Coverage: Most Closed-End and Open-end Consumer loans made by a credit union to a “covered borrower.” Covered Borrower is defined to include any member of the armed forces who is on active duty, or active guard or reserve duty, or any of their dependents.

NEW: Beginning on Page 12: Requirements for Credit Card Accounts

Examples of Closed-End Loans Covered by the rule:

- Closed-end loans such as installment loans;
- Payday loans;
- Vehicle Title loans;
- Private Student loans; and
- Tax Refund anticipation loans.
- Land loans without a dwelling

Examples of Open-End Loans Covered by the rule:

- Overdraft Lines-of-Credit;
- Unsecured open-end lines of credit; and
- Credit card Accounts (Note temporary exemption discussed below).

– Not Covered:

- Residential mortgage loans secured by a dwelling including a loan to finance the dwelling or for initial construction of the dwelling;
- Any refinanced mortgage loan transaction;
- Any Home equity loan or HELOC or reverse mortgage;
• Any loan to finance the purchase of an automobile or motor vehicle (with no additional cash out unrelated to the purchase or no negative equity trade-in) when the loan is secured by the vehicle;
• Any loan to finance the purchase of personal property when the loan is secured by the property being purchased; and
• Any loan that is exempt from Regulation Z requirements.

Note—The rule provides a temporary exemption for credit card accounts until October 3, 2017 and also provides for the exemption to be extended for up to one year thereafter. Creditors will be required to comply with the rule’s requirements for credit card accounts after the exemption expires.

Agency/Citation: Department of Defense / 32 CFR Part 232
Effective Date: OCTOBER 1, 2015, however the mandatory compliance date is OCTOBER 3, 2016.

DoD Rewrites its Regulation that Implements the Military Lending Act

In late July, the U.S. Department of Defense (DoD) issued a final rule that amended its regulation that implements the Military Lending Act (MLA). These amendments expand the definition of “consumer credit” to provide the protections of the MLA to a broader range of closed-end and open-end loans within the scope of the Truth in Lending Act and Regulation Z, rather than the limited types of credit that are defined in the current rule.

This rule is effective October 1, 2015, but compliance isn’t mandatory until October 3, 2016.

Scope of the Rule

The final rule expands the definition of “consumer credit” to include credit extended to a ‘covered borrower” for personal, family, or household
purposes, which is subject to a finance charge or payable by a written agreement in more than four installments.

Generally all closed-end loans such as installment loans, payday loans, vehicle title loans, private student loans, and tax refund anticipation loans will be covered by this rule. The following types of loans are specifically excluded from the definition of ‘consumer credit” and are therefore not covered by the rule: loans secured by a residential mortgage secured by an interest in a dwelling, including a loan to finance the purchase or initial construction of the dwelling, or any loan to finance the purchase of an automobile or motor vehicle when the loan is secured by the vehicle, or any loan to finance the purchase of personal property when the loan is secured by the property being purchased.

The rule also does not cover loans that are exempt from Regulation Z requirements. For example, an extension of credit to a participant in an employer-sponsored retirement plan qualified under section 401(a) of the Internal Revenue Code (Reg. Z Section 1026/3(g)) is not covered by regulation Z and is therefore not covered by the DoD MLA final rule.

The types of open-end loans covered by this rule include overdraft lines of credit, unsecured open-end lines of credit and credit card accounts. Note--The rule provides a temporary exemption for credit card accounts until October 3, 2017 and also provides for the exemption to be extended for up to one year thereafter. Therefore, creditors will need to comply with the rule’s requirements for credit card accounts after the exemption expires.

Previously, the MLA’s requirements applied only to certain payday loans, vehicle title loans, and tax refund anticipation loans.

This rule will impact credit unions who offer any open-end or closed-end loan to a “covered borrower.” The term “covered borrower” is defined to include any member of the armed forces who is on active duty, or active guard or reserve duty, or any of their dependents.

However, the rule does not apply to any loan transaction relating to a consumer who is not a “covered borrower” at the time he or she becomes obligated on the loan.
The rule permits credit unions to use the existing method for conducting a “covered-borrower check,” which involves the use of a covered borrower identification statement, as a safe harbor for compliance until October 3, 2016.

