

# With so much change, be sure to stay up to date!



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## Your Crazy Compliance Peeps



# Agenda

Helping Credit Unions  
Serve, Grow and Remain Strong.

- What's Changing (Final Rules)?
  - Annual Updates
    - Credit Cards – Safe Harbor Penalties
    - Qualified Mortgages – Points and Fees Thresholds
    - HOEPA Coverage – High Cost Mortgage
    - Higher-Priced Mortgage Loan Escrow Exemption
    - Regulation D – Reserve Requirements
  - HMDA – Home Mortgage Disclosure Act
  - CFPB – Small Creditor / Rural and Underserved Areas
  - DOD – Military Lending Act
  - Overview SCRA
  - Flood Insurance Regulations
  - Risk Based Capital
  - CFPB Rulemaking Agenda



# Annual Updates



"I'll be at fine stores everywhere, influencing the consumer price index."

CN  
COLLECTION



# Credit Cards – Safe Harbor Penalties



## Safe Harbor Penalty Fees

Effective January 1, 2016

Permissible fee thresholds under Regulation Z:

- \$27 for the first late payment fee; and
- **\$37** for each subsequent violation within the following six months (this was **\$38** in 2015).



# Qualified Mortgages (QM) – Points and Fees Threshold



# QM - Points and Fees

## Effective January 1, 2016

For a loan to be a QM, the points and fees cannot exceed:

| Loan Amount          | Points and Fees Limit |
|----------------------|-----------------------|
| \$101,749 or more    | 3%                    |
| \$61,050 - \$101,748 | \$3,052               |
| \$20,350 - \$61,049  | 5%                    |
| \$12,719 - \$20,349  | \$1,017               |
| Less than \$12,719   | 8%                    |



# HOEPA Coverage – High Cost Mortgage





# HOEPA Coverage

## High Cost Mortgage – Points and Fees Test

### Effective January 1, 2016

- A transaction is high-cost if its points and fees exceed:
  - 5% of the total loan amount for a loan greater than or equal to **\$20,350**
  - 8% of the total loan amount or **\$1,017** (whichever is less) for a loan amount less than **\$20,350**
- What is included in points and fees calculation?
  - Closed end – same as for QM/ATR rule.
  - Open end – same as closed-end, but also include participation fees, fees you may charge for draws (assuming at least 1 draw).



# HOEPA Coverage

## High-Cost Mortgage

If you determine you have a high cost mortgage:

- Specific disclosure requirements
- Restriction of transaction terms
- Restrictions on fees and practices
- Ability-to-repay requirements
- Pre-loan counseling requirement



# Higher-Priced Mortgage Loan (HPML) Escrow Account



- Higher-Priced Mortgage Loan (HPML) – **Escrow Exemption**
  - Asset Size threshold: Adjusted to **\$2.052 billion** from \$2.060 billion.
- The credit union also has to meet these criteria to qualify for the exemption:
  - Originate more than half of their loans to members in rural or underserved counties;
  - Cannot originate more than 500 first-lien covered transactions during the preceding calendar year (with affiliates).
  - The credit union cannot maintain escrow accounts for loans serviced (few exceptions).



# Regulation D – Reserve Requirements



# FRB – Reserve Requirements

- The credit union is required to maintain reserves based on the mix of deposits at the credit union.

|  |  |
|--|--|
| Up to \$15.2 million in net transactions<br>(the reserve requirement exemption amount) | Exempt from reserve requirements                             |
| Between \$15.2 and \$110.2 million   | 3% reserve requirement                                       |
| Over \$110.2 million (the low reserve tranche)   | \$2.850 million plus 10% of the amount over \$110.2 million. |



# Home Mortgage Disclosure Act



**Effective January 1, 2018 (credit unions need to collect info on new data points). First LAR filed by March 2019.**

- **Credit Union Coverage:**
  - Need to have originated at least 25 closed-end mortgage loans **or** at least 100 open-end lines of credit in each of the two preceding years.
  - No changes made to the asset threshold (44 million, home branch in a metropolitan statistical area and federally insured or regulated).





- **Reporting Coverage:**
  - Credit unions will no longer include home improvement loans that are not secured by the dwelling.
  - Credit unions will be **required** to report HELOCs. The rule moved to a “dwelling secured standard” for all loans or lines of credit for personal, family or household purposes.



