DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[DOD–2013–OS–0133]

RIN 0790–AJ10

Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (''Department'') proposes to amend its regulation that implements the Military Lending Act, herein referred to as the ''MLA''. Among other protections for Service members, the MLA limits the amount of interest that a creditor may charge on ''consumer credit'' to a maximum annual percentage rate of 36 percent. The Department is proposing to amend its existing regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products currently defined as consumer credit. In addition, the Department is proposing to amend its existing regulation to amend the provisions governing a tool a creditor may use in assessing whether a consumer is a ''covered borrower,'' modify the disclosures that a creditor must provide to a covered borrower, implement the enforcement provisions of the MLA, as amended, and for other purposes.

DATES: Comments must be submitted not later than November 28, 2014.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) and title, by any of the following methods;

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Marcus Beauregard, 571–372–5357.

SUPPLEMENTARY INFORMATION:

Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and Regulatory Review.'' DoD's full plan and updates can be accessed at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

I. Executive Summary

A. Purpose of the Regulatory Action

The Department is proposing to amend its existing regulation primarily for the purpose of extending the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products, rather than the limited credit products currently defined as consumer credit. More specifically, the Department proposes to amend its regulation so that, in general, consumer credit covered under the MLA [1] would be defined consistently with credit that for decades has been subject to the protections under the Truth in Lending Act (TILA), namely: 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]

After observing the effects of its existing regulation during the past six years and based on its review of information provided by a wide variety of persons and entities, the Department believes that this proposal to amend the regulation is appropriate in order to address a wider range of credit products that currently fall outside the scope of the regulation implementing the MLA, streamline the information that a creditor would be required to provide to a covered borrower when consummating a transaction involving consumer credit, and provide a more straightforward mechanism for a creditor to assess whether a consumer-applicant is a covered borrower. In this regard, the Department is aware of misuses of the covered borrower identification statement whereby a Service member (or covered dependent) falsely declares that he or she is not a covered borrower. The Department believes that, if a creditor unilaterally conducts a covered-borrower check by using the MLA Database, a Service member or his or her dependent would be relieved from making any statement regarding his or her status as a covered borrower.

The Department is provided authority in 10 U.S.C 987(h) to establish regulations to implement the MLA. As described in 10 U.S.C. 987(h)(3) the Department, at a minimum, must consult with other Federal agencies ''not less often than once every two years'' with a view towards revising the regulation implementing the MLA.

B. Summary of the Major Provisions of the Department's Regulatory Action

The MLA, as implemented by the Department's regulation as well as under this proposed regulation, provides two broad classes of requirements applicable to a creditor: first, 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''); second, when extending consumer credit, the creditor must satisfy certain other terms and conditions, such as providing certain 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, by refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit, and by refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit (collectively, ''other MLA conditions'').

C. Costs and Benefits

The Department anticipates that its regulation, if adopted as proposed, might impose costs of approximately $96 million during the first year, as creditors adapt their systems to comply with the requirements of the MLA and the Department's regulation. However, after the first year and on an ongoing basis, the annual effect on the economy is expected to be between approximately $13 to $137 million. The Department has estimated the potential savings that could result if the rule reduces the involuntary separations of Service members due to financial distress in sensitivity analyses; at some points in the range of estimates the

[1] The forms of ''consumer credit'' that may be covered by the MLA are subject to certain exceptions, notably for a residential mortgage. 10 U.S.C. 987(i)(6)(A) and 987(i)(6)(B).

[2] *See* 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

Department has used to assess the proposal, these savings are estimated to exceed the compliance costs that would be borne by creditors.

FIGURE 1—SUMMARY OF ESTIMATED EFFECTS OF PROPOSED RULE

[2013 dollars in millions]

		First year	Annual, ongoing	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Sensitivity Analysis: Benefits to the Department	Low	$0	$13	$96	$128
	High	0	137	970	1,304
Primary Analysis: Costs to Creditors of Compliance		96	20	144	194
Primary Analysis: Transfer Payments	Low	NA	101	717	958
	High	NA	120	856	1,139

II. Background

A. Overview of the Proposal

The Department proposes to amend its regulation [3] that implements 10 U.S.C. 987, which was enacted in section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007,[4] and amended by sections 661–663 of the National Defense Authorization Act for Fiscal Year 2013 (''2013 Act'').[5]

The 2013 Act amended several provisions of 10 U.S.C. 987. In particular, the 2013 Act added provisions that would permit a covered borrower to recover damages from a creditor who violates a requirement of the MLA,[6] and authorizes the agencies ''specified in section 108 of the Truth in Lending Act'' [''TILA''] to enforce the requirements of the MLA ''in the manner set forth in that section [of TILA] or under any other applicable authorities available to such agencies by law.'' [7] Section 663 of the 2013 Act modified the definition of ''dependent'' in order to make the meaning of that term consistent with parts of the definition that applies in the context of eligibility of a Service member's dependent for military medical care.[8] In addition, section 661 of the 2013 Act amended the MLA to require the Department to consult—''not less often than once every two years''—with the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (''Bureau''), the Department of the Treasury, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, and the Office of the Comptroller of the Currency (collectively, ''Federal Agencies'') with a view towards revising the regulation implementing the MLA.

In August 2007, the Department published its regulation to implement the MLA.[9] When initially determining the extent to which the protections of the MLA should apply, the Department ''focus[ed] on three problematic credit products that the Department identified in its August 2006 *Report to Congress on the Impact of Predatory Lending Practices on Members of the Armed Forces and Their Dependents* [(''2006 Report'')] [10]: Payday loans, vehicle title loans, and refund anticipation loans.'' [11] The Department elected, at that time, to define the scope of ''consumer credit'' covered by the regulation as a narrow band of products within these three categories of credit; for example, the rule defines a ''payday loan,'' in relevant part, as ''[c]losed-end credit with a term of 91 days or fewer in which the amount financed does not exceed $2,000.'' [12]

After observing the effects of its existing regulation, the Department believes that a wider range of credit products offered or extended to Service members reasonably could—and should—be subject to the protections of the MLA, and that the extremely narrow definition of ''consumer credit'' permits creditors to structure credit products in order to reduce or avoid altogether the obligations of the MLA. For example, if a creditor wishes to market a ''payday loan'' to a Service member without regard to the 36-percent interest-rate limit under the MLA, the creditor simply needs to adjust the terms or conditions so that the loan is (i) not closed-end credit, (ii) for a term longer than 91 days, *or* (iii) for an amount of more than $2,000. Making any of these elementary adjustments to a credit product marketed as a ''payday loan'' is not illegal, however, the effect is clear: a Service-member borrower would obtain the credit without the protections afforded under the MLA. The Department's proposal aims to amend the regulation to curb this unfortunate consequence, of which there is ample evidence in the credit markets in which Service members are active participants.[13]

The Department proposes to amend its regulation so that, in general, consumer credit covered under the MLA [14] would be defined consistently with credit that for decades has been subject to the protections under TILA, namely: 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.[15] In general, under the Department's proposal, any charge that is a ''finance charge'' under Regulation Z,[16] adopted by the Bureau, as well as certain other charges that would be covered as ''interest'' under 10 U.S.C. 987(i)(3), must be included in the calculation of the MAPR, as applicable to the transaction for consumer credit. However, the Department also proposes to provide a broad exclusion that would allow a creditor who offers consumer credit through a credit card account to

[3] 32 CFR part 232 (2013).

[4] Public Law 109–364, 120 Stat. 2266.

[5] Public Law 112–239, 126 Stat. 1785.

[6] *Id. See* section 662(a) of the 2013 Act.

[7] 126 Stat. 1786. *See* section 662(b) of the 2013 Act.

[8] 126 Stat. 1786 (defining ''dependent'' to be a person described in subparagraph (A), (D), (E), or (I) of 10 U.S.C. 1072(2)).

[9] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 FR 50580 (Aug. 31, 2007).

[10] Department of Defense, *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.*

[11] 72 FR at 50585.

[12] 32 CFR 232.3(b)(1)(i) (definition of ''consumer credit'').

[13] *See, e.g.,* section III.A.1 (describing information submitted by various persons in response to the Department's June 2013 advance notice of proposed rulemaking).

[14] The forms of ''consumer credit'' that may be covered by the MLA are subject to certain exceptions, notably for a residential mortgage. 10 U.S.C. 987(i)(6)(A) and 987(i)(6)(B).

[15] *See* 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

[16] 12 CFR part 1026 (2013).

exclude from the MAPR any ''bona fide'' fee charged to a credit card account, as discussed more fully in this proposal. The chief consequence of the proposed exclusion from the MAPR for bona fide fees is that a creditor who, for its credit card product(s), currently charges a periodic interest rate of less than the interest-rate limit under 10 U.S.C. 987(b) coupled with one or more fees that carry reasonable costs tied to specific products or services should be able to continue to offer the same product(s) without any adjustments to those price terms. Under the proposal, that creditor would need to confirm that its fees are bona fide, reasonable and customary, and if so, it should be able to continue to offer the same credit card product(s) to covered borrowers by making limited adjustments only to the ''statement of the MAPR,'' which would be permitted simply to be added to its credit card agreement(s) (and not required to be provided in any advertisement), as discussed below.

In addition, the Department is proposing to revise its regulation to provide a creditor with a more straightforward mechanism to assist in assessing the status of a consumer as a covered borrower, in order that the creditor may have ''some degree of certainty in determining that the loans [the creditor makes] are in compliance with [the MLA] as implemented by Part 232.'' [17] The Department believes that a covered-borrower check could be conducted unilaterally by a creditor by checking the database maintained by the Department and without relying on the borrower (as currently required), akin to the process a creditor currently uses to obtain a consumer report when assessing the creditworthiness of a consumer. Accordingly, the Department proposes to amend the regulation to allow a creditor to access the Department's online database (the MLA Database) to assess the status of a consumer-applicant for consumer credit and, as discussed below, thereby provide a clearer mechanism for a creditor to obtain the protection of a safe harbor when determining whether a consumer is a covered borrower.

Consistent with the Department's longstanding policy in administering 10 U.S.C. 987, the Department intends to develop this regulation so that its provisions are true to the intent of the MLA without creating a system that unduly impedes the availability of credit that is beneficial to Service members or is so burdensome that the creditor cannot comply.[18]

The Department seeks comment on all aspects of this proposal. The Department also solicits information and data regarding the nature, scope, and prevalence of credit products offered or extended to Service members and their families.

In particular, the Department seeks comment on the following alternative:

1. Refining the Department's current rule for payday loans, vehicle title loans and refund anticipation loans—and the associated benefits and costs;

2. Refining the Department's current rule and adding all payday loans—and the associated benefits and costs; and

3. Adoption of Regulation Z for consumer credit products—and the associated benefits and costs;

As required by 10 U.S.C. 987(h)(3), in developing this proposal the Department has consulted with the Federal Agencies. The Department will continue to consult with these agencies throughout the process of considering revisions to the regulation implementing the MLA.

B. Financial Status of Enlisted Service Members

In the 2006 Report, the Department provided perspective on why the issue of maintaining the financial stability of Service members and their families is critical to sustaining the all-volunteer force and maintaining its readiness. These concerns remain relevant today.

Service members still represent a predominantly young group with 43 percent of Service members aged 25 years old or younger.[19] The junior enlisted ranks (E1–E4) comprise 44 percent of the military force.[20] Thirty five percent of E1s–E4s are married [21] and 20 percent of them have children or other legal dependents.[22] Considering only 11.7 percent of young people in the United States who are out of the military are married at a comparative age, Service members tend to take on relatively more household responsibilities than their civilian counterparts.[23]

Forty-one percent of enlisted Service members (46% of E1s–E4s) said they had used one or more sources of small dollar lending in the past 12 months. These sources included payday loans, vehicle title loans, bank deposit advance loans, pawn shop loans, cash advances on credit cards, overdraft loans, overdraft lines of credit, overdraft protection from other accounts, relief society loans, and loans from friends and family.[24] About 62% of enlisted Service members selected responses indicating that they were able to make ends meet without difficulty. Twelve percent selected the responses ''tough to make ends meet but keeping your head above water,'' or ''in over your head'' to describe their financial condition.[25] About 26% selected the response ''occasionally have some difficulty making ends meet.''

When asked about their savings habits, 14% of enlisted Service members selected the option ''spend all the income received and don't save'' and 4% selected the option ''don't know.'' Forty-four percent selected the option ''regularly set aside money in savings.'' The remaining 39% selected the option ''save whatever is left at the end of the month.'' When asked about their savings, about 57% of enlisted Service members indicated that they had at least $500 in savings that would be available for emergencies. Eight percent indicated that they have less than $100 and 17% indicated that they have no emergency savings.[26]

When asked about experiencing any shortfalls in finances, 47% of enlisted Service members reported having problems in the past 12 months. Specifically, 9% said they had been more than 60 days late in paying mortgage or other debts, 17% reported that they were unable to use bank credit card(s) because the credit limit was reached, 44% reported that they were short cash between paychecks and 12% indicated that they were unable to pay

[17] 72 FR at 50588.

[18] Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 72 FR 18157, 18165 (April 11, 2007) (in the context of disclosure requirements, explaining one of the policies for the Department's proposed regulation implementing the MLA).

[19] U.S. Dep't of Def., 2012 Demographics Profile of the Military Community, at 36. Available at *http://www.militaryonesource.mil/12038/MOS/Reports/2012_Demographics_Report.pdf.*

[20] *Id.* at 17.

[21] *Id.* at 44.

[22] *Id.* at 128.

[23] U.S. Census Bureau, U.S. Dep't of Commerce, Statistical Abstract of the United States 2012 table 57 (131st ed. 2011) (11.7 percent of individuals aged 18 through 24 who are not in the military are married).

[24] Defense Manpower Data Center (DMDC) QuickCompass of Financial Issues, 2013, Question 30: Have [you][your and/or your spouse][you and/or your significant other] used any of the following financial products or services to cover expenses in the past 12 months?''

[25] *Id.,* Question 13: ''Which of the following best describes [your financial condition][the financial condition of you and your spouse][the financial condition of you and your partner or significant other]?''

[26] *Id.,* Question 15: ''Which of the following best describes [your saving habits][the savings habits of you and your spouse][the savings habits of you and your partner or significant other]? I[We]:''

monthly bills.[27] When asked about how many months in the past 12 were they short on cash, unable to use a credit card because of the credit limit was reached, or unable to pay bills or other debts, 12% said 5 to 7 months and 11% said 8 or more months. The average response was 3.4 months in a 12-month period.[28]

The results of the Defense Manpower Data Center (''DMDC'') QuickCompass on Financial Issues tends to indicate that most Service members report sufficient access to safe, low-cost credit, report few problems managing their finances, and report little use of or impact by high-cost credit products on their financial lives. Nevertheless, the DMDC survey results also tend to indicate that a substantial minority of Service members continue to report difficulty managing their finances, and little access to safe, low-cost credit options. While the relative size of these two groups varies across the different types of financial indicators surveyed, the Department estimates that between 12 and 25% of enlisted Service members may face emergency financial short-falls and indicate difficulties managing their finances and avoiding problems with credit.

C. Financial Stability and Readiness

The Department makes a significant investment in recruiting, training and retaining highly qualified Service members. The Department expects these Service members to maintain personal readiness standards, including paying their debts and maintaining their ability to attend to the financial needs of their families.[29] Losing qualified Service members due to personal issues, such as financial instability, causes loss of mission capability and drives significant replacement costs. The Department estimates that each separation costs the Department $57,333.[30] Losing an experienced mid-grade noncommissioned officer (NCO), who may be in a leadership position or key technical position, may be considerably more expensive in terms of replacement costs and in terms of the degradation of mission effectiveness resulting from a loss of personal reliability for deployment and availability for duty. A study of the potential impact of the use of payday loans on enlisted members in the Air Force found ''significant average declines in overall job performance and retention, and significant increases in severely poor readiness,'' as a result of using payday loans.[31] Additionally, financial concerns detract from mission focus and often times require attention from commanding officers and senior NCOs to resolve outstanding debts and other credit issues.

D. Financial Readiness Program

As young people with steady pay checks and personal responsibilities which emerge earlier than their contemporaries, junior enlisted Service members need to have a commensurate level of financial acumen and maturity to succeed. Junior enlisted Service members are generally high school graduates who may have started college.[32] Prior to entering the military they may have had limited exposure to financial literacy programs within high school, but they are generally unprepared for their financial responsibilities.[33] The Department has established the Financial Readiness Program to assist Service members in dealing with financial concerns, by providing messaging, education, and assistance. Throughout each year, the Department provides key messages on personal finance to the military community as part of a strategic communications plan that includes press releases, news articles, interviews, Web sites and social media. The Department has the assistance of nonprofit organizations in delivering messages and programs to promote savings and sound money management. The Department annually promotes the ''Military Saves Campaign,'' which occurs at the end of February each year as part of ''America Saves,'' sponsored by the Consumer Federation of America. The campaign asks Service members and their families to pledge towards their own savings goals, and the campaigns are supported by banks and credit unions on military installations. Initiated in 2007, the campaign has signed up 31,527 savers through 2013.[34] Additionally, the Financial Institutions National Regulatory Authority (FINRA) Foundation sponsors the ''Save and Invest Program'' that has provided forums at military installations (33,000 participants), fellowships for 1,200 military spouses to earn a financial counselor credential and give back to the community through 355,000 practicum hours, assistance to wounded warriors (17,000 guides distributed), 800,000 booklets on managing money during military moves and deployments, and access to no cost on-line tools to assist 150,000 military families with managing credit.[35]

The Department has established policy requiring Service members to receive financial education throughout their military careers, commencing with an initial course provided within 3 months of having arrived at their first duty station. As Service members assume supervision of others, they are also provided information on policies and practices designed to protect junior military members.[36] Each of the Military Services manages its own educational program to fulfill this requirement, based on regulations from the Military Departments. For Fiscal Year 2012, the Military Services reported providing 34,867 briefings to 872,187 participants.[37] In addition, the National Guard and Reserve Commands conducted 8,912 sessions, hosted at unit events lasting one-to-three days, attended by 13,480 participants.[38]

[27] *Id.,* Question 28: ''During the past 12 months, did any of the following happen to [you][you and your spouse][you and your partner or significant other]? [I was][We were] . . .''

[28] *Id.,* Question 29: ''In how many of the past 12 months were [you][you and your spouse][you and your significant other] short on cash, unable to use a credit card because of the credit limit was reached, or unable to pay bills or other debts?''

[29] U.S. Dep't of Def., Instruction 1344.09, Indebtedness of Military Personnel (2008) (''Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner [to include alimony and child support]. A Service member's failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice [10 U.S.C. 801–940] or a claim pursuant to Article 139 of [10 U.S.C. 801–940].'').

[30] U.S. Gov't Accountability Office, GAO–11–170, *Military Personnel: Personnel and Cost Data Associated with Implementing DOD's Homosexual Conduct Policy* (January 20, 2011) (estimating that each separation costs the Department $52,800 in 2009 dollars). The cost of $57,272 is calculated in 2013 dollars (through November 2013), using the U.S. Dep't of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers (CPI–U), available at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[31] Scott Carrell and Jonathan Zinman, ''In Harm's Way? Payday Lending and Military Personnel Performance,'' August 2008, Abstract.

[32] DMDC Survey, question 20: 39% of E1–E4s have a high school diploma, 22% have less than one year of college, 24% have one or more years of college, but no degree.

[33] Average score for high school seniors was 48.3% and 62.2% for college students on a financial literacy test measuring (1) Income; (2) money management; (3) saving and investing; and (4) spending and credit. Jump$tart Coalition survey of high school seniors and college students, 2008, page 8. *www.jumpstart.org/assets/files/2008SurveyBook.pdf.*

[34] Military Saves 2013 Report, page 2, *http://www.militarysaves.org/in-the-newsroom/military-saves-week-reports.*

[35] ''*Military Financial Readiness Program—Accomplishments To Date,'' SaveandInvest.org, About the Program, http://www.saveandinvest.org/MilitaryCenter/About/P124822.*

[36] DoD Instruction 1342.22, Family Readiness Program, July 3, 2012, page 12, *http://www.dtic.mil/whs/directives/corres/pdf/134222p.pdf.*

[37] ''Fiscal Year 2012 Annual Report on Family Readiness Programs'' (internal DoD report), which reflects activities of installation-based Military and Family Support Centers/Reserve Family Program Sites.]

[38] Military OneSource internal report for Fiscal Year 2012.

Department policy also requires the Military Services to provide one-on-one counseling to help a Service member determine appropriate short and long term actions to alleviate debt and achieve financial goals. The Military Services employ at least one certified financial counselor (civil service or contractor) at each military installation and have developed Military Service-specific programs to extend counseling into the military units through designated approved financial educators. For example, the Department of the Navy directs Navy and Marine Corps units to designate and train a Command Financial Specialist (E6 or above) who delivers financial education, conducts basic counseling and makes referrals to certified counselors. The Military Services reported 1,828,299 brief counseling contacts and 161,992 extended counseling contacts for Fiscal Year 2012.[39] To supplement the counseling services provided by the Military Services, the Department employs contract counselors through Military One Source to conduct over-the-phone counseling (available 24/7) and 12 in-person sessions for each military client (in a 12 month period). These counselors provided 32,000 in-person sessions for 35,000 Service members and spouses in Fiscal Year 2012.[40]

To provide monetary support to Service members and their families with financial hardships, the Military Services have partnered with nonprofit charitable organizations chartered to provide relief services to Service members and their families. The four relief societies for the Military Services (Army Emergency Relief, Navy-Marine Corps Relief Society, Air Force Aid Society and Coast Guard Mutual Assistance) (collectively, the ''Relief Societies'') provide no-interest loans, grants, and scholarships, and fund other support programs for active-duty military communities. Each of these Relief Societies traditionally has provided no-interest loans and grants for shortfalls in household expenses (*e.g.,* rent, mortgage, or utilities) and for unforeseen emergencies (*e.g.,* auto repair, funeral, or family emergency). Since 2007, each of the Relief Societies also has offered small-dollar loans, which can be drawn without counseling.[41] In total for 2012, the Relief Societies provided $142.2 million in no-interest loans and grants to 159,745 clients.[42]

E. Regulation in Support of Financial Readiness

The Department continues to believe that, consistent with the MLA, there may be a need to limit access to high-cost borrowing, even with the Department's emphasis on delivering messages to save and control debt, education to support managing finances wisely, counseling resources to aid Service members, and financial resources to help Service members cover unforeseen shortfalls and emergencies. As initially stated, the Department expects Service members to manage their resources to cover their just debts and to take care of the needs of their families. Additionally, as messaging and education programs make clear, the Department expects Service members to seek out assistance rather than continue attempting by themselves to manage high-cost debt.

In the House Report 112–705 accompanying the 2013 Act, the Department was asked ''to determine if changes to rules implementing [the MLA] are necessary to protect covered borrowers from continuing and evolving predatory lending practices.'' The Department responded to the request of the House Report by issuing a report in April 2014 (''April 2014 Report'').[43] The April 2014 Report presents data submitted by many sources, including anecdotal information, that assisted in responding to the request of the House Report. The Department recognizes that information submitted for the April 2014 Report was provided by numerous sources, including some surveys conducted by the Department, and the information does not yield definitive results; rather, as the April 2014 Report states, the data ''tend to indicate'' some findings[44] and, for many issues, raise important questions that might involve further examination. The April 2014 Report states—specifically in light only of the research and consultation in preparing that Report—that ''the definitions of [consumer credit] in the implementing regulation for the MLA do need to be updated and expanded to ensure that the MLA continues to provide protections to Service members and their families.''[45] While observing that certain conditions ''appear'' to warrant revising the definition of ''consumer credit,''[46] the Department has drawn no conclusions regarding the scope or terms of its regulation implementing the MLA. Rather, the April 2014 Report expressly states that ''the Department is working on [a more] comprehensive approach in its redrafting of the implementing regulation for the MLA.''[47] The Department is committed to an open and transparent process as its work continues on any potential amendment to its regulation, and, as stated above, invites comment on all aspects of this proposal, particularly data regarding the nature, scope, and prevalence of credit products offered or extended to Service members and their families.

The majority of Service members have access to reasonably priced (as well as low-cost) credit, and, as long as they wisely use those resources, they are likely not to need high-cost loans to fulfill their credit needs. In the event that a Service member overwhelms his or her credit, or has not established credit for an emergency, the Department and the Relief Societies are prepared to assist that person in order that he or she might resolve the immediate difficulties and continue to manage his or her income and expenses to a point where he or she can develop a sound financial basis. In circumstances where Service members have taken high-cost loans because no other alternatives appeared to be available, Department counselors and the Relief Societies have found that the existing high-cost debt makes intervention more difficult; these service providers would rather have had the opportunity to have helped resolve issues sooner.

III. Key Aspects of the Department's Proposal

A. Proposal To Amend the Scope of ''Consumer Credit''

The Department proposes to revise the scope of the definition of ''consumer

[39] ''Fiscal Year 2012 Annual Report on Family Readiness Programs'' (internal DoD report), which reflects activities of installation-based Military and Family Support Centers/Reserve Family Program Sites.]

[40] Military OneSource internal report for Fiscal Year 2012.

[41] *See* Army Emergency Relief, Soldiers Helping Soldiers: Army Emergency Relief 2012 Annual Report, at 13 (2013) (in 2012, Army Emergency Relief provided $19.1 million in ''Commander Referral Loans''); Air Force Aid Soc'y, Air Force Aid Society 2012 Annual Report, at 6 (2013) (in 2012, the Air Force Aid Society provided half of its $10.1 million in emergency assistance ''Falcon Loans''); Coast Guard Mut. Assistance, 2012 Annual Report, at 2 (2013) (in 2012, Coast Guard Mutual Assistance provided $212,000 in quick loans).

[42] *See* Army Emergency Relief, Soldiers Helping Soldiers: Army Emergency Relief 2012 Annual Report, at 13 (2013); Navy-Marine Corps Relief Society, 2012 Annual Report, at 11 (2013); Air Force Aid Soc'y, Air Force Aid Society 2012 Annual Report, at 6 (2013); Coast Guard Mut. Assistance, 2012 Annual Report, at 2 (2013).

[43] Dep't of Defense, *Report: Enhancement of Protections on Consumer Credit for Members of the Armed Forces and Their Dependents,* April 2014.

[44] *See, e.g.,* April 2014 Report, at 2.

[45] April 2014 Report, at 2.