After October 3, 2016, credit unions can determine whether a borrower is a “covered borrower” by using one of the two safe harbor methods provided in the final rule. First, a credit union may verify a borrower’s status on the DoD’s database (available at https://www.dmdc.osd.mil/mla/welcome.xhtml) by entering the borrower’s last name, date of birth, and Social Security number. Second, a credit union may use a consumer report obtained from a nationwide consumer reporting agency to determine whether a borrower is a “covered borrower” by using a statement, code, or similar indicator describing that status (although it is not entirely clear how a nationwide consumer reporting agency will identify covered borrowers or their dependents).

**Revised Deadline for Registering for direct Connectivity to the MLA Database of Covered Borrowers:**

In January 2016, the Defense Manpower Data Center (DMDC) indicated that it is working to establish availability for the two methods for identifying covered borrowers under the MLA final rule. Those methods are either: Direct connectivity to the DoD’s manpower database or through the Credit Reporting Agencies.

Initially, the deadline to let DMDC know of a credit union’s intent to use this service was February 1, 2016.

CUNA and others recently requested an extension of the February 1st deadline in order to provide more time for credit unions to register for direct access to the MLA database. The benefit of direct access to the MLA database is to process large volumes of requests in a relatively short time period. Although, the DoD believes that most users will continue to use the MLA website even though it may not be as fast as direct connectivity to the MLA Database. For example, a large batch of requests could take up to 24 hours through the Website and only seconds through direct connectivity. Lower numbers of requests would still be relatively fast through the MLA website.
The Department of defense has agreed to extend the deadline to register for direct access to its Defense Manpower Data Center to February 15th.

Credit unions that wish to register to use the database should email the MLA helpdesk at dodhra.dodcmb.dmdc.mbx.mla@mail.mil by the new deadline of February 15th. Any credit union that emails the MLA helpdesk should receive a response which includes a questionnaire. Credit unions will need to complete the questionnaire and return it as instructed no later than February 19th.

The number of connections DMDC can facilitate is limited and will likely be capped at some point.

CUNA believes the DMDC is the best, most efficient way to determine military status of loan applicants (whether through the MLA website or through direct connectivity), and the DMDC is one of two safe harbor methods credit unions can use after Oct. 3.

The second method allows a credit union to use a consumer report obtained from a nationwide consumer reporting agency.

Credit unions can use the existing method--using a covered borrower identification statement on the loan application--as a safe harbor for compliance until Oct. 3. Afterwards, the MLA permits a credit union to apply its own method to determine whether a consumer is a covered borrower, or as stated above, it can use one of the two safe harbor methods.

The MLA website is available at: https://mla.dmdc.osd.mil/.

**Military Annual Percentage Rate (MAPR):**

The final rule as well as the existing rule prohibits a credit union from imposing a MAPR greater than 36 percent in connection with a loan made to a covered borrower.

For closed-end loans the MAPR limit applies at time of consummation. For open-end loans the MAPR limit applies for each billing cycle.
The MAPR is the cost of credit expressed as a annual percentage rate. The MAPR includes interest, other finance charges, premiums or fees for credit insurance, charges for single premium credit insurance, fees for a debt collection contract, or any fee for a debt suspension agreement, any fee for a credit-related ancillary product sold in connection with the loan, any fee imposed for participation in any plan, and any application fee charged to a covered borrower who applies for a consumer loan.

Exception for NCUA’s PAL program:

One exception is an application fee charged by a Federal Credit Union when making a short-term, small amount closed-end loan under the NCUA’s Payday Alternative Loans (PAL) program. However, the application fee may only be excluded once in any rolling 12-month period. Therefore, an application fee charged to a covered borrower who applies for a second short-term small amount loan within 12-months of the first loan, may not be excluded from the MAPR calculation.

The DoD intentionally included only FCUs under the exemption because they are subject to a federal interest rate cap under the NCUA ‘s PAL program and to avoid conflict with the rules of a fellow federal agency i.e. NCUA’s PAL program. The exemption applies only to “short-term, small amount loans” as defined in the MLA rule and includes only loans made in accordance with a federal law.

Therefore, state-chartered credit unions do not qualify for the exemption.

Exception for Credit Card Bona Fide Fees:

A second exception is for a bona fide fee such as an application fee, annual fee, and cash advance fee (other than a periodic rate) charged on a credit card account. The bona fide fee will not be included in the calculation of the MAPR if the fee is “reasonable” for that type of fee.

