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Preparing to Comply with Regulatory Changes to the Military Lending Act

Jamie Goodson: Good afternoon and welcome. My name is Jamie Goodson. I'm the Director of the Division of Consumer Compliance Policy and Outreach here in NCUA's Office of Consumer Protection. I'm also the moderator for today's webinar on the amendments to the regulation implementing the Military Lending Act that the Department of Defense issued. We hope to provide helpful information about this important topic.

Before we get into the substance of today's webinar, I have a few administrative announcements related to the webcast's functionality. First, please make sure the volume on your computer is turned up so that you can hear the webcast. If you have trouble viewing a slide, click on the Enlarge Slides button on the bottom of the console.

Please allow pop-ups from the website. A screen resolution of 1024 by 768 or higher will let you see the slides appropriately. You can submit a question at any time during the webcast in the Ask a Question box on the left area of the console window.

We have set aside time at the end of today's presentation to address questions as time permits, mostly focusing on questions we received in advance. Thanks to all of you who sent in questions. We looked at them and have been able to respond to many of them.

If your question is not answered during the webcast, please email us at compliance@ncua.gov. That's compliance@ncua.gov. If there are NCUA staff attending this webinar, you can charge authorized time to participate or review the archived webcast to time code 42.

The webcast will be archived for on-demand viewing in approximately two weeks after the live event. A media advisory will be issued when the archive is available. And the archive is going to have the same URL as the live event.

Finally, as noted on the title slide, please note that we're presenting this information for informational purposes only to enhance understanding of the statutes and regulations NCUA administers.

The slide should change momentarily. Alright. In this webinar, we're going to review the recent amendments to the Military Lending Act regulation the Department of Defense issued last year. We'll cover the many important changes and discuss information that will help you comply with the regulation when compliance with most of its provisions becomes mandatory on October 3rd.

The Military Lending Act is one section in a larger military-related law and is also known as the - our presenters for today's webinar are Gail Laster, Director of NCUA's Office of Consumer Protection, myself, and we do not have our resident expert Joe Goldberg today. He's under the weather. We've pulled in his understudy, Specialist Grace Lee. She's a Specialist in the Division

of Consumer Compliance Policy and Outreach in the Office of Consumer Protection. Thanks, Grace, for jumping in at the last minute.

Now, here we go. The Military Lending Act is one section in a larger military-related law, and is also known as the Talent-Nelson Amendment. The Department of Defense amended the original regulation under the act by issuing a final rule on July 22, 2015.

This slide shows you the citations for both the Military Lending Act and its implementing regulation as well as the location in the Federal Register where the Department of Defense filed the final rule last year.

Now, OCP Director Gail W. Laster will discuss the purpose and background of the Military Lending Act, and its implementing regulations, and what led to the recent amendment.

Gail Laster: Good afternoon. Welcome to all of you listening in on this webinar and thank you very much. Thank you, Jamie, for your introduction, and Grace, for pitching in at the last moment.

Now, with regard to the background for the report and the act, the Department of Defense had been concerned for a long time about the effects of adverse financial conditions of service members and their families for force readiness and military capability.

Following delivery of the August 2006 report to Congress on the impact of predatory lending practices on members of the armed forces and their dependents, [Congress](#) passed the Talent-Nelson Amendment, now known as the Military Lending Act, in October 2006. It contained some of the specific protections to be discussed in this webinar. It also directed the Secretary of Defense to issue a regulation implementing the act.

Now, in proposing the first regulation in 2007, the Department noted problems caused by a large number of service members caught in debt traps by certain types of credit. Some creditors make those loans with little or no regard for the borrower's ability to repay the loan, or unrealistic payment schedules, or imposed high fees and interest, and the opportunity to roll over the loan and have ~~inside~~ and present a loan that has an opportunity to roll over as opposed to repaying it. And these types of activities can create a cycle of debt.

The Department concluded that financial protections were essential to maintaining a stable, motivated all-volunteer force. And as noted in the GAO Office study, the estimated cost to the Department of separation from service due to personal issues, such as financial instability, is approximately \$58,000 for each service member lost.

The initial final rule focused on three of the five problematic credit products identified in the 2006 report to Congress. The rule was intended to narrow the regulation's effect upon consumer credit products and services having a negative impact on service members without impeding the availability of credit that is beneficial. The Department designed the rule to balance protections with access to credit.

Now, after observing the effects of the rule for several years after it was issued, the Department recognized a need to make changes. For example, soon after implementation, some creditors making short-term, high-cost payday loans prohibited by the regulation learned to adjust the

terms and characteristics of the products to avoid the rule's protections. Also, the Department became aware of misuses of the covered borrower identification statement, whereby a service member or covered dependent would falsely declare he or she is not a covered borrower.