[46] *Id.*

[47] *Id.*

credit'' to cover a broader range of closed-end and open-end credit products, to be generally consistent with the credit products that for decades have been subject to the requirements of the Bureau's Regulation Z. When adopting its initial regulation in 2007, the Department focused on three narrowly defined types of products that the Department believed, at that time, most directly acted as sources of the ''debt trap'' for Service members and their families.[48] In addition, the Department expressed its concern about the ''potential for unintended consequences that could adversely affect credit availability if it were to adopt a broadly applicable regulation.'' [49] At the same time, the Department was careful to avoid engendering any reliance interests in the narrow scope of its initial rule, and, in this regard, expressly stated that ''[t]he Department maintains the ability to issue additional rules in the future .. . . '' [50] When the Department adopted its initial regulation, financial-institution creditors, Service members, and others who have an interest in the administration of the MLA were appropriately cautioned that the Department had committed itself to review various sources of data, including ''input from regulatory agencies, consumer protection groups and the credit industry to assess the level of protection provided by the final rule,'' in order to determine whether ''further revisions [to its regulation] are needed.'' [51]

The Department continues to believe that certain payday loans, vehicle title loans, and refund anticipation loans present the most severe risks to Service members and their families, and remains mindful that more broadly defining the ''consumer credit'' that would be subject to 10 U.S.C. 987 may present unintended consequences, including a reduction in ''credit availability.'' At the same time, however, the Department recognizes—particularly in light of its experiences administering the existing regulation—that a broader range of closed-end and open-end credit products carry high costs, many of which far exceed the interest-rate limit established in 10 U.S.C. 987(b), and thereby pose the risks to Service members and their families that the Department has long sought to significantly reduce or eliminate.

Consistent with the Department's stated policy to monitor market developments that affect Service members, since adopting its initial regulation in 2007 the Department informally has gathered information from regulatory agencies, consumer protection groups, and participants in the credit industry to assess whether, and in which respects, the Department should consider revising its regulation implementing the MLA.[52] As described above in section II.E., information was submitted for the April 2014 Report issued in response to the House Report. In this regard, the April 2014 Report describes various sources of information, including results from a DMDC QuickCompass survey [53] and a questionnaire the Department distributed to financial counselors and legal assistance attorneys, which mostly requested narrative responses.[54]

More importantly, and directly to support the Department's rulemaking process, in June 2013 the Department published an advance notice of proposed rulemaking (''ANPR'') soliciting comment on several issues relating to its existing regulation.[55] In particular, the Department asked whether there is a need to revise the regulation, ''with special attention to the scope of the definition of 'consumer credit.' '' [56]

1. The Department's June 2013 ANPR

The Department received 37 comments in response to the ANPR. Most of the comments were submitted by state agencies, including state attorneys general,[57] and consumer protection groups. Several participants in the credit industry submitted comments,[58] as did several individuals. In addition, comments were submitted relating to whether the Department should consider revising its regulation in order to address rent-to-own transactions.

Generally, commenters responding to the ANPR urge the Department to take one of three actions relating to the definition of consumer credit: (1) leave untouched the current definition as three enumerated products, as well as the particular definition for each of those products; (2) extend the definition by covering certain additional products, such as overdraft services, rent-to-own transactions, and/or all payday loans; or (3) extend the definition by incorporating the definition of consumer credit in the Bureau's Regulation Z. Other commenters raise general concerns regarding the narrow scope of the existing definition of consumer credit and urge the Department to adopt a more comprehensive definition, but have not recommended a particular definition.

One commenter states that the Department's current rule has ''significant gaps and loopholes, which lenders exploit to target military borrowers with high interest loans well above the MLA's [36 percent] rate cap,'' and is ''particularly concerned with [a] multiple-payment or installment loan[ ]'' that is not covered by the rule, because the loan has a term of over 91 days or exceeds $2,000.[59] This commenter states, more specifically, that ''[i]n Texas, high cost multiple-payment loans with rates often exceeding [600 percent] APR are increasingly offered by payday lenders.'' [60] In support of its claims regarding the effects of the loopholes in the Department's current rule, this commenter describes its ''[s]tore visits'' in Killeen, Texas, in July 2013, where the commenter found companies that had changed their loan products to offer ''high-cost multiple-payment products to [Service] members,'' [61] and cited as an example particular loan products

[48] *See* 72 FR at 50582 (observing that ''[t]he combination of little-to-no regard for the borrower's ability to repay the loan, unrealistic payment schedule, high fees, and interest and the opportunity to roll over the loan instead of repaying it can create a cycle of debt for financially overburdened Service members and their families.'').

[49] 72 FR at 50584.

[50] 72 FR at 50585. In this context, the Department drew attention to its ''ability'' to issue additional rules. There can be no doubt, especially in light of section 661(b) of the 2013 Act, that the Department has the authority to amend the regulation implementing the protections of the MLA. 10 U.S.C. 987(h)(3) (requiring the Department, at a minimum, to consult with other Federal agencies ''not less often than once every two years'' with a view towards revising the regulation implementing the MLA).

[51] 72 FR at 50585.

[52] *See* 72 FR at 50585 (''The Department maintains the ability to issue additional rules in the future and the Department plans to continue surveying Service members and will obtain a variety of inputs from regulatory agencies, consumer protection groups and the credit industry to assess the level of protection provided by the final rule.'').

[53] *See, e.g.,* April 2014 Report, at 2.

[54] April 2014 Report, app. A.

[55] 78 FR 36134 (June 17, 2013).

[56] *Id.*

[57] California Attorney General, et al., DOD–2013–OS–0133–0002. References herein to the comments note the name of the commenter and the docket number of the submission, available at *http://www.regulations.gov.*

[58] *See, e.g.,* American Bankers Assoc. et al., DOD–2013–OS–0133–0022.

[59] Texas Appleseed, DOD–2013–OS–0133–0016, at 1–2; *see also* State of Colorado, DOD–2013–OS–0133–0034, at 1 (explaining how lenders can circumvent the Military Lending Act by ''offering 92 day loans, loans for $2001, or by structuring the loans as open-end credit''); *but see* Credit Union National Association and Defense Credit Union Council, DOD–2013–OS–0133–0032, at 2 (arguing that the current rule has been an ''effective tool'' and that the 91-day limit for payday loans should not be changed).

[60] Texas Appleseed, DOD–2013–OS–0133–0016, at 2.

[61] *Id.* at 3.

offered by a national payday lender with two locations in Killeen.[62]

Another commenter states that under the Department's current rule, ''lenders have easily circumvented the purpose and protections intended by the MLA.'' [63] For example, the commenter describes the ''structure of [the] payday loan law'' [64] in Colorado, which requires ''a minimum loan term of six months.'' [65] Because of the extended duration of the loan, ''the MLA rate cap of 36 percent does not apply,'' [66] allowing lenders ''to make loans to service members with an approximate 200 percent annual percentage rate.'' [67] The commenter urges the Department to revise the rule so that it does not ''contain limits that lenders may use to avoid regulation.'' [68] Specifically, the commenter recommends that the Department incorporate the definition of consumer credit under TILA, ''so that regardless of the consumer credit transaction amount, structure, or duration, it is subject to MLA's 36 percent cap on interest rates.'' [69]

Similarly, another commenter states that the Department's current rule has ''large loopholes that permit lenders to fashion abusive or predatory transactions that avoid the MLA's protections.'' [70] The commenter, more specifically, states that lenders can evade protections under the current rule ''by requiring that payday loans be a minimum of $2,001, or have a minimum period of 92 days'' or by offering ''[a]ny open-ended or revolving payday loan; [a]ny auto title loan for more than 181 days; [a]ny bank loan that is secured by funds on deposit, such as overdraft loans; and [a]ny retail sales credit loan or other similar rent-to-own transaction.'' [71] ''[T]o protect military borrowers from predatory lenders who purposefully structure loan transactions so as to avoid the strictures of the MLA,'' the commenter urges the Department to make the MLA protections ''apply uniformly to the full range of consumer credit loans that present dangers similar to those already covered, including rent-to-own transactions and overdraft loans.'' [72]

One commenter notes that ''inappropriate loans and exorbitant interest payments force many members of the military and their families to forgo other necessities, such as housing or grocery bills.'' [73] Financial strain ''negatively affects [service member] morale and puts their ability to do their job . . . at risk.'' [74] The commenter raises a concern about the ''narrow definition of consumer credit'' and urges the Department to ''modify the definition of consumer credit to ensure that Service Members in all states are protected from all forms of high-cost credit.'' [75]

One commenter expresses concern that ''the rules initially promulgated by the Department contained gaps in the definition of consumer credit.'' [76] These gaps ''have been taken advantage of by certain lenders'' to offer ''predatory loan products at exorbitant triple digit effective interest rates and loan products that do not include the additional protections envisioned by the law.'' [77] The commenter notes that ''the Department was given the authority and has inherent flexibility provided under the law'' to revise the rule to establish a more ''expansive'' definition of consumer credit to which the protections in the law would apply.[78] The commenter urges the Department to include within the scope of the rule ''payday and vehicle title loans of any duration, whether open or closed-ended,'' ''tax refund anticipation loans of any duration,'' as well as to ''consider extending the 36 [percent] APR cap to unsecured installment loans targeted at the military and all other forms of consumer credit.'' [79] The commenter states that ''[s]ervice members and their families deserve the strongest possible protections and swift action to ensure that all forms of credit offered to members of our armed forces are safe and sound.'' [80]

A group of industry commenters states the Department's current rule ''is working as intended to protect members of the armed forces and their dependents.'' [81] These commenters argue that the current rule strikes the correct balance between access to credit and protecting consumers from predatory lending practices. They point to several aspects of the MLA that, in their view, would prevent creditors from offering products to Service members if the current rule's definition is expanded to encompass other products. Specific concerns under the MLA include: Harsh penalties for non-compliance; duplicative and confusing disclosure requirements; oral disclosure requirements that are inconvenient for various technologies; inability to refinance or reprice debt; ban on arbitration clauses common to many loan contracts; and difficulties identifying all covered borrowers.[82] The same commenters specifically request that the rule continue to incorporate definitions provided under the TILA because ''[a]dding separate and disparate definitions undermines the ability of consumers to understand credit products and should be avoided.

[62] *Id.* at 3–4.

[63] State of Colorado, DOD–2013–OS–0133–0034, at 1; *see also* California Attorney General, et al., DOD–2013–OS–0133–0002, at 2 (''[T]he narrow categories and definitions create large loopholes that permit lenders to fashion abusive or predatory transactions that avoid the MLA's protections.''); *but see* Missouri Credit Union Association, DOD–2013–OS–0133–0801, at 1 (arguing that the rule's objective has been accomplished ''primarily by limiting the impact of the rule to those creditors that offer certain loans which are closed-end credit'').

[64] State of Colorado, DOD–2013–OS–0133–0034, at 1.

[65] *Id.*

[66] *Id.* at 2.

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] California Attorney General, et al., DOD–2013–OS–0133–0002, at 2; *see also,* Members of the U.S. Senate, DOD–2013–OS–0133–0036, at 1 (arguing that gaps in the rules ''have been taken advantage of by certain lenders'' who offer ''predatory loan products at exorbitant triple digit effective interest rates and loan products that do not include the additional protections envisioned by the law'').

[71] California Attorney General, et al., DOD–2013–OS–0133–0002, at 2.

[72] *Id.; but see* Ohio Credit Union League, DOD–2013–OS–0133–0027, at 2 (arguing that the current rule is effective and that the Department should protect Service members by ''reviewing and identifying those lending practices that are or can be predatory or abusive on a case by case basis'').

[73] Members of the U.S. House of Representatives, DOD–2013–OS–0133–0035, at 1.

[74] *Id.*

[75] *Id.* at 1–2. *See also* Washington Department of Veterans Affairs, DOD–2013–OS–0133–0004, at 2 (requesting that the Department ''modify the definition of consumer credit to ensure that service members are protected from all forms of high-cost credit, regardless of the duration or structure of the loan''); *but see* American Bankers Assoc., et al., DOD–2013–OS–0133–0022, at 1 (arguing that the Military Lending Act is working as intended and that ''[i]mposing additional requirements on lending to servicemembers would have adverse consequences for members of the armed forces and military families.'').

[76] Members of the U.S. Senate, DOD–2013–OS–0133–0036, at 1; *see also* Texas Appleseed, DOD–2013–OS–0133–0016, at 1 (stating that the current rule has ''significant gaps and loopholes''); *but see* American Bankers Assoc., et al., DOD–2013–0133–0022, at 4 (''The rule adopted in 2007 was structured carefully and struck the proper balance between protecting servicemembers and their families while still ensuring they had access to beneficial products and services.'').

[77] Members of the U.S. Senate, DOD–2013–OS–0133–0036, at 1.

[78] *Id.* at 1–2.

[79] *Id.* at 2.

[80] *Id.*

[81] American Bankers Assoc. et al., DOD–2013–OS–0133–0022, at 1; *see also* Missouri Credit Union Association, DOD–2013–OS–0133–0026, at 1 (''[T]he rule's objective has been accomplished primarily by limiting the impact of the rule to those creditors that offer certain loans which are closed-end credit in the form of payday loans, vehicle title loans, and tax refund anticipation loans.''); *but see* State of Colorado, DOD–2013–OS–0133–0034, at 1 (arguing that ''lenders have easily circumvented the purpose and protections intended by MLA'').

[82] American Bankers Assoc. et al., DOD–2013–OS–0133–0022, at 1, at 4–5.

It would be a step backwards to disconnect the MLA and TILA.'' [83]

One commenter expressed concern that the current rule ''includes limitations which reduce the [MLA's] effectiveness.'' [84] This commenter states that ''[a]pproximately one out of every ten veterans reported having more than $40,000 in unsecured debt. For many veterans, some of this debt is acquired while on active duty, often from high-cost lenders that frequently target military bases.'' [85] The commenter states that in at least eleven states, the current rule ''does not apply to all forms of payday lending permitted under state law, and in at least thirteen the rule does not apply to all forms of vehicle title lending.'' [86] The commenter requests that the Department align consumer credit under the rule with the definition of consumer credit under TILA. The commenter states that ''[t]his inclusive definition will ensure that all service members are covered by the consumer protections envisioned by Congress in 2007 and protect veterans from the long-term effects of predatory lending as they return to civilian life.'' [87]

One commenter states that the Department should ''not lose sight of [a] payday lender's demonstrated capacity for creative evasion.'' [88] In particular, the commenter states that he has seen lenders disguise closed-end transactions as open-end, thereby evading requirements of the MLA. The commenter states that some lenders disguise short-term loans as check cashing services and others disguise loans and loan fees using the sale of phone cards or other ''trinkets'' at inflated prices combined with the delayed presentment of checks. The commenter also states that rent-to-own transactions should be included as consumer credit under the Department's regulation because ''[i]f evaluated as interest, these extra costs amount to extraordinarily high interest, far in excess of that authorized by the MLA.'' [89] The commenter also states that the rule should prohibit unreasonable choice-of-venue provisions in a loan contract, specifically pointing to one creditor who requires all lawsuits be brought in Virginia while all the parties and transactions at issue are typically located in North Carolina. Finally, the commenter states that the Department should amend the rule to cover all payday, rent-to-own, installment, and vehicle title loans without respect to the duration of the loan.

One commenter states that the Department correctly ''left [rent-to-own] out'' of the current rule.[90] In support of its assertion that the Department properly did not include rent-to-own transactions within the scope of the current rule, the commenter states that ''the [rent-to-own] business model is not extending credit and is, instead, a personal property leasing model.'' [91] To support this point, the commenter describes a typical rent-to-own transaction where the consumer ''[does] not assume any debt'' [92] and instead enters into ''weekly, bi-weekly, semi-monthly, or monthly rental agreements for consumer durables.'' [93] The commenter further notes that because rent-to-own transactions are not included in the current rule, ''there was no reason for the industry to modify its practices to escape coverage.'' [94]

One commenter states ''there is no need at this time to revise the rule as it relates to credit unions.'' [95] Another commenter states that the Department should review and identify ''those lending practices that are or can be predatory or abusive on a case by case basis.'' [96] This commenter states that a ''one issue approach could have negative unintended consequences for credit unions and other lenders that adhere to fair and equitable lending practices'' and that such an approach could limit access to beneficial credit for Service members.[97]

One commenter requesting that the current rule should not be changed states that of over 40,000 complaints in the Better Business Bureau's complaint database in 2011, only 37 were filed against online military installment lenders.[98] The commenter states that installment lending should not be covered by the regulation because it ''provides access to affordable, repayable consumer credit'' and is ''the safest form of small-dollar lending'' because it is self-amortizing and thereby protects borrowers from becoming trapped in a cycle of debt.[99]

[83] *Id.* at 11.

[84] Idaho Division of Veterans Services, DOD–2013–OS–0133–0038, at 2; *see also* State of Colorado, DOD–2013–OS–0133–0034, at 2 (''[T]he definition of consumer credit should be as broad as possible and should not contain limits that lenders may use to avoid regulation.''); *but see* American Bankers Assoc. et al., DOD–2013–OS–0133–0022, at 3 (noting that Service members also benefit from many other consumer protections that are not occupation-specific).

[85] *Id.* at 1 (citing Eric Elbogen, Sally Johnson, Ryan Wagner, Virginia Newton, and Jean Beckham, ''Financial Well-Being and Postdeployment Adjustment Among Iraq and Afghanistan War Veterans,'' *Military Medicine* 177 (June 2012).

[86] Idaho Division of Veterans Services, DOD–2013–OS–0133–0038, at 2.

[87] *Id.*

[88] Michael S. Archer, DOD–2013–OS–0133–0007, at 3; *see also* State of Colorado, DOD–2013–OS–0133–0034, at 1 (stating that lenders are easily able to circumvent the current rule's ''purpose and protections'').

[89] Michael S. Archer, DOD–2013–OS–0133–0007, at 4. With regard to rent-to-own transactions, the commenter states that the Department should specifically prohibit sellers from tracking consumers' activity on computers and other electronics. The commenter states that the Department should prohibit contact with commanding officers and other third parties in the debt collection context unless the service member has given written consent after default. *But see* Rent-A-Center, DOD–2013–OS–0133–0010 (arguing that rent-to-own transactions should not be defined as consumer credit due to the nature of those transactions and legislative and regulatory history).

[90] Association of Progressive Rental Organizations, DOD–2013–OS–0133–0012, at 1; *see also* Aaron's, Inc., DOD–2013–OS–0133–0028, at 2 (''[A]ny attempt to include the [rent-to-own] transaction] under [the] definition of consumer credit would not be consistent with federal and state laws.''); *but see* Shriver Center, DOD–2013–OS–0133–0009, at 2 (''[R]ent-to-own transactions are consumer credit sales and should be protected as consumer credit under the MLA.'').

[91] Association of Progressive Rental Organizations, DOD–2013–OS–0133–0012, at 2. *See also* Aaron's, Inc., DOD–2013–OS–0133–0028. In this regard, the Department is cognizant of the consumer protection issues that may arise during rent-to-own transactions. However, consistent with the Department's determination when adopting the initial regulation in 2007, 72 FR at 50582, rent-to-own products usually are not considered credit for purposes of TILA. Accordingly, rent-to-own transactions typically would not be ''consumer credit,'' as that term is proposed in § 232.3(e).

[92] Association of Progressive Rental Organizations, DOD–2013–OS–0133–0012, at 2.

[93] *Id.*

[94] *Id.* at 1–2.

[95] Missouri Credit Union Association, DOD–2013–OS–0133–0026, at 1; *see also* Michigan Credit Union League & Affiliates, DOD–2013–OS–0133–0021, at 1 (''Because of credit unions' unique structure and the products and services offered to assist Service members, the MCUL does not believe revisions to the rules as they relate to credit unions are necessary or desirable at this time.'').

[96] Ohio Credit Union League, DOD–2013–OS–0133–0027, at 2; *but see* Woodstock Institute, DOD–2013–OS–0133–0025, at 2 (''In order to beset protect all service members, the Department of Defense should eliminate its narrow product definitions and apply the 36 percent Military APR limit, and additional protections, to all consumer credit products covered by the Truth in Lending Act.'').

[97] Ohio Credit Union League, DOD–2013–OS–0133–0027, at 2.

[98] American Financial Service Association, DOD–2013–OS–0133–0020 at 2 (citing Jean Ann Fox, *The Military Lending Act Five Years Later: Impact On Servicemembers, the High-Cost Small Dollar Loan Market, and the Campaign against Predatory Lending,* Consumer Federation of America, (May 29, 2012)).

[99] *Id.* at 2; *see also* National Installment Lenders Association, DOD–2013–OS–0133–0014, at 1 (arguing that the Department of Defense should instruct Base commanders to ''place off limits to service members any business they find objectionable or predatory'' instead of amending the rule to cover installment lending); *but see* Shriver Center, DOD–2013–OS–0133–0009, at 2 (arguing that installment loans can ''have many of the same harmful features the MLA prohibits such as high interest rates, automatic access to a bank account, payment by military allotment, and repeated refinances with no benefit to the consumer'').

2. Proposal To Amend the Scope of ''Consumer Credit''

As several commenters state and as the Department itself has observed, a creditor currently may lawfully provide a wide range of closed-end and open-end credit products to a Service member that carry inordinately high costs, and many of these credit products can be offered without meaningfully applying underwriting measures that consider the borrower's ability to repay or with unrealistic payment schedules—precisely the types of risks to Service members that the Department consistently has aimed to diminish.

The Department believes that the narrowly defined parameters of the credit products regulated as ''consumer credit'' under the existing regulation do not effectively provide the protections intended to be afforded to Service members and their families under the MLA. Accordingly, the Department proposes to amend the regulation, in § 232.3(e), so that, in general, consumer credit would be defined consistently with certain credit that long has been subject to the protections under TILA, namely: 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.[100]

The Department proposes amendments so that, in general, its rule may rely on the provisions and jurisprudence of the Bureau's Regulation Z because that regulation substantially regulates the central components of the framework of the MLA, particularly the types of charges that should be included as ''interest'' [101] and the methods for calculating the annual percentage rate of interest for consumer credit.[102] The Department believes that, even as consumer credit may be revised to apply to a broad range of credit products, aligning the key aspects of the framework under the MLA with the terms and standards that have been developed under Regulation Z will greatly facilitate a creditor's ability to comply with the Department's regulation. More specifically, the Department proposes, in §§ 232.3(*l*) and 232.4(c), that any charge that is a ''finance charge'' under Regulation Z, as well as certain other charges that would be covered as ''interest'' under 10 U.S.C. 987(i)(3), must be included in the calculation of the MAPR (as applicable to the transaction), and would be subject to the interest-rate limit under 10 U.S.C. 987(b).

QUESTION 1: The Department solicits comment on whether an approach should be taken that would define ''consumer credit'' consistently with certain credit regulated under TILA, and invites suggestions on alternative approaches.

QUESTION 2: If the Department were to adopt a regulation as proposed, to what extent, and in what manner, would the Department's regulation affect the availability of consumer credit to Service members and their dependents or have other consequences?

QUESTION 3: If the Department were to adopt a regulation as proposed, to what extent would a creditor, as a practical matter, need to develop separate classes of credit products, namely, one class of products for covered borrowers and other classes for other consumers?

QUESTION 4: If the Department continues to pursue an approach that defines ''consumer credit'' to be generally consistent with certain credit regulated under TILA, should the Department consider a limited or complete exemption for an insured depository institution or insured credit union? What legitimate basis could there be for any exemption for an insured depository institution or insured credit union from the requirements of the MLA, particularly if under this approach other financial institutions would be subject to the Department's regulation? What other protections relating to credit products already are afforded to—or could be improved for—Service members and their dependents?

QUESTION 5: If the Department continues to pursue an approach that defines ''consumer credit'' to be generally consistent with certain credit regulated under TILA, should the Department consider including one or more exemptions for certain types of credit products, such as student loans? What legitimate basis could there be for any particular exemptions for certain credit products?

QUESTION 6: Apart from the conditional exclusion proposed for a credit card account that charges bona fide fees, as discussed below, should the Department consider providing one or more exceptions from the charges that must be included in the MAPR for de minimis bona fide fees associated with an open-end credit line? If so, should that type of exception be limited to an open-end line of credit connected to a deposit account? If so, please specifically describe which fees on these accounts would be bona fide fees eligible for such an exception. What would be the appropriate cost limit of a de minimis fee? If the Department does provide for such an exception to open-end credit (other than for credit card accounts), what parameters should the Department use to limit the exception to prevent evasion of the protections under the MLA?

B. Proposed Conditional Exclusion for Credit Card Accounts

Even though the Department believes that the consumer credit regulated under the MLA generally should track the scope of credit regulated under Regulation Z, the Department recognizes that imposing the interest-rate limit of 10 U.S.C. 987(b) on credit card products likely would result in dramatic changes to the terms, conditions, and availability of those products to Service members and their families. The important protections Congress intends to provide to Service members and their families under the MLA should be made relevant to a broader range of credit products without unduly impeding the availability of credit that is benign or beneficial to Service members and their families.[103] Unlike the vast majority of credit products that are amenable to straightforward pricing mechanisms relating to the cost of the funds borrowed (such as solely on the basis of a fixed or variable interest rate applied for a term or on a periodic basis), credit provided through a credit card account can be provided subject to pricing mechanisms that, in part, account for the value of products or services delivered through the cardholder's use of the card itself. In this regard, many creditors offer credit card products that, from a consumer's perspective, generally are subject to periodic interest-rate charges (*i.e.,* the cost of the funds borrowed), plus participation fees and transaction-based fees that may vary, depending on the consumer's use of the card.

The Department believes that most creditors impose bona fide fees expressly tied to specific products or services connected to using the credit card itself and segregable from the cost

[100] *See* 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

[101] *See* 10 U.S.C. 987(i)(3) (broadly defining ''interest'').

[102] *See* 10 U.S.C. 987(h)(2) (granting discretion to the Department to prescribe rules regarding ''[t]he method for calculating the applicable annual percentage rate of interest on [consumer credit] obligations'').

[103] *See* 72 FR at 50585 (''The intent of the statute is clearly to restrict or limit credit practices that have a negative impact on Service members without impeding the availability of credit that is benign or beneficial to Service members and their families.'').

of funds borrowed, such as a foreign transaction fee that applies only when the cardholder tenders the card for a purchase made outside of the United States. Even though some of these fees might appear to be relatively high under certain circumstances, the Department believes that credit card products represent a form of consumer credit that, in general, is beneficial to Service members,[104] especially insofar as the costs of bona fide fees expressly tied to specific products or services may be imposed only upon the Service member's own choices regarding the use of the card. If the interest-rate limit of 10 U.S.C. 987(b) were to be flatly imposed on credit card products, then creditors likely would be required to significantly re-structure their current products, services, and pricing mechanisms when providing credit cards to Service members and their families—without a corresponding benefit to the Service members and their families. Flatly applying the interest-rate limit of 10 U.S.C. 987(b) to credit card products could result in unusually adverse consequences to both creditors and Service members, especially insofar as some creditors might elect to stop offering these products altogether or suspend certain functions of the card (*i.e.,* use of a card to make purchases in a foreign country) to Service members.

