

Department of Defense Consumer Regulation

Section 1: DOD Regulation Introduction

Purpose of the Regulatory Action

The Department of Defense (DOD) has published a final rule to amend its regulation implementing the Military Lending Act (MLA) to extend its protections to a broader range of closed-end and open-end credit products. Consumer credit is now defined using the definitions within the Truth in Lending Act (TILA), codified in Regulation Z.

The DOD believes that this final rule is appropriate in order to address a wider range of credit products. The final rule also streamlines the information that a creditor must provide to a covered borrower when consummating a transaction involving consumer credit and provides a more straightforward mechanism for a creditor to determine whether an applicant is a covered borrower.

For this final rule the DOD has consulted with the Board of Governors of the Federal Reserve System (“Board”), the Consumer Financial Protection Bureau (“Bureau”), the DOD of the Treasury, the Federal Deposit Insurance Corporation (“FDIC”), the Federal Trade Commission (“FTC”), the National Credit Union Administration (“NCUA”), and the Office of the Comptroller of the Currency (collectively, “Federal Agencies”).

Summary and Key Elements of the DOD's Final Rule

The MLA, as implemented by the DOD's regulation, provides two broad classes of requirements applicable to a creditor:

- The creditor may not impose a Military Annual Percentage Rate (“MAPR”) greater than 36 percent in connection with an extension of consumer credit to a covered borrower (“interest-rate limit”);
- When extending consumer credit, the creditor must satisfy other terms and conditions, such as providing information (e.g., a statement of the MAPR), both orally and in a form the borrower can keep, before or at the time the borrower becomes obligated on the transaction or establishes the account, refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit, and refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit.

Key elements of the DOD's rule include:

Providing a temporary exemption for credit extended via credit card. The exemption expires on October 3, 2017, and the rule permits that exemption to be extended;

Providing a qualified exclusion from the requirements relating to the computation of the MAPR for a credit card account for a “bona fide” fee. An application fee, participation fee, transaction-based fee, or similar fee for a charge may be excluded from the MAPR to the extent that the fee is bona fide and reasonable; and

Permitting a creditor, until October 3, 2016, to continue to use the method described in the existing rule for conducting a covered-borrower check, which involves the use of a covered borrower identification statement, as a safe harbor for compliance. After October 3, 2016, a

creditor seeking a safe harbor for compliance with the rule may elect to use either of the new methods for conducting a covered-borrower check.

Overview and Background

The DOD amended its regulation that implements the John Warner National Defense Authorization Act as it was amended in 2013 (MLA).

The MLA added provisions that would permit a covered borrower to recover damages from a creditor who violates a requirement of the law, and authorizes the agencies to enforce its requirements. The 2013 amendments modified the definition of “dependent” in order to make the meaning of that term consistent with the definition used for a service member’s dependents for military medical care.

In 2007, the DOD published the initial regulation to implement the MLA. At that time, the DOD elected to define the scope of “consumer credit” as a narrow band of products within three categories of credit. This new regulation amends the existing rule primarily to extend the MLA protections to a broader range of closed-end and open-end credit products, based on its observation of the current regulation’s impact. The new regulation follows the TILA. Additionally, any charge that is a “finance charge” under Regulation Z (with some additions), would be covered as “interest,” and must be included in the calculation of the MAPR.

There is a broad exclusion to allow a creditor who offers consumer credit through a credit card account to exclude from the MAPR any “bona fide” fee (other than a periodic rate). Under the final rule, that creditor would need to confirm that its fees are bona fide and reasonable, and if so, the creditor should be able to continue to offer the same credit card product(s) to covered borrowers by making adjustments to the terms and conditions for the product(s) by, for example, including the “statement of the MAPR” (which would be permitted simply to be added to its credit card agreement(s), and which is not required to be provided in any advertisement), and modifying any provision that requires a covered borrower to “submit to arbitration.”