The Department determined the rule should cover a broader range of credit products offered to service members and be adjusted in other ways to cover borrowers receive the protections that Congress intended. At the same time, the Department wanted to maintain service members' access to beneficial credit.

The Department issued its proposed rule on amending the existing regulation in 2014, and made it final on July 22, 2015. The effective date was October 1, 2015, although as you would hear, the first mandatory compliance date for most products covered by the rule is October 3rd of this year.

So now, I'll hand it back to Jamie, who'll talk more specifically about how the amendments have changed the regulation. Thanks.

Jamie Goodson: Thank you, Gail. Before we discuss the changes to Military Lending Act regulation, I want to make sure you understand the basic difference between the Military Lending Act and the Servicemembers Civil Relief Act. The Military Lending Act protections only apply to credit provided to a covered borrower during the time the service member is on active duty. By contrast, the Servicemembers Civil Relief Act applies mostly to transactions into which a service member entered prior to the time active duty began.

There are a few exceptions to the timing requirement, but they're not relevant for today's discussion. Also note that SCRA covers some types of agreements that are not covered by the Military Lending Act.

With that said, let's talk about the Military Lending Act in particular and specifically how the amendments have altered the rule. To do that, we thought it'd be helpful to compare the previous version of the MLA regulation to the new one.

The most significant change is to the type of transactions covered. The previous version applied only to three types of transactions: payday loans, vehicle title loans, and tax refund anticipation loans. The amended final rule covers consumer credit, which is defined as credit extended primarily for personal, family, or household purposes and that either includes a finance charge or is payable in more than four installments per a written agreement.

As explained in the supplementary information to the final rule, this means the amended final rule covers most credit subject to the Truth in Lending Act, or TILA, and is implementing Regulation Z.

The supplementary information discussed in the final rule notes that credit card accounts and overdraft lines of credit are subject to the rule. There are some provisions specific to credit cards that we will discuss later.

The Military Lending Act contains exemptions for certain categories of transactions covered by TILA and Regulation Z. One big category is residential mortgage loans, which are any loans secured by an interest in a dwelling including loans to purchase or finance the initial construction of a dwelling, refinance transactions, home equity loans, home equity lines of credit, and reverse mortgages. A second category is credit that is used to buy a motor vehicle and that is secured by the motor vehicle. A third category is credit used to buy personal property that is secured by the personal property purchased.

Also, types of credit exempt from coverage by TILA and Regulation Z generally are exempt from the MLA final rule. For example, an exemption applies under Regulation Z for credit extended primarily for business, commercial, or agricultural purposes. Another exemption applies under Regulation Z for transactions above a certain dollar amount, which is adjusted annually. In 2016, the threshold was \$54,600. That's \$54,600. Note that under Regulation Z, this dollar cap does not apply to private student loans, though private student loans would be covered by the MLA final rule.

By contrast, student loans made, ensured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965 are exempt from Regulation Z and also the MLA final rule.

That's a lot to cover, but basically, think about, "Do I have to comply with Regulation Z?" And if so, and if there's no specific exemption, (that would be a difference), you would be required to comply.

Another note is that the MLA final rule does cover credit transactions that're exempt from Regulation Z if the Regulation Z exemption is a state specific exemption. In a very few cases, some states have state laws that're deemed sufficient so that Regulation Z doesn't apply, but that would not be the case under the Military Lending Act.

The last point I'll make about exemptions from coverage is that the MLA final rule does not apply to a credit transaction with someone who is not a covered borrower. Now, we're going to talk about who is a covered borrower.

The original rule covered active or reserve members of the Army, Navy, Marine Corps, Air Force, or Coast Guard serving on active duty under a call or order unless the call or order specified a period of 30 or fewer days. And it also covered such a member serving on active duty and reserve duty. The original rule also covered the service member's spouse, child, or other person for whom the service member provided more than half the person's support for 180 days immediately before an extension of covered credit.

I know that's a lot to process, but the amendments to the rule adjusted coverage to align the category of dependent with the category of people eligible for military medical care through an active duty service member. This change is consistent with the change in the sSafe hHarbor for determining whether a person is a covered borrower, as we'll discuss.

The amendments also adjust the provisions defining covered borrowers who are on active duty by specifically referring to the provisions of Title 10, Title 14, and Title 32 of the United States Code.

Title 10 addresses the Armed Forces, Title 14 addresses the Coast Guard, and Title 32 addresses the National Guard. Those of you who are getting worried, note that there's going to be an easier way to figure things out. We'll get to that later without you having to sort through the Code.