To determine 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.
The rule provides a safe harbor method for making a determination of whether a fee is reasonable. Under this method, a fee is reasonable if it is 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 each of whose U.S. credit card programs have total outstanding balances of at least $3 billion at any time during the previous three-year period.

However, a bona fide fee charged by a credit union is not unreasonable simply because other creditors do not charge a fee for the same or a substantially similar product or service.

**Mandatory Loan Disclosures:**

The rule requires a statement of the MAPR and a clear description of the payment obligation in writing in a form the covered borrower can keep. A payment schedule (for closed-end loans) or an account opening disclosure (for open-end loans) fulfills this requirement. A credit union must also provide any disclosure required by Regulation Z.

In addition a credit union must verbally provide a statement of the MAPR and the description of the payment obligation or provide a toll-free number to deliver the verbal disclosures to the covered borrower.

NOTE: A credit union may satisfy the requirement of providing a “statement of the MAPR” by describing the charges the credit union may impose. There is no requirement to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to a specific loan.

**Limitations:**

The MLA continues to prohibit creditors from requiring servicemembers to:

- Submit to mandatory arbitration and onerous legal notice requirements;
- Waive their rights under the Servicemembers Civil Relief Act;
- Provide unreasonable notice as a condition for legal action;
- Provide a payroll allotment as a condition of obtaining credit (other than from relief societies);
- Be able to refinance a payday loan or secure credit using a post-dated check;
- Use a car title as security for a loan. Credit unions, banks and savings associations are exempt from this prohibition.

However, a credit union may:

- Require an electronic fund transfer to repay a loan;
- Require direct deposit of the borrower’s salary as a condition of eligibility for the loan; and
- Take a security interest in funds deposited after the extension of credit in an account established in connection with the loan (such as a Credit Builder share account).

NOTE: Standard cross-collateralization clauses that permit a security interest in funds deposited both prior to and after consummation of the loan and in connection with any account of the borrower will likely not comply with the MLA regulations and requirements. As such, the loan agreement with the covered borrower may become void and the borrower would not be required to repay any remaining outstanding loan balance.

CUNA recommends that credit unions making loans to covered borrowers or their dependents check with their legal counsel or forms supplier to ensure that any cross-collateralization clause in their loan documents complies with MLA requirements.

Penalties and Remedies:

Misdemeanor: A knowing violation of the MLA regulations will be considered a misdemeanor with a potential fine and imprisonment for up to one year, or both.
**Contract Void:** Any credit agreement, promissory note, loan agreement or other contract between a credit union and covered borrower that fails to comply with the MLA regulations or requirements will be considered void from the inception.

**Arbitration:** No agreement to arbitrate any dispute involving a loan covered by the MLA shall be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.

**Civil Liability:** A person who violates the MLA regulations or requirements is civilly liable to a covered borrower for any actual damages, but not less than $500 for each violation, including punitive damages, equitable or declaratory relief, any other relief provided by law, as well as costs of the action together with reasonable attorney fees.

**Compliance:**

This rule will impact credit unions that make loans to servicemenbers on active duty or their dependents (a covered borrower or a dependent of a covered borrower). Forms, procedures, and data processing systems will likely need to be changed in order to comply. At the time of publication, approximately one year remains until the mandatory compliance date, so credit unions are urged to contact their forms supplier and data processor to begin working toward compliance.

**Security Interests in Share Accounts under the Military Lending Act Regulations**

Section 232.8(e)(3) of the DoD’s Military Lending Act regulations permits a creditor to take a security interest in funds deposited after the extension of credit and in an account established in connection with the loan.
This same provision has been in the regulations from the beginning—meaning 2007. However, because of the limited types of loans that were subject to the MLA (Payday Loans, Auto Title Loans and Tax Refund Anticipation Loans), the provision didn’t seem to cause much of a problem at that time. However, now that the MLA has expanded coverage to include most open-end as well as closed-end loans subject to Regulation Z (other than the limited exceptions), this provision may pose a serious problem to those credit unions that serve large numbers of military personnel and their dependents.

Why is this language in the MLA Regulations a Problem?