This regulation is also designed to provide a creditor with a more straightforward method to assess the status of a consumer as a covered borrower so that the creditor may have some degree of certainty in determining that loans are in compliance with the MLA. The covered-borrower check can be conducted unilaterally by a creditor using the MLA Database without relying on the borrower, similar to the credit report process. This permits the use of information obtained from the MLA Database or information contained in a credit report to assess whether the consumer-applicant is covered under the regulation. There is a safe harbor when using this method.

Section 2: Section by Section Analysis

Authority and Applicability

Section 232.1 Authority, purpose, and coverage

No changes that impact creditors.

Section 232.2 Applicability

This regulation was adopted as proposed, with a few amendments, including an example, to clarify that the protections of the regulation apply only when the consumer continues to hold the status as a covered borrower.

It applies to consumer credit extended by a creditor to a covered borrower. If the borrower is not covered, or no longer covered at the time they become obligated for the credit transaction or establishes an account for credit, this regulation does not apply.

For instance: A consumer becomes obligated for a car loan while not on active duty. When they begin active duty, they will be eligible for the protections of the Servicemembers Civil Relief Act, but the loan will not be impacted by this regulation, as it is already closed.

For open end lines of credit (such as a credit card), if a consumer ceases to be on active duty, this regulation would no longer apply. This assumes that the line was opened while the consumer was on active duty at the time of origination.

Section 3: Section by Section Analysis

Definitions

§ 232.3 Definitions

Note: Although the full text of the regulation is available on the web page for this seminar, we have elected to quote this section of the regulation within the manual, as the definitions are crucial to the understanding of this subject.

- (a) **Affiliate** means any person that controls, is controlled by, or is under common control with another person.
- (b) **Billing cycle** has the same meaning as “billing cycle” in Regulation Z.
- (c) **Bureau** means the Consumer Financial Protection Bureau.
- (d) **Closed-end credit** means consumer credit (but for the conditions applicable to consumer credit under this part) other than consumer credit that is “open-end credit” as that term is defined in Regulation Z.
- (e) **Consumer** means a natural person.
- (f)
 - (1) **Consumer credit** means credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is:
 - (i) Subject to a finance charge; or
 - (ii) Payable by a written agreement in more than four installments.
 - (2) **Exceptions.** Notwithstanding paragraph (f)(1) of this section, consumer credit does not mean:
 - (i) A residential mortgage, which is any credit transaction secured by an interest in a dwelling, including a transaction to finance the purchase or initial construction of the dwelling, any refinance transaction, home equity loan or line of credit, or reverse mortgage;
 - (ii) Any credit transaction that is expressly intended to finance the purchase of a motor vehicle when the credit is secured by the vehicle being purchased;
 - (iii) Any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased;

(iv) Any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under [12 CFR 1026.29](#)) or otherwise is not subject to disclosure requirements under Regulation Z; and

(v) Any credit transaction or account for credit for which a creditor determines that a consumer is not a covered borrower by using a method and by complying with the recordkeeping requirement set forth in § 232.5(b).

(g)

(1) **Covered borrower** means a consumer who, at the time the consumer becomes obligated on a consumer credit transaction or establishes an account for consumer credit, is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(3) of this section) of a covered member.

(2) The term “covered member” means a member of the armed forces who is serving on -

(i) Active duty pursuant to title 10, title 14, or title 32, United States Code, under a call or order that does not specify a period of 30 days or fewer; or

(ii) Active Guard and Reserve duty, as that term is defined in [10 U.S.C. 101](#)(d)(6).

(3) The term “dependent” with respect to a covered member means a person described in subparagraph (A), (D), (E), or (I) of [10 U.S.C. 1072](#)(2).

(4) Notwithstanding paragraph (g)(1) of this section, covered borrower does not mean a consumer who (though a covered borrower at the time he or she became obligated on a consumer credit transaction or established an account for consumer credit) no longer is a covered member (as defined in paragraph (g)(2) of this section) or a dependent (as defined in paragraph (g)(2) of this section) of a covered member.

(h) **Credit** means the right granted to a consumer by a creditor to defer payment of debt or to incur debt and defer its payment.