Under the amended rule, a creditor is a person who is engaged in the business of extending consumer credit or an assignee of a person engaged in the business of extending consumer credit with respect to any consumer credit extended.

The amended rule clarifies that a person is engaged in the business of extending consumer credit if considered by itself or together with its affiliates, the person meets a transaction standard to be a creditor under Regulation Z with respect to extensions of covered credit to covered borrowers. So, just to clarify, for Military Lending Act purposes, the term creditor does include an assignee of the original creditor.

Under the amended rule, the military annual percentage rate cap remains at 36%. Military APR, or MAPR, is calculated using rules similar to those in Regulation Z for calculating the annual percentage rate for both open-end and closed-end credit. However, it's important to remember that MAPR is not calculated exactly the same as APR under TILA and Regulation Z.

So, get your pens ready. So, importantly, MAPR includes fees for credit insurance premiums, including single premium credit insurance, regardless of whether they are voluntary, fees for debt cancellation or debt suspension agreements regardless of whether they are voluntary, and fees for credit related ancillary products sold in connection with the credit, once again, regardless of whether they are voluntary. So, it's important to note that MAPR includes these fees even if they would be excluded from the finance charge under Regulation Z.

So, there's some more I want you to write down. Other fees included in the MAPR are Regulation Z finance charges, application fees with a special accommodation for payday alternative loans federal credit unions make under NCUA's regulation, and participation fees with certain limitations.

Special rules allow for bona fide and reasonable fees charged in connection with credit card accounts, as we'll discuss. Now, we're going to turn it over to Specialist Grace Lee, and she'll discuss how the changes affect NCUA's payday alternative loans and credits cards, as well as other compliance issues.

Grace Lee: Thank you, Jamie. The amended regulation includes the provision which will permit federal credit unions to continue to make NCUA payday alternative loans, but with some adjustments.

The original regulation generally only covered more traditional payday loans. Although the amended regulation requires you to include application fees in the finance charge for calculating MAPR, under the amended rule, you can exclude from MAPR one application fee in a rolling 12-month period only for what the rule calls short-term small amount loans. This term has a very specific and narrow definition.

We read that definition to apply to federal credit unions making payday alternative loans in compliance with NCUA's regulations. As you can see on the slide, those loans must be made under a federal law with a rate cap. We are not aware of any such federal law for state chartered credit unions or any banks.

Not every loan designed as an alternative to payday loans is a payday alternative loan under NCUA's regulation. Payday alternative loans must comply with NCUA's regulation. The Military Lending Act final rule does not change the limitations on PALs under NCUA's regulation.

For example, the maximum PAL term is 6 months. The final rule's definition of short-term small amount loan could apply to a loan with a term of 9 months, but NCUA's regulation does not allow a PAL with a 9-month term. Loans made under the NCUA PAL regulation cannot exceed the 6-month term limitation.

This slide compares the NCUA PAL provisions to the MLA short-term small amount loans. Rather than list specific requirements and limitations, the MLA regulation instead defines a short-term small amount loan as one subject to a federal law that expressly limits the rate of interest a credit union or insured depository institution may charge on an extension of credit with a maximum APR not higher than 36%.

It also requires the credit be in accordance with the requirements, terms, conditions, and rules prescribed by the federal agency that implements the referenced federal law. However, the same federal law must contain two specific requirements. One, the term of the credit must be fixed at not longer than 9 months. And two, it must contain a fixed numerical limit on the application fee. NCUA's regulation meets both requirements.

The Military Lending Act final rule also contains the provision previously mentioned allowing a lender making a short-term small dollar loan to exclude from the finance charge one application fee in a rolling 12-month period. For small dollar loans with a short-term, adding even a \$20 charge could raise the MAPR above 36%. So, the exclusion is significant for those making NCUA payday alternative loans to covered borrowers.

Because credit card accounts fit the definition of consumer credit, the amended regulation covers them. As open-end credit, the MAPR cannot exceed 36% in any billing cycle for a credit card account. Remember, certain credit card fees are not included in Regulation Z APR may be counted in the finance charge when calculating MAPR. The credit card rules are somewhat complicated, but credit unions do have an extra year to comply with the credit card provisions.

MAPR is calculated using the rules and Regulation Z for calculating APR for a billing cycle for open-end credit, but the MAPR includes certain fees that are not necessarily included in the APR calculated under Reg Z.

These include, one, any credit insurance premium or fee, any charge for single premium credit insurance, any fee for debt cancellation contract, or any fee for debt suspension agreement; two, any fee for a credit-related ancillary product sold in connection with the credit transaction for a closed-end credit or an account for open-end credit; and three, except for a bona fide fee, finance charges associated with the consumer credit, any application fee charge to a covered borrower who applies for consumer credit (other than as provided in the accommodation for PAL loans), and any fee imposed for participation in any plan or arrangement for consumer credit subject to certain provisions. If a fee for opening, renewing, or continuing an account is covered by one of these categories, that fee must be included in the MAPR.

