014.

IX. Next Steps

If your credit union offers consumer credit to Service members and their dependents, you should take several actions before the applicable compliance dates:

- Become familiar with the requirements of the Final Rule;
- Determine the business, process and system changes needed to comply with the Final Rule;
- Develop a plan to implement the new requirements by the compliance dates, including by developing a schedule and a budget;
- Review the plan with executive management;
- Identify third-party relationships impacted by the Final Rule, including relationships with vendors. Contact vendors to make sure they can implement the necessary changes and deliver relevant software on time and to address any questions about the new processes and who will undertake which tasks;
- Develop and provide training for staff and management;
- Test and implement technology changes; and
- Roll out changes in time to meet the applicable compliance dates.

Regulatory Tip: The Final Rule’s safe harbor provisions for identifying covered borrowers go into effect **October 3, 2016**. Until that date, a credit union can use the safe harbor provisions in effect since October 1, 2007. That is, you can use a covered borrower identification statement. On October 3, 2016, the safe harbor when using a covered borrower identification statement expires.

²¹ The Final Rule authorizes the Secretary of Defense to extend the effective date for credit card provisions as necessary to no later than October 3, 2018.

X. Other Resources

The full text of the Final Rule is available [here](#), while the text of the regulation by itself is available [here](#).

The text of the Military Lending Act is available [here](#).

If you have questions, contact NCUA's Office of Consumer Protection at (703) 518-1140 or ComplianceMail@ncua.gov, your regional office, or state supervisory authority.