(i) **Creditor**, except as provided in § 232.8(a), (f), and (g), means a person who is:

(1) Engaged in the business of extending consumer credit; or

(2) An assignee of a person described in paragraph (i)(1) of this section with respect to any consumer credit extended.

(3) For the purposes of this definition, a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a “creditor” under Regulation Z with respect to extensions of consumer credit to covered borrowers.

(j) **DOD** means the DOD of Defense.

(k) **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 condominium unit, cooperative unit, mobile home, and manufactured home.

(l) **Electronic fund transfer** has the same meaning as in the regulation issued by the Bureau to implement the Electronic Fund Transfer Act, as amended from time to time ([12 CFR part 1005](#)).

(m) **Federal credit union** has the same meaning as “Federal credit union” in the Federal Credit Union Act ([12 U.S.C. 1752](#)(1)).

(n) **Finance charge** has the same meaning as “finance charge” in Regulation Z.

(o) **Insured depository institution** has the same meaning as “insured depository institution” in the Federal Deposit Insurance Act ([12 U.S.C. 1813](#)(c)).

(p) **Military annual percentage rate (MAPR)**. The MAPR is the cost of the consumer credit expressed as an annual rate, and shall be calculated in accordance with § 232.4(c).

(q) **Open-end credit** means consumer credit that (but for the conditions applicable to consumer credit under this part) is “open-end credit” under Regulation Z.

(r) **Person** means a natural person or organization, including any corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(s) **Regulation Z** means any rules, or interpretations thereof, issued by the Bureau to implement the Truth in Lending Act, as amended from time to time, including any interpretation or approval issued by an official or employee duly authorized by the Bureau to issue such interpretations or approvals. However, for any provision of this part requiring a creditor to comply with Regulation Z, a creditor who is subject to Regulation Z ([12 CFR part 226](#)) issued by the Board of Governors of the Federal Reserve System must continue to comply with [12 CFR part 226](#). Words that are not defined in this part have the same meanings given to them in Regulation Z ([12 CFR part 1026](#)) issued by the Bureau, as amended from time to time, including any interpretation thereof by the Bureau or an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations. Words that are not defined in this part or Regulation Z, or any interpretation thereof, have the meanings given to them by State or Federal law.

(t) **Short-term, small amount loan** means a closed-end loan that is—

(1) Subject to and made in accordance with a Federal law (other than [10 U.S.C. 987](#)) that expressly limits the rate of interest that a Federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent; and

(2) Made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate Federal regulatory agency (or jointly by such agencies), that implements the Federal law described in paragraph (t)(1) of this section, provided further that such law or rule contains -

- (i) A fixed numerical limit on the maximum maturity term, which term shall not exceed 9 months; and
- (ii) A fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

Section 4: Section by Section Analysis

MAPR for Closed End Loans

Section § 232.4 Terms of Consumer Credit Extended to Covered Borrowers

A creditor who extends consumer credit to a covered borrower may not require the covered borrower to pay an MAPR for the credit that is not agreed to by the parties, as well as authorized by state/federal law and not specifically prohibited by the regulation. The maximum MAPR is 36 percent.

The charges for the MAPR must include:

- Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement,
- Any fee for a credit-related ancillary product sold in connection with the credit transaction for (closed-end credit or open-end credit), and
- Except for a bona fide fee which may be excluded (see below):
 - Finance charges associated with the consumer credit;
 - Any application fee charged; and
 - Any fee imposed for participation in any plan or arrangement for consumer credit

Any charge listed above must be included in the calculation of the MAPR even if that charge would be excluded from the finance charge under Regulation Z.

Computing the MAPR (Closed End Credit)

For closed-end credit, the MAPR is calculated using the same rules as for a standard “Annual Percentage Rate (APR)” for credit transactions under Regulation Z. The difference between the two is the expanded DOD definition of finance charge. It is possible that the APR and MAPR could be identical. However, often the MAPR will exceed the APR.

Computing the MAPR (Open End Credit)

See the credit card section later in this manual.