A credit union cannot charge any fees in a billing period for which there is no balance, except it may impose a participation fee of not more than \$100 per year irrespective of the billing cycle in which it is imposed. However, it may be higher if it is a bona fide and reasonable fee under the circumstances of the account. A participation fee may be reasonable if the amount reasonably corresponds to such factors as the credit limit or other services offered in connection with the account.

Most bona fide and reasonable credit card fees are excluded from MAPR, but that exclusion does not apply to fees for credit insurance, debt cancellation, or debt suspension, or ancillary products. To tell if a fee is bona fide, you compare it to the fees charged by other institutions for the same or substantially similar products. Please note, there is a [sSafe hHarbor](#) to determine if the amount is reasonable.

Under the safe harbor you compare the fee to the average charge during the last 3 year period by 5 credit card issuers with at least \$3 billion in credit card balances. If the fee is higher, it may still be reasonable under the particular circumstances. The final rule states that 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. If a credit union charges a fee that is not a bona fide fee, it then must include all fees, including any fees that are bona fide, in the MAPR for a credit card account, with certain limited exceptions.

The amended rule still requires a creditor to determine covered borrower status prior to a borrower becoming obligated. The previous version provided a [sSafe hHarbor](#) for a creditor when a borrower signed a statement stating he or she is not a covered borrower. That has changed.

Now, a creditor is permitted to use its own method to assess whether a consumer is a covered borrower, but to obtain the benefits of the [sSafe hHarbor](#), a creditor must either check the Defense Manpower Data Center Database for the applicant's name or obtain a credit report from a nationwide consumer reporting agency or a reseller of the same report that indicates covered borrower status.

Please be aware the rule prohibits historic look back. At any time after a consumer has entered into a transaction or established a credit account, a creditor, including an assignee, cannot obtain information from the Department of Defense (DOD) database to find out whether the consumer was a covered borrower as of the transaction date or account opening date.

To get the [Safe Harbor](#), a creditor needs to timely create and thereafter maintain a record of the information. The creditor can make the covered borrower determination and keep the record of the information obtained only at set times: at the time that consumer initiates the transaction or 30 days before, at the time [the](#) consumer applies to establish the account or 30 days before, or at the time the creditor develops or processes a firm offer of credit that includes the borrower's status as a covered borrower, as long as the consumer responds to that offer not later than 60 days after the creditor made the offer.

The Defense Manpower Data Center Database has been used for a number of years to check if a person is eligible for military medical care or is protected by the Servicemember's Civil Relief Act. The DOD has adapted the database for [Military Lending \[APPLIC\]](#) coverage. As discussed earlier, the DOD changed the definition of dependent for MLA purposes so it matches that of people eligible for military medical care.

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Your credit union can search for covered borrower status at the website address on this slide. Access and searches are free and available to the public. A search requires input of the applicant's last name, date of birth, and Social Security number. Recent improvements to the database provide results usually within seconds and a report format you may download or print.

The nationwide consumer reporting agencies have been working with the DMDC in a pilot program so they will be able to supply consumer credit reports showing whether a person is a covered borrower under the Military Lending Act. Some or all may alternatively provide a creditor with a report containing only the MLA coverage indicator instead of a full credit report.

The DMDC initiated the pilot program so that consumer reporting agencies and several of the largest credit card issuers can connect directly to the DMDC database. As it establishes the pilot program, the DMDC is working on ways to make [it](#) available to other participants.

A creditor may also use DMDC's multiple request system, which allows a user to submit database requests in batches of up to 250,000 per batch and as many as 50 batches each day. According to DMDC, batch responses are processed in no more than 24 hours.

Here is a report from an actual DMDC covered borrower inquiry. The name has been changed and the report number has been redacted, but otherwise, this is the response the database provided when checking covered borrower status.

The shaded box near the top tells whether the person searched is or is not a covered borrower. This report says, "Based on the information you provided, DMDC does possess information indicating that the individual is either on active duty for more than 30 days or a family member of a service member on active duty for more than 30 days based on the status inquiry date." The

report contains the inquiry date. You can save the report as a PDF file, store it electronically, and print it.

Until October, when making a covered payday loan, vehicle title loan, or tax refund anticipation loan, a creditor must provide the amounts of the MAPR, the TILA and Reg Z disclosures, a description of the borrower's payment obligation, and a statement of rights. The amendments reduce the disclosure burden.