## ■ Data Points

- A. Universal Loan Identifier (ULI) – must begin with the credit union’s legal entity identifier (LEI) – then include up to 23 additional characters (without any information that can be used to identify the applicant) and ending with a two-character check digit.
- B. Date application was received.
  - 1. Whether the loan is insured by FHA, VA, etc.
  - 2. Home purchase, home improvement, refinance, cash out refinance, or for purpose other than home purchase, home improvement, refinance or cash out refinance.
  - 3. Pre-approval requested
  - 4. Construction method (site built, manufactured home)
  - 5. Principal or second residence – or investment property



## ■ Data Points

6. Amount of covered loan or amount applied for.
7. The action taken by the credit union (accepted, denied, purchased, etc.)
8. The date the action was taken
9. Property information: address and if in MSA or MD, state, county and census tract
10. Applicant information: ethnicity, race and sex (collected by visual observation or surname), age and gross annual income relied on in processing the application
11. Type of entity purchasing a covered loan that the credit union originates or purchases and sells within the same calendar year.
12. Difference between APR and APOR



## ■ Data Points

13. Whether it is a HOEPA loan
14. Lien status
15. Credit score
16. Principal reason for denial
17. Amount of total loan costs or total points and fees charged (if not subject to closing disclosure requirements)
18. Total of all itemized amounts that are borrower-paid at or before closing
19. Points paid to the creditor to reduce the interest rate, expressed in dollars
20. Lender credits
21. Interest rate



## ■ Data Points

22. The term in months of any prepayment penalty
23. Ratio of borrowers total monthly debt to income relied on in making the credit decision
24. Ratio of the total amount of debt secured by the property to the value of the property relied on in making the credit decision
25. Scheduled number of months after the legal obligation will mature or terminate
26. Number of months until the first date the interest rate may change
27. Whether contract include balloon payment, interest only payments or negative amortization
28. Value of property securing the loan
29. Secured by a manufactured home and/or land



## ■ Data Points

30. For manufactured home whether the borrower owns the land or leases
31. Number of dwelling units related to the property securing the loan
32. If multifamily dwelling – number of units that are income restricted
33. Whether the application was submitted directly to the credit union and was the obligation initially payable to the credit union
34. The NMLS number for the MLO
35. Name of automated underwriting system used
36. Indication if a reverse mortgage
37. Indication if an open-end line of credit
38. Indication if covered loan is made primarily for business or commercial purpose



# CFPB Amendments to Small Creditor and Rural/Underserved



**Effective January 1, 2016**

## **Small Creditor definition for Qualified Mortgages:**

During preceding calendar year, the credit union:

- Extended no more than 2,000 covered transactions\* (secured by first liens that were sold assigned or transferred to another person); and
- Had assets below \$2 billion (including assets of affiliates).

*\* Loans that are held in the credit union's portfolio are no longer considered a "covered loan" and don't need to be included in the 2,000.*





## Effective January 1, 2016

- Underserved definition expanded.
- Changed the determination of rural to be based on census blocks.
- The credit union is granted a safe harbor if they use the list created by the CFPB and published on their website to determine if the loan is in a rural/underserved area.



# Small Creditor Qualified Mortgages

- If the credit union meets the small creditor definition, they are eligible for the **Small Creditor Qualified Mortgage**, which **does not** limit a DTI ratio of **43%**.
- If the credit union is a small creditor and more than 50% of their covered loans are in **rural or underserved areas** the credit union is eligible for the **Balloon Payment Qualified Mortgage**.



# Department of Defense – Military Lending Act



# DOD – Military Lending Act

## What is the Military Lending Act?

- Protects active duty members of the armed forces and their dependents from excessive interest rates, requires specific disclosures, and prohibits creditors from requiring arbitration in the event of a dispute.

*The MLA is implemented by the Department of Defense (DOD), but enforced by the CFPB and other federal regulators.*



# DOD – Military Lending Act

Effective Date: October 1, 2015.

Effective Compliance for Loans: October 3, 2016

Effective Compliance for Credit Cards: October 3, 2017

## Summary

- Rules expanded the coverage to include additional loans.
- Amended the requirements for assessing who is a “covered borrower” under the rule.
- Amended the disclosures requirements to be provided to covered borrowers.

# DOD – Military Lending Act

## Does the MLA apply?

- Coverage of the MLA applies to a borrower who is determined to be “covered” **at the time they become obligated on a credit transaction** or established an account.
- There is no requirement to monitor “covered” status for loans, determination is made at the time of consummation.
- The credit union does not have to look backwards at the loans currently in portfolio to determine if a borrower is covered.



# DOD – Military Lending Act

## Covered Borrower

- *At the time the consumer becomes obligated....*
  - **Is a member of the armed forces**, serving on **active duty, active Guard or Reserve duty**.
  - **Dependents** of the above; spouse, child (under 21 or 23 if full time student or no age limit if there is a mental/physical incapacity); could also be a parent or in-law (if supported by servicemember); another adult in legal custody of the servicemember.



