

# Consumer Compliance (CC)

## **Military Lending Act**

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# Introduction

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The Office of the Comptroller of the Currency's (OCC) *Comptroller's Handbook* booklet, "Military Lending Act," is prepared for use by OCC examiners in connection with their examination and supervision of national banks, federal savings associations, and federal branches and federal agencies of foreign banks (collectively, banks).<sup>1</sup> Each bank is different and may present specific issues. Accordingly, examiners should apply the information in this booklet consistent with each bank's individual circumstances.

This booklet applies to examinations of OCC-supervised institutions that consummate or establish consumer credit products covered by the Military Lending Act (MLA) and 32 CFR 232 as of October 3, 2016. The booklet provides background information and examination procedures for the MLA<sup>2</sup> and its implementing regulation, 32 CFR 232. Examiners decide which of these procedures are necessary, if any, after completing a compliance core assessment as outlined in the "Community Bank Supervision," "Federal Branches and Agencies Supervision," or "Large Bank Supervision" booklets of the *Comptroller's Handbook*. Complaint information received by the Customer Assistance Group in the OCC's Office of the Ombudsman and by the bank may also be useful in determining which examination procedures are necessary.

## Risks Associated With the MLA

From a supervisory perspective, risk is the potential that events will have an adverse effect on a bank's current or projected financial condition<sup>3</sup> and resilience.<sup>4</sup> The OCC has defined eight categories of risk for bank supervision purposes: credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation. These categories are not mutually exclusive. Any product or service may expose the bank to multiple risks. Risks also may be interdependent and may be positively or negatively correlated. Examiners should be aware of this interdependence and assess the effect in a consistent and inclusive manner. Examiners also should be alert to concentrations that can significantly elevate risk. Concentrations can accumulate within and across products, business lines, geographic areas, countries, and legal entities. Refer to the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for an expanded discussion of banking risks and their definitions.

A bank's activities regarding the MLA can result in operational, compliance, strategic, and reputation risks.

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<sup>1</sup> The OCC has supervisory and enforcement authority under the MLA for all national banks, federal savings associations, and federal branches and federal agencies of foreign banks. Refer to 10 USC 987(f)(6).

<sup>2</sup> Refer to 10 USC 987, "Terms of Consumer Credit Extended to Members and Dependents: Limitations."

<sup>3</sup> Financial condition includes impacts from diminished capital and liquidity. Capital in this context includes potential impacts from losses, reduced earnings, and market value equity.

<sup>4</sup> Resilience recognizes the bank's ability to withstand periods of stress.

## Operational Risk

Operational risk is the risk to earnings or capital arising from inadequate or failed internal processes or systems, inappropriate accounting, human errors or misconduct, or adverse external events. Operational risk in MLA-covered lending is often elevated with higher volumes of loans, larger numbers of transactions processed, and more extensive use of automation and technology. Highly automated environments pose heightened operational risk exposure that can result in compliance or reputation risk, as automated environments can compound the exposure of errors. Operational risk can also result when a bank outsources operational functions (e.g., covered borrower check, loan origination, account management, collections, payment processing, data input, and legal assistance) to third parties.

## Compliance Risk

Compliance risk is the risk to earnings or capital arising from violations of laws or regulations, or from nonconformance with prescribed practices, internal policies and procedures, or ethical standards. This risk exposes a bank to fines, civil money penalties, payment of damages, and the voiding of contracts. Compliance risk can result in diminished reputation, limited business opportunities, and lessened expansion potential. Banks and relevant third-party service providers must fully comply with all applicable laws and regulations, including the MLA.

## Strategic Risk

Strategic risk is the risk to earnings, capital, or enterprise value arising from adverse business decisions, poor implementation of business decisions, or lack of responsiveness to changes in the banking industry and operating environment. A bank's strategic decisions to enter, exit, or otherwise change the bank's participation in MLA-covered products should be based on sound, complete information, realistic assessments of the risks involved, management's expertise, and the bank's practical operating capacity. Incomplete or inadequate consideration of the MLA when implementing, expanding, or modifying MLA-covered lending products can expose the bank to strategic risk.<sup>5</sup>

## Reputation Risk

Reputation risk is the risk to earnings, capital, or enterprise value arising from negative public opinion. This risk may impair the bank's competitiveness by affecting its ability to establish new relationships or services or continue servicing existing relationships. Inadequate policies and procedures, operational breakdowns, or general weaknesses in any aspect of the bank's MLA lending activities can harm the bank's reputation. Inappropriate delegation of activities to third parties without appropriate bank oversight or wrongful acts by third parties acting on the bank's behalf could also increase a bank's reputation risk

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<sup>5</sup> For more guidance on new, modified, or expanded products and services, refer to OCC Bulletin 2017-43, "New, Modified, or Expanded Bank Products and Services: Risk Management Principles."

exposure.<sup>6</sup> Effective systems and controls to identify, measure, monitor, and control potential issues, such as appropriate oversight of sales, servicing, and collection practices, are critical to managing reputation risk.

## Risk Management

Each bank should identify, measure, monitor, and control risk by implementing an effective risk management system appropriate for the size and complexity of its operations. Management is responsible for the implementation and day-to-day operations of the risk management system, while the board of directors is responsible for oversight and providing credible challenge to management. When examiners assess the effectiveness of a bank's risk management system, they consider the bank's policies, processes, personnel, and control systems. Refer to the "Corporate and Risk Governance" booklet of the *Comptroller's Handbook* for an expanded discussion of risk management.

## Background and Summary

The MLA, enacted in 2006 and implemented by the U.S. Department of Defense (DOD), protects active duty members of the military, their spouses and children, and certain other dependents from certain lending practices (collectively, covered borrowers).

The DOD regulation implementing the MLA<sup>7</sup> contains limitations on and requirements for certain types of consumer credit extended to covered borrowers. Subject to certain exceptions, the regulation generally applies to persons (or banks) who meet the definition of a creditor in Regulation Z and are engaged in the business of extending such consumer credit, as well as their assignees.<sup>8</sup>

For covered transactions, the MLA and the implementing regulation limit the amount that creditors may charge, including interest, fees, and charges imposed for credit insurance, debt cancellation and suspension, and other credit-related ancillary products sold in connection with the transactions. The total charge, as expressed through an annualized rate referred to as the military annual percentage rate (MAPR),<sup>9</sup> may not exceed 36 percent.<sup>10</sup>

While the MAPR largely parallels the annual percentage rate (APR) disclosed and calculated under the Truth in Lending Act (TILA) and Regulation Z, the MAPR also contains charges

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<sup>6</sup> For more guidance on third-party relationships, refer to OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," as well as OCC Bulletin 2017-21, "Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29."

<sup>7</sup> Refer to 32 CFR 232, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents."

<sup>8</sup> Refer to 32 CFR 232.3(i).

<sup>9</sup> The MAPR is calculated in accordance with 32 CFR 232.4(c), "Calculation of the MAPR."

<sup>10</sup> Refer to 32 CFR 232.4(b), "Limit on Cost of Consumer Credit."

that are not included in the finance charge or the APR under TILA and Regulation Z. The additional charges included in the MAPR ensure that creditors do not have incentives to evade the interest rate cap by shifting fees for the cost of the credit product to other fee categories. Certain fees directly related to the cost of credit are included in the MAPR but not the APR. The most common examples of these fees—application fees and participation fees—have been specifically noted in the regulation as charges that generally must be included in the MAPR, but would not be included in the APR under Regulation Z. Certain other charges excluded as finance charges under Regulation Z also would be excluded from the charges that must be included when calculating the MAPR. Late payment fees and required taxes—i.e., fees that are not directly related to the cost of credit—are examples of items excluded from both the APR and the MAPR. Refer to appendix D of this booklet for additional information related to the MAPR and the finance charge under Regulation Z.

As implemented by the DOD, the MLA

- provides optional safe harbor methods that protect against liability for certain procedures that creditors may use in connection with identifying covered borrowers.
- requires creditors to provide written and oral disclosures in addition to those required by TILA.
- prohibits certain loan terms, such as prepayment penalties, mandatory arbitration clauses, and unreasonable notice requirements.
- restricts loan rollovers, renewals, and refinancings by some types of creditors.

Statutory amendments to the MLA in 2013 granted enforcement authority for the MLA's requirements to the agencies specified in section 108 of TILA.<sup>11</sup> These agencies include the OCC, the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Trade Commission. State regulators also supervise state-chartered institutions for MLA requirements pursuant to authority granted by state law.

