

Military Service Member Protections Program

EXAMINATION OBJECTIVES

Determine the financial institution's compliance with the provisions of 32 CFR Part 232, as applicable.

Assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing the provisions.

Determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with the provisions.

Determine corrective action when violations of law are identified or when the institution's policies or internal controls are deficient.

EXAMINATION PROCEDURES

Determine Applicability of Department of Defense (DoD) Regulations and Evaluate Policies and Procedures

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1. Determine if the creditor offers or purchases¹ any consumer credit products covered by 32 CFR Part 232 (*payday loans, motor vehicle title loans, and tax refund anticipation loans as defined in § 232.3(b)(1)*).
 - If the creditor does not offer or purchase consumer credit products as described above, the regulation does not apply and no further review is necessary.
 - If the creditor offers or purchases any consumer credit products covered by 32 CFR Part 232, use the procedures below to determine whether the creditor complies with the regulation.

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2. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring and monitoring compliance with the regulation.
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¹ 32 CFR Part 232 applies to creditors and assignees.

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3. Determine the extent and adequacy of the training received by individuals whose responsibilities relate to compliance with the regulation. Review any training materials pertaining to the regulation and determine whether the training is comprehensive and covers the various aspects of the provisions that apply to the creditor's offerings and operations.
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4. Determine if the institution has policies or procedures in place to:
- Provide account disclosure information to covered borrowers within the appropriate time frames in accordance with § 232.6; and
 - Correctly calculate and limit the military annual percentage rate (MAPR) as defined in § 232.3(h).
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5. Review compliance reviews or audit material, including work papers and reports, to determine if:
- The scope of any audits address all provisions of the regulation, as applicable;
 - Transaction testing includes samples covering relevant product types and decision centers;
 - The work performed is accurate;
 - Significant deficiencies and their causes are included in reports to management or to the Board of Directors;
 - Management has taken corrective actions to follow-up on previously identified deficiencies; and
 - The frequency of review/audit is appropriate based on the degree of compliance risk the regulation presents to the institution.
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6. Through discussions with management and review of available information, determine whether or not the institution's internal controls are adequate to ensure compliance. Consider the following:
- Organization charts
 - Process flowcharts
 - Policies and procedures
 - Account documentation
 - Checklists
 - Computer program documentation, including any computer program testing and validation.
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TRANSACTION RELATED PROCEDURES

When transaction testing is applicable, determine the adequacy of the institution's policies and procedures to its practices. The sample size should be sufficient to cover all aspects of the institution's activities and policies subject to the regulation.

Identification of Covered Borrowers (§232.5)

1. For covered transactions, determine if the creditor provides the following covered borrower identification statement (or a substantially similar alternate form) to identify covered borrowers.²

² There are limitations on use of the identification form prescribed by the regulation as a safe harbor. According to the preamble to 32 CFR Part 232, if the loan applicant signs a declaration of denial about being a covered borrower, but the creditor obtains information as part of the credit transaction reflecting that the applicant is a covered borrower (such as a current military leave and earning statement as proof of employment), the applicant's declaration would not create a safe harbor for the creditor. In such cases, the creditors should seek to resolve the inconsistency, but if they are unable to do so, they may only avoid any risk of noncompliance by treating the applicant as a covered borrower based on the documentation or by declining to extend the credit due to the inability to verify the information provided in the borrower's signed declaration. This caveat prevents creditors from using the declaration to allow covered borrowers to waive their right to the protections provided by the regulation. Refer to 32 CFR Part 232, 72 Fed. Reg. 50580, 50588 (August 31, 2007).

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Covered Borrower Identification Statement:

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to sign one of the following statements as applicable:

I AM a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer.

I AM a dependent of a member of the Armed Forces on active duty as described above because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

OR-

I AM NOT a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (or a dependent of such a member).

Warning: It is important to fill out this form accurately. Knowingly making a false statement on a credit application is a crime.

Optional Verification – The rule provides suggestions for optional verification of the status of a covered borrower. Since these procedures are optional, you do not have to assess compliance with them. However, you should be aware that although the additional verification procedures are optional, if a creditor does use these optional procedures and determines that the borrower is a covered borrower, the creditor is subject to the

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rule (even if the borrower indicated on the covered borrower form that he or she was not a covered borrower).

The creditor may, but is not required to, verify the status of an applicant as a covered borrower by requesting the applicant to provide one of the following:

- A current military leave and earning statement.
- A military identification card (available both to service personnel and their dependents).

Additionally, in the case of National Guard Members or Reservists, request a copy of the military orders and any extensions.

