

in credit card accounts, a \$400 fee nevertheless may be reasonable 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) *Effect of charging fees on bona fide fees*—(i) *Bona fide fees treated separately from charges for credit insurance products or credit-related ancillary products.* If a creditor imposes a fee described in paragraph (c)(1) of this section and imposes a finance charge to a covered borrower, the total amount of the fee(s) and finance charge(s) shall be included in the MAPR pursuant to paragraph (c) of this section, and the imposition of any fee or finance charge described in paragraph (c)(1) of this section shall not affect whether another type of fee may be excluded as a bona fide fee under this paragraph (d).

(ii) *Effect of charges for non-bona fide fees.* If a creditor imposes any fee (other than a periodic rate or a fee that must be included in the MAPR pursuant to paragraph (c)(1) of this section) 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.

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

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

sion under this paragraph (d), and a bona fide, but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion under this paragraph (d)—and the finance charge must be included when calculating the MAPR.

(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 Optional identification of covered borrower.

(a) *No restriction on method for covered-borrower check.* A creditor is permitted to apply its own method to assess whether a consumer is a covered borrower.

(b) *Safe harbor*—(1) *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 paragraph (b).

(2) *Methods to check status of consumer*—(i) *Department database*—(A) *In general.* To determine whether a consumer is a covered borrower, a creditor may verify the status of a consumer by using information relating to that consumer, if any, obtained directly or indirectly from the database maintained by the Department, available at <https://www.dmdc.osd.mil/mla/welcome.xhtml>. A search of the Department's database requires the entry of the consumer's last name, date of birth, and Social Security number.

(B) *Historic lookback prohibited.* At any time after a consumer has entered into a transaction or established an account involving an extension of credit, a creditor (including an assignee) may not, directly or indirectly, obtain any information from any database maintained by the Department to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established.

(ii) *Consumer report from a nationwide consumer reporting agency.* To determine whether a consumer is a covered borrower, a creditor may verify the

status of a consumer by using a statement, code, or similar indicator describing that status, if any, contained in a consumer report obtained from a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or a reseller of such a consumer report (as each of those terms is defined in the Fair Credit Reporting Act (15 U.S.C. 1681a) and any implementing regulation (12 CFR part 1022)).

(3) *Determination and recordkeeping; one-time determination permitted.* A creditor who makes a determination regarding the status of a consumer by using one or both of the methods set forth in paragraph (b)(2) of this section 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 timely creates and thereafter maintains a record of the information so obtained. A creditor may make the determination described in this paragraph (b), and keep the record of that information obtained at that time, solely at the time—

(i) A consumer initiates the transaction or 30 days prior to that time;

(ii) A consumer applies to establish the account or 30 days prior to that time; or

(iii) The creditor develops or processes, with respect to a consumer, a firm offer of credit that (among the criteria used by the creditor for the offer) includes the status of the consumer as a covered borrower, so long as the consumer responds to that offer not later than 60 days after the time that the creditor had provided that offer to the consumer. If the consumer responds to the creditor's offer later than 60 days after the time that the creditor had provided that offer to the consumer, then the creditor may not rely upon its initial determination in developing or processing that offer, and, instead, may act on the consumer's response as if the consumer is initiating the transaction or applying to establish the account (as described in paragraph (b)(3)(i) or (ii) of this section).

§ 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; and

(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.

(b) *One-time delivery; multiple creditors.* (1) The information described in paragraphs (a)(1) and (a)(3) 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, then only one of those creditors must provide the disclosures in accordance with this section. The creditors may agree among themselves which creditor may provide the information described in paragraphs (a)(1) and (a)(3) 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.