Section 5: Section by Section Analysis

Optional Identification of Covered Borrower

§ 232.5 Optional identification of covered borrower

A creditor is permitted to apply its own method, as the creditor may elect, to assess whether a consumer is a covered borrower. However, not using the methods within the regulation may put a creditor at risk.

The creditor needs to undertake this covered-borrower check only once. This could occur at the time that:

1. a consumer initiates the transaction,
2. a consumer applies to establish the account, or
3. the creditor develops or processes, with respect to a consumer, a firm offer of credit that includes the status of the consumer as a covered borrower.

In order to facilitate a creditor's process, a creditor may make a determination and keep a record of the information 30 days prior to the date of the transaction or the date the consumer applies to establish an account.

The DOD designed this method in order to enable a creditor to conduct only one covered-borrower check within the permitted 30 day safe harbor, generally at an early stage of the transaction or the relationship with the consumer.

There is a different time limit to provide consumer protections in the instance of a "prescreened" offer of credit. The regulation provides that creditor may rely on its initial covered-borrower check so long as the consumer responds to that offer not later than 60 days after the date that the creditor had provided that offer to the consumer. Should the consumer respond later than 60 days, a new check of the database will probably be necessary, although not specifically required by the regulation.

Safe Harbor

This paragraph provides two methods for a creditor to unilaterally assess the status of a consumer who applies for consumer credit. Using these methods leads to a legally conclusive determination that a consumer is or is not a covered borrower. For either method, the creditor may make the determination regarding a consumer-applicant's status when the creditor enters into a consumer credit transaction (open or closed end). The results of either method must be documented. A creditor who is an assignee has no occasion to avail itself of the safe harbor afforded in this section by separately assessing the status of an existing borrower for the purpose of determining that the borrower is not a covered borrower.

DOD Database Search

<https://www.dmdc.osd.mil/mla/welcome.xhtml>

A search of the DOD's database requires the entry of the consumer's last name, date of birth, and Social Security number.

The database may only be used when establishing a consumer credit transaction. It may not be used to ascertain the status of a consumer as a covered borrower with respect to a pre-existing transaction or account, and this prohibition applies to any creditor, including an assignee.

Consumer report from a nationwide consumer reporting agency

A creditor may verify the status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such a consumer report.

Section 6: Section by Section Analysis Mandatory Loan Disclosures

§ 232.6 Mandatory Loan Disclosures

This paragraph requires a creditor to provide three categories of information to a covered borrower “at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit,” namely:

- A statement of the MAPR applicable to the extension of consumer credit;
- Any disclosure required by Regulation Z, in accordance with the requirements of Regulation Z that apply to that disclosure; and
- A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or account-opening disclosure (in the case of open-end credit) satisfies this requirement.

The MAPR and payment schedules listed above must be provided both in writing and in a form the borrower can keep and orally. When orally providing the required disclosures, a creditor may elect to provide the disclosures in person or to provide a toll-free telephone number that the borrower can use for that purpose. If applicable, the toll-free telephone number must be included on:

- A form the creditor directs the consumer to use to apply for the transaction or account involving consumer credit; or
- A written disclosure the creditor provides to the covered borrower.

The disclosures need only be delivered one time. If there are multiple creditors, the creditors must decide which creditor must deliver the disclosures.

Statement of the MAPR

A creditor may satisfy the requirement to disclose the MAPR by describing the charges the creditor may impose as they relate to the consumer credit, to calculate the MAPR. Disclosure of the total dollar amount of all charges in the MAPR are not required. While the MAPR must be disclosed in an actual transaction, it is not required for any advertisement relating to the credit.

Using the model statement appears to be the best method to assure compliance. The model statement is:

“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 percent. 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).”

Refinancing and Renewal(s)

The refinancing or renewal of consumer credit requires new disclosures only when the transaction for that credit would be considered a transaction that requires disclosures under Regulation Z.