The Department also believes that credit card products may warrant special consideration under the MLA because comparable protections for consumers who use these products separately apply under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (''CARD Act''). For example, the CARD Act, as implemented by the Bureau's Regulation Z, limits penalty fees on credit cards, including late-payment and over-the-limit fees, to those fees that are ''reasonable and proportional'' to the omission or violation that triggered the fee.[105] Regulation Z provides safe harbor fee ranges designed to facilitate compliance with these requirements of the CARD Act. The CARD Act also limits the total amount of fees that may be charged on an account in its first year: In general, a creditor may not impose fees for a credit card account during the first year that exceed 25 percent of the available line of credit in effect when the account is opened.[106]

In an effort to balance the interests of limiting credit practices that have an adverse impact on Service members without unduly impeding the availability of credit that is benign or beneficial to Service members and their families, the Department has considered proposing a complete exemption from the definition of ''consumer credit'' for credit extended to a covered borrower under a credit card account. However, the Department believes that certain creditors could take advantage of an opportunity to exploit a complete exemption for credit cards by transforming high-cost, open-end credit products (which otherwise would be covered as ''consumer credit'') into credit card products.

The Department similarly has considered whether exclusions from the MAPR for certain types of fees, such as an application fee or participation fee, should be proposed for credit card accounts in order to preserve current levels of access to those products for Service members and their dependents; however, the Department believes that unqualified exclusions from the MAPR for certain fees, or all non-periodic fees, likewise could be exploited by a creditor who would be allowed to preserve a high-cost, open-end credit product by offering a relatively lower periodic rate coupled with a high application fee, participation fee, or other fee (as described in the exclusion), subject to the restrictions under the CARD Act.

To avoid creating clear regulatory gaps in the framework for 10 U.S.C. 987, the Department believes that consumer credit under the MLA should include credit extended to a covered borrower under a credit card account under an open-end (not home-secured) consumer credit plan, except that this form of consumer credit may be subject to a qualified exclusion for bona fide application fees, participation fees, transaction-based fees, and similar fees connected to the use of the credit card.[107] Proposed § 232.4(d) would allow a creditor to exclude from the MAPR a bona fide fee—other than a periodic rate—only to the extent that the charge by the creditor is (i) a bona fide fee and (ii) reasonable and customary for that type of fee. Proposed § 232.4(d)(2) would clarify that certain charges—namely, ''any credit insurance premium, including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, or to any fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction or upon account opening''—may not be excluded as bona fide fees because these charges are expressly included in the definition of ''interest'' in 10 U.S.C. 987(i)(3).

Proposed Standards for Exclusion for Bona Fide Fees

The Department believes that the proposed conditions for excluding a bona fide fee from the MAPR—namely, that the fee must be ''reasonable'' and ''customary''—would fairly allow Service members and their families to continue to have access to credit card products *and* limit the opportunity for a creditor to exploit the exclusion for those products. Unlike a complete or targeted exemption for credit card products, the proposed conditional exclusion would not allow a creditor to transform high-cost, open-end credit products into credit card accounts by offering a relatively lower periodic rate coupled with a high application fee, participation fee, or other fee. Under the proposal, a creditor who imposes an unreasonable (in any respect) fee or a fee that is not, in every respect, customary (such as in the manner of the charge or the basis for the computation) in a credit card account for a Service member must include the total amount of the fees—including any fee(s) that otherwise may be eligible for the exclusion—in the MAPR. The ''reasonable and customary'' conditions for a bona fide fee, as proposed, are intended to be applied flexibly so that, in general, creditors may continue to offer a wide range of credit card products that carry reasonable costs expressly tied to specific products or services and which vary depending upon the Service member's own choices regarding the use of the card.

Proposed §§ 232.4(d)(3)(i)–(v) would provide standards to guide determinations regarding whether a bona fide fee—other than a periodic rate—for a credit card account may be excluded from the calculation of the MAPR as ''reasonable and customary.''

Like-kind fees. Proposed § 232.4(d)(3)(i) would provide that the bona fide fee must be compared to ''fees typically imposed by other creditors for the same or a substantially similar

[104] In this regard, the Department notes that approximately 68 percent of American families have at least one credit card. *See* Federal Reserve Board's Survey of Consumer Finances (2010), available at *http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf* p. 67.

[105] 15 U.S.C. 1665d; 12 CFR 1026.52.

[106] 15 U.S.C. 1637(n)(1); 12 CFR 1026.52(a).

[107] The Department maintains that 10 U.S.C. 987(i)(6) grants broad latitude to the Department to ''define which types of consumer credit transactions shall be covered by the law, provided that they do not include the two listed exemptions.'' 72 FR at 50585. Furthermore, 10 U.S.C. 987(h) grants to the Department discretion to ''prescribe regulations to carry out [the MLA],'' and, in particular, to prescribe rules relating to ''[t]he method for calculating the applicable annual percentage rate of interest'' and the ''types of fees'' that are subject to the restrictions of the MLA. 10 U.S.C. 987(h)(2)(B) and (h)(2)(C).

product or service.'' The Department believes that this elementary like-kind standard would be appropriate because a creditor should not be required to assess a fee for, say, a balance-transfer service based on the fees that other creditors charge for cash-advance services.

Safe harbor. Proposed § 232.4(d)(3)(ii) is designed to provide a firm, yet flexibly adaptable standard for a ''reasonable'' amount of a bona fide fee. Under this provision, a creditor may compare the amount of the bona fide fee to ''an average amount for a substantially similar fee charged by 5 or more creditors each with at least $3 billion in outstanding loans on U.S. credit card accounts at any time during the 3-year period preceding the time such average is computed.'' The Department believes that the standard for a ''reasonable'' amount of a bona fide fee should be sufficiently flexible to allow for changing conditions in the marketplace for products and services provided through credit card accounts, and thus proposes language in the provision (''an average'' of an amount charged by ''5 or more creditors'') that would allow a creditor to select any group of 5 or more credit card issuers who each have the qualifying amount of outstanding credit card loans in order to make a determination. The Department believes that using a pool of 5 or more of these qualifying creditors is reasonable because these creditors, taken together, would represent a significant portion of the market for credit card products.[108]

In order for a creditor to use the fee(s) charged by a credit card issuer when computing an average, the credit card issuer must have had the qualifying amount of loans at any time during the 3-year period preceding the date when the creditor computes the average. If the amount of the creditor's own bona fide fee is less than or equal to the average of the amount charged by those 5 or more credit card issuers who each have the qualifying amount of outstanding credit card loans, then the creditor's bona fide fee would be reasonable for the purposes of the exclusion.

Proposed § 232.4(d)(3)(ii) would set a threshold of $3 billion in outstanding credit card loans on U.S. credit card accounts held by a credit card issuer in order for that issuer's fees to be eligible for inclusion in an average calculated for the purposes of compliance with the ''reasonable'' condition of § 232.4(d)(1). The Department proposes the use of a minimum of 5 credit card issuers, each of whom meet the threshold of $3 billion in outstanding credit card loans on U.S. credit card accounts, in order to facilitate a creditor's ability to compute an average under the safe-harbor provision in light of a very manageable, yet fairly representative, sample of fees in the marketplace for credit card products. The Department believes a threshold of $3 billion of outstanding credit card loans is reasonable because that threshold would include a significant number of credit card issuers, whose credit card products make up the majority of the products in the current credit card market. Moreover, the credit card issuers who hold more than $3 billion in outstanding credit card loans on U.S. credit card accounts offer credit card products that are typical in that marketplace. The Department is aware that many credit card issuers who hold less than $3 billion in outstanding credit card loans on U.S. credit card accounts may offer credit card products with lower or similar fees (relative to issuers who hold more than $3 billion in outstanding credit card loans); these issuers would benefit in a straightforward manner from the proposed method of computing an average for the purposes of the safe-harbor proposed in § 232.4(d)(3)(ii). The Department believes that establishing this threshold would prevent a niche issuer charging unreasonable credit card fees from benefiting from the safe harbor, in a manner that evades the intent of the rule, by comparing its fees only to the fees of other niche issuers, rather than a more representative sample of the marketplace.

The Department also proposes a rolling 3-year look-back period to facilitate a creditor's ability to establish that a credit card issuer meets the asset-size standard. This 3-year period should facilitate the process for calculating, and relying on, an average amount for one or more relevant fees because, for example, when a creditor uses information from the past year to establish that a credit card issuer meets the asset-size threshold, the creditor could rely on the fee information relating to that credit card issuer's credit card products for the next two years. At the same time, the proposed 3-year period could provide stability to the safe-harbor determination, particularly if credit card loan holdings of credit card issuers shift significantly in response to market conditions or otherwise. Furthermore, a 3-year period could provide adequate time for the Department to amend the proposed threshold or safe harbor, as may be necessary.[109]

The Department believes that all creditors who offer credit card products to Service members and their dependents could readily calculate whether each type of fee associated with those products may fit within the safe harbor because data relating to the fees imposed by other credit card issuers, as well as the amount of credit card loans outstanding, is widely available. With regard to credit card fees, most credit card issuers, particularly all of the largest issuers, make complete contract terms on their current offerings freely available on their Web sites as part of solicitations and applications for their products.[110] With regard to the amount of outstanding credit card loans held by a credit card issuer, issuers provide this information in both filings to the Securities and Exchange Commission (SEC filings) and Consolidated Reports of Condition and Income (Call Reports). Both SEC filings [111] and Call Reports [112] are available online without charge. In addition, the Department recognizes that data collected from these and other information sources is compiled in commercially available databases regularly used by financial institutions to track the marketplace for credit card products and services, and the Department believes that creditors should be permitted to reasonably rely upon those industry-specific databases when computing an average fee under proposed § 232.4(d)(3)(ii).

For example, a creditor seeking to determine whether another credit card issuer could qualify as one of the 5

[108] The Department is aware of at least 16 creditors who hold loans above the proposed asset threshold. *See* The Nilson Report, Issue 1,025 (Sept. 2013) at 10 (listing 14 MasterCard and Visa issuers with above $3 billion in outstanding loans mid-year 2013); Discover Bank, Consolidated Reports on Condition and Income for A Bank with Domestic Offices Only—FFEIC 041 (July 30, 2013) at 17 (indicating that Discover held more than $49 billion in such loans); and American Express Company, Consolidated Statements of Income (July 17, 2013) at 13 (indicating that American Express held $54.6 billion in cardmember loans. These 16 creditors (who are not the only creditors above the $3 billion threshold) hold over $582 billion in credit card loans or greater than 87 percent of the market in 2013.

[109] In this regard, 10 U.S.C. 987(h)(3) requires the Department, at a minimum, to consult with other Federal agencies ''not less often than once every two years'' with a view towards revising the regulation implementing the MLA.

[110] *See, e.g.,* the solicitations available at *https://creditcards.chase.com.*

[111] The SEC makes public filings available through its Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Information on this system is available at *http://www.sec.gov/edgar/aboutedgar.htm.*

[112] Call Reports for institutions insured by the Federal Deposit Insurance Corporation can be found on the Federal Financial Institutions Examination Council's Web site, available at *https://cdr.ffiec.gov/public/.* Call Reports for credit unions are available online through the National Credit Union Administration's Web site, available at *http://researchcu.ncua.gov/Views/FindCreditUnions.aspx.*

creditors for determining the average fee under proposed § 232.4(d)(3)(ii) could download a recent Call Report for an issuer and review Schedule RC–C Part I line 6(a) that provides credit card ''[l]oans to individuals for household, family, and other personal expenditures'' held by the institution. If that credit card issuer indicated that it held more than $3 billion in outstanding credit card loans, then the creditor could include any fee charged by that credit card issuer in the creditor's safe-harbor calculation under proposed § 232.4(d)(3)(ii). The creditor could find the amounts of the relevant fees for that credit card issuer disclosed on the issuer's current offerings, as available through a variety of sources, such as the issuer's Web site.

The following example is provided for additional guidance on how a creditor could determine whether its own fees for a credit card account would fit within the safe harbor under proposed § 232.4(d)(3)(ii). Creditor Bank regularly offers a credit card product called the ''Creditor Bank Card.'' The Creditor Bank Card carries an annual fee of $25, a cash advance fee of 3 percent of a transaction or $5, whichever is greater, and no other fees.[113] Creditor Bank is aware of 5 large credit card issuers: Bank A, Bank B, Bank C, Bank D, and Bank E. Creditor Bank consults the SEC filings for each of these 5 banks and finds that all 5 held U.S. credit card loans in excess of $3 billion at some time in the preceding year. Next, Creditor Bank reviews the fees charged on various credit card products issued by those 5 banks. Bank A charges an annual fee of $100 on one credit card product and a $0 annual fee on another credit card product. Bank A charges a cash advance fee of 4 percent of a transaction or $10, whichever is greater, on both of its card products. Bank B charges a $50 annual fee on one credit card product and a $0 annual fee on another credit card product. Bank B charges a cash advance fee of 2 percent of the transaction or $5, whichever is greater, on both its credit card products. Bank C, Bank D, and Bank E each offers one credit card product that carries a $50 annual fee, and a cash advance fee of 3 percent of the transaction or $5, whichever is greater.

Under proposed § 232.4(d)(3)(ii), Creditor Bank may choose to calculate an average using the highest annual fees charged by each of these other 5 banks. In this case, Creditor Bank could calculate an average fee for the annual participation fee of $60 (the sum of $100 for Bank A, plus $50 for each of Bank B, Bank C, Bank D, and Bank E; divided by 5). Because the Creditor Bank Card's $25 annual fee falls below the $60 average of fees charged by 5 other banks, Creditor Bank would meet the safe harbor for that fee. Creditor Bank could then undertake the same analysis for cash advance fees, and would be required to consider whether its fee is ''reasonable'' under the safe harbor with respect to both the percentage charged and the minimum fee. In this case, Creditor Bank could calculate an average cash advance percentage fee of 3 percent and an average cash advance minimum fee of $6. Because the Creditor Bank Card's percentage fee and minimum fee fall below these averages, Creditor Bank may exclude these bona fide fees from the MAPR under proposed § 232.4(d)(3)(ii). We seek comment on the feasibility of performing this calculation and the associated costs.

Reasonable fee. Proposed § 232.4(d)(3)(iii) is designed to clarify that a bona fide fee still may be ''reasonable'' for the purposes of the exclusion even if that fee is higher than an average amount as calculated under proposed § 232.4(d)(3)(ii). In particular, the Department recognizes that, due to several factors in the marketplace for credit cards, the prices of certain fees could drop from current levels, including to zero, and yet the Department believes that a creditor who charges a reasonable fee still should be permitted to avail itself of the exclusion in paragraph (d)(1) of this section. Accordingly, the Department proposes a provision that expressly states that ''[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.''

Customary. Proposed § 232.4(d)(3)(iv) would provide a standard to assess whether a bona fide fee is ''customary'' for the purposes of the exclusion. The touchstone for assessing whether a creditor's bona fide fee is ''customary'' is whether ''other creditors typically compute, or customarily have computed,'' that fee in the manner by which that creditor does so. Nevertheless, the condition that a bona fide fee be ''customary'' for that type of fee should not be interpreted so as to require creditors to move in lockstep in order to satisfy this condition. The Department intends the standard for a ''customary'' condition to be applied with sufficient flexibility that a creditor who imposes a bona fide fee in a given manner, such as a fixed amount per transaction, may continue to do so, ''even if substantially all other creditors compute that fee on a percentage basis.''

Reasonableness for a participation fee. Consistent with the Department's proposal that the conditions of ''reasonable and customary'' be applied flexibly, proposed § 232.4(d)(3)(v) would provide a standard in the particular case of a participation fee. The Department recognizes that creditors who issue credit cards provide a range of benefits and services to Service members and their dependents who are cardholders, and some cards may charge a participation fee in lieu of (or in light of lower) transaction-based fees. For example, a creditor may offer a credit card that carries a relatively higher participation fee, yet does not charge a foreign transaction fee. Accordingly, proposed § 232.4(d)(3)(v) would provide a standard stating that ''[a]n amount of a bona fide fee for participation in a credit card account may be reasonable and customary . . . if that amount reasonably and customarily corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account.''

QUESTION 7: If the Department continues to pursue an approach that defines ''consumer credit'' to be generally consistent with certain credit regulated under TILA, should the Department consider including an exemption specifically for a credit card account under an open-end (not home-secured) consumer credit plan? Would the consumer protection under TILA be sufficient to be consistent with the requirements of MLA? How would an exemption for consumer credit offered through a credit card account be articulated?

QUESTION 8: The Department solicits comment on potential operational issues with applying the regulation under the MLA to credit card products offered in retail sales locations, particularly at the point of sale. How should the Department address any such potential issues in a final rule that may cover some or all credit card products extended to covered borrowers?

QUESTION 9: Do the proposed standards appropriately describe

[113] For the sake of simplicity, only two fees are considered in this example. Under proposed § 232.4(d)(1), each bona fide fee must be ''reasonable and customary,'' and accordingly, a creditor seeking to determine whether all of its bona fide fees fit within the safe harbor under proposed § 232.4(d)(3)(ii) must conduct a separate analysis for each fee. Similarly, the example uses bank cards only for the sake of simplicity. The proposed regulation does not distinguish among types of credit cards (*e.g.,* private label, bank, or retail store cards) or types of creditors.

whether a bona fide fee may be excluded from the calculation of the MAPR as ''reasonable and customary?'' If not, please specifically describe the language the Department should use to clarify when a bona fide fee is not required to be included in the MAPR.

QUESTION 10: Does the threshold of $3 billion in outstanding credit card loans on U.S. credit card accounts appropriately allow an assessment of whether a bona fide fee is ''reasonable,'' in light of the fees charged by credit card issuers whose credit card products are typical in the marketplace? If not, what measure(s) should be used to facilitate a creditor's own assessment of its bona fide fees, for the purposes of complying with conditions proposed in § 232.4(d)(1), while also preventing other creditors who offer credit card products that carry unreasonable fees from benefitting from the safe harbor? Is a pool of 5 or more creditors reasonably large for computing an average fee for the purposes of § 232.4(d)(1)? Does a period of 3 years provide sufficient stability for measuring whether a credit card issuer meets the asset-size standard? If not, what period should be used?

C. Proposal To Revise Provisions Governing Assessment of a Covered Borrower

When adopting its initial regulation in 2007, the Department explained that the provisions governing the assessment of a ''covered borrower'' should balance protections for a covered borrower while also addressing a creditor's need to have ''some degree of certainty in determining that the loans [the creditor makes] are in compliance with [the MLA] as implemented by Part 232.'' [114] The Department's existing regulation seeks to balance these interests by providing a ''safe harbor'' from the requirements of the regulation for a creditor who, with respect to a consumer credit transaction: first, provides a consumer a prescribed form, the ''covered borrower identification statement,'' declaring whether he or she is a covered borrower, and the consumer signs the form indicating that he or she is not a covered borrower; and, second, has not determined, using certain optional verification procedures, that the consumer is a covered borrower.[115]

The Department is proposing to revise these provisions governing the assessment of a covered borrower for two reasons.

First, the Department has become aware of misuses of the covered borrower identification statement whereby a Service member (or covered dependent) falsely declares that he or she is not a covered borrower. The Department is concerned that a Service member seeking a credit product that is subject to the MLA falsely states—either on his or her own initiative or complicit with the creditor in the course of the application process—that he or she is not a covered borrower so that the institution offers the credit product unencumbered by the interest-rate limit and other restrictions of the MLA. While the Department intended the provision of the covered borrower identification statement to afford protections for Service members and their dependents, in actual transactions the dynamic between creditors and individual borrowers has led to widespread misuses of the statement, often resulting in extensions of credit that violate the MLA—plus, adverse effects on Service members or their dependents who make false statements. Furthermore, and benignly, some spouses of active duty Service members may not understand that they are ''dependents'' covered under the MLA and might unwittingly incorrectly complete the covered borrower identification statement. Accordingly, the Department believes that this section of the regulation should be revised to relieve a Service member or his or her dependent from making any statement regarding his or her status as a covered borrower [116] in the course of a transaction involving consumer credit.

Second, the Department believes that the current framework of providing the covered borrower identification statement—which allows the consumer to state either that ''I AM'' or ''I AM NOT'' a covered borrower—could be unduly cumbersome for some creditors to administer. In particular, the Department is concerned that, in light of the proposal to cover a broader range of products as consumer credit under the MLA, a creditor should be afforded a more straightforward mechanism to have ''some degree of certainty in determining that the loans [the creditor makes] are in compliance with [the MLA] as implemented by Part 232.'' [117] The Department believes that a covered-borrower check could be conducted unilaterally by a creditor by checking the Department's database, akin to the unilateral process a creditor currently uses to obtain a consumer report when assessing the creditworthiness of a consumer and to ascertain the consumer's identity. Accordingly, the Department proposes to revise this section of the regulation in order to provide a clearer mechanism for a creditor to obtain the protection of a safe harbor when assessing whether a consumer is a covered borrower.

The Department currently provides an online database, available at *https://www.dmdc.osd.mil/appj/mla/index.jsp,* that allows a creditor to determine whether a consumer is a covered borrower under the MLA (the MLA Database). Proposed § 232.5 would provide a conclusive mechanism for a creditor to unilaterally assess the status of a consumer who applies for consumer credit if: first, the creditor checks the MLA Database to determine that consumer-applicant's status when the creditor enters into a transaction or establishes an account for consumer credit; second, the consumer-applicant does (or does not) appear in the MLA Database; and, third, the creditor retains a record of the information obtained from the MLA Database.

The Department anticipates that commercial information-services providers, such as consumer reporting agencies, may choose to supply information products to financial institutions that would include covered-borrower checks as part of those products used to process loan applications. As the Department may determine to be appropriate, the structure, as well as the terms and conditions for use, of the MLA Database could be developed to permit a commercial information-services provider to access the MLA Database for the purposes of obtaining and reselling a search record regarding a consumer. Contemplating that such developments could be made, if appropriate, nothing in proposed § 232.5 would prohibit or otherwise restrict a creditor from using a commercially provided information product to conduct a covered-borrower check, so long as the MLA Database is the underlying source of the data relied on by that creditor.

QUESTION 11: If the Department makes appropriate adjustments to the MLA Database, should the Department modify the language of § 232.5 to clarify that a creditor may take advantage of the

[114] 72 FR at 50588.

[115] 32 CFR 232.5(a)(1)–(2). However, the Department also issued an important ''caveat'' to this provision, stating that a creditor may not fit within the safe harbor if the ''creditor obtains documentation as part of the credit transaction reflecting that the applicant is a covered borrower'' (notwithstanding the signed declaration). 72 FR at 50588.

[116] In this regard, the Department notes that even under the elective verification method, an activated member of the National Guard or Reserves is required to provide a copy of the military orders calling the covered member to military service, upon request of the creditor. 32 CFR 232.5(b).

[117] 72 FR at 50588.

safe harbor by conducting a covered-borrower check using a commercially provided information product whose underlying data is derived from the MLA Database? If so, please specifically describe the language the Department should use to clarify this aspect of § 232.5.

If the vast majority of transactions are amenable to covered-borrower checks conducted solely through information obtained from the MLA Database, the actual status of the consumer as a covered borrower could be material to a consumer credit transaction or account if the creditor has actual knowledge of that consumer's status. Consistent with the policy underlying the caveat to the existing § 232.5(a), the Department believes that a creditor who has actual knowledge that a consumer is a covered borrower should not be entitled to the safe harbor when entering into a transaction or establishing an account for consumer credit for that borrower. For example, if as part of the creditor's application or underwriting process, the creditor collects from a covered borrower a copy of the borrower's current military identification card or other record of the borrower's status, the creditor would obtain actual knowledge of that borrower's status, regardless of whether the creditor checks the MLA Database. Proposed § 232.5(c) reflects this policy and provides that the creditor must ''treat the consumer as a covered borrower notwithstanding any determination by that creditor based on information obtained from the [MLA Database].'' The Department intends for this exception to the safe harbor in proposed § 232.5(b) to apply so that a creditor may not take advantage of an obvious error in the MLA Database when the creditor knows otherwise, and the Department expects these circumstances to be rare.

If a creditor conducts a covered-borrower check in reliance on information obtained (including, potentially, indirectly) from the MLA Database, and determines at the outset that a consumer-applicant is not a covered borrower, proposed § 232.5(b)(2) generally would provide a safe harbor from liability under the MLA in the event that the consumer, in fact, is a covered borrower. This situation could occur, for example, in the case that a consumer married to an active duty service member (and, therefore who is a covered borrower himself or herself) has not registered for any military benefits in the Defense Enrollment Eligibility Reporting System which provides the underlying data for the MLA Database. The Department believes a creditor who checks a consumer against the MLA Database has undertaken the best efforts under the circumstances to comply with the MLA and should receive, therefore, protection from liability if the database had contained incorrect information about that consumer. Moreover, a creditor who satisfies the conditions for the safe harbor provided under proposed § 232.5(b)(2) would be free from liability under the MLA at the outset of establishing an account for credit—and throughout the lifespan of that particular account—relating to that consumer.

The Department believes the consumer protections of the MLA will be most effectively provided if creditors extending consumer credit with an MAPR exceeding the 36 percent interest-rate limit check the MLA Database before extending that credit to consumers. In order to benefit from the safe-harbor provision under proposed § 232.5(b), a creditor must check the MLA Database whenever a consumer applies for a new consumer credit product or establishes a new account for consumer credit, including a new line of consumer credit that might be associated with a pre-existing transactional account held by the borrower. For example, if a consumer initially opens a checking account with a bank, and then, later, applies for an overdraft line of credit associated with that checking account and which carries a cost in excess of the interest-rate limit, in order to receive the benefit of the safe harbor for purposes of that new line of consumer credit, the bank must check the MLA Database when the consumer applies for the overdraft line of credit, even if the bank previously had checked the MLA Database at the time he or she established the checking account and did not find the consumer in the database.

QUESTION 12: If the Department were to adopt a framework for a creditor to conduct a covered-borrower check as proposed in § 232.5, should the Department also adopt an exception from the safe harbor that addresses the situation when the creditor has actual knowledge that a consumer is a covered borrower? What are the likely costs associated with conducting covered-borrower checks as proposed in § 232.5? What alternatives should the Department consider for creditors to conduct covered-borrower checks? Should the Department consider alternative safe harbor provisions for certain types of creditors or certain types of consumer credit, such as credit extended at retail sales locations? Please provide specific language for provisions that would implement these alternatives.

QUESTION 13: Should the Department retain a safe harbor for use of the covered borrower identification statement? The Department solicits comment on whether the use of the statement would be unduly cumbersome if the Department expands coverage of the regulation to additional types of credit products?