An important thing to note is that creditors will no longer have to disclose the MAPR as a percentage. Instead, creditors give a statement of the MAPR along with the disclosures required by Regulation Z, and a clear description of the payment obligation of the borrower. So, for closed-end loans, the same payment schedule and Reg Z disclosures satisfies the requirement to describe the payment obligation. And for open-end loans, the Reg Z account opening disclosures satisfy the requirement.

The statement of MAPR and payment obligation must be provided in writing and orally. A creditor can provide the oral version in person or by providing a toll-free number so the borrower can hear it by phone. The toll-free number must be provided in writing.

Creditors may not provide the information more than once for the transaction or account with respect to that covered borrower. If there are multiple creditors, only one has to give the disclosures and the creditors can agree which one will give them. Creditors will no longer be required to provide the statement of rights and the final rule includes a modified statement of MAPR.

This slide shows the Model Statement of MAPR contained in the final rule. The statement of MAPR delivered to covered borrowers must be substantially similar to this model. You must provide it to all covered borrowers in writing and orally. You may provide it orally in person or through a toll-free telephone number you maintain.

Now, Jamie is going to discuss some of the limitations and prohibitions in the amended rule as well as enforcement and liability issues.

Jamie Goodson: Thanks, Grace. You are truly a champ. Thanks for stepping in. So now, we're going to talk about the limitations included in the final rule. The final rule kept the limitations of the earlier version with some changes.

For example, the amended version keeps the prohibition against loan rollovers, but eliminates the exceptions allowing them under terms more favorable to the borrower. However, it makes the amended rollover prohibition not applicable to chartered or licensed credit unions, banks, or savings associations. Also, most creditors cannot use title of a vehicle as security of a covered credit. However, chartered and licensed financial institutions are exempt from that restriction.

Other prohibitions in the previous version have been retained in the final rule. These prohibit terms in the agreement by which the covered borrower waives the right to legal recourse under any state or federal law including the Servicemembers Civil Relief Act, is required to submit to

arbitration or other onerous legal notice provision in the event of a dispute, must provide unreasonable notice as a condition for legal action, agrees to a prohibition on or must pay a fee or charge for prepayment, or agrees to repayment by allotment. However, the allotment prohibition doesn't apply to obligations to a military welfare society or service relief society.

Another restriction prohibits the use of a check or other means of accessing a borrower's account with some exceptions. Note that the exception on the slide of allowing a financial institution to require payment through electronic fund transfers generally is prohibited by law under the Electronic Fund Transfer Act and Regulation E. And you can see the citation there to see the interaction between the rules.

The Military Lending Act preempts any state or federal law, rule, or regulation including any state usury law to the extent they're inconsistent with a provision of the MLA. However, laws that provide greater protection to a covered borrower or protection in addition to those in the Military Lending Act and the final rule are not preempted.

In addition, the Military Lending Act prohibits states from authorizing creditors to charge covered borrowers rates of interest for covered credit higher than the legal limit for residents of the state. States are also not permitted to allow the violation or waiver of any state consumer lending protection covering consumer credit that is for the benefit of residents of the state on the basis of the covered borrower's non-resident or military status, if the protection would otherwise apply to the covered borrower.

The penalties and related provisions are contained in the Military Lending Act itself as well as in the final rule, and they continue unchanged by the final rule. In the event the creditor violates the Military Lending Act, the transaction is void from the inception of the contract. The MLA and the final rule are to be enforced by the agencies specified in the Truth in Lending Act and the Truth in Lending Act specifies NCUA enforces TILA and Regulation Z as to federal credit unions while the Federal Trade Commission does so against state chartered credit unions.

This slide shows the remedies available to a person who brings a private civil action where a covered borrower suffers an actual loss due to a creditor's violation of the final rule, his or her recovery includes the amount of that loss. However, where the actual loss is less than \$500, the recovery will be \$500.

Other recoveries available to a covered borrower who brings an action includes punitive damages, if appropriate, cost of the action, and reasonable attorney fees. These remedies are in addition to and do not supersede remedies available under any other federal or state law or regulation. The statute of limitations to bring an action is 2 years from the date the borrower discovers the violation, but in no case can it be later than 5 years from the date the violation occurred.

A creditor has only one defense to an allegation in a civil action that it violated the MLA or its regulation: that the act was not intentional and it resulted from a bona fide error, despite having a process in place reasonably adopted to prevent such an error. Note that an error in interpreting the law does not qualify as a defense.

Although the amendments were effective October 1, 2015, the only part for which compliance is mandatory as of that date is the civil liability provision. That provision currently applies only to transactions entered into under the previous version of the rule. So, that was the payday loans, the vehicle title loans, and the refund anticipation loans. It will apply to all other provisions on their respective compliance dates.