In July 2015, the DOD published amendments to the MLA implementing regulation<sup>12</sup> that

- extend the MLA's protections to a broader range of credit products.
- modify the MAPR to include certain additional fees and charges.
- alter the provisions of the optional safe harbor available to creditors for identification of covered borrowers.
- modify the disclosures that creditors are required to provide to covered borrowers.
- modify the prohibition on rolling over, renewing, or refinancing consumer credit.
- implement statutory changes, including provisions related to administrative enforcement and civil liability for MLA violations. (Knowingly violating the MLA could lead to criminal penalties.)

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<sup>11</sup> National Defense Authorization Act for Fiscal Year 2013, Pub. L. 112-239, section 662(b), 126 Stat. 1786.

<sup>12</sup> Refer to 80 Fed. Reg. 43560, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents; Final Rule."

Before July 2015, the MLA regulation applied only to certain types of credit, namely: narrowly defined payday loans, motor vehicle title loans, and tax refund anticipation loans with particular terms. The current rule defines “consumer credit” subject to the MLA much more broadly, generally paralleling the definition in Regulation Z. Some examples of additional credit products now subject to MLA protections when made to covered borrowers include

- credit cards.
- deposit advance products.
- overdraft lines of credit (but not traditional overdraft services).<sup>13</sup>
- certain installment loans (but not installment loans expressly intended to finance the purchase of a vehicle or personal property when the credit is secured by the vehicle or personal property being purchased).

Credit agreements that violate the MLA are void from inception. For most products, creditors were required to come into compliance with the DOD’s July 2015 rule on October 3, 2016.

For credit card accounts, creditors were required to comply with the rule as of October 3, 2017.<sup>14</sup>

## Key Definitions (32 CFR 232.3)

“Consumer credit” is credit offered or extended to a covered borrower primarily 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 regulation’s definition of “consumer credit” has been amended to align more closely with the definition of the same term in Regulation Z. It is the DOD’s intent that the term as used in the MLA regulation should, whenever possible, be interpreted consistently with Regulation Z. Notably, however, the MLA and the implementing regulation do not apply to certain types of loans extended to covered borrowers that are covered by Regulation Z, including

- residential mortgages (any credit transaction secured by an interest in a dwelling), including transactions to finance the purchase or initial construction of a dwelling, any refinance transaction, a home equity loan or line of credit, or a reverse mortgage.

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<sup>13</sup> 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 for which the covered borrower pays a fee or charge; and the extension of credit for the item and the imposition of a fee were previously agreed upon in writing.

<sup>14</sup> For purposes of this compliance date, credit card accounts must be under an open-end (not home-secured) consumer credit plan.

- credit transactions expressly intended to finance the purchase of a motor vehicle<sup>15</sup> when the credit is secured by the motor vehicle being purchased.
- credit transactions expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased.

A “covered borrower” is a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member of the armed forces or a dependent of a covered member (as defined in 32 CFR 232.3(g)(2) and (g)(3)). Covered members of the armed forces include members of the Army, Navy, Marine Corps, Air Force, or Coast Guard currently serving on active duty pursuant to title 10, title 14, or title 32 of the U.S. Code under a call or order that does not specify a period of 30 days or fewer, or such a member serving on Active Guard and Reserve duty as that term is defined in 10 USC 101(d)(6).

For the regulation to apply, the consumer must be a covered borrower at the time that he or she becomes obligated on a credit transaction or establishes an account for credit.<sup>16</sup> Additionally, the regulation does not apply to a credit transaction or account once the consumer is no longer a covered borrower.

Specific to OCC-supervised banks, and except as provided in 32 CFR 232.8(a) and (f), a “creditor” under the MLA is a “person” (defined to include banks) who is

- engaged in the business of extending consumer credit,<sup>17</sup> or
- an assignee of a person engaged in the business of extending consumer credit with respect to any consumer credit extended.

With respect to limitations on rollovers, renewals, repayments, refinancings, and consolidations under 32 CFR 232.8(a) and to limitations on the use of a vehicle title as security under 32 CFR 232.8(f), the term “creditor” does not include an OCC-supervised bank.

The term “dependent” refers to a covered member’s

- spouse.
- children under age 21.
- children under age 23 who are (i) enrolled full time at an approved institution of higher learning and (ii) dependent on a covered member (or dependent at the time of the member’s or former member’s death) for over one-half of their support.

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<sup>15</sup> For purposes of the MLA, the term “vehicle” includes any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation. The term does not include motor homes, recreational vehicles, golf carts, or motor scooters.

<sup>16</sup> Refer to 32 CFR 232.2(a)(1), “Applicability.”

<sup>17</sup> For the purposes of this definition, 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 with respect to extensions of consumer credit to covered borrowers.



- children of any age who are (i) incapable of self-support due to mental or physical incapacity that occurred while they were a dependent of the covered member under the preceding two points and (ii) dependent on a covered member (or dependent at the time of the member's or former member's death) for over one-half of their support.

Other relationships may also qualify an individual as a dependent of a covered member. Paragraphs (E) and (I) of 10 USC 1072(2) refer to other relationships that qualify individuals as dependents under the MLA.

The "MAPR" is the cost of the consumer credit expressed as an annual rate, calculated in accordance with 32 CFR 232.4(c). The MAPR for covered transactions must not exceed 36 percent.<sup>18</sup>

Under certain circumstances, an application fee for a short-term, small amount loan may be excluded when calculating the MAPR. A "short-term, small amount loan" is a closed-end loan that is

- subject to and made in accordance with a federal law (other than the MLA) that expressly limits the rate of interest that a federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an APR of interest of 36 percent; and
- made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate federal regulatory agency (or jointly by such agencies), that implements the federal law described in the paragraph above, provided further that such law or rule contains
  - a fixed numerical limit on the maximum maturity term, which term shall not exceed nine months; and
  - a fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

## **Terms of Consumer Credit Extended to Covered Borrowers (32 CFR 232.4)**

### **Limit on Cost of Consumer Credit (32 CFR 232.4(b))**

Under the MLA, a creditor may not impose a MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit. For credit card accounts, creditors were not required to comply with the DOD's July 2015 rule until October 3, 2017.

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<sup>18</sup> The regulation also prohibits an institution from imposing a MAPR except as authorized by applicable federal or state law. Depending on the type of institution, different federal or state laws may govern the maximum rates and fees an institution may impose for consumer credit transactions covered by the regulation, but in no instance may such rates and fees exceed the 36-percent MAPR cap contained in the regulation.

## Types of Fees to Include in MAPR Calculation (32 CFR 232.4(c)(1))

The following charges must be included in the calculation of the MAPR for both closed- and open-end credit, as applicable:

- Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a 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.
- Except for a bona fide fee (other than a periodic rate) charged to a credit card account, which may be excluded if the bona fide fee is reasonable,
  - finance charges associated with the consumer credit.
  - any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a federal credit union or an insured depository institution when making a short-term, small amount loan (as defined in the regulation<sup>19</sup> and discussed in the “Key Definitions” section of this booklet) provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period (see note below).
  - in general, any fee imposed for participation in any plan or arrangement for consumer credit. (Refer to the “Computing the MAPR for Open-End Credit” section of this booklet for more information on the MAPR calculation rules when there is no balance during a billing cycle for open-end credit.)

These charges are to be included in the MAPR calculation even if they would be excluded from the calculation of the finance charge under Regulation Z.

**Note:** One application fee charged by a creditor making a short-term, small amount loan can be excluded from the computation of the MAPR under the conditions noted in the definition of a short-term, small amount loan. If a creditor charges a second application fee to a covered borrower who applies for a second short-term, small amount loan within a rolling 12-month period, however, that second fee (and any subsequent application fees charged during that period) is not eligible for the exclusion and must be included when computing the MAPR for that loan.

## Computing MAPR for Closed-End Credit (32 CFR 232.4(c)(2)(i))

For closed-end credit, the MAPR is calculated following the rules for calculating and disclosing the APR for credit transactions under Regulation Z, based on the MAPR charges listed in the previous section of this booklet. Refer to appendix D of this booklet for a summary of the types of fees that would be included or excluded from the MAPR calculation.

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<sup>19</sup> Refer to 32 CFR 232.3(t).

## Computing MAPR for Open-End Credit (32 CFR 232.4(c)(2)(ii))

Generally, the MAPR for open-end credit should be calculated following the rules for calculating the effective APR for a billing cycle as set forth in 12 CFR 1026.14(c) and (d) of Regulation Z<sup>20</sup> (as if a creditor must comply with that section) based on the charges listed in the previous section of this booklet.

Even if a fee is otherwise eligible to be excluded under 12 CFR 1026.14(c) and (d), the amount of charges related to opening, renewing, or continuing an account must be included in the calculation of the MAPR to the extent those charges are among those in the “Types of Fees to Include in MAPR Calculation” section of this booklet.