QUESTION 14: Should the Department provide a fallback provision to protect a creditor from liability in the case that the creditor is temporarily or permanently unable to access the internet at the time of conducting a transaction or establishing an account for consumer credit? Should the Department provide protection from liability from the MLA in the case that a creditor can demonstrate that the MLA Database was not operational at the time the creditor attempted to search the database? If so, should the Department address how the creditor may establish that the MLA Database was not operational at the time the creditor attempted the search?

IV. Section-by-Section Description of the Proposed Regulation

Section 232.1 Authority, purpose, and coverage

The Department proposes minor revisions to this section, mainly for the sake of clarity and consistency with provisions of the regulation.

Section 232.2 Applicability

The Department proposes to amend this section in two respects.

First, in the new proposed subsection (a), the Department would add a provision stating: ''Nothing in this part applies to a credit transaction or account relating to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction or establishes an account for credit.'' This proposed provision is designed to clarify the Department's longstanding policy that the requirements under 10 U.S.C. 987, as implemented in the regulation, apply only to a consumer who is a covered borrower ''at the time he or she becomes obligated on a consumer credit transaction covered by this part.'' [118]

The Department believes that defining the scope of the regulation to apply only to a covered borrower when he or she enters into a transaction or establishes an account for consumer credit is consistent with the language and

[118] *See* 32 CFR 232.3(c) (defining a ''covered borrower'').

structure of 10 U.S.C. 987.[119] In this regard, the Department believes that 10 U.S.C. 987 should not be interpreted so as to impose restrictions on an existing agreement between a creditor and a consumer involving a credit transaction primarily for personal, family, or household purposes that spring to life when the consumer becomes a covered borrower when he or she begins active duty service in the military. Interpreting 10 U.S.C. 987 as applying only to a covered borrower who holds that status when he or she agrees to obtain the consumer credit is fair to the creditor who, at the outset of the transaction, should be in a position to know the status of its counterparty to the agreement. Moreover, the Department's longstanding policy regarding this aspect of the scope of 10 U.S.C. 987 is consistent with the provision set forth in § 987(f)(3),[120] which makes any credit contract that is prohibited under 10 U.S.C. 987 ''void from the inception of such contract.'' Section § 987(f)(3) would operate unjustly if a consumer, upon obtaining the status of a covered borrower, could sue the creditor to void an existing credit contract on the grounds that the contract—which may have been entirely lawful when originally entered into with the consumer—violates one or more provisions of 10 U.S.C. 987. One practical consequence of the Department's longstanding policy is that a creditor is not required to constantly monitor the status of each consumer who has obtained credit or holds an account for credit to assess whether the consumer is a ''covered borrower;'' rather, the creditor may conduct that assessment, as the creditor may so elect, only at the outset of the transaction or when establishing the account for consumer credit. The Department proposes to adopt corresponding revisions to the language of certain other provisions of the regulation, notably §§ 232.3(f) and 232.5(b)(2), for the sake of clarity and consistency with this policy.

Second, the Department proposes to add a new subsection (b) stating: ''The examples in this part are not exclusive. To the extent that an example in this part implicates a term or provision of Regulation Z (12 CFR part 1026), issued by the Consumer Financial Protection Bureau to implement the Truth in Lending Act, Regulation Z shall control the meaning of that term or provision.''

Section 232.3 Definitions

(a) Affiliate. The Department proposes a definition of ''affiliate'' to accompany the definition of ''creditor.'' This new proposed definition is designed to prevent evasion of the rule, specifically with respect to an entity that would not, when considered alone, qualify as a creditor, but, when considered together with its affiliates, would be engaged in extending credit, as described in § 232.3(i)(3) of the proposed rule.

(b) Billing cycle. The Department proposes to define the term consistent with the meaning of this term in Regulation Z.

(c) Bureau. The Department proposes to define the term for the Consumer Financial Protection Bureau.

(d) Closed-end credit. The Department proposes to define the term consistent with the meaning of this term in Regulation Z.

(e) Consumer. The Department proposes to define this term as a natural person.

(f) Consumer credit. As discussed above, the Department proposes to define ''consumer credit'' consistent with the relevant provisions of the Bureau's Regulation Z. Proposed § 232.3(f)(2) would provide exceptions to ''consumer credit'' that, in general, track the exceptions in 10 U.S.C. 987(i)(6).

Certain credit products may, or may not, be covered under the Department's proposed definition of ''consumer credit,'' depending, for example, on whether the particular credit product is subject to a ''finance charge,'' which the Department likewise proposes to define consistent with the meaning of that term in Regulation Z. Most, if not all, ''deposit advance'' products would (when offered to a covered borrower) be covered as consumer credit because this type of product typically involves credit extended by a creditor primarily for personal, family, or household purposes for which the borrower pays any fee or charge that is, or is expected to be, repaid from funds available in the borrower's asset account held by that creditor. Likewise, consistent with Regulation Z,[121] an overdraft line of credit with a finance charge would (when offered to a covered borrower) be covered as consumer credit to the extent that product consists of credit extended by a creditor primarily for personal, family, or household purposes to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, but only if (A) the extension of credit for such an item and (B) the imposition of the fee or charge were previously agreed upon in writing. On the other hand, an overdraft service typically would not be covered as consumer credit because Regulation Z excludes from ''finance charge'' any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing.[122]

Consistent with the Department's existing regulation, proposed § 232.3(f)(2)(iv) would exclude from the scope of ''consumer credit'' any credit transaction that is an exempt transaction for the purposes of Regulation Z (other than a transaction exempt under 12 CFR 1026.29) [123] or otherwise is not subject to disclosure requirements under Regulation Z. The Department believes, at this time, that the exclusions in proposed § 232.3(f)(2)(iv) are appropriate limitations to the consumer credit that is subject to 10 U.S.C. 987 because these types of exempted credit do not pose risks to Service members and their dependents, and a creditor who already complies with Regulation Z should not be required to independently assess whether certain types of credit exempt under that rule could be subject to the requirements of the MLA.

In this regard, this section of the proposed rule would remove the provision in the Department's existing regulation that provides an exclusion for ''credit secured by a qualified retirement account as defined in the Internal Revenue Code.'' [124] The Department believes that the intent of this exclusion is sufficiently captured by the exception for any credit transaction that is an exempt transaction for the purposes of Regulation Z, as described in proposed § 232.4(c)(1)(iv). Under § 1026.3(g) of Regulation Z, credit extended to a participant in certain retirement plans is

[119] *See, e.g.,* 10 U.S.C. 987(a) (imposing conditions on ''[a] creditor who *extends* consumer credit''); 10 U.S.C. 987(c) (requiring certain information to be provided to a covered borrower ''before the issuance of credit''); 10 U.S.C. 987(e) (declaring that ''[i]t shall be unlawful for any creditor *to extend* consumer credit to a [covered borrower]'' that involves certain restrictions or conduct) (emphases added).

[120] 10 U.S.C. 987(f)(3) (''Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.'').

[121] *See* 12 CFR 1026.4(c)(3) (imposing certain conditions on a charge for overdraft services that, if not satisfied, would make that charge a ''finance charge'').

[122] *See* 12 CFR 1026.4(c)(3).

[123] *See* 12 CFR 1026.29, regarding state application for Bureau exemption of a class of transactions within the state.

[124] 32 CFR 232.3(b)(2)(iv). In addition, the Department now believes that this provision represents a drafting error because, upon closer review, the Department could not locate a reference in the Internal Revenue Code to a ''qualified retirement account,'' as described in this provision.

not subject to the requirements of Regulation Z.

(g) Covered borrower. The Department proposes to revise the definition of ''covered borrower'' to provide greater clarity and more closely reflect the language of the MLA. Consistent with the plain language of 10 U.S.C. 987(i)(1), the proposed rule would refer to the ''armed forces.'' This proposed provision also would clarify that the protections provided to members of the armed forces on active duty apply to Service members called or ordered to active duty under titles 10 or 14 of the United States Code, or Service members on active Guard and Reserve duty under title 32. Additionally, the Department proposes to revise the definition of ''dependent'' to reflect the plain language of the statute, as amended by § 663 of the 2013 Act. The Department believes that the proposed definition of ''dependent,'' consistent with the term used to establish eligibility for military medical care, would appropriately carry out the intent to simplify the process for determining which family members are covered under 10 U.S.C. 987.

QUESTION 15: Does the revised definition of covered borrower appropriately cover active duty Service members and their dependents?

(h) Credit. The proposed definition of ''credit'' is not changed from the Department's existing regulation.[125]

(i) Creditor. The Department proposes to define ''creditor'' to more closely track the language in the definition of the term in 10 U.S.C. 987(i)(5). In addition, in paragraph (i)(3), the Department proposes to interpret the statutory provision of ''engaged in the business of extending consumer credit'' [126] consistent with the corresponding provision of the Department's existing regulation, which refers to the definition of ''creditor'' in Regulation Z.[127]

(j) Department. The Department proposes to define the term for the Department of Defense.

(k) Dwelling. The proposed definition of ''dwelling'' is not changed from the Department's existing regulation.[128]

(l) Electronic fund transfer. The Department proposes to amend the definition of ''electronic fund transfer'' to have the same meaning as in the regulation issued by the Bureau to implement the Electronic Fund Transfer Act (''EFTA''), as amended from time to time (12 CFR part 1005).[129] In the context of this provision—which relates only to an exception that would be contained in proposed § 232.8(e)—the Department believes that there is no need to account for the authority of the Board of Governors of the Federal Reserve System under EFTA.

(m) Finance charge. The Department proposes to define the term consistent with the meaning of this term in Regulation Z.

(n) Military annual percentage rate (MAPR). The Department proposes to define the term as the cost of credit expressed as an annual rate, and requires the MAPR to be calculated in accordance with proposed § 232.4(c).

(o) Open-end credit. The Department proposes to define the term consistent with the meaning of this term in Regulation Z.

(p) Person. The Department proposes to define the term consistent with the definition of ''person'' in the Department's existing regulation.[130]

(q) Regulation Z. The Department proposes to define the term consistent with the definition of ''Regulation Z'' in the Department's existing regulation,[131] except that, first, the Department would delete the phrase ''or contract'' and, second, the Department would include a provision relating to the authority of the Board of Governors of the Federal Reserve System under TILA.

Section 232.4 Terms of Consumer Credit Extended to Covered Borrowers

Proposed § 232.4(a) is intended to track the restrictions under 10 U.S.C. 987(a). Relative to the language of this provision in the Department's existing rule, which describes a ''creditor'' and an ''assignee,'' the Department is proposing to modify this provision to track the language of the statute and proposed § 232.3(i)(2), which includes an ''assignee'' within the definition of creditor.

Proposed § 232.4(a)(2) would track the restriction under 10 U.S.C. 987(a)(2), which provides that a creditor who extends consumer credit to a covered borrower shall not require the borrower to ''pay interest with respect to the extension of such credit, except as . . . authorized by applicable State or Federal law.'' The Department understands that this condition on an extension of consumer credit possibly could be interpreted to restrict a financial institution, such as a national bank, based in one state from charging interest to covered borrowers residing in another state, which imposes a limit on the interest rate that may be charged, ''except as . . . authorized by [that other] State.'' The Department believes nothing in 10 U.S.C. 987 or this regulation should be construed so as to affect the Federal law governing the interest rate a financial institution may charge.[132]

Proposed § 232.4(b) is intended to track the interest-rate limit of 10 U.S.C. 987(b).

Proposed § 232.4(c) provides the framework for calculating the MAPR by: First, in § 232.4(c)(1), describing each of the charges that must be included in the MAPR; and second, in § 232.4(c)(2), prescribing the rules for computing the MAPR based on those charges.

Proposed § 232.4(c)(1)(i)–(ii) is intended to reflect the charges that must be included as ''interest'' under 10 U.S.C. 987(i)(3). Relative to the corresponding provisions of the Department's existing rule,[133] the language of these proposed provisions would be amended to reflect the broader scope of consumer credit subject to the regulation, such as by referring to ''the credit transaction for *closed-end credit or upon account opening for open-end credit*'' (emphasis added). The proposed exception for a bona fide fee (other than a periodic rate) charged to a credit card account would not apply to the charges set forth in proposed § 232.4(c)(1)(i)–(ii).

At this time, the Department proposes to maintain (in proposed § 232.4(c)(1)(ii)) the language of § 232.3(h)(1)(iii), which requires a creditor to include in the MAPR ''fees for credit-related ancillary products sold in connection with and either at or before consummation of the [consumer credit].'' When adopted in 2007, including in the MAPR only the ''credit-related ancillary products'' sold ''either at or before consummation of the credit transaction'' [134] was designed to be consistent with the scope of consumer credit, which covers only a narrow band of closed-end credit products. However, nothing in the MLA necessarily limits the inclusion in the MAPR of these charges only to those that are sold at the outset of the credit transaction. Particularly insofar as consumer credit would cover open-end credit products, as proposed, the MLA reasonably could

[125] 32 CFR 232.3(d).

[126] 10 U.S.C. 987(i)(5)(A)(i).

[127] 32 CFR 232.3(e) (''*Creditor* means a person who . . . and who otherwise meets the definition of 'creditor' for purposes of Regulation Z.'').

[128] 32 CFR 232.3(f).

[129] Currently the term ''electronic fund transfer'' is defined in section 1005.3(b) of the Bureau's Regulation E. 12 CFR 1005.3(f).

[130] 32 CFR 232.3(e) (defining ''person'' for the purposes of § 232.3 as including a ''natural person, organization, corporation, partnership, proprietorship, association, cooperation, estate, [and] trust.''

[131] 32 CFR 232.3(i).

[132] In the case of a national bank, for example, *see* 12 U.S.C. 85; 12 CFR 74001.

[133] 32 CFR 232.3(h)(1)(ii)–(iii).

[134] 32 CFR 232.3(h)(1)(iii).

be interpreted to require a creditor to include in the MAPR the fee for any ancillary product ''sold with any extension of credit to a [covered borrower]'' so long as that ancillary product was ''associated with the extension of credit'' [135]—which could arise at any time in an ongoing, open-end account for consumer credit. The Department has considered whether to amend the language of proposed § 232.4(c)(1)(ii) to require the inclusion in the MAPR of any fees for credit-related ancillary products, with respect to open-end credit, sold either upon account opening or at any time during the existence of the account, so long as the consumer was a covered borrower at the time the account was established.[136]

QUESTION 16: Should the Department consider eliminating the timing condition of § 232.4(c)(1)(ii) to require the inclusion in the MAPR of any fees for credit-related ancillary products sold either upon account opening or at any time during the existence of an account for open-end consumer credit? If so, please specifically describe the scope of an amended § 232.4(c)(1)(ii). For example, how should the Department define a ''credit-related ancillary product?'' How should the Department define the seller whose charge for a credit-related ancillary product would be subject to inclusion in the MAPR (*i.e.,* ''sold by the creditor'' or ''sold by the creditor or any affiliate of the creditor'')?

Proposed § 232.4(c)(1)(iii) is intended to describe the charges that must be included in the MAPR in light of the definition of consumer credit, which would chiefly consist of ''[f]inance charges,'' consistent with Regulation Z. In general, a charge that is excluded as a ''finance charge'' under Regulation Z also would be excluded from the charges that must be included when calculating the MAPR. As a result, whereas the Department's existing regulation provides exclusions from the MAPR for late payment fees [137] and taxes required to be paid,[138] proposed § 232.4(c) omits these provisions because these charges (as well as other charges) are not finance charges under Regulation Z.[139]

However, the Department recognizes that, under Regulation Z, a wide range of charges that a creditor may impose in connection with a credit product are excluded as ''finance charges,'' particularly an application fee and a participation fee.[140] If these exclusions from the definition of finance charge were to be maintained in the context of consumer credit covered under the MLA, a creditor would have a strong incentive to evade the interest-rate limit of 10 U.S.C. 987(b) by shifting the costs of a credit product by lowering the interest rate and imposing (or increasing) one or more of these excluded fees. To guard against this obvious result, the Department proposes to specifically include any application fee and any participation fee as charges that generally must be included in the MAPR.[141] The exception for a bona fide fee (other than a periodic rate) charged to a credit card account would apply to the charges set forth in proposed § 232.4(c)(1)(iii).

Proposed § 232.4(c)(1)(iv) is intended to clarify that, even if a charge set forth in paragraphs (c)(1)(i)–(iii) of this section would be excluded from the finance charge under Regulation Z, that charge nevertheless must be included in the calculation of the MAPR.

QUESTION 17: Would this approach to include any application fee or participation fee in the calculation of the MAPR be reasonable to implement the statutory provision of ''interest,'' which covers ''any other charge or premium with respect to the extension of consumer credit?'' [142]

1. Computing the MAPR

The proposed rule contains two provisions for computing the MAPR,[143] both of which track the methods already established in Regulation Z.

First, for closed-end credit, the proposed rule would require a creditor to follow ''the rules for calculating and disclosing the 'Annual Percentage Rate (APR)' for credit transactions under Regulation Z,'' based on the charges required for the MAPR, as set forth in proposed § 232.4(c)(1). In general, the requirements for calculating the APR for closed-end credit under Regulation Z are found in § 1026.22(a)(1), and include the explanations and instructions for computing the APR set forth in appendix J to part 1026.

For example, the MAPR for single advance, single payment transactions, such as some types of deposit advance loans, must be computed in accordance with the rules in Regulation Z, such as by following the instructions described in paragraph (c)(5) of appendix J. Based on the formula provided in paragraph (c)(5) of appendix J, in the case of a single advance, single payment transaction loan extended to a covered borrower for a period of 45 days, and for which the advance is $500 and the single payment required consists of the principal amount plus a finance charge of $28.44, for a total payment of $528.44, the MAPR would be 46.14 percent. In this example, the resultant MAPR would exceed the interest-rate limit imposed by 10 U.S.C. 987(b), as set forth in proposed § 232.4(b) of the regulation.

Second, for open-end credit, a creditor generally would be required to calculate the MAPR using the methods prescribed in § 1026.14(c)–(d) of Regulation Z, which relates to the ''effective annual percentage rate.'' [144] Section 1026.14(c) of Regulation Z provides for the methods of computing the annual percentage rate under three scenarios: (1) When the finance charge is determined solely by applying one or more periodic rates; (2) when the finance charge includes a fixed charge that is not due to application of a periodic rate, other than a charge with respect to a specific transaction; and (3) when the finance charge includes a charge relating to a specific transaction during the billing cycle.

[135] 10 U.S.C. 987(i)(3) (defining '' 'interest''' generally as including ''all cost elements associated with the extension of credit'').

[136] Amending the scope of § 232.4(c)(1)(ii) by eliminating the timing condition would be consistent with the scope of § 232.4(c)(1)(i) (which tracks § 232.3(h)(1)(ii) of the existing regulation), which does not impose a condition based on the timing of a sale or charge for a credit insurance premium.

[137] 32 CFR 232.3(h)(2)(i) (excluding from the MAPR ''[f]ees or charges imposed for actual unanticipated late payment, default, delinquency, or similar occurrence'').

[138] 32 CFR 232.3(h)(2)(ii) (excluding from the MAPR ''[t]axes or fees prescribed by law that actually are or will be paid to public officials for determining the existence of, or for perfecting, releasing, or satisfying a security interest'').

[139] *See* 12 CFR 1026.4(c).

[140] *See* 12 CFR 1026.4(c)(1) and (c)(4).

[141] *See also* 72 FR at 50587 (explaining the need to define the MAPR so that covered credit products ''cannot evade the 36 percent [interest-rate] limit by including low interest rates with high fees associated with origination, membership, administration, or other cost that may not be captured in the TILA definition of APR'').

[142] 10 U.S.C. 987(i)(3).

[143] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(h)(2)(B) (authorizing the Department to establish ''[t]he method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under [the MLA]'').

[144] A creditor subject to § 1026.40 of Regulation Z is not required to comply with § 1026.14(c) (''[that type of] creditor may, at its option, disclose an effective annual percentage rate pursuant to § 1026.7(a)(7) and compute the effective annual percentage [in accordance with the subparagraphs of § 1026.14(c)]''). However, for the purposes of complying with the Department's proposed rule when computing a MAPR for open-end credit, any creditor subject to the Department's regulation would be required to comply with that proposed § 1026.14(c), subject to the proposed § 232.4(c)(2)(ii)(B) (in the event that there is no balance during a billing cycle).

For example, suppose a creditor offers a line of credit to a covered borrower primarily for personal, family, or household purposes (commonly referred to as a ''personal line of credit''), and permits the borrower to repay on a monthly basis. Upon establishing the personal line of credit, the covered borrower borrows $500. The creditor charges a periodic rate of 0.006875 (which corresponds to an annual rate of 8.25 percent), plus a fee of $25, charged when the account is established and annually thereafter. Under these circumstances, pursuant to § 1026.14(c)(2) of Regulation Z the creditor would calculate the MAPR as follows: ''Dividing the total amount of the finance charge for the billing cycle''—which is $3.44 (corresponding to (0.006875) × ($500)), plus $25—''by the amount of the balance to which it is applicable''—$500—and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year''—12 (since the creditor allows the borrower to repay monthly), which is 68.26 percent. In this example, even though the periodic rate (0.006875) would comply with the interest-rate limit under proposed § 232.4(b), the resultant MAPR would be in excess of that limit because the amount borrowed is low at the time the annual fee is imposed. If the covered borrower instead borrows a higher amount, then the creditor still could impose the $25 annual fee and comply with proposed § 232.4(b); for example, if the amount initially borrowed is $1,400, then the resultant MAPR would be 24.73, well below the 36 percent limit.

In the case of open-end credit extended through a credit card account, a creditor likewise would be required to calculate the MAPR using the methods prescribed in § 1026.14(c)–(d) of Regulation Z. For example, if a creditor extends credit to a covered borrower through a credit card account and the borrower incurs a finance charge relating to a specific transaction, such as a cash advance transaction, during the billing cycle, then the creditor would calculate the MAPR under the instructions set forth in § 1026.14(c)(3) of Regulation Z. However, in the case of a credit card account the creditor may exclude, pursuant to proposed § 232.4(c)(1)(iii), any bona fide fee (as described in proposed § 232.4(d)) from the finance charges that otherwise must be accounted for; thus, if a charge for the cash advance transaction fits within the exclusion for a bona fide fee under proposed § 232.4(d), then that charge would not be included when computing the MAPR for that billing cycle.

Under certain circumstances, a creditor might not know at the outset of a billing cycle whether the borrower's use of an open-end line of credit will lead to a finance charge that—through a combination of rates and fees—exceeds the interest-rate limit of the MLA. However, at the end of a billing cycle the creditor would be able to calculate the total charges included in the MAPR and waive an amount necessary to comply with the 36-percent limit of § 232.4(b).

QUESTION 18: Are there operational issues with the use of the effective APR methodology for open-end credit products that the Department should consider? If so, are there alternative methods for calculating the MAPR for these products that would be consistent with 10 U.S.C. 987 and that would address the operational issues?

Proposed § 232.4(c)(2)(ii)(B) generally would prohibit a creditor from imposing a charge in an open-end credit plan for any billing cycle during which there is no balance. However, this provision would include an exception for a participation fee (which otherwise would be required to be included under proposed § 232.4(c)(1)(iii)(B)) because the Department believes that there might be circumstances in which a creditor should be allowed to charge a bona fide fee for maintaining an open-end line of credit for a covered borrower. Still, recognizing that a creditor could structure a high-cost, open-end line of credit to fit within this exception by substantially increasing the participation fee, the Department proposes to limit that fee to $100 per annum, regardless of the billing cycle in which the participation fee is imposed. The Department believes that $100 is the highest reasonable amount that a creditor could charge as a bona fide participation fee, during a billing cycle in which there is no balance, for the purposes of keeping the line of credit open to the covered borrower. Furthermore, proposed § 232.4(c)(2)(ii)(B) would contain a provision to clarify that the $100-per annum limitation on the amount of the participation fee does not apply to a bona fide participation fee charged to a credit card account that would be eligible for the exclusion under proposed § 232.4(d). We seek comment on whether the limit on a participation fee to $100 per annum is reasonable and economically justifiable.

2. Conditional Exclusion From the MAPR for Bona Fide Fees Charged to a Credit Card Account

The Department believes that credit card products may warrant special consideration under the MLA. As discussed above, proposed § 232.4(d) would provide the conditional exclusion, including standards relating to the conditions, that allows a creditor to exclude bona fide fees charged to a credit card account from the MAPR. The Department believes that the proposed conditions for excluding a bona fide fee from the MAPR—namely, that the fee must be ''reasonable'' and ''customary''—would fairly allow Service members and their dependents to continue to have access to credit card products *and* limit the opportunity for a creditor to exploit the exclusion for those products.

However, as set forth in proposed § 232.4(d)(4), a creditor who imposes any fee that is not a bona fide fee or that fails to meet the conditions of being ''reasonable and customary'' must include the total amount of those fees, including any bona fide fees, in the MAPR. Thus, if a creditor charges one unreasonable fee or a fee that is not customary in a credit card account for a covered borrower, the creditor must include the total amount of the fees—including any fee(s) that otherwise may be eligible for the exclusion—in the MAPR. As discussed above, the ''reasonable and customary'' conditions for a bona fide fee, as proposed, are intended to be applied flexibly so that, in general, creditors may continue to offer a wide range of credit card products that carry reasonable costs expressly tied to specific products or services and which vary depending upon the covered borrower's own choices regarding the use of the card.

Section 232.5 Identification of Covered Borrowers

As discussed above and except as provided in § 232.5(c), proposed § 232.5 would provide a mechanism for a creditor to unilaterally assess the status of a consumer who applies for consumer credit if: First, the creditor checks the MLA Database to determine that consumer-applicant's status when the creditor enters into a transaction or establishes an account for consumer credit; second, the consumer-applicant does (or does not) appear in the MLA Database; and, third, the creditor retains a record of the information obtained from the MLA Database. In addition, proposed § 232.5(a) would expressly provide that a creditor is permitted to use other methods, as the creditor may elect, to assess whether a consumer is a covered borrower.

Proposed § 232.5(c)(1) would provide that a creditor who has actual knowledge that a consumer is a covered borrower must ''treat the consumer as a

covered borrower notwithstanding any determination by that creditor based on information obtained from the [MLA Database].'' The Department intends for this exception to the safe harbor in proposed § 232.5(b) to apply so that a creditor may not take advantage of an obvious error in the MLA Database when the creditor knows otherwise, and the Department expects these circumstances to be rare.

Proposed § 232.5(c)(2) would state that ''actual knowledge'' of the status of a consumer as a covered borrower may be established ''only on the basis of a record (including any electronic record) collected by the creditor prior to entering into a transaction or establishing an account for consumer credit and maintained in any system used by the creditor that relates to the consumer credit involving that consumer.'' This proposed paragraph (c)(2) is intended to provide an evidentiary standard to establish whether a creditor might have ''actual knowledge'' with respect to a consumer's status relating to a consumer credit transaction or account. Depending on the circumstances, actual knowledge may be established based on the presence of one or more records maintained in the relevant system the creditor uses for the consumer credit transaction or account; under proposed § 232.5(c)(2), actual knowledge may not be established solely on the basis of other kinds of evidence, such as solely on testimony from a borrower that, during the application process, the borrower told the creditor's employee that the borrower is a Service member on active duty.