So, a credit union must comply with the remaining provisions, other than the credit card related rule, beginning October 3, 2016. The credit card rules are effective October 3, 2017, although the Secretary of Defense can extend that date up to another year.

Now that we've discussed the final rule's provisions, we will answer questions. Starting with those received in advance. Gail, will you please start with the first question?

Gail Laster: Certainly. And again, we want to thank you for the questions, and we have been able to post the questions as part of the slides. We appreciate that. We're going to have Grace answer the first set of questions. And then, we're going to have Jamie answer the second set of questions.

So, and I stand corrected. We're not posting the questions, but as I said again, we appreciate you providing those questions to us when you registered for the event. So, the first question, Grace, is "How do we calculate the MAPR, which is Military APR, for closed-end credit?"

Grace Lee: For closed-end credit, a creditor follows the rules for calculating and disclosing the APR for credit transactions under Reg Z, based on charges required for the MAPR as set forth in 32 CFR 232.4(c)(1).

In general, the requirements for calculating the APR for closed-end credit under Reg Z are found in 12 CFR 1026.22(a)(1). The explanations and instructions for computing the APR are set forth in Appendix J to Regulation Z.

Gail Laster: Thank you. So now that we've discussed MAPR for closed-end credit, how do we calculate the MAPR for open-end credit?

Grace Lee: For open-end credit, a creditor generally must calculate the MAPR using the methods prescribed in Section 1026.14(c) through (d) of Regulation Z, which relates to the effective annual percentage rate per billing cycle. Please note that for both closed-end and open-end credit, the creditor must remember to include in the MAPR those items listed in the MLA regulation which are excluded from the Regulation Z APR but are not excluded for MAPR purposes.

Gail Laster: Okay. And now, with regard to what else goes into the MAPR calculation, will the charges for gap coverage, vehicle warranty, and payment protection be included in the MAPR calculation?

Grace Lee: Under Section 232.4(c), charges for all credit protection products, such as gap coverage and payment protection, are included in the MAPR as applicable to the extension of credit. In addition, the same section states that the cost for ancillary products, such as a warranty sold in connection with the credit transactions must also be included in the MAPR.

Gail Laster: Okay. Now, here's other types of products. Credit union writes that, "We offer credit life, disability, and unemployment insurance on our loans. On the application for the insurance, the estimated total fees for options chosen is listed. We bill the first premium monthly payments starting at month end after confirmation, and this can be canceled at any time. No payments are made prior to confirmation." So the question is, "Do we include the entire estimated total fees for options chosen in the MAPR calculation?"

Grace Lee: The MLA regulation requires your credit union to include in the MAPR all such charges imposed as applicable to the extension of credit. The regulation directs the credit union to use the Reg Z methods for computing APR when calculating the MAPR. Therefore, you should comply with the Regulation Z APR methodology regardless of whether the credit is open-end or closed-end.

Gail Laster: Thank you. Next question is about auto secured loans. A credit union writes that, "With regard to auto secured loans, we offer a single payment mechanical repair coverage, otherwise known as MRC product, that covers repairs to the auto that secures the loan in the event that the warranty has expired." So, the question is, "Would the MRC payment need to be included in the MAPR calculation since it is related to the auto and used as collateral?"

Grace Lee: If the loan is for the purchase of a motor vehicle and is secured by the vehicle, the MLA does not apply. For non-purchase loans secured by a motor vehicle, the creditor must include the cost of all ancillary products sold in connection with the credit transaction, pursuant to Section 232.4(c)(1)(ii) of the regulation.

Gail Laster: Okay. Next question is two parts regarding a closed-end loan. So, the question, first question is, "On a closed-end loan, is there an exact calculation to help us calculate the MAPR with a debt collection, for example, life, disability, involuntary employment product? This will be charged based on the declining balance of a loan." Second question is also an ancillary product on a closed-end loan such as gap and/or warranty based on a declining balance of the loan.

Grace Lee: Yes, for closed-end credit, the rule requires a creditor to follow the rules for calculating and disclosing the APR for credit transactions under Regulation Z based on the charges required for the MAPR as set forth in Section 232.4(c)(1).

In general, the procedures for calculating the APR for closed-end credit under Regulation Z are found in Section 1026.22(a)(1). The explanations and instructions for computing the APR are set forth in Appendix J to Regulation Z.

Gail Laster: Thanks. Now, we have a question about how to -- if we have to determine if a person is a covered borrower. So, a credit union writes, "We don't make any loans with interest

rates as high as 36%. The credit union's highest rate is 18%. Do we still have to determine if a person is a covered borrower?"