The provision limiting security interests does not apply to any loan that is not covered by the MLA regulations. However, for loans that are covered by the MLA regulations, the specific provisions regarding security interests could severely limit the amount of funds on deposit that are subject to setoff. This could result in higher loan losses on loans covered by the MLA regulations. In addition, Section 232.9(c) of the MLA regulations provides that any credit agreement, promissory note or other contract with a covered borrower that fails to comply with the regulations is void from the inception.

Standard cross-collateralization clauses, contained in many loan documents, typically permit a security interest to be obtained in shares deposited both prior to and after consummation of the loan and in connection with any share account of the borrower.

Statutory Lien provisions in Part 701.39 of NCUA’s Rules and Regulations permit Federal credit unions to apply the balance of shares and dividends in all individual and joint accounts to the loan balance once a member is in default.

Standard cross-collateralization clauses as well as NCUA’s statutory Lien provisions, do not comply with the MLA regulations limiting the security interest to shares deposited after the loan is established and to funds that are deposited into an account set up in connection with the loan.

As such, any loan agreement between a credit union and covered borrower that contains only the standard cross-collateralization language and language regarding statutory liens could be considered void and the borrower would not be required to repay any outstanding loan balance.
How can We Prevent our Loan Agreements from Being Considered Void?

To start with, you should make sure that the “Security” clause in your loan documents contains language regarding the specific requirements in the MLA regulations related to a security interest in deposited funds. This means ensuring that the security interest only covers deposits made after loan consummation and relates only to deposits made in an account that is established in connection with the loan.

What type of Share Account Would Satisfy the Requirements of the MLA regulations?

Unfortunately, the MLA regulations don’t provide any guidance with regard to this requirement in either the current final rule or in its initial final rule issued in August 2007. However, a share account that is opened at or near the time a covered loan is opened might satisfy the requirement of being established in connection with the loan.

In addition, a “Credit Builder” or similar account that is opened in connection with the loan, would seem to satisfy this requirement.

However, it is unlikely that a share account opened three months before a member applies for a loan covered by the MLA regulations would satisfy the MLA requirement that the “account be established in connection with the loan.”

What Other Action will our Credit Union Have to Take?

CUNA recommends that your credit union consider the following:

- Contact your data processor immediately concerning software changes that will be necessary to ensure that any security interest in the borrower’s funds only applies to funds that are deposited into an account that is established in connection with the loan and only applies to funds deposited after the extension of credit.

- Check with your forms supplier to ensure that cross-collateralization clauses in your loan documents contains language that limits the security interest to funds deposited after the extension of credit and to funds deposited into an account established in connection with the MLA covered loan.
Finally, your loan policies and procedures should be revised to cover these MLA requirements.

MLA Requirements for credit Card Accounts:

Effective Date: October 3, 2017

Applicability of MLA requirements:
Generally, the MLA rules that are applicable to closed-end loans and other open-end loans are applicable to credit card accounts as well. However, on credit card accounts, finance charges under regulation Z may be excluded from the calculation of the MAPR if the fees are determined to be reasonable bona fide fees.

When are Credit Card Accounts Subject to the MLA?
A Credit Card Account opened on or after October 3, 2017 would be covered by the MLA rule if the account is opened by a servicemember on active duty (or a spouse or dependent of the servicemember) at the time the account is opened.

Proper Calculation of the MAPR for credit card Accounts
Section 232.4(b) of the MLA rule states that a creditor may not impose an MAPR greater than 36% in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit. On open-end loans The MAPR must be calculated during each billing cycle, but near the end of the billing cycle so fees can be waived if the MAPR exceeds 36% and so that no other fee can be charged before the end of the billing cycle that would cause the MAPR to again exceed 36%. The MAPR for open-end loans includes interest, other finance charges such as a cash advance fee, balance transfer fee, foreign transaction fee, other transaction fees, premiums or fees for credit insurance, fees for a
debt cancellation product, fees for a debt suspension agreement, fees for credit-related ancillary products, an application fee, and a participation fee (in certain situations). For credit card accounts, reasonable and bona fide fees are not included in the calculation of the MAPR. However, the exclusion of bona fide fees from the MAPR does not apply to credit insurance premiums, fees for a debt cancellation contract, fees for a debt suspension agreement, or fees for credit related ancillary products. Those fees must still be included in the MAPR.