QUESTION 19: What alternatives should the Department consider for the evidentiary standard articulated in proposed § 232.5(c)(2)? Please provide specific language for provisions that would implement these alternatives.

Section 232.6 Mandatory Loan Disclosures

The Department proposes to amend § 232.6 of the regulation to simplify the information that a creditor must provide to a covered borrower when issuing consumer credit, consistent with the requirements of 10 U.S.C. 987(c). In particular, the Department is proposing, first, to eliminate the current requirement for information to be provided ''clearly and conspicuously'' and, second, to require a creditor to provide a ''statement'' of the MAPR that describes the charges the creditor may impose, instead of the periodic rate of the MAPR itself ''and the total amount of all charges included in the MAPR,'' as the existing regulation currently requires.

Proposed § 232.6(a) would require a creditor to provide four 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, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure;
- 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) provided pursuant to paragraph (a)(2) of this section satisfies this requirement; and
- A statement [describing the protections afforded to Service members and their dependents under the MLA].''

1. Clear and Conspicuous Requirement

The Department's existing regulation requires each of these categories of information to be provided ''clearly and conspicuously'' to a covered borrower.[145] There might be some benefits to covered borrowers by requiring certain information to be provided in a manner that, relative to other terms and conditions relating to the extension of or account for consumer credit, makes that information clear and conspicuous.[146] However, nothing in 10 U.S.C. 987(c) requires information to be provided ''clearly and conspicuously.'' In addition, Regulation Z independently generally requires disclosures regarding the costs of credit to be provided ''clearly and conspicuously,'' [147] and requires a creditor to present some types of information in those disclosures in certain formats.[148] The Department believes that—particularly in light of the proposal to extend the protections of the MLA to a broader range of transactions of and accounts for consumer credit—a creditor should be relieved from the obligation to present the categories of information required under 10 U.S.C. 987(c)(1)(A) and 987(c)(1)(C) in a manner that is clear and conspicuous. However, the Department continues to intend that the information which would be required to be provided to a covered borrower must be provided consistent with the format and other requirements of Regulation Z.[149]

QUESTION 20: If the Department were to adopt a regulation as proposed, to what extent, and in what manner, would the elimination of the clear-and-conspicuous requirement affect the presentation of the categories of information required under 10 U.S.C. 987(c)(1)(A) and 987(c)(1)(C)?

2. Statement of the MAPR

Proposed § 232.6(a)(1) would require a creditor to provide a ''statement'' of the MAPR, instead of ''[t]he MAPR applicable to the extension of consumer credit, and the total dollar amount of all charges included in the MAPR,'' as required under § 232.6(a)(1) of the existing regulation. When adopting this requirement in 2007, the Department recognized that the disclosure of the figures relating to the MAPR would apply only to the discrete forms of closed-end credit defined as ''consumer credit,'' and therefore interpreted the language of 10 U.S.C. 987(c)(1)(A) to require an annual percentage rate of interest. Nonetheless, the Department then recognized ''the potential confusion inherent in mandating the disclosure of two differing annual percentage rates (the MAPR required by [its] regulation and the APR required by TILA).'' [150] The Department now believes that this same ''potential confusion'' would be significantly magnified in the context of a wider range of closed-end and open-end credit products that, under this proposal, would be covered under the MLA.

Section 987(c)(1)(A) of the MLA does not, by its terms, require the disclosure of a particular annual percentage rate or the ''amount of all charges'' applicable to the extension of consumer credit. Rather, 10 U.S.C. 987(c)(1)(A) requires a ''*statement* of the annual percent rate of interest applicable to the extension of credit'' (emphasis added), and 10 U.S.C. 987(c)(2) independently requires ''[s]uch disclosures [to] be presented in accordance with terms prescribed by the regulations . . . to implement the [TILA].'' [151] Taken singly and in

[145] 32 CFR 232.6(a).

[146] When adopting its rule in 2007, the Department addressed the disclosure requirements of Regulation Z, *see, e.g.,* 72 FR at 50588, but did not address the purposes of imposing a clear-and-conspicuous requirement under 10 U.S.C. 987(c).

[147] 12 CFR 1026.5(a)(1)(i) and 1026.17(a)(1).

[148] *See, e.g.,* 12 CFR 1026(a)(3)(iii) (requiring ''[c]ertain account-opening disclosures [to] be provided in a tabular format''); *see also, e.g.,* 12 CFR 1026.17(a)(1) (prescribing the format of the TILA disclosures for closed-end credit transactions to be ''grouped together, [and] segregated from everything else'').

[149] *See* 72 FR at 50588. Accordingly, the information required under the MLA should not be interspersed with the TILA disclosures.

[150] 72 FR at 50589.

[151] 10 U.S.C. 987(c)(2). As enacted, the MLA refers in this section to regulations ''issued by the

conjunction with each other, these provisions of § 987(c) reasonably should be interpreted as requiring a ''statement'' regarding the MAPR and, separately, disclosures regarding the particular costs of credit relating to a transaction of or account established for consumer credit that are ''in accordance with the terms'' of Regulation Z.

In addition, section 987(i)(4) of the MLA provides that the term '' 'annual percentage rate' has the same meaning as in section 107 of [TILA], as implemented by regulations of the [Bureau].'' That term also includes ''all fees and charges,'' including certain charges that may be exempt from the term ''finance charge'' under Regulation Z.[152] The Department believes that, in light of section 987(i)(4) (''' 'annual percentage rate' has the same meaning as in section 107 of [TILA], as implemented by the [Bureau]''), section 987(c)(1)(A) of the MLA (''A statement of the annual percentage rate of interest'') should not be interpreted to require a creditor to calculate and disclose to a covered borrower a definitive figure for the ''annual percentage rate'' of interest applicable to the consumer credit that could include additional charges that must be counted as ''interest,'' and thereby would be materially different from the figure the creditor is required (under section 987(c)(1)(B) of the MLA) to compute and disclose under TILA. Instead, the Department believes that the appropriate approach to interpret the tension between sections 987(i)(4), 987(c)(1)(A), and 987(c)(1)(B) is to subject a creditor to one set of requirements for calculating and disclosing the costs of the extension of credit, namely, the requirements under TILA. One clear and beneficial consequence of interpreting these ambiguous provisions of the MLA under this approach is that a creditor would not be required to provide to a covered borrower two different numerical disclosures, which inevitably would lead to confusion.[153]

In light of the scope of the proposed definition of consumer credit, which would encompass open-end credit products, the Department proposes to exercise its discretion under the MLA [154] to interpret 10 U.S.C. 987(c)(1)(A) more straightforwardly to require, in § 232.6(c), a creditor to provide a description of ''the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement relating to the consumer credit to calculate the MAPR.'' This proposed section also would clarify that a creditor would *not* be required to ''describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.'' The Department believes that the disclosure of the items relating to the costs of consumer credit (*e.g.,* a periodic rate and other finance charges) that apply to a particular transaction or account, including the format of those items, should be governed under Regulation Z, consistent with the provisions of 10 U.S.C. 987(c)(1)(B) and 987(c)(2). Accordingly, under the Department's proposal, a creditor should be able to streamline its compliance with these requirements under 10 U.S.C. 987(c) by providing to a covered borrower the same disclosures the creditor must (in any event) provide to a consumer under Regulation Z, plus a statement of the MAPR. In order to facilitate compliance with that latter requirement, proposed § 232.6(c)(3) provides a model statement that a creditor could use.

Proposed § 232.6(c)(2) provides that a creditor may include a statement of the MAPR in its agreement with the covered borrower for the transaction of or account established for consumer credit. Consistent with the Department's interpretation of its existing regulation,[155] proposed § 232.6(c)(2) would expressly provide that the statement of the MAPR is not required in any advertisement relating to consumer credit.

QUESTION 21: If the Department were to adopt a regulation as proposed, to what extent, and in what manner, would the requirement to provide a description of ''the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement relating to the consumer credit to calculate the MAPR,'' instead of a definitive figure for the ''annual percentage rate'' of interest applicable to the consumer credit, affect the offering or provision of that credit to a covered borrower?

3. One-Time Delivery of Information; Methods of Delivery; Refinancing a Covered Loan

Proposed § 232.6(b) would establish rules relating to transactions involving a creditor and assignee or multiple creditors. More specifically, proposed § 232.6(b)(1) would provide that the information required under the MLA is ''not required to be provided to a covered borrower more than once for the transaction or the account established for consumer credit with respect to that borrower.'' (However, the disclosures required by Regulation Z, described in proposed § 232.6(a)(2), would remain subject to Regulation Z, and not the one-time delivery provision in proposed § 232.6(b)(1).) Proposed § 232.6(b)(2) would require multiple creditors to agree among themselves as to how to provide the information required under the MLA.

Proposed § 232.6(d) would establish rules relating to the methods of delivery, which are substantively similar to the rules under the existing regulation. Under proposed § 232.6(d)(1), a creditor would be required to provide the information required under the MLA ''in writing in a form the covered borrower can keep.'' And under proposed § 232.6(d)(2), consistent with the structure and intent of the existing regulation,[156] a creditor would be required to orally provide the information required under the MLA, or provide a method for the covered borrower to obtain oral disclosures when the borrower engages in a mail transaction, an internet transaction, or a credit transaction conducted at the point-of-sale in connection with the sale of a nonfinancial product or service. In this regard, the Department recognizes that its proposal to extend the scope of consumer credit to apply to a broader range of closed-end and open-end credit products would encompass credit offered at retail locations for nonfinancial products or services; similar to the treatment of a mail or internet transaction under the existing

Board of Governors of the Federal Reserve System'' (Board) to implement TILA. Subject to certain exceptions, notably under section 1029(c) of the Consumer Financial Protection Act of 2010, 12 U.S.C. 5519(c), the Board's authorities to prescribe rules implementing the federal consumer financial laws have been transferred to the Bureau. 12 U.S.C. 5581. Accordingly, the Department now generally looks to the rules prescribed by the Bureau implementing TILA, except with respect to certain creditors. *See* proposed § 232.3(p) (describing the application of the Board's Regulation Z, 12 CFR part 226, to certain creditors).

[152] *See* 12 U.S.C. 1026(c).

[153] In this regard, the Department also recognizes that many creditors likely would adopt disclosures and contract documents that would be designed to be provided to both consumers who are not entitled to the protections under the MLA and to covered borrowers. The Department's proposed interpretation of sections 987(i)(4), 987(c)(1)(A), and 987(c)(1)(B) of the MLA, which would require a creditor to provide the cost disclosures only required by TILA, would reduce the general confusion to *non*-covered borrowers assessing the costs of credit products that are not covered by the MLA.

[154] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(h)(2)(A) (authorizing the Department to prescribe regulations establishing ''[d]isclosures required of any creditor that extends consumer credit to a [covered borrower]'').

[155] 72 at 50589.

[156] *See* 10 U.S.C. 987(c)(1) (requiring information to be provided ''orally'').

regulation, the Department believes that, because a creditor is not present to interact orally with a covered borrower, the creditor should be permitted to provide a toll-free telephone number on or with the written disclosures so that the borrower may obtain the oral disclosures when obtaining consumer credit at the point-of-sale for a nonfinancial product or service.

Proposed § 232.6(e) would keep intact the current provision, currently found in § 232.6(c) of the Department's regulation, that requires ''a new statement''—to correspond with the statement of the MAPR under proposed § 232.6(a)(1)—and ''disclosures under this section only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.''

4. Proposal To Eliminate Disclosure Under § 232.6(a)(4)

Under the Department's existing regulation (as well as this proposed regulation), § 232.6(a)(4) requires a creditor to provide to a covered borrower a specific statement regarding protections for Service members and their dependents under Federal law and resources that may be available to assist them with financial matters (''Statement of Federal Protections''). Consistent with the Department's stance when proposing its initial regulation in 2007,[157] the Department intends to develop this regulation so that its provisions are true to the intent of the MLA without creating a system that is so burdensome that the creditor cannot comply. If the Department were to adopt in the final rule the provisions relating to the statement of the MAPR, including the model statement set forth in proposed § 232.6(c)(3), and maintain the general statement regarding the protections under the MLA, under § 232.6(a)(4), a creditor effectively would be required to provide two, potentially overlapping items of information before or at the time the covered borrower becomes obligated on the transaction or establishes an account for the consumer credit. The Department recognizes that, whereas a ''statement'' of the MAPR is required by 10 U.S.C. 987(c)(1)(A), the Statement of Federal Protections under § 232.6(a)(4) is solely a function of the Department's discretion to require a creditor to provide certain disclosures.[158] In light of other aspects of the Department's proposal, the Department is concerned that these two, potentially duplicative disclosure requirements could create a system that would be relatively burdensome for a creditor to comply with. The Department recognizes the need to consider balancing Service members' and their dependents' interests in receiving useful information with creditors' compliance burdens; thus, the Department could take certain steps to reduce the overall amount of and simplify the information relating to extensions of consumer credit. Accordingly, the Department is considering whether to eliminate § 232.6(a)(4) that requires a creditor to provide the Statement of Federal Protections.

QUESTION 22: Please specifically describe the benefits currently provided to a covered borrower by requiring a creditor to provide a specific statement describing the protections afforded to Service members and their dependents under the MLA, as set forth in § 232.6(a)(4). What would be the likely costs or benefits of eliminating the requirement in § 232.6(a)(4) to provide this specific statement?

QUESTION 23: The Department solicits comment on whether the proposal adequately addresses compliance challenges involving the provision of oral disclosures required by the MLA. The Department invites comment on alternatives that would balance the informational needs of covered borrowers with the compliance burden of creditors.

Section 232.7 Preemption

Proposed § 232.7 would revise the corresponding section of the Department's existing regulation to reflect amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a)(1) of the 2013 Act. In particular, § 232.7(b)(1) would be amended to reflect the prohibition against a state to authorize creditors to charge covered borrowers rates of interest for ''*any consumer credit or* loans'' that are higher than the legal limit for residents of the state (emphasis added). To mirror the language in 10 U.S.C. 987(d)(2), proposed § 232.7(b)(1) also would revise the term ''rates of interest'' to ''annual percentage rates of interest.'' Additionally, § 232.7(b)(2) would be amended to clarify that the prohibition against a state to permit a violation or waiver of any state law protections on the basis of a covered borrower's nonresident or military status to protections ''covering consumer credit,'' consistent with the amendment in section 661(a)(2) of the 2013 Act.

Section 232.8 Limitations

When the Department adopted its initial regulation in 2007, § 232.8(a) provided an exception from the prohibition, set forth in 10 U.S.C. 987(e)(1), against rolling over, renewing, or refinancing consumer credit that had been extended to a covered borrower by the same creditor. The exception allows the same creditor to renew or refinance consumer credit to the covered borrower if ''the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR.'' [159] Commenters on the Department's initial proposal expressed concerns that the more-favorable-terms standard was ''too subjective and would create uncertainty about what terms are 'more beneficial,' '' and ''suggested that financial institutions might err on the side of caution and forego entering transactions that could benefit the borrower in order to avoid any potential liability.'' [160] Whereas the existing exception had been adopted in the context of a narrow band of products within the three categories initially defined as consumer credit, this proposal to extend the scope of consumer credit increases the potential risks associated with any perceived ambiguity in the more-favorable-terms standard.

Proposed § 232.8(a) would track the language of the refinancing prohibition of 10 U.S.C. 987(e)(1),[161] but would limit the application of that prohibition to a relatively narrow group of creditors. More specifically, the Department would exercise its discretion to define a creditor for the purposes of 10 U.S.C. 987 [162] by defining—only for the purposes of § 232.8(a)—the term ''creditor'' to mean ''a person engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the

[157] When proposing its initial regulation in April 2007, the Department addressed the disclosure requirements under § 232.6(a) and stated: ''As with other aspects of the statute, the Department's intention has been to develop a regulation that is true to the intent of the statute without creating a system that is so burdensome that the creditor cannot comply.'' 72 FR at 18165.

[158] 10 U.S.C. 987(h)(2)(A).

[159] 32 CFR 232.8(a)(1).

[160] 72 FR at 50589.

[161] In addition, the Department proposes to substantially preserve the provision which currently states: ''This part shall not apply to a transaction permitted by this paragraph when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this part because the consumer was not a covered borrower at the time of the original transaction.''

[162] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(i)(5)(A)(ii) (authorizing the Department to establish ''additional criteria [for the definition of creditor] as are specified for such purpose in regulations prescribed under [the MLA]'').

relevant law), *provided however,* that the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.'' Restricting the application of the refinancing prohibition to creditors who are engaged in the business of ''deferred presentment transactions or similar payday loan transactions (as described in the relevant law)'' would be consistent with the structure, language, and intent of the prohibition, which is designed to apply to a creditor who rolls over, renews, repays, refinances, or consolidates consumer credit that the creditor itself already extended to a covered borrower, thereby ensnaring the borrower in the debt trap that the Department described in its 2006 Report.[163] The Department believes that payday lenders commonly engage in these transactions. Moreover, the Department believes that restricting the application of the refinancing prohibition to that specified class of creditors would permit most creditors, including a wide range of banks, thrifts, and credit unions, to offer beneficial forms of consumer credit, such as workout loans and other favorable refinancing transactions, to their covered-borrower customers.

Proposed § 232.8(e) generally would track the language of § 232.8(a)(5) of the existing regulation.

Proposed § 232.8(f) would track the language of the prohibition of 10 U.S.C. 987(e)(6), but would provide an exemption for a unique class of creditors. More specifically, the Department would exercise its discretion to define a creditor for the purposes of 10 U.S.C. 987 [164] by excluding—only for the purposes of § 232.8(f)—from the term ''creditor'' military welfare societies and the service relief societies, as described in 10 U.S.C. 1033(b)(2) and 37 U.S.C. 1007(h)(4) and: Army Emergency Relief, the Air Force Aid Society, the Navy-Marine Corps Relief Society, and the Coast Guard Mutual Assistance. Federal law provides that a loan to a Service member from one of these specified Relief Societies may be repaid through deductions from the pay of the borrowing Service member.[165]

In the Department's experience, the specified Relief Societies provide essential emergency financial assistance to Service members. The specified Relief Societies make low- and no-cost loans, as well as grants, to Service members repayable through an allotment of military pay.[166] Recognizing the unique and important role of the specified Relief Societies, and the long history of the specified Relief Societies in supporting the welfare of Service members and their families, the Department encourages Service members facing financial need to utilize the services provided by the specified Relief Societies.

In light of the specialized operations of each of the specified Relief Societies, which currently depend crucially on the use of an allotment from a Service-member borrower's pay, and consistent with the Department's regulations on deductions from pay under 37 U.S.C. 1007, the Department proposes to exclude the Relief Societies specified in 10 U.S.C. 1033(b)(2) and 37 U.S.C. 1007(h)(4) from the definition of ''creditor'' only for the purposes of the prohibition in § 232.8(f).

In all other respects, proposed § 232.8 would substantially preserve the language of the existing provisions of § 232.8. However, the Department proposes to amend the structure of § 232.8 by eliminating subsection § 232.8(b) (and make other conforming amendments) because the definition of ''creditor,'' in proposed § 232.3(i)(2), would include an assignee of a covered creditor.

QUESTION 24: What would be the likely costs or benefits of revising the refinancing prohibition in 10 U.S.C. 987(e)(1) to apply only to a specific type of creditor who is ''engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law),'' and to not include a creditor that is ''chartered or licensed under Federal or State law as a bank, savings association, or credit union?''

QUESTION 25: What would be the likely costs or benefits of amending the prohibition in 10 U.S.C. 987(e)(5) to apply to creditors other than a creditor who is ''chartered or licensed under Federal or State law as a bank, savings association, or credit union?''

QUESTION 26: Should the Department consider a broader exemption from the term ''creditor'' for the military welfare societies and the service Relief Societies specified in 10 U.S.C. 1033(b)(2) and 37 U.S.C. 1007(h)(4)?

Section 232.9 Penalties and Remedies

Proposed § 232.9(a)–(d) would preserve the language of those provisions of the existing regulation. The Department proposes to add a new § 232.9(e) to reflect (with conforming changes to the language) the civil-liability provisions of the MLA enacted in section 662(a) of the 2013 Act.

Section 232.10 Administrative Enforcement

The Department proposes to add a new § 232.10 to reflect (with conforming changes to the language) the administrative-enforcement provisions of the MLA enacted in section 662(b) of the 2013 Act.

Section 232.11 Servicemembers Civil Relief Act Provisions Unaffected

As a consequence of adding a new section for the administrative-enforcement provisions, the existing § 232.10 would be re-numbered to § 232.11, without any change to the language of that section.

Section 232.12 Effective Dates

The Department proposes to amend the section relating to the effective dates of the regulation, now § 232.12, particularly to reflect the effective dates of amendments to the MLA enacted in the 2013 Act.

Proposed § 232.12(a) would amend the language of § 232.11 of the existing regulation to reflect the amendments that would be adopted in the Department's forthcoming final rule. Consistent with the current § 232.11, consumer credit extended to a covered borrower any time on or after October 1, 2007, and up to the effective date of the Department's forthcoming final rule

[163] *See* 2006 Report, at 14. *See also* Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* 24–25 (April 2013), available at *http://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf* (discussing the sustained use of payday loans, and stating that for consumers who conducted at least seven payday loan transactions in a year, the majority of those transactions ''were taken on a nearly continuous basis.'').

[164] 10 U.S.C. 987(h)(1) (authorizing the Department to prescribe regulations to carry out the MLA); 10 U.S.C. 987(i)(5)(A)(ii) (authorizing the Department to establish ''additional criteria [for the definition of creditor] as are specified for such purpose in regulations prescribed under [the MLA]'').

[165] 37 U.S.C. 1007(h).

[166] *See* Army Emergency Relief: *http://www.aerhq.org/dnn563/Portals/0/AERAnnualReport2012.pdf,* ''[i]n 2012, AER provided more than $68.6 million in no-interest loans and grants to 55,342 Soldiers and Families and their Families;'' Air Force Aid Society: *http://www.afas.org/file/documents/2012-Annual-Report.pdf,* ''2012 direct assistance totaled nearly $18 million, and includes more than 40,000 assists to Airmen and their families;'' Navy-Marine Corps Relief Society *http://b.3cdn.net/nmcrs/45f955f5204f8ca1df_mlbruu7ib.pdf,* ''FY12 63,392 Clients received financial assistance, $41.8 million;'' Coast Guard Mutual Aid: *http://www.cgmahq.org/Financial/AnnualReports/2012.pdf,* ''[o]verall in 2012, CGMA distributed more than $4.27 million in direct financial assistance to over 5,900 Coast Guard individuals and their families.''

would be subject to the requirements of the Department's existing rule.

Proposed § 232.12(b) generally would apply the requirements of the Department's forthcoming final rule only to new transactions or accounts involving consumer credit that are consummated or established after the effective date of the final rule. The Department believes that this provision would be equitable, particularly to avoid the potential injustice and operational difficulties that could arise if new requirements under the amended regulation were to apply to pre-existing transactions or accounts involving consumer credit to covered borrowers. However, proposed § 232.12(b) would provide exceptions to allow certain provisions of § 232.7(b) and § 232.9(e), as discussed below, to become effective prior to the effective date of the Department's forthcoming final rule.

Proposed § 232.12(c) would provide that ''the amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, 126 Stat. 1785), as reflected in § 232.7(b), shall take effect on January 2, 2014.'' Section 661(c)(2)(A) of the 2013 Act provides, in relevant part, that the amendments enacted in section 661(a) of that Act shall take effect on ''the date that is one year after the date of enactment of this Act.'' [167] As a result, only the amendments made in § 232.7(b)(1)—adding the phrase ''any consumer credit'' before ''loans''—and § 232.7(b)(2)—adding the phrase ''covering consumer credit'' after ''State consumer lending protections''—would be effective on January 2, 2014.

Proposed § 232.12(d) would provide that civil-liability provisions adopted in § 232.9(e) ''shall apply with respect to consumer credit extended on or after January 2, 2013.'' This subsection reflects the effective date, established in section 662(c) of the 2013 Act, of the civil-liability provisions enacted in section 662(a) of that Act.

V. Regulatory Analyses

A. Analysis Under Executive Orders 12866 and 13563

In accordance with the requirements of Executive Orders 12866 [168] and 13563 [169] (''EO 12866'' and ''EO 13563''), the Department has assessed the expected costs associated with the proposal to amend its regulation to extend the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products offered or extended to covered borrowers. In addition, the Department has provided a sensitivity analysis that examines potential benefits.

1. Executive Summary

EO 12866 and EO 13563 direct executive agencies, including the Department, to assess the anticipated present and future benefits and costs of available regulatory alternatives—including both quantitative measures and qualitative measures—using the best available techniques. A determination has been made that this proposed regulation is a significant regulatory action, as defined in EO 12866 and as supplemented by EO 13563, in that this regulation, if adopted as proposed, might have an annual effect on the economy of $100 million or more. Accordingly, this proposed regulation has been reviewed by the Office of Management and Budget (''OMB''). The regulatory impact assessment prepared by the Department for this proposed regulation is provided below.

The Department anticipates that its regulation, if adopted as proposed, might impose costs of approximately $96 million during the first year, as creditors adapt their systems to comply with the requirements of the MLA and the Department's regulation. After the first year and on an ongoing basis, the annual cost to the economy is expected to be approximately $20 million. The Department provides a sensitivity analysis examining scenarios in which the proposed rule would, if adopted, reduce the incidence of involuntary separation of Service members due to financial distress; the benefits under these scenarios range from $13 million to $137 million annually.

The MLA, as implemented by the Department's regulation as well as under this proposed regulation, provides two broad classes of requirements applicable to a creditor: first, the creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit to a covered borrower (''interest-rate limit''); second, when extending consumer credit, the creditor must satisfy certain other terms and conditions, such as providing certain 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, by refraining from requiring the borrower to submit to arbitration in the case of a dispute involving the consumer credit, and by refraining from charging a penalty fee if the borrower prepays all or part of the consumer credit (collectively, ''other MLA conditions'').

The interest-rate limit results in a transfer payment because the amount of interest revenue to be foregone by a creditor—that is, the amount of interest revenue that a creditor otherwise could receive by imposing an MAPR of greater than 36 percent—necessarily corresponds to the amount saved by the covered borrower.