For open-end credit, if the MAPR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a creditor generally may not impose any fee or charge during that billing cycle. However, the creditor may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed \$100.00 annually, regardless of the billing cycle in which the participation fee is imposed.

**Note:** The \$100.00-per-year limitation on the amount of the participation fee does not apply to a bona fide participation fee charged to a credit card account consistent with 32 CFR 232.4(d).

Creditors may impose fees or charges that are excluded from the calculation of the MAPR during a particular billing cycle when there is no balance during the billing cycle. For example, if a creditor charges a late fee for a late payment in accordance with its credit agreement with the covered borrower and in compliance with Regulation Z, the creditor may charge the fee, regardless of whether there is a balance in the billing cycle, because a late fee is not among the charges that are included in the calculation of the MAPR.

## Bona Fide Fee Charged to a Credit Card Account (32 CFR 232.4(d))

For consumer credit extended in a credit card account under an open-end consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR calculation, provided the fee is both bona fide and reasonable for the type of fee. There is no exclusion for bona fide fees on accounts that are not credit card accounts.

The exclusion for bona fide fees on credit card accounts does not apply to the following fees:

- Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement.

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<sup>20</sup> 12 CFR 1026.14(c) and (d) of Regulation Z provide for the methods of computing the APR under several scenarios, such as (1) when the finance charge is determined solely by applying one or more periodic rates; (2) when the finance charge during a billing cycle is or includes a fixed or other charge that is not due to application of a periodic rate, other than a charge with respect to a specific transaction; and (3) when the finance charge during a billing cycle is or includes a charge relating to a specific transaction during the billing cycle.

- 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.

**Note:** A minimum interest charge on a credit card account that is generally disclosed in an account-opening table can be a bona fide fee excludable from the MAPR calculation if it meets the conditions for exclusion.

To assess whether a bona fide fee is reasonable, the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. This comparison is designed to be an elementary like-kind standard, as illustrated in the following examples:

**Example #1:** When assessing a bona fide cash advance fee, that fee must be compared to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent.

**Example #2:** When assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (e.g., a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the consumer.

It is generally permissible to consider benefits provided by credit card rewards programs in determining whether a fee is reasonable overall. For participation fees, the rule gives additional guidance for determining whether a fee is reasonable: if the amount of the fee reasonably corresponds to

- the credit limit in effect or credit made available when the fee is imposed,
- the services offered under the credit card account, or
- other factors relating to the credit card account.

**Example #3:** Even if other creditors typically charge \$100.00 annually for participation in credit card accounts, a \$400.00 fee nevertheless may be reasonable if (relative to other accounts carrying participation fees) the credit made available to the covered borrower is significantly higher or additional services or other benefits are offered under that account.

**Bona fide fees charged to a credit card account, safe harbor:** The regulation provides a safe harbor standard to determine if a bona fide fee on a credit card account is reasonable. In order for a bona fide fee to be reasonable, the amount of the fee must be less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by five or more creditors that meet certain conditions. Specifically, these creditors must have had at least \$3 billion in U.S. credit card outstanding balances (or at least \$3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the three-year period preceding the time such average is computed. Creditors may use publicly available information regarding credit cards and fees charged on those credit cards, such as U.S. Securities and Exchange Commission filings, Consolidated Reports of Condition and Income, agreements posted on the Bureau of Consumer Financial Protection's website,

agreements posted on creditors' own websites, or commercially compiled sources of information. A creditor may meet the \$3 billion threshold even if the creditor has sold the credit card loans to a special-purpose vehicle or entered into another arrangement so that securities backed by the loans may be issued.

A bona fide fee higher than the average amount calculated using the safe harbor standard may be reasonable depending on other factors relating to the credit card account. A bona fide fee charged by a creditor is not unreasonable solely because other creditors do not charge a fee for the same or a substantially similar product or service.

**Effect of charging fees on bona fide fees:** If a creditor imposes fees that cannot be excluded from the MAPR (refer to the “Types of Fees to Include in MAPR Calculation” section of this booklet) and imposes a finance charge on a covered borrower, the total amount of the fee(s) and finance charge(s) must be included in the MAPR. The imposition of any fee or finance charge included in the MAPR does not affect whether another type of fee may be excluded as a bona fide fee.

If, however, a creditor imposes any fee (other than a periodic rate or charges that must be included in the MAPR) that is not a bona fide fee and imposes a finance charge on a covered borrower, the total amount of those fees, including any bona fide fees, and other finance charges must be included in the MAPR.

**Example #1:** In a credit card account under an open-end consumer credit plan during a given billing cycle, Creditor A imposes a fee for a debt cancellation product, a finance charge, and a reasonable bona fide foreign transaction fee. Only the fee for the debt cancellation product and the finance charge must be included when calculating the MAPR.

**Example #2:** In a credit card account under an open-end consumer credit plan during a given billing cycle, Creditor B imposes a fee for a debt cancellation product, a finance charge, a reasonable bona fide foreign transaction fee, and a bona fide but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion as a bona fide fee—and the finance charge must be included when calculating the MAPR.

## Timing for Computing MAPR for Open-End Credit

In general, creditors can be reasonably expected to estimate at the outset of a billing cycle whether charges to a covered borrower can produce a MAPR in excess of the 36-percent limit. This is particularly true because the creditor already would know the periodic rate and whether the nonperiodic fees are covered by the exclusion for a bona fide fee under 32 CFR 232.4(d).

Nevertheless, under certain circumstances, creditors might not know at the outset of a billing cycle whether the borrower's use of an open-end line of credit will lead to a finance charge that—through a combination of rates and fees—exceeds the 36-percent limit. At the end of a billing cycle, however, the creditor would be able to calculate the MAPR and, in that same

billing cycle, waive fees or periodic charges, either in whole or in part, to comply with the 36-percent limit.

## MAPR Calculation Examples

The following examples may assist reviewers in calculating the MAPR.

**Example #1:** Closed-end credit. The MAPR for single advance, single payment transactions, such as some types of deposit advance loans, must be computed in accordance with the rules in Regulation Z, by following the instructions described in paragraph (c)(5) of 12 CFR 1026, appendix J, “Annual Percentage Rate Computations for Closed-End Credit Transactions.” In the case of a single advance, single payment transaction loan extended for a period of 45 days, and for which the advance is \$500.00 and the single payment required consists of the principal amount plus a finance charge of \$28.44, for a total payment of \$528.44, the MAPR would be 46.14 percent. In this example, the MAPR would exceed the 36-percent rate limit.

**Example #2:** Open-end credit (general). Suppose a creditor offers a line of credit to a covered borrower primarily for personal, family, or household purposes (commonly referred to as a personal line of credit) and permits the borrower to repay on a monthly basis. Upon establishing the personal line of credit, the borrower receives \$500.00. The creditor charges a periodic interest rate of 0.006875 (which corresponds to an annual interest rate of 8.25 percent), plus a fee of \$25.00, charged when the account is established and annually thereafter. Under these circumstances, pursuant to 12 CFR 1026.14(c)(2), the creditor would calculate the MAPR as follows: “dividing the total amount of the finance charge for the billing cycle”—which is \$3.44 (corresponding to  $0.006875 \times \$500$ ), plus \$25.00—“by the amount of the balance to which it is applicable”—\$500—and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year”—12 (since the creditor allows the borrower to repay monthly), equals 68.26 percent. In this example, even though the periodic rate (0.006875) would comply with the interest-rate limit under 32 CFR 232.4(b), the MAPR would be in excess of the limit because the amount borrowed is low at the time the annual fee is imposed.

**Example #3:** Open-end credit (credit card). In the case of a credit card account, a creditor would be required to calculate the MAPR using the methods in 12 CFR 1026.14(c) and (d) of Regulation Z. For example, if a creditor extends credit to a covered borrower through a credit card account and the borrower incurs a finance charge relating to a specific transaction, such as a cash advance transaction, during the billing cycle, then the creditor would calculate the MAPR under the instructions set forth in 12 CFR 1026.14(c)(3). In the case of a credit card account the creditor may exclude, pursuant to 32 CFR 232.4(c)(1)(iii) and 232.4(d), however, any bona fide fee from the finance charges that otherwise must be accounted for; thus, if a charge for the cash advance transaction fits within the exclusion for a bona fide fee under 32 CFR 232.4(d), then that charge would not be included when computing the MAPR for that billing cycle.

## Identification of Covered Borrowers (32 CFR 232.5)

A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower. The regulation, however, provides creditors with an optional safe harbor from liability in determining whether credit is offered or extended to a covered borrower through assessing the covered status of a consumer by use of either of the following methods:

- Verifying the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the DOD's database, located at <https://mla.dmdc.osd.mil/> (or through any URL or direct connection to the database that may be provided by the DOD). Searches require entry of the consumer's last name, date of birth, and Social Security number.