Section 7: Section by Section Analysis

Miscellaneous Regulatory Sections

§ 232.7 Preemption

This regulation preempts any State or Federal law, rule or regulation, including any State usury law, to the extent such law, rule or regulation is inconsistent with this part, unless the law, rule or regulation provides greater protection(s) to a covered borrower greater than those protections provided by this regulation. Generally states may not violate the limits set forth here.

§ 232.8 Limitations

Not all portions of this section are applicable to banks. The relevant portions of this paragraph for banks are:

It is unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

- The covered borrower is required to waive the covered borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act
- The creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions in the case of a dispute.
- The creditor demands unreasonable notice from the covered borrower as a condition for legal action.
- The creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, except that, in connection with a consumer credit transaction with an MAPR, the creditor may:
 - Require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law;
 - Require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or
 - If not otherwise prohibited by applicable law, take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction.
- The covered borrower is prohibited from prepaying the consumer credit or is charged a penalty fee for prepaying all or part of the consumer credit.

§ 232.9 Penalties and remedies

Violation is a federal misdemeanor, and punishable by fines and/or a year in jail. This is in addition to all other remedies that might be available, including any award for consequential damages and punitive damages. The loan contract will also become void.

Civil liability includes:

- Any actual damage sustained as a result, but not less than \$500 for each violation;
- Appropriate punitive damages;
- Appropriate equitable or declaratory relief;
- Any other relief provided by law;
- Costs of the action (court costs, attorney fees)

If the court finds the action was brought in bad faith and for the purpose of harassment, the plaintiff is liable for the attorney fees of the defendant as determined by the court to be reasonable in relation to the work expended and costs incurred. A creditor may not be held liable for civil liability if they show by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples include clerical, calculation, computer malfunction and programming, and printing errors.

Any civil liability cases brought under this regulation will be adjudicated in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of:

- Two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or
- Five years after the date on which the violation that is the basis for such liability occurs.

§ 232.10 Administrative enforcement

The banking regulators are charged with the primary enforcement of this regulation in banks.

§ 232.11 Servicemembers Civil Relief Act protections unaffected

Nothing in this regulation limits or otherwise affects the applicability of section 207 and any other provisions of the Servicemembers Civil Relief Act.

Section 8: Section by Section Analysis

Effective Dates

§ 232.12 Effective dates

Until the effective date of October 3, 2016, all transactions are subject to the current regulation. While this regulation is effective October 1, 2015, nothing shall apply to consumer credit that is extended to a covered borrower and consummated before October 3, 2016.

This paragraph includes other effective dates, all of which are in the past and have no immediate bearing on banks.

§ 232.13 Compliance dates.

A creditor must comply with the requirements of this part with respect to a consumer credit transaction or account for consumer credit consummated or established on or after October 3, 2016. The new safe harbor rule becomes effective on that date.

The compliance date for credit cards is one year later – October 3, 2017, and the DOD has reserved the right to delay the credit card portion until October 3, 2018.

Section 9: Section by Section Analysis

Special Rules for Credit Cards (MAPR)

§ 232.4 Terms of consumer credit extended to covered borrowers

Generally, a creditor who extends consumer credit to a covered borrower may not require the covered borrower to pay an MAPR for the credit that is not agreed to by the parties, as well as authorized by state/federal law and not specifically prohibited by the regulation. The maximum MAPR is 36 percent.

The charges for the MAPR must include:

- Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement,
- Any fee for a credit-related ancillary product sold in connection with the credit transaction for (closed-end credit or open-end credit), and
- Except for a bona fide fee which may be excluded (see below):
 - Finance charges associated with the consumer credit;
 - Any application fee charged; and
 - Any fee imposed for participation in any plan or arrangement for consumer credit

Any charge listed above must be included in the calculation of the MAPR even if that charge would be excluded from the finance charge under Regulation Z.

Computing the MAPR (Open End Credit)

For open-end credit, the MAPR shall be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in § 1026.14(c) and (d) of Regulation Z, based on the charges set forth above. The amount of charges related to opening, renewing, or continuing an account must be included in the calculation of the MAPR to the extent those charges are included above.