The Department recognizes that the other MLA conditions of the proposed regulation could lead to various types of compliance costs for creditors, and the estimated cumulative amount of those quantified costs on an ongoing, annual basis is approximately $20 million. The other MLA conditions are anticipated to impose direct financial costs on a creditor that are not reasonably expected to be offset by any quantifiable, financial benefit to a covered borrower. For example, the Department believes that, for the purposes of conducting this assessment under EO 12866 and EO 13563, the estimated costs on creditors associated with the requirement to provide to covered borrowers a statement of the MAPR is not offset by any financial benefit to the borrowers, even though borrowers generally do obtain some non-quantifiable benefits from receiving the statement. Similarly, the Department expects that creditors will face compliance costs when using the Department's MLA Database to assess whether consumer-applicants are covered borrowers and maintaining records of that information, as provided in proposed § 232.5(b), and consumers reasonably can be assumed to be indifferent to the functions associated with conducting covered-borrower checks through the MLA Database and not receive any readily quantifiable, financial benefits thereof. The Department believes, as discussed above in section III.C., there are benefits to a system for conducting a covered-borrower check that minimizes, or eliminates, the opportunity for a covered borrower to make a false statement regarding his or her status when applying for consumer credit. Likewise, the Department recognizes that the proposal could impose certain types of costs on covered borrowers, including a potential reduction in access to available credit. Nevertheless, as discussed above in section II.E., the majority of Service members have access to reasonably priced (as well as low-cost) credit, and, as long as they wisely use those resources, they are

[167] 10 U.S.C. 987 note.

[168] Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993).

[169] Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

likely not to need high-cost loans to fulfill their credit needs.

The scenario analysis that examines the potential benefit of the Department's proposal are the savings attributable to lower recruiting and training expenses associated with the reduction in involuntary separation of Service members due to financial distress. Each separation of a Service member is estimated to cost the Department $57,333, and the Department estimates that each year approximately 4,703 to 7,957 Service members are involuntarily separated due to financial distress. If the Department's proposed regulation could reduce the annual number of involuntary separations due to financial distress from between five to 30 percent, the savings to the Department are expected to be in the range of approximately $13.47 million to $136.85 million each year.

Figure 1 (which also appears in the Executive Summary, in section I.C.) provides a summary of the anticipated benefits and (costs) of the Department's proposed regulation,[170] and the estimates are provided for the first year, on an annual (ongoing basis), and for a ten-year period, applying discount rates of both 7 percent and 3 percent, consistent with guidance issued by OMB.[171] Nevertheless, the Department has assessed the amounts of value that potentially may be involved in the transfer payments due to the interest-rate limit, and those amounts are summarized in Figure 2.

FIGURE 1—SUMMARY OF ESTIMATED EFFECTS OF PROPOSED RULE

[2013 dollars in millions]

		First year	Annual, ongoing	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Sensitivity Analysis:					
Benefits to the Department	Low	$0	$13	$96	$128
	High	0	137	970	1,304
Primary Analysis:					
Costs to Creditors of Compliance		96	20	144	194
Primary Analysis:					
Transfer Payments	Low	NA	101	717	958
	High	NA	120	856	1,139

FIGURE 2—ESTIMATED VALUE OF TRANSFER PAYMENTS UNDER THE PROPOSED RULE

[2013 dollars in millions]

	Annual, ongoing	10-year, 7% discount rate	10-year, 3% discount rate
Transfer Payments:			
Low	$101	$716	$957
High	120	856	1,139

2. Need for the Regulation and Consideration of Alternatives

The Department is proposing to amend its existing regulation primarily for the purpose of extending the protections of 10 U.S.C. 987 to a broader range of closed-end and open-end credit products, rather than the limited credit products currently defined as consumer credit. More specifically, as discussed above, the Department proposes to amend its regulation so that, in general, consumer credit covered under the MLA [172] would be defined consistently with credit that for decades has been subject to the protections under TILA, namely: 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.[173]

In developing this proposal, the Department has consulted with the Federal Agencies (pursuant to 10 U.S.C. 987(h)(3)), and in the course of that process has considered a range of alternatives to the provisions contained in this proposal. For example, as discussed above in section III.B., in developing the provisions for the conditional exclusion for credit card accounts, the Department has considered proposing a complete exemption from the definition of ''consumer credit'' for credit extended to a covered borrower under a credit card account. The Department similarly has considered whether exclusions from the MAPR for certain types of fees, such as an application fee or participation fee, should be proposed for credit card accounts in order to preserve current levels of access to those products for Service members and their dependents. The Department also has considered alternative mechanisms and thresholds for the provision in proposed § 232.4(d)(3)(ii) would set a threshold of $3 billion in outstanding credit card loans on U.S. credit card accounts held by a credit card issuer in order for that issuer's fees to be eligible for inclusion in an average calculated for the purposes of compliance with the ''reasonable'' condition of § 232.4(d)(1).

Similarly, in developing the provisions relating to a creditor's assessment of a covered borrower, the Department has considered alternatives to the creditor's use of the MLA Database in order to obtain the benefit

[170] For the sake of brevity and clarity, the estimated savings to creditors, as discussed below, are not included in the computations represented in Figure 1.

[171] *See* OMB Circular A–4 (Regulatory Planning and Review), at 31–34 (recommending, for regulatory analysis, providing estimates of net benefits using discount rates of both 3 percent and 7 percent), available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*.

[172] The forms of ''consumer credit'' that may be covered by the MLA are subject to certain exceptions, notably for a residential mortgage. 10 U.S.C. 987(i)(6)(A) and 987(i)(6)(B).

[173] *See* 12 CFR 1026.1(c)(1)(iii) (limiting the coverage of the regulation, in relevant part, to credit that is subject to a finance charge or is payable by a written agreement in more than four installments).

of a safe harbor under proposed § 232.5(b)(2). In this regard, the Department has considered whether to retain a safe harbor for a creditor's use of the covered borrower identification statement, and explicitly seeks comment on that alternative.[174] Likewise, the Department has considered alternative provisions relating to a creditor's use of the MLA Database via commercial information-services providers, such as consumer reporting agencies, and seeks comment on that approach.[175]

In light of the data and other information available to the Department at this time, the Department has considered alternative approaches to the provisions of the proposal and, as appropriate, explicitly solicits comments on the alternatives the Department should consider.[176]

After observing the effects of its existing regulation during the past six years and based on its review of information provided by a wide variety of persons and entities, the Department believes that this proposal to amend the regulation is appropriate in order to address a wider range of credit products that currently fall outside the scope of the MLA, streamline the information that a creditor would be required to provide to a covered borrower when consummating a transaction involving consumer credit, and provide a more straightforward mechanism for a creditor to conclusively assess whether a consumer-applicant is a covered borrower. In this regard, as discussed above in section III.C., the Department is aware of misuses of the covered borrower identification statement whereby a Service member (or covered dependent) falsely declares that he or she is not a covered borrower. The Department believes that, if a creditor unilaterally conducts a covered-borrower check by using the MLA Database, a Service member or his or her dependent would be relieved from making any statement regarding his or her status as a covered borrower.

3. Estimate of Anticipated Costs Associated With Other MLA Conditions

The other MLA conditions that would apply to creditors who offer consumer credit products that would be subject to the proposed regulation might present several types of compliance costs to those creditors. For example, if a creditor extends consumer credit to a covered borrower only in the form of a credit card product (and who thus currently is not subject to the MLA), the creditor might encounter various costs associated with complying with requirements for: adjustment of computer systems and software to provide for calculation of the MAPR (pursuant to § 232.4(b)); the use of the MLA Database and the retention of records relating to its covered-borrower determinations (under proposed § 232.5(b)); the mandatory loan disclosures (under proposed § 232.6); and each of the statutory limitations applicable to consumer credit (under proposed § 232.8).

The Department believes that some of the compliance costs due to the other MLA conditions are not material to the quantifiable aspects of this regulatory impact assessment because some costs are minimal (relative to the creditor's other compliance costs or the creditor's overall costs of operations when providing consumer credit) or not amenable to measurement.[177] Accordingly, for the purposes of this regulatory impact assessment, the Department has focused its quantitative assessment of costs on two areas that, based on the Department's experience, are reasonably likely to impose costs: First, the disclosures required by the MLA to be provided by a creditor to a covered borrower (under proposed § 232.6); and, second, the use of the MLA Database and the retention of records for covered-borrower determinations (under proposed § 232.5(b)). In addition, for the purposes of this regulatory impact assessment, the Department addresses the potential costs associated with the prohibition against requiring a covered borrower to submit to arbitration in the case of a dispute involving an extension of consumer credit (under proposed § 232.8(c)).

The Department recognizes that this assessment does not capture all possible compliance costs associated with the proposed regulation. Indeed, the Department anticipates that a creditor who chooses to extend credit with a cost that may exceed the interest-rate limit or implicate the limitations in proposed § 232.8 might need to adjust its computer and software systems to calculate the MAPR, develop new policies and procedures, and train staff on new procedures for identifying covered borrowers and taking advantage of the proposed safe harbor under proposed § 232.5. Further, creditors likely would select different techniques for meeting compliance obligations under the proposal. The cost burden on each creditor could vary depending on the business decisions made by that creditor. Acknowledging the limits of the assessment and pursuant to the directive of EO 12866 and EO 13563, the Department has sought to quantify the important potential costs of the proposal and to identify important non-quantified potential costs and benefits.[178]

As the Department assesses whether to amend its regulation, as proposed, the Department will further consider the potential benefits and costs of extending the protections of the MLA to a broader range of closed-end and open-end credit products. There are several areas where additional information could assist the Department in better estimating the potential benefits, costs, and effects of amending its regulation. The Department requests interested parties to provide specific data relating to the benefits and costs of amending the regulation, as proposed, including costs to implement measures to adjust computer systems and to train personnel. The Department seeks comments on whether all anticipated costs have been adequately captured in the analysis. Please provide information on the type of costs and the magnitude of costs by providing relevant data and studies.

Disclosures. Under the Department's existing regulation (''status quo alternative''), a creditor who extends to a covered borrower one or more of the three consumer credit products covered by the regulation must ''clearly and conspicuously'' disclose: (i) A

[174] *See* section III.C., question 13.

[175] *See* section III.C., question 11.

[176] *See, e.g.,* section III.B., question 10.

[177] For example, the Department believes that the costs associated with the prohibition against requiring a covered borrower to waive his or her rights under any otherwise applicable provision of law (as provided in proposed § 232.8(b)) is not material to this regulatory impact assessment because the potential costs of this prohibition are negligible. Moreover, there is no reasonable basis for the Department to estimate the potential costs associated with this prohibition, in part because the Department believes so few—if any—creditors currently require, as part of their standard agreements in credit products, a consumer to waive rights under applicable provisions of State or Federal law.

[178] In considering the costs associated with updating computer programs, the Department relies on analysis from the Government Accountability Office (GAO) examining the costs of implementing changes to minimum payment disclosures for credit card accounts. There, GAO found that credit card issuers were unable to provide precise estimates of, among others, the cost of computer programming to provide the revised disclosures. GAO found that estimates of the computer programming cost varied widely, from $5,000 to $1 million. For large issuers, GAO concluded that these one-time costs would be very small when compared with large issuers' net income. For smaller issuers, GAO concluded that work to implement changes would be done largely by third-party processors, accustomed to reprogramming required to managing cardholder data and processing billing statements. U.S. Gov't Accountability Office, GAO–06–434, *Credit Cards: Customized Minimum Payment Disclosures Would Provide More Information to Consumers, but Impact Could Vary* (April 2006).

numerical value for the MAPR applicable to the extension of credit, including the total dollar amount of all charges included in the MAPR; (ii) any disclosures required by Regulation Z; (iii) a clear description of the payment obligation (which may be satisfied by a payment schedule provided pursuant to Regulation Z); and (iv) a Statement of Federal Protections. A creditor must provide the information orally and in writing prior to consummation of the credit transactions. For mail and internet transactions, the creditor may provide, with the written disclosures, a toll-free telephone number that the borrower may use to obtain the oral disclosures.

Section 232.6 of the proposed rule would amend the provisions relating to the information required by the MLA to simplify the information that a creditor must provide to a covered borrower when extending consumer credit. The proposal would relieve a creditor of the obligation to disclose ''clearly and conspicuously'' the information required by the MLA. Additionally, the Department would eliminate the requirement that a creditor disclose a numerical value for the MAPR or ''the total dollar amount of all charges,'' and instead would require a creditor to provide a description of the charges that the creditor may impose. Thus, in general, the proposal would permit a creditor to streamline compliance with the disclosure requirements under 10 U.S.C. 987(c) by providing to a covered borrower the same information the creditor must provide to a consumer under Regulation Z, plus a statement of the MAPR. In order to facilitate compliance, the proposed regulation provides a model statement that a creditor could use. Consistent with the Department's interpretation of its existing regulation, the proposal expressly provides that the statement of the MAPR would not be required in any advertisement relating to consumer credit.

The Department estimates that there are approximately 191 million transactions each year in which creditors would provide the required information,[179] generally included as part of their standard credit agreements. The Department assumes that all creditors, other than creditors who offer only residential mortgage loans or loans expressly to finance the purchase of personal property (neither of which loans is consumer credit), will provide these disclosures, and believes that, based on these assumptions, approximately 40,000 creditors would be subject to the proposed regulation.[180] The Department seeks comments on whether the estimate of 40,000 creditors is reasonable. Please provide data and studies that support the comment.

(a) Statement of the MAPR

For creditors who currently provide disclosures to covered borrowers (under the status quo alternative), the proposed rule is expected to reduce some of their compliance costs by eliminating the requirement to disclose a numerical value for the MAPR. The Department estimates that eliminating the requirement under the status quo to disclose a numerical value for the MAPR would reduce the compliance costs for creditors who currently offer forms of consumer credit by $71,900 per year. Over ten years, the Department estimates that the total savings to this class of creditors would be between $0.58 million (at a 7 percent discount rate) and $0.69 million (at a 3 percent discount rate).

The proposal to require the provision of a statement of the MAPR, which may be satisfied through the use of a model statement, is anticipated to cost all creditors approximately $19 million during the first year, principally due to the costs of modifying the documents given to covered borrowers (such as a contract for consumer credit).[181] The Department estimates that, on an ongoing basis, providing the statement of the MAPR would add approximately 50 seconds to each transaction when provided orally and require one-quarter of a printed page when included in standard account disclosures. To estimate the cost of providing the statement of the MAPR orally, the Department assumes that this statement is provided by a creditor's teller or sales person, provided only to covered borrowers, and that there are approximately 2 million covered borrowers, each opening two credit accounts per year.[182] The Department estimates that the ongoing cost to creditors for the additional transaction time in orally providing the statement of MAPR will be approximately $0.69 million per year.[183] Over ten years, the total costs to creditors of providing a statement of the MAPR orally during in-person transactions would be between $4.88 million (at a 7 percent discount rate) and $6.57 million (at a 3 percent discount rate).

The Department further assumes that creditors will update standard account disclosures for all consumer credit accounts and that the printing and paper costs are five cents per page.[184] The Department estimates that the ongoing costs for additional printing would be approximately $2.39 million per year.[185] Over ten years, the total

[179] To estimate the number of consumer credit transactions each year, the Department relies on data from the Federal Reserve Bank of New York's Consumer Credit Panel. *See* Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit* (August 2013). For the six months prior to the second quarter of 2013, there were approximately 159 million credit inquiries. The Department assumes that 60 percent of these inquiries were for credit accounts that would be consumer credit under proposed § 232.3(f). This estimate does not differentiate between credit applications and credit accounts opened. If most creditors only supply the required information as part of their account agreements which are provided at the time of account opening, then the overall number of transactions involving the provision of that information would be lower than is estimated here.

[180] The Department bases this estimate on relevant numbers of establishments published by the Bureau of Labor Statistics, the FDIC, and NCUA. *See* BLS, Quarterly Census of Employment and Wages, NAICS 522291 Consumer Lending, NAICS 522298 All Other Nondepository Credit Intermediation (2012) (the annual average number of establishments for consumer lending is 14,544; the annual average number of all other nondepository establishments for credit intermediation is 8,963); FDIC Institution Directory, available at *http://www2.fdic.gov/IDASP/* (reporting 6,812 insured institutions) (accessed January 2014); and NCUA Annual Report 145 (2012), available at *http://www.ncua.gov/Legal/Documents/Reports/AR2012.pdf* (reporting 9,369 credit unions) (accessed January 2014).

[181] The Department estimates that set-up for the statement of the MAPR will take 20 hours, and that staff time for the set-up of the proposed disclosure will be 50 percent data entry and information processing workers, 40 percent supervisors of office and administrative support workers, and 10 percent legal counsel. U.S. Dep't of Labor, Bureau of Labor and Statistics, Occupational Employment and Wages 2012, Table 1 (mean hourly wage for data entry and information processing workers is $15.11; mean hourly wage for supervisors of office and administrative support workers is $25.40; mean hourly wage for legal counsel is $62.93), available at *http://www.bls.gov/news.release/ocwage.t01.htm.* The Department calculates the total estimated cost by multiplying the mean hourly wage by the portion of time for each classification of worker expected to be involved in modifying the documents.

[182] In this regard, the Department has estimated the potential costs only for in-person transactions. These figures do not relate to applications involving the use of the creditor-supplied telephone number for the oral delivery of the required information.

[183] The Department reaches this estimate by computing the cost of the additional transaction time, calculated by multiplying the number of transactions (4 million) by the mean hourly wage for financial tellers ($12.40) and the portion of hour that the disclosure will take in a typical transaction (1/72nd of an hour). U.S. Dep't of Labor, Bureau of Labor and Statistics, Occupational Employment and Wage Table 1 (May 2012) (mean hourly wage for financial tellers is $12.40).

[184] The Department relies on estimates of paper and printing costs recently published by the Department of Labor. Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure,77 FR 5632, 5654 (Feb. 3, 2012).

[185] The Department reaches this estimate by computing the cost of the additional printing and paper for the disclosure, calculated by multiplying the number of transactions (191 million) by the cost

Continued

costs to creditors of providing a printed statement of the MAPR would be between $16.93 million (at a 7 percent discount rate) and $22.75 million (at a 3 percent discount rate).

Taking the additional transaction time for oral disclosure and the additional printing and paper expenses for written disclosure together, the Department estimates that the total costs to all creditors of providing the statement of the MAPR would be $3.08 million each year. Over ten years, the Department estimates that the total costs to all creditors of providing the statement of the MAPR would be between $21.81 million (at a 7 percent discount rate) and $29.32 million (at a 3 percent discount rate).

Additionally, creditors may experience some increase in call volume and costs associated with providing oral disclosures if borrowers engage in consumer credit transactions by mail, internet, or at the point of sale in association with the sale of a nonfinancial product or service. The Department seeks comment, as well as data (as may be appropriate), on its supposition regarding the costs associated with these sales channels. Due to the lack of readily available data, the Department has not quantified the potential costs of any increase in this call volume; however, the Department has sought to streamline and minimize the compliance burden associated with all disclosures, including the requirement to orally provide the required information. Proposed § 232.6(d)(2) reflects the Department's effort to minimize the burden on creditors while retaining the structure and intent of the current regulation. The Department seeks comment on the assumptions invoked in this section. Please provide comment on the reasonableness of the assumptions and likelihood of the associated costs. Please provide data and studies that support the comment.

(b) Statement of Federal Protections

Under the proposal, like the status quo alternative, a creditor still must provide to a covered borrower the Statement of Federal Protections. However, because the proposal would apply the protections of 10 U.S.C. 987 to a broader scope of credit transactions, an additional 20,000 creditors would provide the Statement of Federal Protections, as required by proposed § 232.6(a)(4). The Department estimates that incorporating the 111 words in the required Statement of Federal Protections into existing disclosures or contract documents would cost newly obligated creditors approximately $9.60 million in set-up costs during the first year.[186]

On an ongoing basis, the Department estimates that providing the Statement of Federal Protections would add approximately 50 seconds to each transaction when the disclosure is provided orally and require one-quarter of a printed page when included in standard account disclosures. To estimate the cost of orally providing the Statement of Federal Protections, the Department assumes that this statement is provided by a creditor's teller or sales person, provided only to covered borrowers, and that there are approximately 2 million covered borrowers, each opening two credit accounts per year. The Department estimates that the cost to creditors of providing the Statement of Federal Protections orally will be approximately $0.69 million per year.[187] Over ten years, the total costs to creditors of providing the Statement of Federal Protections orally during in-person transactions would be between $4.88 million (at a 7 percent discount rate) and $6.57 million (at a 3 percent discount rate).

The Department further assumes that creditors will update standard account disclosures for all credit accounts and that the printing and paper costs are five cents per page.[188] The Department estimates that the ongoing costs for additional printing would be approximately $2.39 million per year.[189] Over ten years, the total costs to creditors of providing the Statement of Federal Protections in account agreements would be between $16.93 million (at a 7 percent discount rate) and $22.75 million (at a 3 percent discount rate).

Taking the additional transaction time for oral disclosure and the additional printing and paper expenses for written disclosure together, the Department estimates that the total costs to all creditors of providing the Statement of Federal Protections would be $3.08 million each year. Over ten years, the Department estimates that the total costs to all creditors of providing the Statement of Federal Protections would be between $21.81 million (at a 7 percent discount rate) and $29.32 million (at a 3 percent discount rate). Because some creditors obligated under the current rule may provide the Statement of Federal Protections to covered borrowers, the actual additional cost of the proposal over the status quo alternative could be lower than the Department's estimate.

Additionally, as with the statement of the MAPR, the Department realizes that creditors might experience some increase in call volume and costs associated with providing oral disclosures if borrowers engage in consumer credit transactions by mail, internet, or at the point of sale in association with the sale of a nonfinancial product or service. The Department has not quantified the potential costs of any increase in this call volume; however, the Department has sought to streamline and minimize the compliance burden associated with all disclosures, including the MLA's oral disclosure requirement. Proposed § 232.6(d)(2) reflects the Department's effort to minimize the burden on creditors while retaining the structure and intent of the current regulation.

Figure 3a provides a summary of the anticipated benefits and (costs) associated with the disclosures under the Department's proposed regulation.

per page ($.05) and the portion of the page used for the disclosure (0.25 page).

[186] The Department estimates that set-up for the Statement will take 20 hours and that staff time for the set-up of proposed disclosures will be 50 percent data entry and information processing workers, 40 percent supervisors of office and administrative support workers, and 10 percent legal counsel. U.S. Dep't of Labor, Bureau of Labor and Statistics, Occupational Employment and Wages Table 1 (2012) (mean hourly wage for data entry and information processing workers is $15.11; mean hourly wage for supervisors of office and administrative support workers is $25.40; mean hourly wage for legal counsel is $62.93). *http://www.bls.gov/news.release/ocwage.t01.htm*. The Department calculates the total estimated cost by multiplying the mean hourly wage by the portion of time for each classification of worker expected to be involved in modifying the documents.

[187] The Department reaches this estimate by computing the cost of the additional transaction time, calculated by multiplying the number of transactions (4 million) by the mean hourly wage for financial tellers ($12.40) and the portion of hour that the disclosure will take in a typical transaction (1/72nd of an hour). U.S. Dep't of Labor, Bureau of Labor and Statistics, Occupational Employment and Wage Table 1 (May 2012) (mean hourly wage for financial tellers is $12.40).

[188] U.S. Dep't of Labor, Bureau of Labor and Statistics, Occupational Employment and Wages Table 1 (May 2012). *See also* Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure, 77 FR 5632, 5654 (Feb. 3, 2012) (estimating costs of printing and paper).

[189] The Department reaches this estimate by computing the cost of the additional printing and paper for the disclosure, calculated by multiplying the number of transactions (191 million) by the cost per page ($.05) and the portion of the page used for the disclosure (0.25 page).

FIGURE 3A—ESTIMATED BENEFITS AND COSTS OF DISCLOSURES UNDER THE PROPOSED RULE

[2013 dollars in millions]

	First year	Annual, ongoing	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Benefits of eliminating requirement to disclose numerical MAPR	$0.00	$0.07	$0.58	$0.69
Set up costs of Proposed Statement of the MAPR	19	n/a	n/a	n/a
Ongoing costs of Proposed Statement of the MAPR (oral and printed)	0.00	3	22	29
Set up costs of Statement of Federal Protections (additional creditors)	10	n/a	n/a	n/a
Ongoing costs of Statement of Federal Protections (oral and printed)	0.00	3	22	29
Total Net Costs	29	6	43	58

Department seeks comment on the assumptions invoked in this section. Please provide comment on the reasonableness of these assumptions and likelihood of the associated costs. Please provide data and studies that support the comment.

Identification of Covered Borrowers. Under the status quo, the Department believes that a creditor who offers a covered payday loan, vehicle title loan, or refund anticipation loan typically assesses the status of a consumer-applicant by providing a self-certification form which is completed by the applicant, as provided in § 232.5.

The Department proposes to modify the process for conducting a covered-borrower check so that a creditor may unilaterally assess the status of a consumer-applicant, rather than relying on the applicant to complete a self-declaration form. Proposed § 232.5(b), if adopted, would allow a creditor to access the MLA Database to assess the status of a consumer-applicant for consumer credit, and would provide a safe harbor from liability under the MLA for a creditor who uses the MLA Database (except when a creditor has actual knowledge about the status of the consumer-applicant), finds that the consumer is not a covered borrower, and maintains a record of the information obtained from the database.

The Department assumes that all creditors, other than creditors who offer only residential mortgage loans or loans expressly to finance the purchase of personal property (neither of which loans is consumer credit), will establish processes for querying the MLA Database and retaining records of covered-borrower checks. As described above, the Department believes that, based on these assumptions, approximately 40,000 creditors would be subject to the proposed regulation. The Department believes that setting up the process to use the MLA Database and retain records of queries will take each creditor 70 hours of labor time. Based on these assumptions, the Department estimates that the total costs relating to setting up the processes to use the MLA Database and take advantage of the safe harbor in proposed § 232.5(b) would be $67.22 million.[190]

The Department has observed that, in general, creditors who currently offer consumer credit products, as defined by the Department's existing regulation, require all consumer-applicants to complete the self-declaration form. For the purposes of this analysis, the Department assumes that a creditor requests the consumer-applicant to complete the self-declaration form only once. For a creditor who currently offers a form of consumer credit, as defined by the Department's existing rule, replacing the self-declaration form with a process to use the MLA Database is estimated to result in a savings from transaction time, printing and paper costs, as well as a reduction in legal risks. Further, the Department assumes that creditors choosing to avail themselves of the MLA Database and the safe harbor in proposed § 232.5(b) will retain a record of the result of the database query in electronic form.