Alternatively, the creditor may, but is not required to, verify the status of an applicant as a covered borrower by accessing the information available through the Internet at <http://www.dmdc.osd.mil/mla/owa/home> and entering the service member's full name, social security number, and date of birth.

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2. If the creditor does not use the above Covered Borrower Identification Statement or similar form, describe the method that the creditor uses to determine compliance with the rule so that the creditor does not make covered loans to covered borrowers on prohibited terms.
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Notice and Disclosure Requirements (§ 232.6)

3. Determine whether covered transaction disclosures are made clearly and conspicuously in writing and in a form the covered borrower may keep.
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4. If the covered transaction disclosures are combined with other account disclosures, determine whether it is clear which disclosures are applicable to the covered borrower's account, including those disclosures:

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- Related to the MAPR and the total dollar amount of all charges included in the MAPR.
 - Required by Regulation Z.
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5. Determine if the disclosures reflect a clear description of the payment obligation of the covered borrower as applicable. A payment schedule provided pursuant to Regulation Z disclosure requirements will satisfy this requirement.

6. Verify that the following required statement (federal notice) is provided before consummation of the credit transaction:

“Federal law provides important protections to regular or reserve members of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer, and their dependents. Members of the Armed Forces and their dependents may be able to obtain financial assistance from Army Emergency Relief, Navy and Marine Corps Relief Society, the Air Force Aid Society, or Coast Guard Mutual Aid. Members of the Armed Forces and their dependents may request free legal advice regarding an application for credit from a service legal assistance office or financial counseling from a consumer credit counselor.”

7. For oral disclosure, determine whether the creditor provides oral disclosure of the MAPR, the payment obligation, and required federal notice (as discussed above) before consummation.

8. In the case of mail and internet transactions, determine whether the creditor provides both:

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- A toll-free telephone number on or with the written disclosures that consumers may use to obtain oral disclosure.
- Oral disclosures when the covered borrower contacts the creditor for this purpose.

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9. For renewal and refinancing of covered transactions, determine if new disclosures are provided when the transaction would be considered a new transaction that would require disclosures under Regulation Z. (Refer to 12 CFR § 226.20.)

Note: Creditors need not provide new disclosures unless the transaction is considered a new transaction under Regulation Z. (Refer to 12 CFR § 226.20.) However, whether or not new disclosures are required in a particular transaction, when a creditor refinances or renews an extension of consumer credit to a covered borrower, the limitations on rates and terms apply in the same manner as they would for the original transaction.

Prohibitions and Restrictions (§ 232.4 and § 232.8)

10. Determine whether the creditor, as part of any covered transaction:
- Imposed a MAPR greater than what is permissible under applicable State or Federal law.
 - In any case, imposed a MAPR greater than 36 percent.
 - Rolled over, renewed, repaid, refinanced, or consolidated any covered transaction with the proceeds of a covered transaction to the same covered borrower unless the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR.
 - Required the covered borrower to waive their right to legal recourse under any applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 USC App. § 527 *et seq.*).

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- Required the covered borrower to submit to arbitration or imposed any other onerous legal notice provision in the case of a dispute.
 - Demanded unreasonable notice from the covered borrower as a condition for legal action.
 - Required use of a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower.
- EXCEPT THAT, in a transaction with a MAPR consistent with the rule (that is, 36 percent or less), the creditor may
- ⇒ require an electronic fund transfer to repay the obligation, unless prohibited by Regulation E (Electronic Fund Transfers), 12 CFR Part 205;
 - ⇒ require direct deposit of the consumer's salary as a condition of eligibility, unless otherwise prohibited by law; or
 - ⇒ if not otherwise prohibited by law, take a security interest in funds deposited after the extension of the covered transaction in an account established in connection with the covered transaction.
- Required the covered borrower to establish an allotment to repay the obligation.
 - Prohibited the covered borrower from prepaying the credit or being charged a penalty fee for prepaying all or part of the credit.
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PROGRAM CONCLUSIONS

1. Summarize the findings, supervisory concerns, and regulatory violations.

2. For the violations noted, determine the root cause by identifying weaknesses in internal controls, audit and compliance reviews, training, management oversight, or other factors. Determine whether the violation(s) are repetitive or systemic.

3. Identify action needed to correct violations and weaknesses in the institution's compliance system.

4. Discuss findings with the institution's management and, if necessary, obtain a commitment for corrective action.

5. Record violations according to agency policy in the EDS/ROE system to facilitate analysis and reporting.

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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