If the MAPR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except that the creditor may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed \$100 per annum, regardless of the billing cycle in which the participation fee is imposed. There are restrictions on the \$100 fee, discussed below.

Bona fide fee charged to a credit card account

For consumer credit extended in a credit card account, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR. The exclusion provided for any bona fide fee applies only to the extent that the charge by the creditor is a bona fide fee, and must be reasonable for that type of fee.

The exclusion for bona fide fees in paragraph (d)(1) of this section does not apply to:

- Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; or
- Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit.

Standards relating to bona fide fees

To assess whether a bona fide fee is reasonable, the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. For example, when assessing a bona fide cash advance fee, that fee must be compared to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent.

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 a substantially similar product or service charged by 5 or more creditors each of whose U.S. credit cards in force is at least \$3 billion in an outstanding balance (or at least \$3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.

A bona fide fee that is higher than an average amount, as calculated above, also may be reasonable depending on other factors relating to the credit card account. 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.

For instance, a bona fide fee for participation in a credit card account may be reasonable if that amount reasonably corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered, or to other similar factors.

Effect of charging fees

If a creditor imposes a fee as well as a finance charge to a covered borrower, the total amount of fee(s) and finance charge(s) shall be included in the MAPR. The imposition of any fee or finance charge described above shall not affect whether another type of fee may be excluded as a bona fide fee.

If a creditor imposes any fee (other than a periodic rate or a fee that must be included in the MAPR, that is not a bona fide fee and imposes a finance charge to a covered borrower, the total amount of those fees, including any bona fide fees, and other finance charges shall be included in the MAPR. The regulation includes two examples, as follows:

- In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor A imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), and a bona fide foreign transaction fee that qualifies for the

exclusion under this paragraph (d). Only the fee for the debt cancellation product and the finance charge must be included when calculating the MAPR.

- In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle, Creditor B imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d), and a bona fide, but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion under this paragraph (d)—and the finance charge must be included when calculating the MAPR.

Nothing in this paragraph authorizes the imposition of fees or charges otherwise prohibited by this regulation or by other applicable State or Federal law.

Section 7: Regression Analysis

Regression Analysis is a predictive model used to better understand the relationship between different variables. In the world of fair lending, it is used to explain credit and pricing decisions. It is also used to predict which applicants were approved and which applicants were denied. The approval / denial prediction is then compared to what actually happened. This allows the Bank or examiner to focus on “outliers” (applications that were denied and yet the model predicted should have been approved).

To actually run a regression analysis in your bank would typically require outside assistance. You will need to be able to give the company completing this work for you a wide range of information, including all relevant factors that entered into the underwriting and pricing decision. For instance:

- Credit score
- LTV
- DTI
- APR
- Fees
- Prepayment penalties
- Bankruptcy
- Plus race, ethnicity, and gender

There could be other factors that influence pricing and credit decisions. Some factors are objective, but some can be subjective and must be considered.

- Loan program
- Promotions
- Geographic differences in pricing
- Individual factors on credit reports
- Relationships
- ACH discounts
- Property class

The objective of any good regression analysis is to identify and explain the differences between the regression (the predicted outcomes) and the actual results of the credit decision. It is also used to identify similarly situation applicants or borrowers and determine if they received a similar decision or price (matched pairs test).

Regression does not work with small data sets. Banks must be prepared to offer 200 data records or more. The larger the file, the more meaningful the predictive model. If you are a HMDA filer, the process can be pretty easy. If you are not a HMDA filer, an extract of loan data is needed, which can be time consuming.

Regression does not work if there is little or no variation in the dependent or independent variables. For example;

- All/No Denied Applicants
- All/No Protected Class Applicants
- All/No Denied Protected Class Applicants
- All Applicants Get Same Price

Regression can often be overkill. Before committing to this type of project, know your numbers. Statistics indicate most banks do a great job. Regression is one of the ways to report and demonstrate the job you are doing. But do not commit to this type of project unless you know your origination, denial, fallout, and price disparity rates, and they indicate a potential issue.