According to the FDIC, approximately 2 million households report using a payday loan, and 1.45 million households report using a refund anticipation loan in the past year.[191] In a comment letter submitted to the Bureau, the auto title lending industry association reports having 1 million customers.[192] The Department assumes that there is one transaction per household, and further assumes that processing each self-certification form costs five cents (conservatively assuming only the costs per page for printing and paper). Given these assumptions of volume and cost—4.45 million transactions involving a printed self-declaration form—the Department estimates that for those creditors who currently offer consumer credit products, the savings on printing and paper will be $222,500 per year; over ten years, the Department estimates a savings of between $1.58 million (at a 7 percent discount rate) and $2.12 million (at a 3 percent discount rate). The Department has not quantified the expected savings for creditors with respect to the potential reduction in transaction time or legal risk.

The Department expects that proposed § 232.5(b), if adopted, would prompt all creditors who offer consumer credit with an MAPR of more than 36 percent (which would include some creditors who offer credit products with credit insurance premiums or fees for credit-related ancillary products sold in connection with the consumer credit) to assess the status of consumer-applicants as potential covered borrowers. Depository institutions or credit unions that offer open-end lines of credit, such as deposit advance loans, might choose to use the MLA Database before offering or extending those types of loans, and thereby take advantage of the safe harbor in the proposed § 232.5(b), to identify potential covered borrowers within their respective account portfolios. In addition, other creditors may choose to query the database, regardless of the terms of their credit products, particularly through batch processing of their customer accounts.

The Department estimates that of the estimated 191 million covered credit

[190] The Department estimates that staff time to set up access to the MLA Database and the processes to record and retain information will be 50 percent data entry and information processing workers, 40 percent supervisors of office and administrative support workers, and 10 percent legal counsel. U.S. Dep't of Labor, Bureau of Labor and Statistics, Occupational Employment and Wages Table 1 (2012) (mean hourly wage for data entry and information processing workers is $15.11; mean hourly wage for supervisors of office and administrative support workers is $25.40; mean hourly wage for legal counsel is $62.93).

[191] Federal Deposit Insurance Corp., *Addendum to the FDIC National Survey of Unbanked and Underbanked Households* (June 2013).

[192] American Association of Responsible Auto Lenders (AARAL), Comment letter to Consumer Financial Protection Bureau (CFPB Docket No. CFPB–HQ–2011–2) (2011).

applications each year,[193] there will be approximately 70 million applications when creditors choose to query the MLA Database as a single-record check. For each of these single-record checks, the inquiry and record retention is expected to add approximately 60 seconds to each new consumer credit transaction. The Department estimates that the total cost to creditors for using the database and retaining records relating to consumer-applicants would be approximately $14.47 million per year;[194] over ten years, the total cost of using the MLA Database would be between $102.56 million (at a 7 percent discount rate) and $137.87 million (at a 3 percent discount rate).

Because modern credit applications, whether conducted online or in person, involve highly automated systems for underwriting, the Department expects that many creditors who issue credit cards and other creditors will choose to develop systems that make the marginal increase in time for querying the MLA Database negligible. The Department has not sought to estimate the potential costs associated with computer programming or including a covered-borrower check in automated underwriting.[195]

Figure 3b provides a summary of the anticipated benefits and (costs) associated with the covered-borrower checks under the Department's proposed regulation.

FIGURE 3B—ESTIMATED BENEFITS AND COSTS OF COVERED-BORROWER CHECKS UNDER THE PROPOSED RULE

[2013 dollars in millions]

	First year	Annual	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Benefits of Eliminating Printing and Paper Costs for Self-Certification	$0.00	$0.22	$2	$2
Set-up Costs to Use MLA Database	67	n/a	n/a	n/a
Covered-Borrower Checks	0.00	14	103	138
Total	67	14	101	136

Department seeks comment on the assumptions invoked in this section. Please provide comment on the reasonableness of these assumptions and the likelihood of the associated costs. Please provide data and studies that support the comment.

Prohibition on Requiring Arbitration. The MLA prohibits a creditor from ''requir[ing] a covered borrower to submit to arbitration or impos[ing] onerous legal notice provisions in the case of a dispute'' relating to an extension of consumer credit,[196] and this restriction is reflected in proposed § 232.8(c). Under the status quo, the prohibition against requiring a covered borrower to submit to arbitration applies only to certain payday loans, vehicle title loans, and refund anticipation loans. If the Department adopts the regulation as proposed, then the prohibition against requiring arbitration (in proposed § 232.8(c)) would apply to agreements for a significantly broader range of credit products, such as credit cards and deposit advance loans. The Department recognizes that extending the application of the prohibition in proposed § 232.8(c) likely would lead to costs, primarily as a result of the significantly broader range of creditors affected by that prohibition. Nevertheless, the Department has not endeavored to quantify the costs of the restriction itself, such as the costs that might be associated with making modifications to standard agreements or potentially increased exposures to disputes litigated in courts.

The Department seeks comment on the potential costs to creditors, across a variety of contracts implicated by the prohibition in proposed § 232.8(c), who offer forms of consumer credit that could be affected by the prohibition against requiring arbitration.

4. Sensitivity Analysis on Potential Benefits

Each year, thousands of well-trained Service members are compelled to leave military service because they experience financial distress that leads to the revocation of their security clearances. The Department has direct experience with this process of involuntary separation, which generally involves a Service member becoming over-extended in debt—which occurs due to a wide range of factors—defaulting on one or more credit agreements (either by making late payments or by failing to make payments), and experiencing a deterioration in the credit score or credit history prepared by a consumer reporting agency for that individual. The individual's deteriorating creditworthiness presents an exposure to the Department that the individual poses a security risk, which ultimately warrants separation.

As discussed in sections II.C and II.D, the Department makes a significant investment in recruiting, training, and progressing each qualified Service member. Losing a qualified soldier, sailor, airman, or Marine can cause a loss of mission capability, and there are substantial costs associated with replacing that Service member. Even though, for the purposes of this regulatory impact assessment under EO 12866 and EO 13563, the most direct effect of the interest-rate limit is a transfer payment, a secondary—yet no less direct—effect is the reduction in the

[193] The Department estimates 191 million relying on data from the Federal Reserve Bank of New York's Consumer Credit Panel. *See,* Federal Reserve Bank of New Year, *Quarterly Report on Household Debt and Credit* (August 2013). For the six months prior to the second quarter of 2013, there were about 159 million credit inquiries. The Department assumes that 60 percent of these inquiries were for credit accounts that would be consumer credit under proposed § 232.3(f).

[194] The Department calculates the estimated cost by multiplying the expected number of transactions involving a covered borrower check (70 million) by the mean hourly wage for financial tellers ($12.40) and the additional transaction time expected (1/60th of an hour).

[195] In considering the costs associated with updating computer programs, the Department relies on analysis from GAO examining the costs of implementing changes to minimum payment disclosures for credit card accounts. There, GAO found that credit card issuers were unable to provide precise estimates of, among others, the cost of computer programming to provide the revised disclosures. GAO found that estimates of the computer programming cost varied widely, from $5,000 to $1 million. For large issuers, GAO concluded that these one-time costs would be very small when compared with large issuers' net income. For smaller issuers, GAO concluded that work to implement changes would be done largely by third-party processors, accustomed to reprogramming required to managing cardholder data and processing billing statements. U.S. Gov't Accountability Office, GAO–06–434, *Credit Cards: Customized Minimum Payment Disclosures Would Provide More Information to Consumers, but Impact Could Vary* (April 2006).

[196] 10 U.S.C. 987(e)(3).

overall amount of debt owed to creditors by covered borrowers. The Department believes if the interest-rate limit were to apply to a broader range of credit products, the overall amount of debt owed to creditors would be reduced; as a result, regardless of the original occasions for incurring debts, Service members reasonably may be expected to have a lower incidence of financial distress, and a correspondingly lower incidence of involuntary separation. Thus, the Department believes that the savings of the Department's costs associated with replacing Service members who are involuntarily separated constitute benefits for the purposes of this regulatory impact assessment—entirely independently of the transfer payment flowing from the interest-rate limit—and are amenable to being quantified. More generally, the anticipated improvements in military readiness and Service-member retention lie at the core of 10 U.S.C. 987.

Military Readiness and Service Member Retention. The most substantial—as well as meaningfully quantifiable—benefit of the Department's proposed regulation, if adopted, would be the reduction in involuntary separations among Service members due to financial distress. The Department also anticipates that the proposed regulation would entail non-quantifiable benefits, reducing stress for Service members or their families, which currently affects approximately two-thirds of military families who report experiencing stress related to their financial condition.[197]

The Department estimates that each separation costs the Department $57,333.[198] The Department estimates the potential impact of adopting the proposed regulation by using two alternative approximations of the current number of separations attributable to financial distress.

(a) Estimate One

For the years 2003 through 2011, there was an average of 55,036 involuntary separations per year. Of those involuntary separations that were due to legal or standard-of-conduct issues—an average of 19,893 per year—the Department estimates that approximately half are attributable to a loss of security clearance, and, of these, 80 percent are due to financial distress.[199] Based on this data and these assumptions, the Department estimates that, going forward, there would be approximately 7,957 separations each year due to financial distress.

(b) Estimate Two

In 2005, there were 1,999 revocations of security clearances in the Navy and Marine Corps, representing 8.5 percent of involuntary separations.[200] Approximately 80 percent of the revocations of security clearances are due to financial distress.[201] The Department conservatively estimates the number of separations due to financial distress at 25 percent, rather than attempt to identify separations not triggered by a loss of security clearance.[202] Based on this data and these assumptions, the Department estimates that, going forward, there would be approximately 4,703 separations each year due to financial distress.[203]

The Department estimates that the 10-year cost of involuntary separations due to financial distress is between $1.912 billion and $4.348 billion. However, the Department believes that these calculations significantly underestimate the impact of involuntary separations due to financial distress on Service-member retention and military readiness, primarily because the loss of security clearance is only one way that financial distress leads to separation from military service. Furthermore, involuntary separation is only one of the ways to detect the impact of financial distress on military readiness; excessive debt—which is less manageable at higher rates of interest—likewise can impair a Service member's eligibility to deploy or to reenlist.

The Department acknowledges that the proposed regulation, if adopted as proposed, would not entirely eliminate financial distress among Service members. However, the Department expects that extending the protections of 10 U.S.C. 987 to a broader range of credit products would significantly reduce the incidence of derogatory items in the credit files of Service members (maintained by consumer reporting agencies), and thereby improve the Service members' respective capacities to manage and pay debts.

The Department estimates that the proposal, if adopted, would reduce the separations associated with financial distress. To assess the anticipated savings reasonably attributable to a reduction in involuntary separations, the Department has used three estimates of the possible reduction in involuntary separations: 5 percent,[204] 17.5 percent,[205] and 30 percent.[206] The Department believes that estimating between 5 percent and 30 percent reduction in the total number of these separations is reasonable in light of the conservative assumptions relating to the separations due to financial distress. The Department seeks comment on the reasonableness of these estimates. Please provide data and studies that support the comment.

The Department estimates that the proposed regulation, if adopted, would result in savings from involuntary separations due to financial distress of between $13.47 million and $136.85

[197] Blue Star Families, *The 2013 Military Family Lifestyle Survey* 11 (May 2013).

[198] U.S. Gov't Accountability Office, GAO–11–170, *Military Personnel: Personnel and Cost Data Associated with Implementing DOD's Homosexual Conduct Policy* (January 20, 2011) (estimating that each separation costs the Department $52,800 in 2009 dollars). The cost of $57,333 is calculated in 2013 dollars (through December 2013), using the U.S. Dep't of Labor, Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers (CPI–U), available at *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt.*

[199] U.S. Dep't of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* 39 (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.*

[200] Amy Klamper, ''Breakthrough,'' Navy League of the United States (October 2006).

[201] U.S. Dep't of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* 9 (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf.*

[202] Service members also could be separated in a number of other ways; for example, this number does not attempt to account for separations where a Service member is court-marshaled for failure to pay debts.

[203] Thus, in estimate two, the Department computes the total number of separations per year as follows: the approximate total number of revocations per year [(1,999)/(0.0850)] multiplied by 0.80, yields the revocations due to financial distress of 18,814; and 25 percent of that figure is 4,703.

[204] *See, generally,* Scott Carrell & Jonathan Zinman, *In Harm's Way? Payday Loan Access and Military Personnel Performance* (January 2013) (estimating a 5 percent increase in negative personnel outcomes for Service members with access to high-cost payday loans). The Department uses this study to estimate a low-end of the possible reduction in separations. This estimate likely is less reliable than other estimates of separations included in this analysis because the study does not directly measure the impact of high-cost loans on borrower personnel outcomes.

[205] *See, generally,* Department of Navy, Personnel Security Appeals Board, CY 2011 Activity Report at 7 (in 2011, 47 percent of denied appeals of revoked security clearances were due to financial problems) available at *www.ncis.navy.mil/securitypolicy/PSAB/PSAB%20Activity%20Reports/CY11%20PSAB%20Activity%20Report.pdf*); Consumer Federation of America, et al, DOD–2013–OS–0133–0030, at 3 (noting that for the Department of Navy the portion of denied appeals of revoked security clearances due to financial distress declined from 57 percent in 2006 to 47 percent in 2011). The Department uses the percentage of the decline (17.5) as a midpoint estimate.

[206] *See, generally,* Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012) at 16–17 (for the Department of the Navy, overall denied appeals of revoked security clearances declined by 30 percent from 2006 to 2010).

million per year. Over ten years, the proposal would save the Department between $95.52 million and $1.304 billion. Figure 4 provides a summary of the anticipated savings that reasonably could be attributable to reduction in involuntary separations due to financial distress.

FIGURE 4—SCENARIO ANALYSIS OF COSTS SAVINGS FROM REDUCTIONS IN SEPARATIONS

[2013 dollars in millions]

	Annual	10-year, 7% discount rate	10-year, 3% discount rate
Estimate One: 7,957 separations per year			
Separations Reduced by 30%	$137	$970	$1,304
Separations Reduced by 17.5%	80	567	763
Separations Reduced by 5%	23	162	217
Estimate Two: 4,703 separations per year			
Separations Reduced by 30%	81	574	771
Separations Reduced by 17.5%	47	335	451
Separations Reduced by 5%	13	96	128

In addition to reducing the quantifiable costs associated with separations due to financial distress, the Department believes that the proposed regulation, if adopted, would reduce non-quantifiable costs associated with financial strains on Service members. High-cost debt can detract from mission focus, reduce productivity, and require the attention of supervisors and commanders. Additionally, if the Department's proposed regulation is adopted, the protections afforded to covered borrowers under the MLA might, over time, improve the Department's capabilities to retain Service members. In this regard, one study found that access to extremely high-cost debt decreases military readiness by increasing the presence of unfavorable credit information in the files of consumer reporting agencies, and by producing a significant decline in job performance, reducing the overall eligibility of Service members for reenlistment.[207]

5. Estimate of Amount of Transfer Payments

The Department believes that the interest-rate limit and the corresponding provisions governing computation of the MAPR could entail some costs, particularly for creditors who might need to adjust their systems to compute the MAPR in accordance with the standards of the proposed regulation. The Department anticipates that the great majority of creditors should be able to compute the MAPR for their credit products without significantly redesigning their computing or accounting systems. However, there might be a relatively small number of creditors who offer credit insurance products or credit-related ancillary products with loans who might encounter costs to adjust their computing or accounting systems to comply with the new standards, if adopted as proposed. For example, credit card issuers whose fees fit within the bona fide fee safe harbor would not be required to calculate an effective APR cost element of the MAPR, provided that the periodic rate falls below 36 percent APR. The Department anticipates that only a small number of creditors would offer credit products requiring calculation of an effective APR cost element of the MAPR. For this limited class of creditors, the Department recognizes that adjustments to computing or accounting systems could entail some costs, however, there are no reliable data on how many creditors would pursue such product offerings nor data that would allow the Department to develop a quantifiable estimate of the potential costs associated with compliance with the interest-rate limit and the provisions governing computation of the MAPR. Thus, for the purposes of this analysis under EO 12866 and EO 13563, the Department has assessed the potential effects of the interest-rate limit only in terms of the amount of the transfer payments relating to certain consumer credit products.

Even though the interest-rate limit of 10 U.S.C. 987(b) results in transfer payments from various creditors to covered borrowers, and thus does not affect the benefits-cost analysis under EO 12866 and EO 13563, the Department has estimated the amounts involved in these payments. For the purposes of assessing the amounts involved in the transfer payments, the Department has considered estimates of the current cost of credit and usage rates for four types of consumer credit, namely: (i) Credit card products, (ii) payday loans, (iii) auto title loans, and (iv) installment loans.

In the credit card market, the Department believes that most creditors should be able to comply with the limitation on the MAPR by continuing to offer credit card products with minimal or no alternations to their current pricing practices. In this regard, few, if any, creditors who offer credit card products charge periodic rates that exceed the interest-rate limit of 10 U.S.C. 987(b) and proposed § 232.4(b). Taking into account the exclusion for bona fide fees under proposed § 232.4(d), the Department expects that nearly all of the amount of the transfer payments in credit card products will be due to revenues that would be foregone from credit insurance, debt cancellation, and credit-related ancillary products sold to covered borrowers.

The Department estimates the amount of the transfer payments by taking the difference of the cost of credit for a typical credit card with a credit insurance or debt cancellation product and 36 percent MAPR, less the payout rate on a credit insurance or debt protection product. To calculate the range of possible transfer payments associated with credit card products, the Department estimates an amount per account, and then makes a high- and low-end estimate of the number of Service members with credit cards who

[207] Scott Carrell & Jonathan Zinman, *In Harm's Way? Payday Loan Access and Military Personnel Performance* (January 2013) at 23, available at *http://www.econ.ucdavis.edu/faculty/scarrell/payday.pdf* (''Overall the results provide ammunition for the Pentagon's concern that payday borrowing has adverse effects on military readiness. We find that payday loan access produces a significant decline in overall job performance (as measured by a 3.9% increase in reenlistment ineligibility), and a concomitant decline in retention. We also find that a measure of severely poor readiness (the presence of an Unfavorable Information File) increases by 5.3%.'').

also carry a credit insurance or debt cancellation product that would cause the MAPR to exceed the 36-percent threshold. In this regard, the Department's estimate is conservative because the data relate only to consumer credit obtained by Service members, and not to other categories of individuals who could be covered borrowers.

The Department is aware that there are other credit-related ancillary products that may be sold in connection with, and either at or before, the account opening. The Department has not estimated the amount of the transfer payments that might be associated with those credit-related ancillary products.

To estimate the amount of the transfer payment for each credit card account, the Department assumes that 78 percent of Service members have a credit card,[208] revolving an average balance of $5,000.[209] The Department further assumes that a typical debt-cancellation product costs $1.10 per $100 of balance and has a payout rate of 21 percent.[210] Assuming that a borrower makes only the minimum payment each month on this card while paying 28 percent APR, under the proposal, a creditor who offers a credit card with these terms could charge a fee for a credit insurance or debt cancellation product of no more than $0.67 per $100 of balance per month, a price of 8 percent interest per year. For a credit card with a credit insurance or debt cancellation product carrying standard prices, the amount transferred from a creditor to a covered borrower—that is, when the creditor complies with the 36-percent MAPR limit and foregoes revenue that the borrower thereby saves—would be $886 per card over ten years.[211]

Second, from an examination of credit card offers, the Department estimates that between 44 and 100 percent of the 78 percent of Service members who have a credit card account have a card with an APR sufficiently high that if the creditor also sells a credit insurance or debt cancellation product, the cost of credit could exceed the limit in 10 U.S.C. 987(b). The Department assumes that 7 percent of these accounts actually use credit insurance or debt cancellation; therefore the estimates are based on the assumption that between 3 percent and 7 percent of the 78 percent of Service members holding credit cards have a credit insurance or debt cancellation product.[212]

At the high-end, assuming that 78 percent of Service members have a credit card that, given typical costs, might exceed the interest-rate limit if the borrower purchases credit insurance or debt cancellation and pays a penalty APR, and that 7 percent of these borrowers actually do purchase such a product, the amount that would be transferred is estimated to be $6.75 million per year.[213] Over ten years, the discounted amount that would be transferred would be between $54.13 million (at a 7 percent discount rate) and $61.17 million (at a 3 percent discount rate).

At the low-end, assuming that 44 percent of Service members have a credit card that, given typical fees, might exceed the interest-rate limit if the borrower purchases credit insurance or debt cancellation and pays a penalty APR, and that 7 percent of these borrowers actually do purchase such a product, the amount that would be transferred is estimated to be $2.97 million per year.[214] Over ten years, the discounted amount that would be transferred would be between $23.82 million (at a 7 percent discount rate) and $26.91 million (at a 3 percent discount rate).

For non-credit card credit products that would be subject to the proposed regulation, the Department estimates the amount that would be transferred due to the interest-rate limit by considering three segments of that market for consumer credit: Payday loans, auto title loans, and non-purchase money installment loans. The Department assumes that approximately 12 percent of Service members use non-credit card credit products that would be covered under the Department's regulation, if adopted as proposed.[215] The prices associated with these credit products vary widely; for any given creditor, the amount that would be transferred as a result of compliance with the interest-rate limit depends on how much that creditor charges for credit extended under the status quo.

In order to estimate the amount that would be transferred, the Department assumes that between 7 percent and 4.9 percent of Service members use payday loans with a median APR of 391 percent and a median ten transactions per year, each borrowed for 14 days,[216] 0.3 percent of Service members use auto title loans with a median APR of 300 percent,[217] and 7 percent of Service members use installment loans with a median APR of 80 percent.[218]

Given typical prices of payday loans and borrowing patterns, the Department estimates that the value that would be

[208] Blue Star Families, *The 2013 Military Family Lifestyle Survey* 34 (May 2013).

[209] FINRA Investor Education Foundation, *Financial Capability in the United States, Military Survey* (October 2010).

[210] U.S. Gov't Accountability Office, GAO–11–311, *Credit Cards: Consumer Costs for Debt Protection Can be Substantial Relative to Benefits but Are Not a Focus of Regulatory Oversight* 9, 21 (March 2011).

[211] This calculation assumes a beginning balance of $5,000 and that the borrower pays only the minimum payment, calculated as 4 percent of the monthly balance. Under the status quo, the APR is 28 percent and the debt cancellation is $1.10 per $1,000 of outstanding balance, and the sum of payments over ten years is $12,696. Under the proposal, the APR is 28 percent and the debt cancellation is $.67 per $1,000 of outstanding balance, and the sum of payments over ten years is $11,810.

[212] U.S. Gov't Accountability Office, GAO–11–311, *Credit Cards: Consumer Costs for Debt Protection Can be Substantial Relative to Benefits but Are Not a Focus of Regulatory Oversight* 7 (March 2011).

[213] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a credit card account (78 percent), the percentage of accounts with costs that might exceed the interest rate limit if the borrower purchases add-on products (100 percent), the percentage of accounts where the borrower actually purchases add-on products (7 percent), and the amount transferred per card ($886).

[214] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a credit card account (78 percent), the percentage of accounts with costs that might exceed the interest rate limit if the borrower purchases add-on products (44 percent), the percentage of accounts where the borrower actually purchases add-on products (7 percent), and the amount transferred per card ($886).

[215] *See* Department of Defense, *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf;* Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012); U.S. Gov't Accountability Office, GAO–05–349, *Military Personnel: DOD's Tools for Curbing the Use and Effects of Predatory Lending Not Fully Utilized* (April 2005); The Pew Charitable Trusts, *Payday Lending in America: Who Borrowers, Where They Borrow, and Why* 4 (July 2012).

[216] *See* Department of Defense, *Report On Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents* (August 9, 2006), available at *http://www.defense.gov/pubs/pdfs/Report_to_Congress_final.pdf;* Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012); Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* 8 (April 2013). The Department further assumes that borrowers take a median of 10 loans per year, those loans are for $392 and carry an average 14-day term. *See* Consumer Financial Protection Bureau, *Payday Loans and Deposit Advance Products* (April 2013). Some, though not all, transactions involving these products are subject to the protections of 10 U.S.C. 987 under the current rule. *See, e.g.,* section II.A.

[217] Consumer Federation of America and Center for Responsible Lending, *Driven to Disaster: Car-Title Lending and Its Impact on Consumers* 3 (2013); U.S. Gov't Accountability Office, GAO–05–349, *Military Personnel: DOD's Tools for Curbing the Use and Effects of Predatory Lending Not Fully Utilized* (April 2005); Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012).

[218] *See* Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America (2012).

transferred is $534 per borrower per year for payday loans.[219] Assuming that 4.9 percent of Service members use payday loans each year, the Department estimates that the proposed regulation would result in transfer payments of $36.74 million per year relating to the domestic payday lending industry.[220] Over ten years, the Department estimates that the amount of the transfer payments relating to the domestic payday lending industry would be between $260.45 million (at a 7 percent discount rate) and $350.11 million (at a 3 percent discount rate). Alternatively, assuming that 7 percent of Service members use payday loans each year, the Department estimates that the amount of transfer payments on the domestic payday lending industry would be $52.16 million per year.[221] Over ten years, the Department estimates that the transfer payments under the proposed regulation would be between $369.80 million (at a 7 percent discount rate) and $497.11 million (at a 3 percent discount rate).

Approximately 7 percent of volume in payday loans is done by online lenders based offshore.[222] The Department estimates that the transfer payments relating to these offshore creditors would be between $2.57 million and $3.65 million per year. Over ten years, the Department estimates that the total amount of the transfer payments relating to these offshore creditors would be between $18.23 million (at a 7 percent discount rate, assuming 4.9 percent usage) and $34.80 million (at a 3 percent discount rate, assuming 7 percent usage).

Assuming that 0.3 percent of Service members use auto title loans each year and that the average auto title loan carries an APR of 300 percent, the Department estimates that the interest-rate limit would lead to transfer payments relating to the auto title lending industry of $0.87 million per year.[223] Over ten years, the Department estimates that the total amount of the transfer payments relating to auto title lenders would be between $6.14 million (at a 7 percent discount rate) and $8.26 million (at a 3 percent discount rate).

Assuming that 7 percent of Service members use high-cost installment loans each year and that the average installment loan carries an APR of 80 percent, the Department estimates that the interest-rate limit would result in transfer payments relating to the domestic installment lending industry of $60.06 million per year.[224] Over ten years, the Department estimates that the total amount of transfer payments from installment-loan creditors would be between $425.77 million (at a 7 percent discount rate) and $572.35 million (at a 3 percent discount rate).

Approximately 7 percent of volume in the high-cost installment lending market is done by online lenders based offshore.[225] The Department estimates the proposed regulation would result in transfer payments relating to these offshore creditors of approximately $4.20 million per year. Over ten years, the total amount of transfer payments from these offshore creditors are estimated to be between $29.80 million (at a 7 percent discount rate) and $40.06 million (at a 3 percent discount rate).