# DOD – Military Lending Act

## Safe Harbor – Covered Borrower

- Assessing a covered borrower from either the MLA database or a consumer report from a CRA.
  - <https://www.dmdc.osd.mil/mla/welcome.xhtml>
  - Credit union responsible for determining covered borrower status for borrower/co-borrower.
  - Time periods for determination
    - When member initiates transaction or 30 days prior;
    - At application or 30 days prior; or
    - 60 days from processing firm offer of credit.
  - Credit union must retain documentation with the loan file.





# DOD – Military Lending Act

**“Consumer Credit”** – will now be generally consistent with Regulation Z;

- Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:
  - Subject to a finance charge; or
  - Payable by a written agreement in more than four installments.



# DOD – Military Lending Act

## Loan Coverage

- Payday loans
- Vehicle title loans
- Refund anticipation loans
- Deposit advance loans
- Installment loans
- Unsecured open-end lines of credit
- Credit cards
- Refinance of an auto loan
- Refinance of a loan on personal property



# DOD – Military Lending Act

## Excluded Loans

- A residential mortgage (credit transaction secured by an interest in a dwelling – includes purchases, refinances, initial construction, home equity, HELOC or reverse mortgage).
- Any credit transaction intended to finance the **purchase** of a vehicle when the credit is secured by the vehicle being purchased.
- Any credit transaction intended to finance the purchase of personal property when the credit is **secured by the property being purchased**.
- Any credit transaction that is exempt under Regulation Z.
- Any credit transaction for a non-covered borrower (by using a method and complying with recordkeeping requirements outlined in the Act).



# DOD – Military Lending Act

## Protections include:

- 36% MAPR limit (including all interest and fees associated with the loan).
- Prohibition on certain requirements, mandatory arbitration, onerous legal notice requirements, waiving rights under the Servicemembers Civil Relief Act, are just a few.
- Changing the definition of credit to bring any closed and open-end loans within the scope of the regulation, except for loans secured by real estate or a purchase-money loan, including a loan to finance the purchase of a vehicle.



# DOD – Military Lending Act

## Military Annual Percentage Rate (MAPR)

- Closed-end loans: The MAPR is calculated in the same way an APR is calculated under Regulation Z, including the fees described below:
- Open-end credit: Calculated the same as an APR under Regulation Z, including the fees described below:
  - Credit insurance premium or fee;
  - Debt cancellation or debt suspension fee;
  - Fees for ancillary products sold in connection with the transaction (credit default insurance and debt suspension plans);
  - Financial charges (except for a bona fide fee)
  - Application fee (other than FCU for short term small dollar – can only charge once in any rolling 12 month period)



# DOD – Military Lending Act

## Military Annual Percentage Rate (MAPR)

- Bona Fide Fees for Credit Card Accounts (not home secured)
  - Generally, a bona fide and reasonable fee, other than a periodic rate is not required to be included in the MAPR calculation (applies only to the extent that the charge by the credit union is a bona fide fee and reasonable for that type of fee.)
    - Credit insurance premiums or fees and fees for ancillary products are not exempt and must be included in the MAPR calculation.
    - The fees must be “**reasonable**”, meaning they would fairly allow servicemembers and their dependents to continue to have access to credit card products and limit the opportunity for a creditor to exploit the exclusion for those products.



# DOD – Military Lending Act

## Military Annual Percentage Rate (MAPR)

- Bona Fide Fees for Credit Card Accounts (not home secured)
  - **Safe Harbor** – a bona fide fee is “**reasonable**” if the amount of the fee is less than or equal to an average amount of a fee for the same or substantially similar products or services, charged by more than 5 creditors each of whose US credit cards in force is at least \$3 billion in an outstanding balance at any time during the 3 year period preceding the time such average is computed.
  - If one fee is “unreasonable,” all fees must be included in the MAPR calculation.



# DOD – Military Lending Act

## Mandatory Loan Disclosures

- Information required to be provided to the covered borrower before they are obligated on the transaction.
  - Statement of the MAPR applicable to the extension of credit (model statement);
  - Any disclosures required under Reg Z (this exists now)
  - A clear description of the payment obligation and a payment schedule or account opening disclosure provided pursuant to Reg Z (this exists now)
- Must be provided in writing **and** orally. However, oral requirement can be met by providing a toll-free number the borrower can use to call to receive the oral disclosures (*on application or required disclosures listed above*).