Grace Lee: Yes, unless your credit union complies with all the requirements and restrictions of the MLA and the regulations. In addition to the MAPR limits, the MLA and its regulations contain other requirements and restrictions as we discussed this afternoon. A credit union that does not comply with those requirements and restrictions runs the risk of non-compliance by lending to a covered borrower.

Gail Laster: Okay. Now, I have another coverage question. "Now, I know at some point I believe Jamie talked in the presentation about loans secured by a dwelling are not covered by the MLA. What does the MLA consider to be a dwelling?"

Grace Lee: Under the regulation, a dwelling means a residential structure that contains one to four units, whether or not the structure is attached to **real** property. The term includes an individual condo unit, cooperative unit, mobile home, and manufactured home.

Gail Laster: Okay. Another coverage question. Credit union writes that, "You mentioned an exclusion for coverage of credit in excess of the \$54,600 threshold. Please explain the \$54,600 threshold."

Grace Lee: Under TILA, most non-mortgage consumer transactions for more than \$50,000 are excluded from TILA and Regulation Z coverage. TILA requires the Consumer Financial Protection Bureau to adjust that threshold figure annually according to changes in the consumer price index.

The 2016 threshold is \$54,600. Because the amended regulation excludes from MLA coverage most credit exempt from TILA coverage, the \$54,600 cap also applies to the MLA. An exception to that rule is private student loans. They are covered by TILA and the MLA even if they exceed the \$54,600 threshold.

Gail Laster: Okay. Another basic question about coverage in the notion of what does a "non-consumer" loan mean?

Grace Lee: Consumer loans under the MLA are those primarily for personal, family, or household purposes. TILA contains an exclusion for credit that is not for consumer purposes. That includes extensions of credit primarily for business, commercial, or agricultural purposes, to government or governmental agencies or instrumentalities, or to organizations. Because the MLA regulation excludes most of the same credit TILA excludes, these non-consumer loans are not subject to the MLA.

Gail Laster: Thank you. The next question, it goes back to the issue of covered borrower status. Credit union indicates that, "My credit union is not near a military base. We have a few members in the military service. I know all of my members. Please explain why I need to check covered borrower status."

Grace Lee: Although your credit union is not required to make any particular kind of covered borrower check, remember the MLA protections extend to spouses, children, and other dependents of active duty service members. Your credit union could be liable for extending credit that doesn't comply with the MLA and its regulation to someone covered by the act.

| By using one of the two [sSafe](#) [hHarbor](#) methods of checking statuses, either accessing the DMDC database or obtaining a credit report issued by a nationwide consumer reporting agency that notes covered borrower status, and by keeping proper records, your credit union is protected if it mistakenly extends non-compliant credit to a covered borrower. Your credit union will not have this [sSafe](#) [hHarbor](#) protection if it did not make the DMDC or credit report check.

Gail Laster: Okay. Now, we have a question about finance charges. “The MAPR calculation as defined by 32 CFR Section 232.4 is to include finance charges plus the items in Section 232.4(c)(i)(iii), it is unclear whether comprehensive and collision insurance or [forced place] insurance that is not a state required insurance but rather a financial institution imposed insurance should be considered an add-on product or would the Regulation Z finance charge exceptions apply?”

Grace Lee: The MLA regulation requires creditors to include in the MAPR any ancillary product applicable to the extension of credit. Creditors must also include all finance charges. For MLA purposes, finance charge has the same meaning as finance charge under Regulation Z. Therefore if not otherwise specified in the MLA regulation, you should refer to the provisions of Regulation Z and its official interpretations to determine if you must include in the MAPR a non-voluntary charge such as this.

Gail Laster: Thank you, Grace. We still have a few more questions. So now, I'm going to turn to Jamie and ask her some of them. So, Jamie, first question is, “Are loans secured by all vehicles, whether new or used, considered to be covered loans?”

Jamie Goodson: I'll make two points in responding to that question. First, the rule does not apply to credit extended expressly for the purpose of purchasing a motor vehicle that is used as security for the credit. However, it does apply to non-purchase credit that is secured by a vehicle. Second, neither the MLA itself or the regulation distinguishes between new and used motor vehicles. So, they cover both types.

Gail Laster: So, Jamie, keeping with questions about vehicle loans, “Are vehicle loans between individuals considered to be covered loans where the loans are secured by the vehicle?”

Jamie Goodson: Only if the individual making the loan is considered to be a creditor engaged in the business of extending consumer credit. The MLA and its regulations apply to extensions of credit by a creditor, which is a defined term.