**Note:** After a consumer has entered into a transaction or established an account, a creditor (including an assignee) may not, directly or indirectly, obtain any information from the DOD database to determine whether a consumer had been a covered borrower as of the date of a transaction or the date an account was established.<sup>21</sup>

This provision, however, does not prevent creditors from adopting a risk management plan that includes periodically screening credit portfolios for other purposes, such as determining whether there are changes to covered borrower status.

- Verifying the status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such consumer reports, as those terms are defined in the Fair Credit Reporting Act and any implementing regulations.

**Note:** The consumer reporting agency must be a nationwide agency or a reseller of reports from such an agency (as both of those terms are defined by the Fair Credit Reporting Act); many specialty consumer reporting agencies may not qualify.

A creditor's one-time determination, by using one of the methods provided in 32 CFR 232.5(b)(2), is permitted and deemed to be conclusive with respect to that transaction or account between the creditor and that consumer, so long as the creditor timely creates and maintains a record of the information obtained, solely at the time that

- the consumer initiates the transaction or 30 days prior to that time;
- the consumer applies to establish the account or 30 days prior to that time; or
- the creditor develops or processes a firm offer of credit that includes the status of the consumer as a covered borrower, so long as the consumer responds to that offer no later than 60 days after the creditor provides the offer to the consumer.

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<sup>21</sup> Refer to 32 CFR 232.5(b)(2)(i)(B).

The MLA rule extends the covered borrower check safe harbor to a creditor's assignee provided that the assignee continues to maintain the original record created by the creditor that initially extended the credit. Neither the MLA nor 32 CFR 232 specifies how and for how long creditors are to maintain these records, noting only that the records must be created in a timely manner and maintained thereafter.

An action by a creditor within an existing account, such as to increase the available credit that a consumer may draw on, does not alter the status of the creditor's prior determination for that account. To benefit from the optional safe harbor provisions, however, a creditor must use one of the safe harbor methods when extending a new consumer credit product or newly establishing an account for consumer credit, including a new line of consumer credit that might be associated with a pre-existing transactional account held by the borrower (for example, when a consumer applies for an overdraft line of credit associated with an existing checking account).

## **Mandatory Loan Disclosures (32 CFR 232.6)**

If a creditor extends consumer credit to a covered borrower (including any consumer credit originated or extended through the internet), the creditor must provide the covered borrower with the following information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit:

- A statement of the MAPR applicable to the extension of consumer credit.
- Any disclosure required by Regulation Z.
- A clear description of the payment obligation of the covered borrower, as applicable. Note that a payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to Regulation Z satisfies this requirement.

A creditor may satisfy the requirement to provide a statement of the MAPR by describing the charges the creditor may impose, in accordance with the regulation and subject to the terms and conditions of the agreement, to calculate the MAPR. A creditor is not required to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit. A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. The regulation does not require a statement of the MAPR to be included in advertisements.

Under 32 CFR 232.6(c)(3), a statement substantially similar to the following model statement may be used to satisfy the requirement to provide a 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).

The statement of the MAPR and the clear description of the payment obligation, as described above, need to be provided to a covered borrower only once for the transaction or the account established for consumer credit with respect to that borrower.

If a transaction involves more than one creditor, then only one of those creditors must provide the required disclosures. The creditors may agree among themselves which creditor will provide the statement of the MAPR and the clear description of the payment obligation.<sup>22</sup>

The statement of the MAPR and the clear description of the payment obligation must be provided in writing in a form the covered borrower can retain. A creditor must also provide such required information orally.<sup>23</sup> A creditor may satisfy the requirement to provide oral disclosures if the creditor provides

- the information to the covered borrower in person; or
- a toll-free telephone number in order to deliver the oral disclosures to a covered borrower when the covered borrower contacts the creditor for this purpose.

If a creditor elects to provide a toll-free telephone number in order to deliver the oral disclosures, the toll-free telephone number must be included on

- a form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or
- the written disclosure the creditor provides to the covered borrower.

The oral disclosures provided through the toll-free number need only be available for a duration of time reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure. A creditor may orally provide a clear description of the payment obligation of the covered borrower by providing a general description of how the payment obligation is calculated or a description of what the borrower's payment obligation would be based on an estimate of the amount the borrower may borrow. For example, a creditor could generally describe how minimum payments are calculated on open-end credit plans issued by the creditor and then refer the covered borrower to the written materials the borrower will receive in connection with opening the plan. Alternatively, a creditor could choose to generally describe borrowers' obligations to make a monthly, bimonthly, or weekly payment as the case may be under the borrowers' agreements. The requirement of a clear oral payment obligation disclosure has sufficient breadth that creditors may choose a variety of acceptable oral disclosure compliance strategies. A generic oral

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<sup>22</sup> Refer to 32 CFR 232.6(b)(2), "Multiple Creditors."

<sup>23</sup> Refer to 32 CFR 232.6(d)(2), "Oral Disclosures."

description of the payment obligation may be provided, even though the disclosure is the same for borrowers with a variety of consumer credit transactions or accounts.

In instances where Regulation Z allows a creditor to provide a required disclosure after the borrower has become obligated on a transaction, as in the case of purchase orders or requests for credit made by mail, telephone, or fax under 12 CFR 1026.17(g), the disclosures required by the MLA may similarly be provided at the time prescribed in Regulation Z. A creditor is required to provide new disclosures for the refinancing or renewal of consumer credit only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.

## Limitations (32 CFR 232.8)

The MLA imposes a number of limitations on creditors in connection with consumer credit extended to covered borrowers.

**Rollovers and certain other actions:** It is unlawful for a creditor to roll over, renew, repay, refinance, or consolidate any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower.

For the purposes of this paragraph, the term “creditor” means a person engaged in the business of deferred presentment transactions or similar payday loan transactions (as described in the relevant law), provided, however, that the term does not include a person who is chartered or licensed under federal or state law as a bank, savings association, or credit union.

**Note:** This prohibition does not apply to a transaction when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this paragraph because the consumer was not a covered borrower at the time of the original transaction.

**Terms relating to dispute resolution:** A creditor cannot require a covered borrower to

- waive the covered borrower’s right to legal recourse under any applicable provision of federal or state law, including any provision of the Servicemembers Civil Relief Act (SCRA).<sup>24</sup>
- submit to arbitration or other onerous legal notice provisions in the case of a dispute.
- give unreasonable notice as a condition for legal action.

**Payment terms and conditions—general:** A creditor cannot

- use the title of a vehicle as security for the obligation involving the consumer credit (note that for the purposes of this paragraph, the term “creditor” does not include a person that

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<sup>24</sup> Refer to 50 USC 3901 et seq., “Servicemembers Civil Relief Act.”

is chartered or licensed under federal or state law as a bank, savings association, or credit union).

- require as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation (note that for the purposes of this paragraph only, the term “creditor” does not include a military welfare society, as defined in 10 USC 1033(b)(2), or a service relief society, as defined in 37 USC 1007(h)(4)).
- prohibit the borrower from prepaying the consumer credit or charge a penalty fee for prepaying all or part of the consumer credit.

**Payment terms and conditions—account access:** A creditor cannot use a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a consumer credit transaction with a MAPR not exceeding the 36-percent limit, a creditor may

- require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law.
- require direct deposit of the consumer’s salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law.
- take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction, if not otherwise prohibited by applicable law.

**Note:** Regarding the last bullet above, the MLA does not prohibit a creditor from, for example, exercising a statutory right to take a security interest in funds deposited in an account at any time, provided that the security interest is not otherwise prohibited by other applicable law and the creditor complies with all other provisions of the MLA regulation, including the limitation on the MAPR to 36 percent.

32 CFR 232.8(e) prohibits a creditor from using the borrower’s account information to create a remotely created check or remotely created payment order to collect payments on consumer credit from a covered borrower. Similarly, a creditor may not use a postdated check provided at or around the time credit is extended that deprives the borrower of control over payment decisions, as is common in certain payday lending transactions. The prohibition on account access, however, does not in any way prevent covered borrowers from tendering a check or authorizing access to a deposit, savings, or other financial account to repay a creditor.

This section also does not prohibit a covered borrower from authorizing automatically recurring payments, provided that such recurring payments comply with other laws and regulations, including the Electronic Fund Transfer Act and its implementing regulation,<sup>25</sup> as applicable. The prohibition in 32 CFR 232.8(e) also does not prohibit covered borrowers from granting a security interest to a creditor in the covered borrower’s checking, savings, or other financial account, provided that it is not otherwise prohibited by applicable law and the creditor complies with the MLA regulation including the 36-percent limitation on the MAPR.

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<sup>25</sup> Refer to, for example, 12 CFR 1005.10.