# DOD – Military Lending Act

## Model Disclosure

“Federal law provides important protections to members of the Armed Forces and their dependents relating to extensions of consumer credit. In general, the cost of consumer credit to a member of the Armed Forces and his or her dependent may not exceed an annual percentage rate of 36%. 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).”



# Servicemembers Civil Relief Act - SCRA



## Active Duty

- **Army, Navy, Air Force, Marines, or Coast Guard** - full time duty in the active military service.
  - Reporting for basic training.
  - Full time training – boot camp, advanced training, etc.
- **National Guard** – includes service under a call to active service authorized by the President or Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency.



## Dependent

- Protections include termination of leases, foreclosure or seizure of real property or repossession of personal property (not the 6% interest rate, unless servicemember is also obligated or the dependent applies for relief through the court).
  - Spouse
  - Child; or
  - 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.



## “Materially Affected”

- The SCRA applies to servicemembers on active duty and who are “materially affected” as a result of that status.
  - A servicemember on active duty is unable to protect legal rights, for example, but not being able to appear in court.
  - A servicemember is unable to meet prior financial obligations because for example, the member suffer a cut in pay on active duty.



## Coverage

The SCRA applies to the member when:

- The member is in the military service of the US.
- The member is on active duty.
- The member is materially affected or disadvantaged as a result of going on active duty.



## Interest Rate Limitation

- For loans that are incurred prior to active duty, the credit union may not charge more than a 6% *interest rate* during active duty.
- For mortgage loans, the 6% interest rate cap extends for 1 year beyond the period of military service.



## Interest Rate Limitation - Exemptions

- Does not apply to new advances on existing plans, even if established prior to active duty.
- Does not apply to new loans consummated during active duty.
- Does not apply to loans granted under the Guaranteed Student Loan Program.





## Interest Rate Calculation

- **Closed-end:** rate limitation applies to all fees, service charges, renewal charges or any other charges except for bona fide insurance. If the credit union charges the full 6%, not other fees, including a **late fee** may be charged.
- **Open-end:** fees related to the outstanding balance prior to active duty and that have not been paid when active duty begins may not be added to the account.



## Servicemember's Obligation

- The servicemember is required to provide the credit union with a written notice and a copy of military orders calling them to active duty, as well as any orders further extending military service.
- Notice **must** be provided 180 days after the date of the servicemember's termination or release from military service.
- Credit union must reduce the interest rate on any debt incurred prior to active duty as of the date on which the servicemember was called to service.



## Mortgage Protections

- If the court determines that the servicemember has been materially affected, it may stay the foreclosure proceedings or adjust the obligation to preserve the interests of all of the parties.
- The credit union will have to obtain a court order approving the sale, foreclosure or seizure of real estate if it occurs during the servicemember's military service or within 90 days after military service ends.



# MLA / SCRA – Credit Union Considerations



# MLA/SCRA Considerations

## Applicability – Differences between MLA/SCRA

Make sure your procedures address:

### ▪ Coverage

- Under the SCRA, the **member** must notify the credit union of their active duty.
- Under the SCRA, changes will be made to loans consummated prior to active duty.
- Under the MLA, the **credit union** must determine a covered borrower.
- Under the MLA, there is no “lookback.” Determination of coverage is made during consummation.



# MLA/SCRA Considerations

## Applicability – Differences between MLA/SCRA

Make sure your procedures address:

### ▪ Interest Rate

- Under the SCRA, 6% interest rate only applies to debts incurred **prior** to active duty.
- SCRA **relief ends** when the member returns from active duty (or for mortgage related debt, 12 months following their return).
- Under the MLA, the 36% MAPR limitation is for the life of the loan and determined at the time of consummation.



# MLA/SCRA Considerations

## Applicability – Differences between MLA/SCRA

Make sure your procedures address:

- Dependents
  - Under the SCRA, generally, unless they are a joint obligor on a loan, **dependents** are not entitled to receive the reduced rates.
  - The SCRA protections are also provided to servicemembers in the foreclosure process.
  - Under the MLA, **dependents** are defined differently and the protections under the Act also apply to them.



# Flood Insurance Regulations





# NCUA Rules – Flood Insurance

## Effective January 1, 2016

- Flood insurance premiums and fees secured by residential improved real-estate or mobile homes are required to be escrowed.
- Requires borrowers with covered loans on the books as of the effective date, to have the option to escrow flood insurance premiums and fees. Lenders have until **June 30, 2016** to communicate this information to the borrowers.
- Allows the lender/servicer to force-place flood insurance commencing on the date which the borrower's coverage lapses or becomes insufficient.