Overall, the Department estimates that the total amount of transfer payments relating to these four categories of consumer credit products would be between $100.64 million and $119.84 million per year; over ten years, the overall amount of these transfer payments would be between $716.18 million (assuming lower usage rates and a 7 percent discount rate) and $1.139 billion (assuming higher usage rates and a 3 percent discount rate). Of these overall amounts, between $6.77 million and $7.85 million of the transfer payments would relate to offshore creditors, and between $48.03 million and $74.86 million over ten years. The transfer payments from domestic creditors would be between $93.87 million and $111.99 million per year; over ten years, these transfer payments would be between $668.15 million (assuming lower usage rates and a 7 percent discount rate) and $1.064 billion (assuming higher usage rates and a 3 percent discount rate). Figure 5 provides a summary of all of these figures for the transfer payments.

FIGURE 5—AMOUNT OF TRANSFER PAYMENTS RELATING TO THE INTEREST-RATE LIMIT

[2013 dollars in millions]

	Annual	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Payday:			
(1) At 4.9% usage	$37	$260	$350
(2) At 7% usage	52	370	497
Auto title	0.87	6	8
Installment	60	426	572

[219] The Department assumes that the average loan amount is $392, ten loans of 14 days each are taken in a year, and the average APR is 391 percent. The Department calculates the transfer amount per borrower by finding the difference between the cost of a typical loan under the status quo, assuming that the loan falls outside the scope of the current rule ($588), and the permissible cost of a loan complying with the 36 percent interest rate limitation ($54).

[220] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a payday loan (4.9 percent), and the amount transferred per account ($534).

[221] The Department calculates the estimated transfer amount by multiplying the number of active duty service members (1.4 million) by the percentage with a payday loan (7 percent), and the amount transferred per account ($534).

[222] *See* Stephens Inc., *Forging Ahead: Growth, Opportunity and the Direction of the Alternative Financial Services Sector,* presentation to the Community Financial Services Association of America, March 7, 2013 (estimating that one-third of lending volume is online and that 20 percent of the online market is offshore).

[223] The Department assumes that the average principal borrowed is $951, average APR is 300 percent, and the average loan term is 30 days. The Department calculates the transfer amount per borrower by finding the difference between the cost of a typical loan under the status quo, assuming that the loan falls outside the scope of the current rule ($235), and the permissible cost of a loan complying with the 36 percent interest rate limitation ($28). *See* Susanna Montezemolo, *Car-Title Lending,* Center for Responsible Lending, July 2013, available at *http://www.responsiblelending.org/state-of-lending/reports/7-Car-Title-Loans.pdf. See* Consumer Federation of America, *Policy Brief: Gaps in the Military Lending Act Leave Many Service Members Vulnerable to Abusive Lending Practices,* July 2013, available at *http://www.consumerfed.org/pdfs/130725-policybrief-mla-cfa.pdf* (finding that a typical auto title loan has a 300 percent APR). The Department does not have data regarding auto-title creditors located offshore.

[224] The Department assumes that a typical loan is $1,000 and borrowed for two years. Under the status quo with an APR of 80 percent, the monthly payment is $85 per month, for a sum of payments of $2,032. Under the proposal with an APR of 36 percent, the monthly payment is $59, for a sum of payments of $1,417, a difference of $615. For information on typical military installment loans, *see* Jean Ann Fox, *The Military Lending Act Five Years Later,* Consumer Federation of America, May 2012.

[225] *See* Stephens Inc., *Forging Ahead: Growth, Opportunity and the Direction of the Alternative Financial Services Sector,* presentation to the Community Financial Services Association of America, March 7, 2013 (estimating that one-third of lending volume is online and that 20 percent of the online market is offshore).

FIGURE 5—AMOUNT OF TRANSFER PAYMENTS RELATING TO THE INTEREST-RATE LIMIT—Continued

[2013 dollars in millions]

	Annual	PV 10-year, 7% discount rate	PV 10-year, 3% discount rate
Credit Cards:			
(1) At 3% of cards	3	24	27
(2) At 7% of cards	7	54	61
TOTAL			
Low (4.9% payday, 3% cards)	101	716	958
High (7% payday, 7% cards)	120	856	1,139

Apart from the MLA, for active duty Service members who are materially affected by virtue of his or her military service, the Servicemembers Civil Relief Act (SCRA) limits the permissible rate of interest on outstanding pre-service balances at 6 percent APR.[226] To avail himself or herself of the protections of the SCRA, a Service member must make a written request to the creditor. Because data is unavailable on the extent to which creditors are reducing pre-service obligations for Service members, the Department is unable to adjust the estimated amount of the transfer payments relating to the interest-rate limit of the proposed regulation to account for the potential effects of the SCRA.

Furthermore, the Department does not expect that the interest rate limitation will have undesirable side-effects for Service members. The Department observes that numerous creditors currently supply credit to Service members in a manner that already should comply with the interest-rate limit. In the Department's experience, covered borrowers enjoy access to low- and no-cost credit. For example, to provide monetary support to Service members and their families with financial hardships, the Military Services have partnered with nonprofit charitable organizations chartered to provide relief services to Service members and their families. The four Relief Societies for the Military Services provide no-interest loans and grants for shortfalls in household expenses and unforeseen emergencies.

B. Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

The Department certifies that this proposed regulation does not contain a Federal mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.[227]

C. Regulatory Flexibility Act

The Department certifies that this proposed regulation is not subject to the Regulatory Flexibility Act (''RFA'')[228] because the regulation, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities.

The North American Industrial Classification (NAIC) codes for the affected businesses are the following:

(a) 522110—Commercial Banking
(b) 522130—Credit Unions
(c) 522210—Credit Card Issuing
(d) 522291—Consumer Lending

Pursuant to the Small Business Administration (SBA) Small Business Size Standards, a consumer lending business is a ''small business entity'' if it has less than $35.5 million in receipts. According to the 2007 Economic Census (the last year for which data is available), approximately 96 percent of firms in NAIC code 522291 are small business entities. For the other three potentially affected businesses, the SBA Small Business Size Standards considers any business with less than $500 million in assets to be a small business entity.

Approximately 81 percent of firms in NAIC code 522110 and 94 percent of firms in NAIC code 522130 are small business entities. Overwhelmingly, credit card products are issued by insured depository institutions and, therefore, small business entities issuing credit cards (included within NAIC code 522210) are covered by the previously described codes.

While a substantial portion of firms in each affected market are ''small business entities,'' Service members and their dependents make up only a small portion of the consumers for those businesses. Because only approximately 2.5 percent of households in the United States include an active duty Service member, the interest-rate limit and other MLA conditions of the proposed regulation would affect a small percentage of the consumers served by entities that could be creditors covered by this regulation. Thus, the Department concludes that—even though there appears to be a large percentage of small business entities in each affected class of business—the proposed regulation would not (for the purposes of the RFA) have a significant economic impact on a substantial number of small businesses because those businesses nonetheless have very few customers who are covered borrowers. The Department seeks comment, particularly from potentially affected small businesses themselves, on the possible impact of the proposed rule on small businesses. Please provide data and studies that support the comment.

D. Paperwork Reduction Act

Proposed §§ 232.5 and 232.6 contain information-collection requirements. The Department has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act.[229] Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents.

Title: Database Inquiry and Mandatory Loan Disclosures as Part of Limitations on Terms of Consumer Credit Extended to Service Members and Their Dependents.

[226] 50 App. USC 527(a).

[227] *See* analysis in section IV.A. for calculations. The Department expects expenditure by the private sector of approximately $96.03 million in the implementation year for setting up the required disclosures and optional database inquiry and record retention process. On an ongoing basis, the Department expects expenditure by the private sector of $20.34 million to comply with the required disclosures and optional database inquiry and record retention procedures during the course of credit transactions.

[228] 5 U.S.C. 601.

[229] 44 U.S.C. 3502, 3506–07.

Type of Request: Reinstatement with change.

Number of Respondents: 40,000.

Responses per Respondent: Varies by type of respondent.

Annual Responses: 191 million.

Average Burden per Response: Varies by type of response. On an ongoing basis, respondents likely will spend 1 minute (0.02 hours) for single-record borrower inquiry (70 million); 1.67 minutes (0.03 hours) for orally providing the required information to covered borrowers (4 million responses); and 0 minutes for printed disclosures included in all consumer credit contracts (191 million). In the first year, there is expected to be a one-time burden of 110 labor hours to set up the mandatory oral and printed disclosures, as well as a process for conducting covered-borrower checks and retaining records.

Annual Burden Hours: 4,000,000 set-up burden hours in the first year; 1,266,747 ongoing burden hours each year.

Needs and Uses: With respect to any extension of consumer credit to a covered borrower, a creditor would be required to provide to the borrower (a) a statement of the MAPR and (b) a Statement of Federal Protections. In approximately 4 million transactions, the required information would be provided orally as well as in a printed document; in approximately 191 million transactions, the required information would be included in standard account agreements. Additionally, a creditor may, at its discretion, identify the status of a consumer-applicant by querying the MLA Database and, in the event that the inquiry indicates that consumer-applicant is not a covered borrower, take advantage of a safe harbor from liability under 10 U.S.C. 987 by retaining a record of the information obtained from the database.

Affected Public: Creditors making loans that are subject to a finance charge or payable by a written agreement in more than four installments, except for loans that are mortgage loans and purchase-money financing for vehicles or other personal property.

Frequency: One set of disclosures for each transaction involving consumer credit; one database inquiry for each transaction involving consumer credit.

Respondents' Obligation: Mandatory loan disclosures; optional database inquiry and subsequent record retention.

OMB Desk Officer

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to the Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy), 4000 Defense Pentagon, Washington, DC 20301–4000. Comments can be received from 30 to 60 days after the date of this document, but comments to OMB will be most useful if received by OMB within 30 days after the date of this document.

You may also submit comments, identified by docket number and title, by the following method:

* Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy), 4000 Defense Pentagon, Washington, DC 20301–4000, Marcus Beauregard, 571–372–5357.

E. Executive Order 13132 Federalism

Executive Order 13132 (''EO 13132'') requires Executive departments and agencies, including the Department, to identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

The provisions of this part, as required by 10 U.S.C. 987, override state statutes inconsistent with this part to the extent that these provisions provide different protections for covered borrowers than those provided to residents of that State. As discussed in the section-by-section description of the proposed regulation, in section III, the proposal would revise the corresponding section of the Department's existing regulation to reflect amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a)(1) of the 2013 Act. This amendment clarifies the scope of state laws subject to preemption by 10 U.S.C. 987.

The proposed regulation, if adopted as proposed, would not affect in any manner the powers and authorities that any State may have or affect the distribution of power and responsibilities between Federal and State levels of government. Therefore, the Department has determined that the proposed regulation has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with EO 13132.

List of Subjects in 32 CFR Part 232

Loan programs, Reporting and recordkeeping requirements, Service members.

For the reasons set forth in the preamble, chapter I of title 32, Code of Federal Regulations is proposed to be amended by revising part 232 to read as follows:

PART 232—LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICE MEMBERS AND DEPENDENTS

Sec.

Authority: 10 U.S.C. 987.

§ 232.1 Authority, purpose, and coverage.

(a) *Authority.* This part is issued by the Department of Defense to implement 10 U.S.C. 987.

(b) *Purpose.* The purpose of this part is to impose limitations on the cost and terms of certain extensions of credit to Service members and their dependents, and to provide additional protections relating to such transactions in accordance with 10 U.S.C. 987.

(c) *Coverage.* This part defines the types of transactions involving ''consumer credit,'' a ''creditor,'' and a ''covered borrower'' that are subject to the regulation, consistent with the provisions of 10 U.S.C. 987. In addition, this part:

(1) Provides the maximum allowable amount of all charges, and the types of

charges, that may be associated with a covered extension of consumer credit;

(2) Requires a creditor to provide to a covered borrower a statement of the Military Annual Percentage Rate, or MAPR, before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit. The statement required by this part differs from and is in addition to the disclosures that must be provided to consumers under the Truth in Lending Act;

(3) Provides for the method a creditor must use in calculating the MAPR; and

(4) Contains such other criteria and limitations as the Secretary of Defense has determined appropriate, consistent with the provisions of 10 U.S.C. 987.

§ 232.2 Applicability; examples.

(a) *Applicability.* This part applies to consumer credit extended by a creditor to a covered borrower, as those terms are defined in this part. Nothing in this part applies to a credit transaction or account relating to a consumer who is not a covered borrower at the time he or she becomes obligated on a credit transaction or establishes an account for credit.

(b) *Examples.* The examples in this part are not exclusive. To the extent that an example in this part implicates a term or provision of Regulation Z (12 CFR part 1026), issued by the Consumer Financial Protection Bureau to implement the Truth in Lending Act, Regulation Z shall control the meaning of that term or provision.

§ 232.3 Definitions.

(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 the covered borrower's dwelling, including a transaction to finance the purchase or initial construction of a 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; and

(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.

(g) *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 this paragraph) or a dependent (as defined in this paragraph) of a covered member.

(1) 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).

(2) 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).

(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) and § 232.8(f), 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) *Department* means the Department 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) *Finance charge* has the same meaning as ''finance charge'' in Regulation Z.

(n) *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).

(o) *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.

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

(q) *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 rule 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.

§ 232.4 Terms of consumer credit extended to covered borrowers.

(a) *General conditions.* A creditor who extends consumer credit to a covered borrower may not require the covered borrower to pay an MAPR for the credit with respect to such extension of credit, except as:

(1) Agreed to under the terms of the credit agreement or promissory note;

(2) Authorized by applicable State or Federal law; and

(3) Not specifically prohibited by this part.

(b) *Limit on cost of consumer credit.* A creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit.

(c) *Calculation of the MAPR.*

(1) *Charges included in the MAPR.* The charges for the MAPR shall include, as applicable to the extension of consumer credit:

(i) Credit insurance premiums, including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements;

(ii) Fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction for closed-end credit or upon account opening for open-end credit; and

(iii) Except for a bona fide fee (other than a periodic rate) which may be excluded under paragraph (d) of this section:

(A) Finance charges associated with the consumer credit;

(B) Any application fee charged to a covered borrower who applies for consumer credit; and

(C) Any fee imposed for participation in any plan or arrangement for consumer credit, subject to paragraph (c)(2)(ii)(B) of this section.

(iv) *Certain exclusions of Regulation Z inapplicable.* Any charge set forth in paragraphs (c)(1)(i)–(iii) of this section shall be included in the calculation of the MAPR even if that charge would be excluded from the finance charge under Regulation Z.

(2) *Computing the MAPR*—(i) *Closed-end credit.* For closed-end credit, the MAPR shall be calculated following the rules for calculating and disclosing the ''Annual Percentage Rate (APR)'' for credit transactions under Regulation Z based on the charges set forth in paragraph (c)(1) of this section.

(ii) *Open-end credit*—(A) *In general.* Except as provided in paragraph (c)(2)(ii)(B) of this section, 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)–(d) of Regulation Z (as if a creditor must comply with that section) based on the charges set forth in paragraph (c)(1) of this section. Notwithstanding § 1026.14(c)–(d) of Regulation Z, 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 set forth in paragraph (c)(1) of this section.

(B) *No balance during a billing cycle.* For open-end credit, 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; *provided, however,* that the $100-per annum limitation on the amount of the participation fee does not apply to a bona fide participation fee imposed in accordance with paragraph (d) of this section.

(d) *Bona fide fee charged to a credit card account*—(1) *In general.* For consumer credit extended in a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR pursuant to paragraph (c)(1) of this section. The exclusion provided for any bona fide fee under this paragraph applies only to the extent that the charge by the creditor is a bona fide fee, and must be reasonable and customary for that type of fee.

(2) *Ineligible items.* The exclusion for bona fide fees in paragraph (d)(1) of this section does not apply to any credit insurance premium, including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, or to any fees for credit-related ancillary products sold in connection with and either at or before consummation of the credit transaction or upon account opening.

(3) *Standards relating to bona fide fees*—(i) *Like-kind fees.* To assess whether a bona fide fee is reasonable and customary under paragraph (d)(1) of this section, 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.

(ii) *Safe harbor.* A bona fide fee is reasonable under paragraph (d)(1) of this section 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 with at least $3 billion in outstanding loans on U.S. credit card accounts at any time during the 3-year period preceding the time such average is computed.

(iii) *Reasonable fee.* A bona fide fee that is higher than an average amount, as calculated under paragraph (d)(3)(ii) of this section, also may be reasonable under paragraph (d)(1) of this section 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.

(iv) *Customary.* A bona fide fee computed as a percentage of the amount of a transaction is customary under paragraph (d)(1) of this section so long as other creditors typically compute, or customarily have computed, that fee for the same or a substantially similar product or service on a percentage basis. Nothing in this paragraph (d)(3)(iv) shall prohibit a bona fide fee that is a fixed amount from being customary for the purpose of meeting the condition set forth in paragraph (d)(1) of this section, even if substantially all other creditors currently compute that fee on a percentage basis. Nothing in this paragraph (d)(3)(iv) shall prohibit a bona fide fee that is charged on a percentage basis from being customary for the purpose of meeting the condition set forth in paragraph (d)(1) of this section, even if substantially all other creditors currently charge a fixed amount.

(v) *Indicia of reasonableness for a participation fee.* An amount of a bona fide fee for participation in a credit card account may be reasonable and customary under paragraph (d)(1) of this section if that amount reasonably and customarily corresponds to the credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account. For example, even if other creditors typically charge $100 per annum for participation in credit card accounts, a $400 fee nevertheless may be reasonable and customary if (relative to other accounts carrying participation fees) the credit made available to the covered borrower is significantly higher or additional services or other benefits are offered under that account.

(4) If a creditor imposes any fee (other than a periodic rate) 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 pursuant to paragraph (c) of this section.

(5) *Rule of construction.* Nothing in paragraph (d)(1) of this section authorizes the imposition of fees or charges otherwise prohibited by this part or by other applicable State or Federal law.

§ 232.5 Identification of covered borrower.

(a) *In general.* A creditor may 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 this part, by assessing the status of a consumer in accordance with this section. A creditor also is permitted to assess whether a consumer is a covered borrower by using other methods, as the creditor may elect.

(b) *Safe harbor*—(1) *Department database.* To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by accessing the information relating to that consumer, if any, in the database maintained by the Department, available at *http://www.dmdc.osd.mil/mla/owa/home.* A search of the Department's database requires the entry of the consumer's last name, date of birth, and Social Security number.

(2) *Determination and recordkeeping.* Except as provided in paragraph (c) of this section, when a creditor enters into a transaction or establishes an account for consumer credit, a determination by a creditor regarding the status of a consumer based on information obtained from the Department's database shall be deemed to be conclusive with respect to that transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor maintains a record of the information so obtained.

(c) *Actual knowledge.* (1) If at the time a creditor enters into a transaction or establishes an account for consumer credit the creditor has actual knowledge that a consumer is a covered borrower, the creditor shall treat the consumer as a covered borrower notwithstanding any determination by that creditor based on information obtained from the Department's database. Actual knowledge that a consumer is a covered borrower obtained after a creditor has entered into a transaction or established an account for consumer credit shall not affect that transaction or account if the prior determination by that creditor was based solely on information obtained from the Department's database.

(2) For the purposes of this section, actual knowledge of the status of a consumer as a covered borrower may be established only on the basis of a record (including any electronic record) collected by the creditor prior to entering into a transaction or establishing an account for consumer credit and maintained in any system used by the creditor that relates to the consumer credit involving that consumer.

§ 232.6 Mandatory loan disclosures.

(a) *Required information.* With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered borrower, a creditor shall provide to the covered borrower the following information before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit:

(1) A statement of the MAPR applicable to the extension of consumer credit;

(2) Any disclosure required by Regulation Z, which shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure;

(3) 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) provided pursuant to paragraph (a)(2) of this section satisfies this requirement; and

(4) A statement that ''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.''

(b) *One-time delivery; multiple creditors.* (1) The information described in paragraphs (a)(1), (a)(3), and (a)(4) of this section are not required to be provided to a covered borrower more than once for the transaction or the account established for consumer credit with respect to that borrower.

(2) *Multiple creditors.* If a transaction involves more than one creditor, the creditors shall agree among themselves which creditor must provide the information described in paragraphs (a)(1), (a)(3), and (a)(4) of this section.

(c) *Statement of the MAPR*—(1) *In general.* A creditor may satisfy the requirement of paragraph (a)(1) of this section by describing the charges the creditor may impose, in accordance with this part and subject to the terms and conditions of the agreement relating to the consumer credit to calculate the MAPR. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to describe the MAPR as a numerical value or to describe the total dollar amount of all charges in the MAPR that apply to the extension of consumer credit.

(2) *Method of providing a statement regarding the MAPR.* A creditor may include a statement of the MAPR applicable to the consumer credit in the agreement with the covered borrower involving the consumer credit transaction. Paragraph (a)(1) of this section shall not be construed as requiring a creditor to include a statement of the MAPR applicable to an extension of consumer credit in any advertisement relating to the credit.

(3) *Model statement.* A statement substantially similar to the following statement may be used for the purpose of paragraph (a)(1) of this section: ''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 a credit card account); and any participation fee charged (other than certain participation fees for a credit card account).''

(d) *Methods of delivery*—(1) *Written disclosures.* The creditor shall provide the information required by paragraphs (a)(1), (a)(3), and (a)(4) of this section in writing in a form the covered borrower can keep.

(2) *Oral disclosures.* The creditor also shall orally provide the information required by paragraphs (a)(1), (a)(3), and (a)(4) of this section. In mail transactions, internet transactions, and transactions conducted at the point-of-sale in connection with the sale of a nonfinancial product or service, the creditor satisfies this requirement if it provides a toll-free telephone number

on or with the written disclosures that a covered borrower may use to obtain oral disclosures and the creditor provides oral disclosures when the covered borrower contacts the creditor for this purpose.

(e) *When disclosures are required for refinancing or renewal of covered loan.* The refinancing or renewal of consumer credit requires new disclosures under this section only when the transaction for that credit would be considered a new transaction that requires disclosures under Regulation Z.

§ 232.7 Preemption.

(a) *Inconsistent laws.* 10 U.S.C. 987 as implemented by this part 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, except that any such law, rule or regulation is not preempted by this part to the extent that it provides protection to a covered borrower greater than those protections provided by 10 U.S.C. 987 and this part.

(b) *Different treatment under State law of covered borrowers is prohibited.* A State may not:

(1) Authorize creditors to charge covered borrowers rates of interest for any consumer credit or loans that are higher than the legal limit for residents of the State, or

(2) Permit the violation or waiver of any State consumer lending protection covering consumer credit that is for the benefit of residents of the State on the basis of the covered borrower's nonresident or military status, regardless of the covered borrower's domicile or permanent home of record, provided that the protection would otherwise apply to the covered borrower.

§ 232.8 Limitations.

Title 10 U.S.C. 987 makes it unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

(a) The creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower. This paragraph shall not apply to a transaction when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by this paragraph because the consumer was not a covered borrower at the time of the original transaction. For the purposes of this paragraph only, the term ''creditor'' means a person engaged in the business of extending consumer credit subject to applicable law to engage in deferred presentment transactions or similar payday loan transactions (as described in the relevant law), *provided however,* that the term does not include a person that is chartered or licensed under Federal or State law as a bank, savings association, or credit union.

(b) 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 (50 U.S.C. App. 501 et seq.).

(c) The creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions in the case of a dispute.

(d) The creditor demands unreasonable notice from the covered borrower as a condition for legal action.

(e) 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 consistent with § 232.4(b), the creditor may:

(1) Require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law;

(2) Require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or

(3) 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.

(f) The creditor requires as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation. For the purposes of this paragraph only, the term ''creditor'' shall not include a ''military welfare society,'' as defined in 10 U.S.C. 1033(b)(2), or a ''service relief society,'' as defined in 37 U.S.C. 1007(h)(4).

(g) 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.

(a) *Misdemeanor.* A creditor who knowingly violates 10 U.S.C. 987 as implemented by this part shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(b) *Preservation of other remedies.* The remedies and rights provided under 10 U.S.C. 987 as implemented by this part are in addition to and do not preclude any remedy otherwise available under State or Federal law or regulation to the person claiming relief under the statute, including any award for consequential damages and punitive damages.

(c) *Contract void.* Any credit agreement, promissory note, or other contract with a covered borrower that fails to comply with 10 U.S.C. 987 as implemented by this part or which contains one or more provisions prohibited under 10 U.S.C. 987 as implemented by this part is void from the inception of the contract.

(d) *Arbitration.* Notwithstanding 9 U.S.C. 2, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit to a covered borrower pursuant to this part shall be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.

(e) *Civil liability*—(1) *In general.* A person who violates 10 U.S.C. 987 as implemented by this part with respect to any person is civilly liable to such person for:

(i) Any actual damage sustained as a result, but not less than $500 for each violation;

(ii) Appropriate punitive damages;

(iii) Appropriate equitable or declaratory relief; and

(iv) Any other relief provided by law.

(2) *Costs of the action.* In any successful action to enforce the civil liability described in paragraph (e)(1) of this section, the person who violated 10 U.S.C. 987 as implemented by this part is also liable for the costs of the action, together with reasonable attorney fees as determined by the court.

(3) *Effect of finding of bad faith and harassment.* In any successful action by a defendant under this section, 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.

(4) *Defenses.* A person may not be held liable for civil liability under paragraph (e) of this section if the person shows 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 of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors, except that an error of

legal judgment with respect to a person's obligations under 10 U.S.C. 987 as implemented by this part is not a bona fide error.

(5) *Jurisdiction, venue, and statute of limitations.* An action for civil liability under paragraph (e) of this section may be brought 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:

(i) Two years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(ii) Five years after the date on which the violation that is the basis for such liability occurs.

§ 232.10 Administrative enforcement.

The provisions of this part, other than § 232.9(a), 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.

§ 232.11 Servicemembers Civil Relief Act protections unaffected.

Nothing in this part may be construed to limit or otherwise affect the applicability of section 207 and any other provisions of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

§ 232.12 Effective dates.

(a) *Prior extensions of consumer credit.* Consumer credit that is extended to a covered borrower and consummated any time between October 1, 2007, and [EFFECTIVE DATE OF FINAL REGULATION, AS AMENDED], are subject to the requirements of this part as were established by the Department and effective on October 1, 2007.

(b) *New extensions of consumer credit.* Except as provided in paragraphs (c) and (d) of this section, the requirements of this part, as amended by the Department and effective as of [EFFECTIVE DATE OF FINAL REGULATION], shall apply only to a consumer credit transaction or account for consumer credit consummated or established on or after [EFFECTIVE DATE OF FINAL REGULATION].

(c) *Provisions of 10 U.S.C. 987(d)(2).* The amendments to 10 U.S.C. 987(d)(2) enacted in section 661(a) of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, 126 Stat. 1785), as reflected in § 232.7(b) of this part, shall take effect on January 2, 2014.

(d) *Civil liability remedies.* The provisions set forth in § 232.9(e) shall apply with respect to consumer credit extended on or after January 2, 2013.

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