**Savings clauses:** A creditor may include a proscribed term under 32 CFR 232.8, such as a mandatory arbitration clause, within a standard written credit agreement with a covered borrower, provided that the agreement includes a contractual savings clause limiting the application of the proscribed term to only non-covered borrowers, consistent with any other applicable law.

# Examination Procedures

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This booklet contains objectives and expanded procedures for examining compliance with the MLA and 32 CFR 232. The objectives and procedures on pages 19 through 24 in this booklet reflect the objectives and procedures in the “Military Lending Act Interagency Examination Procedures, 2015 Amendments.” Examiners decide which of these objectives and procedures are relevant to the scope of the examination during examination planning or after drawing preliminary conclusions during the compliance core assessment as outlined in the “Community Bank Supervision,” “Federal Branches and Agencies Supervision,” or “Large Bank Supervision” booklets of the *Comptroller’s Handbook*.

## Scope

These procedures are designed to help examiners tailor the examination to each bank and determine the scope of the MLA examination. This determination should consider work performed by internal and external auditors and other independent risk control functions and by other examiners on related areas. Examiners need to perform only those objectives and steps that are relevant to the scope of the examination as determined by the following objectives. Seldom will every objective or step of the expanded procedures be necessary.

**Objective:** To determine the applicability and the scope of the examination of the MLA and identify examination objectives and activities necessary to meet the needs of the supervisory strategy for the bank.

1. Determine if the creditor offers or purchases consumer credit covered by 32 CFR 232 (refer to appendix A of this booklet for guidance in determining MLA applicability to a particular extension of credit to a covered borrower).
  - If the creditor does not offer or purchase the types of credit that would be consumer credit within the meaning of the MLA, the regulation does not apply and no further review is necessary.
  - If the creditor offers or purchases any of the types of credit that would be consumer credit within the meaning of the MLA, use the following procedures to determine whether the creditor complies with the MLA.
2. Review the following sources of information and note any previously identified problems related to the MLA that require follow-up:
  - Supervisory strategy
  - OCC’s supervisory information system
  - Previous reports of examination and work papers
  - Internal and external audit reports and work papers
  - Bank management’s responses to previous reports of examination and audit reports
  - Customer complaints and litigation

3. Obtain and review policies, procedures, and reports bank management uses to supervise compliance with the MLA, including internal risk assessments.
4. In discussions with bank management, determine if there have been any significant changes (for example, in policies, processes, personnel, control systems, third-party relationships, products, services, delivery channels, volumes, markets, and geographies) since the prior MLA examination.
5. Based on an analysis of information obtained in the previous steps, as well as input from the EIC, determine the scope and objectives of the MLA examination.
6. Select from the following examination procedures the necessary steps to meet examination objectives and the supervisory strategy.

## **Evaluate Compliance Management System**

**Objective:** To assess the quality of the bank's compliance risk management systems and to determine whether the bank has policies, procedures, practices, and training designed to assure compliance with the MLA and 32 CFR 232.

1. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring and monitoring compliance with the MLA.
2. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the MLA. Review any training materials pertaining to the MLA and determine whether the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.
3. Determine if the institution has policies or procedures in place to
  - provide account disclosure information to covered borrowers in accordance with 32 CFR 232.6.
  - correctly determine which fees and charges are required to be included in the calculation of the MAPR.
  - correctly calculate and limit the MAPR (including waiving amounts necessary in order to comply with the limit at the outset of a transaction and at the end of a billing cycle on open-end credit, as applicable) as defined in 32 CFR 232.3(p) and in accordance with 32 CFR 232.4(c).
  - properly create and maintain records of covered-borrower checks.

**Objective:** To determine the reliance that can be placed on the bank's internal controls and procedures for monitoring its compliance with the MLA and 32 CFR 232.

1. Obtain compliance reviews or audit materials, including work papers and reports, to determine if

- the scope of any audits addresses all provisions of the regulation, as applicable.
  - transaction testing includes samples covering all relevant product types and decision centers.
  - the work performed is accurate.
  - significant deficiencies and their causes are included in reports to management or to the board of directors.
  - management has taken corrective actions to follow up on previously identified deficiencies.
  - the frequency of review/audit is appropriate (including review/audit of implemented corrective actions related to previously identified deficiencies).
2. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance. Consider the following:
- Organization charts
  - Process flowcharts
  - Policies and procedures
  - Account documentation
  - Checklists
  - Computer program documentation, including any computer program testing and validation

**Objective:** To determine the bank's level of compliance with the MLA and 32 CFR 232.5 for identifying covered borrowers.

1. Determine whether the creditor's policies, procedures, and training materials accurately reflect the "covered borrower" definition.
2. Determine whether the creditor has elected to use one of the optional safe harbor methods provided in 32 CFR 232.5(b). If the creditor does not use one of the optional safe harbor methods, describe the method, if any, which the creditor uses to ensure it does not make covered loans to covered borrowers on prohibited terms.
3. If a creditor elects to use one of the two optional safe harbor methods to check a consumer's status, ascertain whether the creditor timely creates and thereafter maintains a record of the information obtained, in accordance with 32 CFR 232.5(b)(3).
4. If a creditor elects to use a method other than one of the two optional safe harbor methods, determine whether the chosen method is performed before a consumer becomes obligated on a credit transaction or establishes an account for credit and whether the creditor maintains a record of the information obtained.

**Note:** 32 CFR 232.5 contains no specific timing and record-keeping requirements if the creditor uses an alternative to one of the safe harbors to verify covered borrower status. Any alternative method selected by the creditor, however, should be evaluated to

determine whether it is reasonable and verifiable, and whether it addresses the risk of extending consumer credit that does not comply with the MLA to a covered borrower.

5. Regarding an action by a creditor relating to a covered borrower with an existing account, if a creditor has elected to use one of the two optional safe harbor methods, determine whether the creditor also uses one of the safe harbor methods when extending a new consumer credit product or newly establishing an account for consumer credit, including a new line of consumer credit that might be associated with a preexisting transactional account held by the covered borrower.

**Objective:** To determine the bank’s level of compliance with the MLA and 32 CFR 232.4 for calculating the MAPR.

1. Determine whether the creditor includes the following charges in the calculation of the MAPR for both closed- and open-end credit, as applicable:
  - Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a 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.
  - Except for a bona fide fee (other than a periodic rate) charged to a credit card account, which may be excluded if the bona fide fee is reasonable for that type of fee,
    - finance charges associated with the consumer credit.
    - any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a federal credit union or an insured depository institution when making a short-term, small amount loan, as defined in the MLA regulation,<sup>26</sup> if the application fee is charged to the covered borrower not more than once in any rolling 12-month period.
    - any fee imposed for participation in any plan or arrangement for consumer credit other than as permitted under 32 CFR 232.4(c)(2)(ii)(B).
2. For closed-end credit, determine whether the creditor appropriately calculates the MAPR following the rules for calculating and disclosing the APR for credit transactions under Regulation Z based on the “Types of Fees to Include in MAPR Calculation” section of this booklet.
3. For open-end credit, determine whether the creditor appropriately calculates the MAPR following the rules for calculating the effective APR for a billing cycle as set forth in 12 CFR 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the “Types of Fees to Include in MAPR Calculation” section of this booklet.

**Objective:** To determine the bank’s level of compliance with the MLA and 32 CFR 232.6 for providing the mandatory loan disclosures.

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<sup>26</sup> Refer to 32 CFR 232.3(t).



1. Determine whether the creditor properly provides the covered borrower with required information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit, including
  - a statement of the MAPR applicable to the extension of consumer credit.
  - any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure.
  - a clear description of the payment obligation of the covered borrower, as applicable. Note that a payment schedule (in the case of closed-end credit) or an account-opening disclosure (in the case of open-end credit) provided pursuant to Regulation Z satisfies this requirement. Also note that for oral disclosures, a generic, clear description of the payment obligation is permissible.
2. Determine whether the creditor provides the statement of the MAPR and the clear description of the payment obligation both in writing in a form that the covered borrower can keep and orally.
3. If the creditor elects to provide a toll-free telephone number to deliver the oral disclosures to a covered borrower, determine whether the toll-free telephone number is included on either
  - a form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit, or
  - the written disclosure the creditor provides to the covered borrower.
4. If the creditor elects to provide a toll-free telephone number to deliver the oral disclosures to a covered borrower, determine whether the toll-free telephone number is available for a time span reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure.