# NCUA Rules – Flood Insurance

## Notice of Special Flood Hazard

- The credit union needs to make sure their Notice of Special Flood hazard is updated with the following text:

### **Escrow Requirement for Residential Loans**

Federal law may require a lender or its servicer to escrow all premiums and fees for flood insurance that covers any residential building or mobile home securing a loan that is located in an area with special flood hazards. If your lender notifies you that an escrow account is required for your loan, then you must pay your flood insurance premiums and fees to the lender or its servicer with the same frequency as you make loan payments for the duration of your loan. These premiums and fees will be deposited in the escrow account, which will be used to pay the flood insurance provider.



# NCUA Rules – Flood Insurance

- **Exemptions from escrow requirement:**
  - Loans primarily for business, commercial or agricultural purposes;
  - Loans secured by junior liens if the borrower has obtained flood insurance;
  - Loans where flood insurance is provided by a condo association, cooperative, homeowners association or other similar group;
  - Home equity lines of credit;
  - Nonperforming loans; and
  - Loans with a term of 12 months or less with an original principal balance of less than \$5,000.
- **Exemption for obtaining flood insurance** for a structure that is part of residential property if the structure is detached from the primary residence and does not serve as the primary residence.



# NCUA Rules – Flood Insurance

## ▪ Small Lender Exemption:

- Credit union has total assets of less than \$1 billion as of December 31<sup>st</sup> (of either of the two prior calendar years); and on or before July 6, 2012:
  - Was not required under Federal or State law to deposit taxes, insurance premiums or fees, or any other charges in an escrow account for the entire term if any loan secured by residential improved real estate or a mobile home; AND
  - Did not have a policy of consistently and uniformly requiring the deposit of taxes, insurance premiums, fees or any other charges in an escrow account for any loans secured by residential improved real estate or a mobile home.



# Risk Based Capital



# Risk Based Capital (RBC)

## Effective January 1, 2019

- Establishes a new RBC ratio for FICUs and FISCUs with over \$100mm.
- Changes the definition of “complex credit union” to include credit unions greater than \$100mm in assets.
- Establishes a RBC ratio of 10 percent for well-capitalized credit unions.
- Establishes a RBC ratio of 8 percent for adequately-capitalized credit unions.
- Revises risk weightings to reflect changes under BASEL system.
- Requires higher minimum capital levels for credit unions with concentration of assets in real estate, commercial and delinquent loans.
- Sets forth supervisory action to address a credit union that does not hold capital commensurate with risk profile.



## Capital Adequacy

- New 702.101(b) will require “complex” credit unions to maintain “comprehensive written strategy appropriate for level of capital and risk profile.”
- NCUA will assess plan.
- Assessment will include review of the level and severity of problem assets and a credit union’s exposure to operational risk, IRR and asset concentrations.



## Key changes

- Removes Individual Minimum Capital Requirement.
- Removes IRR from consideration in the RBC calculation.
- Drops the 1.25% ALLL cap from the RBC ratio numerator.
- Provides for extended implementation period until January 1, 2019.
- Adds a section for “Charitable Donation Accounts,” assigning it a risk weight of 100%.
- Clarifies that “excluded goodwill” and “excluded other intangible assets” applies to mergers or combinations completed on or before 60 days after publication of the final rule in the Federal Register; and extending the expiration of this definition to January 1, 2029.





# Risk Based Capital (RBC)

Helping Credit Unions  
Serve, Grow and Remain Strong.

## Capital Categories

| CU NW classification           | Net Worth Ratio              |     | RBC Ratio    | Subject to following conditions   |
|--------------------------------|------------------------------|-----|--------------|---|
| Well Capitalized               | 7% or above                  | AND | 10% or above | None  |
| Adequately Capitalized         | 6% or above                  | AND | 8% or above  | And does not meet the criteria to be classified as well capitalized   |
| Undercapitalized               | At least 4% but less than 6% | Or  | Less than 8% | None  |
| Significantly Undercapitalized | 2% or more but less than 4%  |     | N/A          | Or if “undercapitalized at < 5% net worth and (a) fails to timely submit, (b) fails to materially implement , or (c) receives notice of the rejection of a net worth restoration plan |
| Critically Undercapitalized    | Less than 2%                 |     | N/A          | None  |



## Risk Weightings

- 100% - Loans to CUSOs, Noncurrent first-lien real estate loans
- 150% - Consumer loans not current, equity investments in CUSOs
- 250% - Carrying value of mortgage servicing assets



# CFPB Rulemaking Agenda



## ■ CFPB 2015 Fall Rulemaking Agenda

- Arbitration
- Payday, auto title, and similar lending products
- Prepaid accounts
- Overdraft
- Debt collection
- Women-owned, minority owned, and small business data collection
- Mortgage servicing



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