

State AGs Criticize CFPB Plans To End MLA Exams

Article By:

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Thirty state attorneys general, joined by the AGs of the District of Columbia, Puerto Rico, and the Virgin Islands, [have sent a letter](#) to CFPB Acting Director Mulvaney “to express our concern about recent reports that the [Bureau] will no longer ensure that lenders are complying with the Military Lending Act (MLA) as part of its regular, statutorily mandated supervisory examinations.” Such recent reports included [one from the New York Times](#) published in August 2018 indicating that Mr. Mulvaney was planning to eliminate routine supervisory examinations of creditors for MLA violations because the CFPB lacks statutory authority to conduct such examinations.

In addition to describing the benefits that the MLA provides to servicemembers, the AGs assert that the Bureau “would be failing to abide by its statutorily mandated duty to enforce the MLA by restrictively interpreting its examination authority to preclude lenders’ compliance with the MLA.” They cite to the MLA provision (10 U.S.C. Section 987(f)(6)) that states the MLA “shall be enforced by the agencies specified in section 108 of the Truth in Lending Act (15 U.S.C. 1607) in the manner set forth in that section or under any other applicable authorities available to such agencies by law.” Such agencies include the CFPB. The AGs argue that this language allows the CFPB to examine for MLA compliance because “Congress has explicitly provided [in the Consumer Financial Protection Act (CFPA)] that one ‘applicable authority’ available to the CFPB is examination of lenders in order to ‘detect[] and assess[] risks to consumers and to markets for consumer financial products and services.’”

The AGs appear to be arguing that the MLA allows the CFPB to use its supervisory authority to “enforce” the MLA. We believe this interpretation is incorrect for at least two reasons. First, TILA Section 108 specifies not only the agencies that can enforce TILA but also the laws they can use to exercise such enforcement authority. For the CFPB, Section 108 specifies that it can enforce TILA under subtitle E of the CFPA, the subtitle that sets forth the CFPB’s enforcement powers. Thus, it is apparent from a plain language reading that the phrase “any other applicable authorities” in the MLA refers to any laws that give the CFPB enforcement powers beyond those it can exercise under subtitle E. The CFPB’s supervisory authority (which is separately provided in subtitle B of the CFPA) is not a source of additional enforcement powers.

Second, the AGs’ argument ignores the CFPA provisions that set forth the scope of the Bureau’s supervisory authority. CFPA Sections 1024(b)(1)(A) and 1025(b)(1)(A) 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.

Another letter urging Mr. Mulvaney to reconsider his plans to eliminate MLA examinations was sent by all 49 Democratic Senators who also take the position that the CFPB has statutory authority to conduct such examinations. As [discussed in our blog post](#), we think the Senators’ interpretation is based on a misreading of the Bureau’s supervisory authority under the CFPA.

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