**Objective:** To determine the bank's level of compliance with the MLA and 32 CFR 232.8 for other limitations.

1. Determine whether the creditor abides by the prohibitions against requiring covered borrowers to
  - waive their rights to legal recourse under any otherwise applicable law.
  - submit to arbitration or other onerous legal notice provisions in the case of a dispute.
  - provide unreasonable notice as a condition for legal action.
2. Confirm that the creditor does not
  - require that a covered borrower repay the obligation by military allotment (note that for the purposes of this provision of the regulation, the term "creditor" does not include military welfare societies or service relief societies).
  - prohibit a covered borrower from prepaying the consumer credit.

- charge a covered borrower a penalty fee for prepaying all or part of the consumer credit.
3. Determine whether the creditor improperly requires access to a deposit, savings, or other financial account maintained by the covered borrower for repayment by
- obtaining payment through a remotely created check or remotely created payment order.
  - obtaining a postdated check provided at or around the time credit is extended.

## Conclusions

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Conclusion: The aggregate level of MLA compliance risk is (low, moderate, or high).  
The direction of MLA compliance risk is (increasing, stable, or decreasing).

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**Objective:** To determine, document, and communicate overall findings and conclusions regarding the examination of compliance with the MLA and its implementing regulation.<sup>27</sup>

1. Determine preliminary examination findings and conclusions and discuss with the examiner-in-charge, including
  - quantity of MLA compliance risk.
  - quality of MLA risk management.
  - aggregate level and direction of MLA compliance risk.
  - overall risk, including operational, reputation, and strategic risk, posed by non-compliance with the MLA.
  - violations or other concerns.
2. Discuss examination findings with bank management, including violations, deficient practices, and conclusions about risks and risk management practices. If necessary, obtain commitments for corrective action.
3. Compose conclusion comments, highlighting any issues that should be included in the report of examination or supervisory letter. If necessary, compose matters requiring attention or violations. Compose supervisory strategy recommendations for future OCC MLA compliance supervision, including time periods, staffing, and workdays required.
4. Provide final examination findings and conclusions to the examiner-in-charge.
5. Update the OCC's supervisory information system and any applicable report of examination schedules or tables.
6. Update, organize, and reference work papers in accordance with OCC policy.
7. Appropriately dispose of or secure any paper or electronic media that contain sensitive bank or customer information.

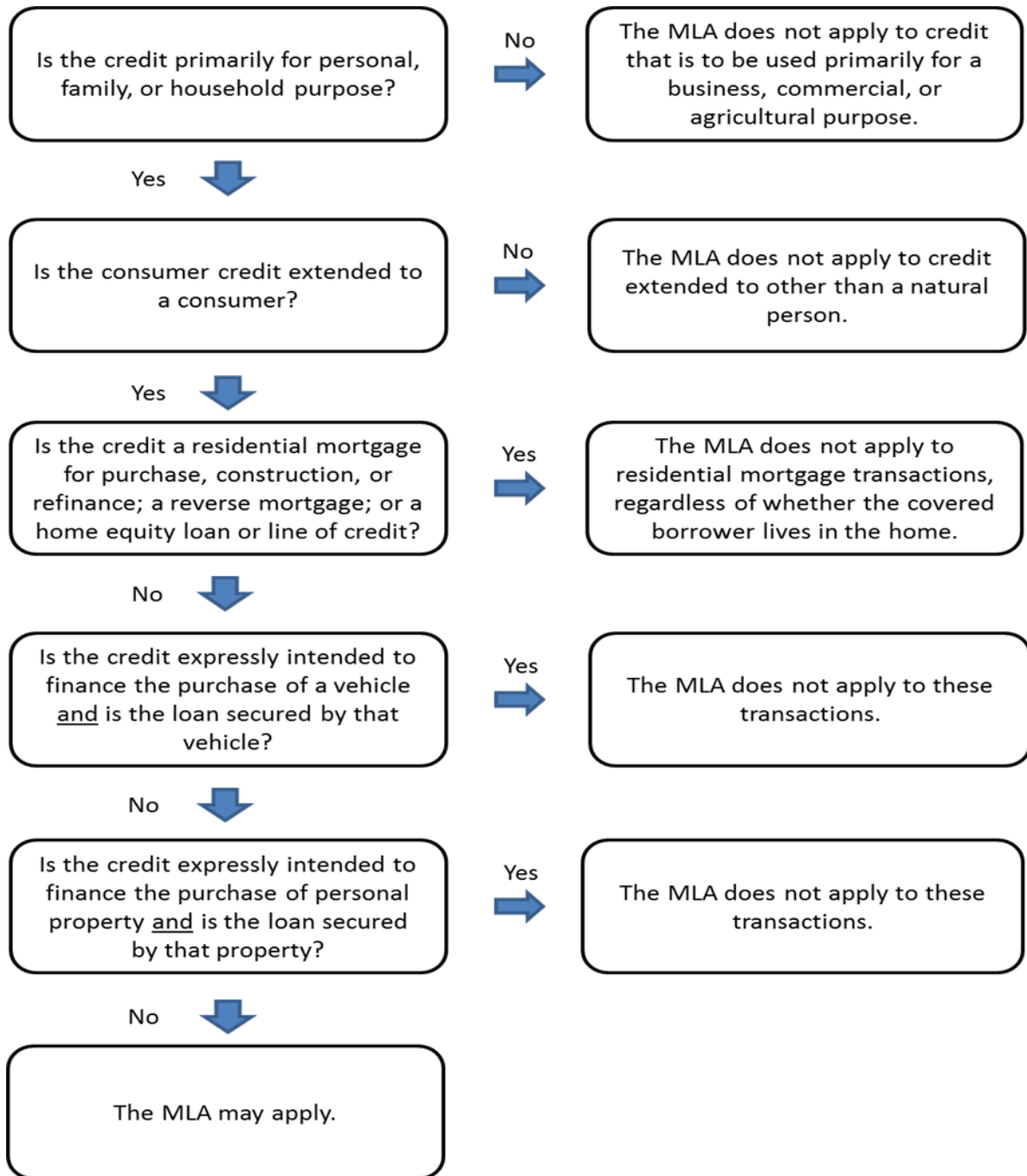
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<sup>27</sup> The "Conclusion" objective in this booklet is an OCC-specific objective that is in addition to the interagency objectives and procedures on pages 19 through 24 in this booklet.

# Appendixes

## Appendix A: MLA Applicability Flowchart

This flowchart can help determine MLA applicability to a particular extension of credit to a covered borrower.



## Appendix B: Examiner Scope and Root Cause Questionnaire

Examiners may use the following questionnaire<sup>28</sup> to determine the scope of the MLA examination for the bank. While reviewing the bank’s MLA-related compliance reviews and audit materials (including work papers and reports), examiners may complete this questionnaire to determine the adequacy of and the reliance that can be placed on the bank’s reviews and audits. Examiners may also use this questionnaire after completing all applicable examination procedures and conducting any necessary transaction testing to determine the root cause of any concerns identified during the examination. If a line item is not applicable within the area being reviewed, indicate “NA.”

<b>Applicability of the Regulation</b>			
1. Does the creditor or assignee offer, extend, or purchase credit primarily for personal, family, or household purposes?  If the answer is yes, proceed. If the answer is no or NA, conclude the review.	Yes	No	NA
<b>Evaluation of the Compliance Management System</b>			
2. Does the institution have adequate policies, procedures, and practices for ensuring and monitoring compliance with the MLA?	Yes	No	NA
3. Does the institution provide adequate training for individuals whose responsibilities relate to compliance with the MLA?	Yes	No	NA
4. Does the institution have policies or procedures in place to			
• provide account disclosure information to covered borrowers in accordance with 32 CFR 232.6?	Yes	No	NA
• correctly determine which fees that the creditor charges are required to be included in the calculation of the MAPR?	Yes	No	NA
• correctly calculate and limit the MAPR (including waiving amounts necessary to comply with the limit at the outset of a transaction and at the end of a billing cycle on open-end credit, as applicable) as defined in 32 CFR 232.3(p) and in accordance with 32 CFR 232.4(c)?	Yes	No	NA
• properly create and maintain records of covered-borrower checks?	Yes	No	NA
5. Based on a review of the institution’s compliance reviews and audit materials, including work papers and reports,			
• does the scope of any audits address all provisions of the regulation, as applicable?	Yes	No	NA
• does transaction testing include samples covering all relevant product types and decision centers?	Yes	No	NA
• is the work performed accurate?	Yes	No	NA
• are significant deficiencies and their causes included in reports to management or to the board of directors?	Yes	No	NA
• has management taken corrective actions to follow up on previously identified deficiencies?	Yes	No	NA
• is the frequency of review/audit appropriate (including review/audit of implemented corrective actions related to previously identified deficiencies)?	Yes	No	NA

<sup>28</sup> Also refer to Military Lending Act Examination Checklist in the “Military Lending Act Interagency Examination Procedures, 2015 Amendments.”