Requirements exempting Reasonable and Bona Fide fees from the MAPR

Under the Safe Harbor, a credit union may exclude a Bona Fide credit card fee from the MAPR if the fee is considered “reasonable.” Which means that the fee must be less than or equal to the average fee for the same or similar product charged by 5 separate card issuers, that each have at least $3 billion in outstanding credit card balances at any time during the three year period preceding the time the average is determined. Currently, there are 20 large card issuers that meet this requirement and only one of those is a credit union—Navy FCU. Together these card issuers have about 260 card agreements in the CFPB’s Card Agreement Database. However, many of the agreements are Private Label cards. Only about 85 of the agreements would appear to be useful for MLA purposes.

The exclusion generally applies to finance charges under Reg. Z such as cash advance fees, foreign transaction fees, balance transfer fees and transaction fees for purchases. (Other charges, which are not finance charges under Reg. Z, such as a late fee or an over-limit fee are not included in the calculation of the MAPR anyway), so the exclusion would not apply to such fees. Also, the exclusion does not apply to fees or premiums for credit insurance, fees for a debt cancellation contract, fees for a debt suspension agreement, or to fees for a credit related ancillary product. Those fees must be included in the calculation of the MAPR.

What steps are required to determine that your fees are Reasonable and Bona Fide?

- The first step is to identify all large card issuers that meet the criteria.
- The second step is to select five of the card issuers your credit union wishes to review.
• Third: Obtain copies of the five card issuers card agreements—the CFPB’s Credit card database may be used for this purpose.
• Select card agreements from the five card issuers that are similar or identical to your credit union’s card products.
• Identify the card fees from the five card issuers that are identical to your card fees.
• Average the specific card fees from the five card issuers.
• Compare your fees to the average fees from the five card issuers and make sure your fees are less than or equal to the average. For example, you might have an average for a cash advance fee, an average for a foreign transaction fee, and an average for a balance transfer fee. Of course, there could be others as well.

Once your credit union has determined that your fees are reasonable and bona fide, you should retain documentation of the safe harbor calculations in case your results are challenged by your regulator or challenged in a court of law.

**How often should the safe harbor calculations be performed?**
Unfortunately, the MLA rule doesn’t establish any timing requirement for repeating the calculations after they are initially performed, but since the CFPB’s Credit Card Agreement database can change quarterly, it might make sense to perform the calculations quarterly also.

Complying with this requirement will not be easy. The process is basically a time consuming manual operation. Comparing fees and card types in many cases will be difficult. For example, I compared fees for a local credit union with fees for five large card issuers, which included four banks and Navy FCU. The local credit union has a $3 cash advance fee, while one of the four banks had a range for the cash advance fee --$10 to $20 or 4-5% , whichever is greater and three banks cash advance fees were similar—For example: $10 or 5%., of the cash advance amount, whichever is greater

These types of differences makes the comparison challenging at best.

**Standards Relating to Bona Fide fees:**
The MLA rule requires that fees be compared to “like kind fees” for the same or similar service and the same or similar product in order to determine whether a bona fide fee is reasonable.

For example, a cash advance fee may not be compared to a foreign transaction fee because those fees are for different services. In addition, a
rewards card should be compared to other rewards cards and a cash-back card should be compared to other cash-back cards because those are the same or similar products.
The rule also states that a bona fide fee may be higher than the average of the five large card issuers a credit union reviews depending on additional services or benefits offered or other factors related to the card. However, the rule doesn’t describe or provide any guidance on how to determine the value of the additional services or other benefits. Because of the lack of guidance, it may be difficult to determine a value for the additional services, other benefits or other factors.
The MLA rule also states that a bona fide fee is not unreasonable solely because other card issuers do not charge a fee for the same or similar product or service. There is no guidance in the rule or official interpretation which explains how a fee can still be considered reasonable if it isn’t compared to the average amount for the five card issuers your credit union reviews. If your credit union encounters this situation, you may pick other card issuers that actually charge the same fee you are trying to compare yours to.

**Establishing Reasonableness for a Participation Fee**

If your credit union’s Participation fee is less than or equal to the average of the five large card issuers you review, then your fee would be considered reasonable.

