



Compliance eNewsletter

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InfoSight News

Pandemic Awareness Update

As we are all aware, the news is filled with COVID-19, or the Coronavirus. While many of you have most likely reviewed your credit union's pandemic and business continuity policies, in light of this recent news, **InfoSight has now been updated** with additional information to assist you. In the **Security Channel**, a new section has been added under Business Continuity Planning: Pandemic Preparedness.

In addition to this content, you will want to also review your state's health authority websites. All of them should have COVID-19 pages that provide local information and recommendations.

Military Lending Act Clarity

On February 28, 2020, the Department of Defense (DOD) published an interpretive rule that amended an existing interpretive rule. *Specifically, the DOD is withdrawing the amended question and answer number 2 from the December 12, 2017 interpretive guidance and replacing it with the old question and answer number 2 from the interpretive guidance published on August 26, 2016.* In addition, the DOD published a new question and answer.

Here is the original question and answer from August 26, 2016, which is now current and in effect as of the interpretive guidance issued on February 28, 2020:

2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?

Answer: No. Section 232.3(f)(1) defines "consumer credit" as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to paragraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property

when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional “cash-out” financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

So, what was removed from question #2? The interpretation that if a credit transaction included financing for Guaranteed Auto Protection insurance or a credit insurance premium, it would lose the exception under 232.3(f)(2)(ii) or (iii), similar to what happens in a “cash-out” financing type of transaction. As opposed to a credit transaction that finances the purchase of a vehicle (and is secured by that vehicle), and also finances optional leather seats within that vehicle and an extended warranty for service of that vehicle, which according to the old question #2, would still qualify for an exception under 232.3(f)(2)(ii).

Credit unions should keep in mind that even though that content was removed from the interpretive guidance question #2, the commentary indicates that “the Department (DOD) absent of additional analysis, *takes no position on any of the arguments or assertions advanced as a basis for withdrawing the amended question #2.*” They further indicate that they are withdrawing the amended question because of “*unforeseen technical issues between the question and 32 CFR 232.8(f).*”

Why does this matter to your credit union, since 232.8(f) allows credit unions (as a creditor) to take a security interest? Because it would make it unlawful for an entity, such as a car dealership, to take a security interest in the vehicle if it was a covered loan and in quite a few indirect lending relationships, it is the car dealer making the loan and the credit union purchasing that contract. Would that be an unsecured loan?

Long story short, it appears that the DOD’s actions by reverting question #2 back to its original format does indicate some acknowledgement that there may be some inconsistencies and “unforeseen technical issues.” Credit unions should still be cognizant of the rules and seek a legal opinion if they are purchasing MLA covered loans in an indirect relationship.

With the new interpretive rule, *also came a new FAQ (#21)* which is included below for reference:

21. Does a creditor qualify for the safe harbor set forth in 32 CFR 232.5(b)(2)(i)(A) if the creditor uses an Individual Taxpayer Identification Number (ITIN) to search the Department's database to conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of 32 CFR 232.5(b)?

Answer: Yes. The Department recognizes that while all members of the Armed Forces will have a Social Security Number (SSN), a limited population of dependents, who meet the definition of a covered borrower in 32 CFR 232.3(g), may not qualify for a SSN due to their citizenship status. An ITIN is a tax processing number issued by the Federal government in lieu of a SSN. ITINs are only available for certain nonresident and resident aliens, their spouses, and dependents who cannot obtain a SSN and can be used in searches of the Department's database.[7] Since all covered borrowers will have a SSN or ITIN, the Defense Manpower Data Center (DMDC) MLA database contains ITINs for

covered borrowers who are not eligible to obtain an SSN. Therefore, for purposes of 32 CFR 232.5(b)(2)(i)(A), an ITIN is a "Social Security number."

Military Act/Servicemembers Civil Relief Act Channel Updates

In addition to the information above, both the [Military Lending Act](#) and the [Servicemembers Civil Relief Act](#) topics in the Loans & Leasing channel in InfoSight have been updated to bring more clarification to those respective subjects.

Compliance and Advocacy News & Highlights

Articles of Interest

- [SEC Charges Wells Fargo In Connection with Investment Recommendation Practices](#)
- [CFPB Adds Ten TRID FAQs on Lender Credits](#)
- [OFAC posts two new FAQs on reporting procedures](#)

Pending Comment Calls

- [Affirmatively Furthering Fair Housing](#)
- [Property Assessed Clean Energy \(PACE\) Program](#)

CUNA's Advocacy Resources:

- [This Week in Washington](#)
- [CUNA Advocacy page](#)

Compliance Calendar

- March 20th, 2020: Increasing the Same Day ACH Dollar Limit (Effective Date)
- April 26th, 2020: 5300 Call Report Due to NCUA
- May 25th, 2020: Memorial Day - Federal Holiday
- June 30th, 2020: Supplementing Data Security Requirements (Effective Date)
- July 1st, 2020: Regulation CC – Monetary Limit Threshold Changes