6. Are the institution's internal controls adequate to ensure compliance?	Yes	No	NA
<b>Identification of Covered Borrowers</b>			
7. Do the creditor's policies, procedures, and training materials accurately reflect the scope of the "covered borrower" definition?	Yes	No	NA
8. Has the creditor elected to use one of the optional safe harbor methods provided in 32 CFR 232.5(b)?	Yes	No	NA
9. If a creditor elects to use one of the two optional safe harbor methods to check a consumer's status, <ul style="list-style-type: none"> <li>• does the creditor timely create a record of the information obtained, in accordance with 32 CFR 232.5(b)(3)?</li> <li>• does the creditor thereafter maintain a record of the information obtained, in accordance with 32 CFR 232.5(b)(3)?</li> <li>• regarding an action by a creditor relating to a covered borrower with an existing account, does the creditor also use one of the safe harbor methods when extending a new consumer credit product or newly establishing an account for consumer credit, including a new line of consumer credit that might be associated with a preexisting transactional account held by the covered borrower?</li> </ul>	Yes	No	NA
10. If a creditor elects to use a method other than one of the two optional safe harbor methods, <ul style="list-style-type: none"> <li>• is the chosen method performed before a consumer becomes obligated on a credit transaction or establishes an account for credit?</li> <li>• does the creditor maintain a record of the information obtained?</li> </ul>	Yes	No	NA
<b>Calculation of MAPR</b>			
11. Does the creditor include the following charges in the calculation of the MAPR for both closed- and open-end credit, as applicable? <ul style="list-style-type: none"> <li>• Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement.</li> <li>• 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.</li> <li>• Except for a bona fide fee (other than a periodic rate) charged to a credit card account, which may be excluded if the bona fide fee is reasonable for that type of fee, <ul style="list-style-type: none"> <li>– finance charges associated with the consumer credit.</li> <li>– any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a federal credit union or an insured depository institution when making a short-term, small amount loan provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period.</li> <li>– in general, any fee imposed for participation in any plan or arrangement for consumer credit.</li> </ul> </li> </ul>	Yes	No	NA
12. For closed-end credit, does the creditor appropriately calculate the MAPR following the rules for calculating and disclosing the APR for credit transactions under Regulation Z based on the MAPR charges?	Yes	No	NA

13. For open-end credit, does the creditor appropriately calculate the MAPR following the rules for calculating the effective APR for a billing cycle as set forth in 12 CFR 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the MAPR charges?	Yes	No	NA
<b>Mandatory Loan Disclosures</b>			
14. Does the creditor properly provide each covered borrower with required information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit (or at a later time provided for in Regulation Z, if any), including			
<ul style="list-style-type: none"> <li>a statement of the MAPR applicable to the extension of consumer credit?</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure?</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>a clear description of the payment obligation of the covered borrower, as applicable? Note that a payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) provided pursuant to Regulation Z satisfies this requirement.</li> </ul>	Yes	No	NA
15. Does the creditor provide the statement of the MAPR and the clear description of the payment obligation both in writing in a form the covered borrower can keep and orally?	Yes	No	NA
16. If the creditor elects to provide a toll-free telephone number to deliver the oral disclosures to a covered borrower, does the creditor include the toll-free telephone number on either			
<ul style="list-style-type: none"> <li>a form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit, or</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>the written disclosure the creditor provides to the covered borrower?</li> </ul>	Yes	No	NA
17. If the creditor elects to provide a toll-free telephone number to deliver the oral disclosures to a covered borrower, is the toll-free telephone number available for a time span reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure?	Yes	No	NA
<b>Other Limitations</b>			
18. Does the creditor abide by the prohibitions against requiring covered borrowers to			
<ul style="list-style-type: none"> <li>waive their rights to legal recourse under any otherwise applicable law?</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>submit to arbitration or other onerous legal notice provisions in the case of a dispute?</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>provide unreasonable notice as a condition for legal action?</li> </ul>	Yes	No	NA
19. Does the creditor refrain from			
<ul style="list-style-type: none"> <li>requiring that a covered borrower repay the obligation by military allotment (note that for purposes of this provision of the regulation, the term "creditor" does not include military welfare societies or service relief societies)?</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>prohibiting a covered borrower from prepaying the consumer credit?</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>charging a covered borrower a penalty fee for prepaying all or part of the consumer credit?</li> </ul>	Yes	No	NA

<p>20. Does the creditor refrain from improperly requiring access to a deposit, savings, or other financial account maintained by the covered borrower for repayment by</p>			
<ul style="list-style-type: none"> <li>• obtaining payment through a remotely created check or remotely created payment order?</li> </ul>	Yes	No	NA
<ul style="list-style-type: none"> <li>• obtaining a postdated check provided at or around the time credit is extended?</li> </ul>	Yes	No	NA



## Appendix C: Comparison of SCRA and MLA Protections

The following table compares the treatment of certain protections under the SCRA and the MLA. The list is not intended to be exhaustive with respect to all possible protections. This table is part of the OCC Compliance and Community Affairs Department's Quick Reference Tools series.

	<b>Servicemembers Civil Relief Act 50 USC 3901 – 4043</b>	<b>Military Lending Act 10 USC 987 and 32 CFR 232</b>
<b>Protects</b>	<p>Servicemembers and, in some cases, their dependents.</p> <p>A servicemember is a member of the uniformed services, as that term is defined in 10 USC 101(a)(5). Banks may check servicemember status on the DOD's Defense Manpower Data Center (DMDC) website at <a href="https://scra.dmdc.osd.mil/">https://scra.dmdc.osd.mil/</a>.</p> <p>A dependent, with respect to a servicemember, is (a) the servicemember's spouse; (b) the servicemember's child (as defined in 38 USC 101(4)); or (c) an individual for whom the servicemember provided more than one-half of the individual's support for 180 days immediately preceding an application for relief under the SCRA. Specific dependent protections are summarized in this SCRA table, as applicable. Under 50 USC 3959, a servicemember's dependent may apply to a court for other protections under subchapter III of the SCRA.</p>	<p>Covered members of the armed forces and their dependents (collectively, covered borrowers). Banks may check covered borrower status on the DOD's DMDC website at <a href="https://mla.dmdc.osd.mil/">https://mla.dmdc.osd.mil/</a><sup>a</sup></p> <p>A covered member is a member of the armed forces serving on active duty pursuant to USC titles 10, 14, or 32, under a call or order that does not specify a period of 30 days or fewer; or active Guard and Reserve duty, as that term is defined in 10 USC 101(d)(6).</p> <p>A dependent, with respect to covered members, means a person described in 10 USC 1072(2), subparagraph (A), (D), (E), or (I).</p>

<sup>a</sup> Banks are permitted to use their own method to assess whether a consumer is a covered borrower. Section 32 CFR 232.5(b), however, provides banks with an optional safe harbor from liability in conclusively determining whether credit is offered or extended to a covered borrower. Use of the DMDC website is one method included in the safe harbor.

	<b>Servicemembers Civil Relief Act</b>	<b>Military Lending Act</b>
<b>Covers<sup>b</sup></b>	Loans; leases; contracts for the purchase of real or personal property, including motor vehicles; safety deposit boxes; and civil actions, including repossessions and foreclosures. Refer to the following sections for specific requirements.	Consumer credit (32 CFR 232.3(f)): credit that is offered or extended to a covered borrower primarily for personal, family, or household purposes, and is either subject to a finance charge or payable by a written agreement in more than four installments.  Consumer credit does not include residential mortgages, purchase money loans secured by a motor vehicle or personal property being purchased with loan proceeds, and credit transactions exempt from Regulation Z (other than a transaction exempt under 12 CFR 1026.29, involving state exemptions).
<b>Interest rate limitations</b>	A creditor must reduce and forgive the interest rates charged on a loan made to a servicemember or the servicemember and the servicemember's spouse jointly before entry into military service to no more than 6 percent, if requested by the servicemember in writing. The 6 percent maximum interest rate includes service charges, renewal charges, fees, or any other charges, except bona fide insurance fees, with respect to an obligation. Interest charged in excess of 6 percent must be refunded to the servicemember. (50 USC 3937)	Limits rates charged for covered loans to a MAPR of no more than 36 percent in connection with closed-end credit or in any billing cycle for open-end credit. (32 CFR 232.4(b))
<b>Foreclosure protections</b>	While a servicemember is active in military service, or within one year <sup>c</sup> after the military service ends, a creditor cannot foreclose or seize real or personal property owned by the servicemember and secured by a mortgage (or other security in the nature of a mortgage) that originated before the servicemember's military service and for which the servicemember is still liable, without a court order or a valid waiver from the servicemember. (50 USC 3953)	Not applicable

<sup>b</sup> A servicemember may waive any of the rights and protections provided by the SCRA. In most instances, the waiver must be in writing and must be executed as an instrument separate from the obligation or liability to which it applies. Refer to 50 USC 3918, "Waiver of Rights Pursuant to Written Agreement" for specific waiver requirements.