Specifically, a creditor is someone who is in the business of extending covered consumer credit or its assignee. The final rule explains that for purposes of the MLA regulation, a person is engaged in the business of extending consumer credit if the person considered together with its affiliates meets the transaction standard for being a creditor under TILA and Regulation Z.

If the individual extending credit is not considered a creditor for purposes of TILA and Regulation Z, the individual does not become a creditor for purposes of MLA. And if you want to know more about the definition of creditor under Regulation Z, I'll direct you to 12 CFR 1026(a)(17) especially (i) and (iv). Additional information about the term creditor appears in the official staff commentary on Regulation Z.

But to be clear, this answer responds to a question about transactions between individuals. Most of the people listening today probably are credit union employees. If your credit union has to comply with TILA and Regulation Z, it is a creditor for purposes of MLA.

Another factor relevant to answering the question about a transaction between individuals is whether the transaction is considered consumer credit. And we went over that definition earlier in the presentation, but just to hit it pretty quickly, because we're nearing the top of the hour, it has to be extended to a covered borrower primarily for personal, family, or household purposes and it must either one, be subject to a finance charge, or two, be payable by written agreement in more than four installments. So, unless the individual meets these standards, the transaction is not subject to the MLA or its regulations.

Gail Laster: Okay. We still have a few more questions on covered borrower. And one of them is, "Will the credit reporting agencies flag an individual as a covered borrower?"

Jamie Goodson: Thanks, Gail. We don't yet know the full answer to that question, but it certainly would be helpful to a lot of lenders if the consumer reporting agencies could do that. The Defense Manpower Data Center started a pilot program that will allow the big three nationwide consumer reporting agencies, that's Equifax, Experian, and TransUnion, and a few other entities to obtain direct access to the DMDC MLA database.

There are technological issues involved, but DMDC and those parties have been working on this for some time. One purpose of the pilot program is to allow the consumer reporting agencies to devise a way to add a notation to a standard credit report indicating whether a person is a covered borrower under the MLA.

Gail Laster: Okay. And I think we'll do, what, two more questions, because we're at the top of the hour. But again, the next one is on covered borrowers. So, we talked about credit reporting agencies, but the question is, "How can my credit union identify a first-time borrower who may be a dependent and therefore a covered borrower?"

Jamie Goodson: Okay. So, the DMDC MLA database contains the names of all those who're on active duty as well as those that're covered dependents for MLA purposes. As we discussed earlier, your credit union can access the database via the internet and make individual inquiries pretty quickly. And hopefully, the consumer reporting agencies will soon provide an alternative method via a standard credit report.

Gail Laster: All right. So, we're at the top of the hour, when we indicated we'd be done. And so, as I said, we realize -- or as Jamie said, we realize that ~~this is~~ -- there ~~are~~-may be additional

questions. So, please contact us if we didn't provide you with answers in both the presentation and in the questions and answers that we gave as part of the webinar.

And so, just to close up, I would like to talk about, since indeed I know credit unions, you're trying to be in compliance and NCUA wants to do everything we can in addition to this webinar to help you with compliance. And so, indeed, we have resources through NCUA to help you be compliant. And one of our major resources is NCUA's Consumer Compliance Regulatory Resources page, which is found on ncua.gov and it provides access to many resources related to federal consumer financial protection laws and regulations.

And indeed, there's a special section providing service member credit resources. Among the items available there on this resource page are the NCUA's two regulatory alerts discussing the Military Lending Act regulation. And it was Regulatory Alert 16-RA-04 and Regulatory Alert 15-RA-04.

And the 2016 regulatory alert contains an enclosure that examines the MLA amended regulation in detail. There are also links to the text of the final rule and the DMDC database. Also, NCUA is in the process of finalizing revised ~~exam~~ procedures for compliance with the MLA and the amended final rule. And we anticipate releasing them in August 2016.

So, indeed, as I said, if you need to contact us, in addition to looking at the resources page, here is our contact information. And we indicate that both we have -- you could have a policy question that ~~you~~ would be directed to our office. Or if in fact you have a safety and soundness question, we'd certainly direct you to the Office of Examination & Insurance.

So, we realize this is dense material. We realize that you are trying to do the right thing, and comply, and that you certainly do share DOD and everyone's determination and commitment to protecting service members from unscrupulous lending practices.

And indeed, we anticipate hopefully additional guidance and we do appreciate your patience in working through these issues in terms of interpretation and implementation. We do appreciate the fact that the rule does allow for the PAL program to continue in its form. And we stand here to try to address your questions and concerns about implementation, but also to strengthen your commitment to protecting our service members from unscrupulous lending practices.

So, thank you Jamie. Thank you Grace. Joe, feel better. And we'll talk to you credit unions soon. Thank you. Bye-bye.