

## CFPB suspending routine supervisory examinations for MLA compliance

Article By:

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On August 10, the [New York Times reported](#) that Mick Mulvaney, the CFPB Acting Director, intends to dispense with routine supervisory examinations of creditors for violations of the Military Lending Act (MLA). According to the report, Acting Director Mulvaney has argued in a two-page draft change to the CFPB's policies that "proactive oversight is not explicitly laid out in the legislation."

We agree with Acting Director Mulvaney that the CFPB lacks statutory authority to examine creditors for MLA compliance. Sections 1024(b)(1)(A) and 1025(b)(1)(A) of the Consumer Financial Protection Act (CFPA) provide that the CFPB shall conduct examinations of covered persons to assess compliance with the requirements of "Federal consumer financial laws." Section 1002(14) of the CFPA defines the term "Federal consumer financial law" to mean generally the provisions of the CFPA and the "enumerated consumer laws." Section 1002(12) lists the "enumerated consumer laws." There are 18 federal statutes listed in Section 1002(12). Noticeably absent is the MLA.

Although supervisory examinations for MLA compliance are expected to come to a halt, the Times reports that the CFPB will continue to pursue cases against creditors for violations of the 36 percent interest rate cap. While the CFPB does not have statutory authority to examine creditors for MLA compliance, it does have MLA enforcement authority. The MLA authorizes the CFPB to enforce the MLA against the same persons as to whom it has Truth in Lending enforcement authority (i.e. any person subject to TILA.)

The CFPB will also continue to supervise creditors under other consumer protection statutes. According to the Times report, "the rule change came from a top-to-bottom review of the bureau's procedures geared at curtailing what the administration, along with lending industry executives, have criticized as overly aggressive enforcement by the bureau's first director, Richard Cordray."

In place of supervisory examinations, it appears the CFPB will rely exclusively on complaints reported by service members through the CFPB's website and hotlines. Christopher L. Peterson, a University of Utah law professor who participated in the drafting of the Department of Defense's regulations implementing the MLA, observed that enforcement "will go from a proactive system to something that is completely reactive." At the same time, Acting Director Mulvaney is urging Congress to pass legislation amending the MLA to expressly permit supervisory examinations. A spokesman for Mr. Mulvaney, John Czwartacki, stated "we are 100 percent committed to seeing that happens."

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