<sup>c</sup> On December 12, 2017, the "National Defense Authorization Act for Fiscal Year 2018" temporarily extended the one-year period to December 31, 2019. Unless extended again, the one-year period will revert to 90 days on January 1, 2020.

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	<b>Servicemembers Civil Relief Act</b>	<b>Military Lending Act</b>
<b>Contract termination and property repossession protections</b>	Contracts for the purchase, lease, or bailment of real or personal property, including motor vehicles and safe deposit boxes, for which the servicemember paid a deposit or made a payment before the servicemember entered military service, may not be rescinded or terminated during military service for a breach of the terms of the contract—regardless of whether the breach occurred before or during military service—without a court order or valid waiver. The bank is also prohibited from repossessing the property because of the breach without a court order or waiver. (50 USC 3952)	Not applicable
<b>Motor vehicle lease coverage</b>	A servicemember may terminate a motor vehicle lease under certain circumstances. Motor vehicle lease protections are extended to leases obtained both before and, under certain conditions, after entering active military status. Termination of the lease by the servicemember also terminates any obligation of a dependent under the lease. (50 USC 3955)	Not applicable
<b>Residential lease coverage</b>	Residential leases entered into before active duty may be terminated by the servicemember upon entering active duty. Residential leases entered into during active duty may be terminated by the servicemember if the servicemember receives orders for active military service deployment for 90 days or more. Termination of the lease by the servicemember also terminates any obligation of a dependent under the lease. (50 USC 3955) Additional eviction protections are available for servicemembers and their dependents (certain monthly rent restrictions and requirement for court order). (50 USC 3951)	Not applicable

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	<b>Servicemembers Civil Relief Act</b>	<b>Military Lending Act</b>
<b>Other protections</b>	<p>The fact that a servicemember requests relief under the SCRA cannot be a basis for the bank to take the following actions (50 USC 3919):</p> <ul style="list-style-type: none"> <li>• Deny or revoke credit to the servicemember</li> <li>• Change the terms of existing credit or pending credit</li> <li>• Provide an adverse report relating to the creditworthiness of the servicemember to a credit reporting agency</li> </ul>	<p>Banks extending consumer credit under the MLA regulation (32 CFR 232.8(b), (c), (d), (e), (g), and (h)) may not</p> <ul style="list-style-type: none"> <li>• require the borrower to waive legal recourse (including, but not limited to, any provisions of the SCRA).</li> <li>• require the borrower to submit to arbitration or impose other onerous legal notice provisions.</li> <li>• demand unreasonable notice as a condition for legal action.</li> <li>• use a check or other method to access a covered borrower's account, with some exceptions.</li> <li>• require as a condition for the extension of credit that the borrower establish an allotment to repay the obligation.</li> <li>• prohibit prepayment or charge a penalty for prepayment.</li> </ul>
<b>Disclosures</b>	Not applicable	Requires specific written and oral notices related to MAPR and payment obligation, as well as Regulation Z-applicable disclosures. (32 CFR 232.6)

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## Appendix D: Fees and Charges Comparison (MLA MAPR and Regulation Z Finance Charge)

The following table compares treatment of certain fees and charges for purposes of calculating the MAPR under the MLA (32 CFR 232.4(c)) to treatment of these charges under the definition of “finance charge” in Regulation Z (12 CFR 1026.4). The list is not intended to be exhaustive with respect to all possible fees or charges.<sup>a</sup> This table is part of the OCC Compliance and Community Affairs Department’s Quick Reference Tools series.

Fee/Charge Type	MAPR Inclusion (32 CFR 232.4)	Regulation Z Finance Charge (12 CFR 1026.4)
<b>Credit insurance premiums; charges or premiums for debt cancellation or debt suspension coverage</b>	Included in MAPR calculation. (32 CFR 232.4(c)(1)(i))	Not a finance charge if insurance or coverage is not required, disclosures are made, and the consumer makes an affirmative written request for the insurance or coverage (or affirmatively requests the insurance or coverage for an open-end (not home-secured) plan by telephone). (12 CFR 1026.4(d)(1), (3), and (4))
<b>Credit-related ancillary products</b>	Included in MAPR calculation when sold in connection with a credit transaction for closed-end credit or an account for open-end credit. (32 CFR 232.4(c)(1)(ii))	Inclusion depends on whether the charge is payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit and whether there is an applicable exclusion. (12 CFR 1026.4(a))
<b>Interest</b>	Because interest is a finance charge (12 CFR 1026.4(b)(1)), it is included in MAPR calculation. (32 CFR 232.4(c)(1)(iii)(A))	Included in finance charge. (12 CFR 1026.4(b)(1))
<b>Transaction fees on credit card accounts<sup>b</sup></b>	Fees such as foreign transaction fees and cash advance fees may be excluded from MAPR calculation if they are bona fide and reasonable for that type of fee. (32 CFR 232.4(d))	Included in the finance charge. (Official Interpretations, Section 12 CFR 1026.4(a) – 4)

<sup>a</sup> For an exhaustive list related to the MLA MAPR and to Regulation Z finance charges, refer to 32 CFR 232.4, “Terms of Consumer Credit Extended to Borrowers,” and 12 CFR 1026.4, “Finance Charge,” respectively.

<sup>b</sup> Note that compliance with the MLA regulation for credit card accounts became mandatory on October 3, 2017. Charges resulting from a periodic rate, credit insurance premiums, fees and charges for debt cancellation or debt suspension coverage, and fees and charges for credit-related ancillary products may not be excluded from the MAPR calculation for credit card accounts.

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Fee/Charge Type	MAPR Inclusion (32 CFR 232.4)	Regulation Z Finance Charge (12 CFR 1026.4)
<b>Application fees</b>	Generally included in MAPR calculation, except when charged under certain circumstances for a “short-term, small amount loan.” <sup>c</sup> (32 CFR 232.4(c)(1)(iii)(B))  Credit card accounts only: An application fee may be excluded from MAPR calculation if it is bona fide and reasonable. (32 CFR 232.4(d))	Not a finance charge if it is charged to all applicants for credit, whether or not credit is actually extended. (12 CFR 1026.4(c)(1))
<b>Participation fees for credit plan</b>	Included in MAPR calculation, subject to certain exceptions. (32 CFR 232.4(c)(1)(iii)(C)) For open-end credit, if the MAPR cannot be calculated in a billing cycle because there is no balance, a creditor may impose a participation fee so long as the fee does not exceed \$100 per annum, <sup>d</sup> regardless of the billing cycle in which the fee is imposed. (32 CFR 232.4(c)(2)(ii)(B))	Not a finance charge. (12 CFR 1026.4(c)(4))

<sup>c</sup> Refer to 32 CFR 232.3(t) for the definition of a “short-term, small amount loan.” Under current federal law, only federal credit unions are allowed to make these types of loans.

<sup>d</sup> This limitation does not apply to a bona fide credit card account participation fee if imposed in accordance with 32 CFR 232.4(d).

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## References

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### Laws

- 10 USC 987, “Terms of Consumer Credit Extended to Members and Dependents: Limitations” (MLA)
- 15 USC 1601 et seq., “Truth in Lending Act”
- 15 USC 1681 et seq., “Fair Credit Reporting Act”
- 15 USC 1693 et seq., “Electronic Fund Transfer Act”
- 50 USC 3901 et seq., “Servicemembers Civil Relief Act”

### Regulations

- 12 CFR 1005, “Electronic Fund Transfer Act” (Regulation E)
- 12 CFR 1022, “Fair Credit Reporting Act” (Regulation V)
- 12 CFR 1026, “Truth in Lending Act” (Regulation Z)
- 32 CFR 232, “Limitations on Terms of Consumer Credit Extended to Service Members and Dependents”; 81 Fed. Reg. 58840, “Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents: Interpretive Rule”; and 82 Fed. Reg. 58739, “Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents: Interpretive Rule; Amendment”

### Comptroller’s Handbook

#### Examination Process

- “Bank Supervision Process”
- “Community Bank Supervision”
- “Federal Branches and Agencies Supervision”
- “Large Bank Supervision”

#### Safety and Soundness, Management

- “Corporate and Risk Governance”

### OCC Issuances

- OCC Bulletin 2013-29, “Third-Party Relationships: Risk Management Guidance” (October 30, 2013)
- OCC Bulletin 2017-21, “Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29” (June 7, 2017)
- OCC Bulletin 2017-43, “New, Modified, or Expanded Bank Products and Services: Risk Management Principles” (October 20, 2017)