However, the MLA rule offers other means for establishing reasonableness. The MLA rule permits a credit union to compare credit limits, services offered or other factors related to the card in order to determine whether a participation fee is considered reasonable and therefore may be excluded from the MAPR. For example, if other card issuers typically charge a participation fee of $100 annually, a participation fee of $300 may be reasonable for your card if the credit limit available to the covered borrower is significantly higher than the credit limit offered by other card issuers or additional services or other benefits are offered on your account. However, the DoD’s rule and official interpretations don’t provide any guidance or discussion on how services offered or other factors relating to the account should be valued. If these services or factors are valued too high, it seems likely your fee could be considered unreasonable.

**Effect of Charges for Non-Bona fide Fees**
The MLA rule provides that charging any fee that is considered unreasonable or that is not a bona fide fee will require a credit union to include in the MAPR all unreasonable fees, all non-bona-fide fees, any finance charges and all bona-fide fees that ordinarily would have been excluded from the calculation of the MAPR.

For example, suppose a credit union charges a finance charge, a credit life insurance premium and a reasonable bona fide cash advance fee that qualifies for the exclusion. Only the finance charge and the premium for the credit life insurance must be included in the calculation of the MAPR. The cash advance fee is not included because it qualified for the exclusion.

On the other hand, suppose a credit union charges a finance charge, a premium for credit disability insurance, a bona-fide cash advance fee that qualifies for the exclusion and a bona-fide, but unreasonable foreign transaction fee.

In this case, the finance charge and all fees including the premium for credit disability insurance, the cash advance fee that otherwise would qualify for the exclusion and the unreasonable foreign transaction fee must be included in the calculation of the MAPR.

It is very likely that this second situation would cause the MAPR to exceed 36% and would require the credit union to waive or refund to the covered borrower any amount that exceeds 36% over the entire time period that the unreasonable fee or non bona-fide fee was charged.

This requirement seems to be punitive, because the requirement doesn’t provide any relief or exemption for situations when the unreasonable or non-bona-fide fee has been unknowingly or unintentionally imposed. In a recent letter to the DoD, CUNA pointed out the punitive nature of this requirement and requested a change that would eliminate this requirement in instances where the mistake is unintentional or unknowing.

**Types of Fees Included in the MAPR for Open-end Loans and credit card accounts**

Generally, charges that are finance charges under Reg. Z are included in the calculation of the MAPR for open-end loans, unless excluded under the MLA rule as reasonable bona fide fees on a credit card account. While charges that are defined as “other charges” under Reg. Z are excluded from the MAPR because they are not finance charges. Examples include a late fee, an over-limit fee, and an application fee charged to all applicants whether or not credit is actually extended.
Additional examples of “other charges required by the MLA to be included in the MAPR include fees or charges for credit insurance, debt protection, debt suspension and credit-related ancillary products.

**Treatment of Zero-balance Accounts**
The MLA rule provides that if there is a zero balance during a billing cycle on an open-end loan including a credit card account, the creditor may not charge any fee except for a participation fee that doesn’t exceed $100 per year, regardless of the billing cycle in which the fee is imposed, provided that the $100 per year limitation on the amount of the participation fee does not apply to a bona fide participation fee imposed on a credit card account. Question #5 from the DoD’s Official Interpretations, specifically states that a creditor may charge a late payment fee during a billing cycle with a zero balance because a late fee is not among the charges that are included in the calculation of the MAPR. The same reasoning would certainly apply to an over-limit fee and likely a returned check fee. Furthermore, it seems the same reasoning would apply to reasonable bona-fide fees, but neither the rule nor the official interpretations specifically mention reasonable bona fide fees in this context. The language suggests that such a fee may be charged during a billing cycle with a zero balance, but to be 100% certain, we may need further clarification from the DoD.

**Minimum Interest Charge on a Credit Card Account**
If the minimum interest charge is less than or equal to the average minimum interest charge of the five large card issuers your credit union reviews, then it can be excluded from the MAPR on a credit card account because it would be considered a reasonable bona fide fee. Otherwise, it must be included in the calculation of the MAPR.

**May Card Agreements Contain a Savings Clause?**
Initially, there was concern that a loan document containing terms prohibited by the MLA would be considered void from the beginning and could subject the credit union to certain penalties under the MLA rule.

However, the DoD’s Official interpretations clarifies that a loan document or agreement provided to both covered borrowers and non-covered borrowers may contain prohibited terms as long as the document contains a “Savings Clause” limiting the prohibited term/s to only non-covered borrowers.