

Supporting Statement

Mandatory Disclosures as Part of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

A. JUSTIFICATION

1. Need for Information Collection

After both Congressional Banking and Armed Services Committees reviewed the issue of predatory lending directed at members of the Armed Forces and their dependents, the Armed Services Committees included Section 670 in the John Warner National Defense Authorization Act for Fiscal Year 2007. The resulting statute, 10 U.S.C. § 987 (attachment 1), directs the Secretary of Defense to establish policy to implement the provisions of the statute with the consultation of the U.S. Department of Treasury, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Reserve Board, Federal Trade Commission, Federal Deposit Insurance Corporation and the National Credit Union Administration. The proposed regulation, 32 C.F.R. Part 232 (attachment 2), implements the statute within the delegated authority. This information collection is needed to fulfill those disclosure requirements stipulated in 10 U.S.C. § 987 (c)(1) which are in addition to current disclosures required by the Truth in Lending Act, as implemented through Regulation Z (12 C.F.R. part 226) issued by the Board of Governors of the Federal Reserve System.

2. Use of Information

The purpose of this information collection is to ensure disclosures required by 10 U.S.C. § 987 (c)(1) to covered borrowers by creditors in the process of extending consumer credit. The terms “creditors” and “consumer credit” are defined in the 32 C.F.R. Part 232 in accordance with 10 U.S.C. § 987(h)(1). These definitions are as follows:

Creditor (as defined in 232.3(e)): A person who is engaged in the business of extending consumer credit with respect to a consumer credit transaction covered by this part. For the purposes of this section, “person” includes a natural person, organization, corporation, partnership, proprietorship, association, cooperation, estate, trust, and any other business entity and who otherwise meets the definition of “creditor” for purposes of Regulation Z.

Consumer credit (as defined in 232.3(b)): Means closed-end credit offered or extended to a covered borrower primarily for personal, family or household purposes, as described in paragraph (b)(1) of this section.

(1) Except as provided in paragraph (b)(2) of this section, consumer credit means the following transactions:

(i) Payday loans. Closed-end credit with a term of 91 days or fewer in which the amount financed does not exceed \$2,000 and the covered borrower:

(A) Receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds, provides a check or other payment

instrument to the creditor who agrees with the covered borrower not to deposit or present the check or payment instrument for more than one day, or;

(B) Receives funds from and incurs interest and/or is charged a fee by a creditor, and contemporaneously with the receipt of funds, authorizes the creditor to initiate a debit or debits to the covered borrower's deposit account (by electronic fund transfer or remotely created check) after one or more days. This provision does not apply to any right of a depository institution under statute or common law to offset indebtedness against funds on deposit in the event of the covered borrower's delinquency or default.

(ii) Vehicle title loans. Closed-end credit with a term of 181 days or fewer that is secured by the title to a motor vehicle, that has been registered for use on public roads and owned by a covered borrower, other than a purchase money transaction described in paragraph (b)(2)(ii) of this section.

(iii) Tax refund anticipation loans. Closed-end credit in which the covered borrower expressly grants the creditor the right to receive all or part of the borrower's income tax refund or expressly agrees to repay the loan with the proceeds of the borrower's refund.

The covered borrower is defined in 232.3 (c) to further clarify the definition included in 10 U.S.C. § 987:

(1) A regular or reserve member 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 less, or such a member serving on Active Guard and Reserve duty as that term is defined in 10 U.S.C. 101(d)(6), or

(2) The member's spouse, the member's child defined in 38 USC 101(4), or an individual for whom the member provided more than one-half of the individual's support for 180 days immediately preceding an extension of consumer credit covered by this part.

With respect to any extension of consumer credit (including any consumer credit originated or extended through the Internet) to a covered borrower, a creditor is responsible for disclosing the following information to the covered borrower (as defined in 232.6(a)):

(1) The Military Annual Percentage Rate (MAPR) applicable to the extension of consumer credit, and the total dollar amount of all charges included in the MAPR.

(2) Any disclosures required by Regulation Z (Truth in Lending), 12 CFR Part 226.

(3) A clear description of the payment obligation of the covered borrower, as applicable. A payment schedule provided pursuant to subsection (2) satisfies this requirement.

(4) A statement that "Federal law provides important protections to active duty members of the Armed Forces 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.”

The anticipated burden associated with the proposed regulation results from the initiation of disclosure of the MAPR in paragraph 232.6(a)(1). The disclosures required in paragraphs 232.6(a) (2), (3), and (4) would not represent a burden association with a new disclosure because:

- 232.6(a) (2) is already required to be disclosed by Regulation Z.
- 232.6(a) (3) is likewise already accomplished as part of the disclosure requirements in Regulation Z
- 232.6(a) (4) is a disclosure provided by the Federal Government and consequently is exempt from the definition of information collection contained in 5 C.F.R. 1320.3(c).

Paragraph 232.6(b) requires oral disclosure of requirements 232.6(a)(1), (3) and (4) in addition to the written disclosure. This is a new requirement and could pose an additional burden to the creditor providing consumer credit. The paragraph states: “In mail and internet transactions, the creditor satisfies this requirement if it provides a toll-free telephone number on or with the written disclosures that consumers may use to obtain oral disclosures and the creditor provides oral disclosures when the covered borrower contacts the creditor for this purpose.”

3. Improved Information Technology

A review of respondent creditors currently providing consumer credit defined in 232.3(b) shows that there are approximately 320 using the Internet to accept approximately 5.3 percent of all applications for consumer credit through electronic means. These creditors can use their websites to provide written disclosure of the MAPR. Additionally, they have the capability of coding the requirement for calculating the MAPR into the software used to provide the applicant with APR and other costs associate with the loan.

4. Efforts to Identify Duplication

The specific information to be provided by the creditor as part of this new disclosure has been reviewed in light of current Regulation Z disclosures. All disclosures have been kept consistent with Regulation Z, with the exception of the MAPR which is required by 10 U.S.C. § 987(c)(1).

5. Methods Used to Minimize Burden on Small Entities

The burden applied to small entities is the minimum allowable under the 10 U.S.C. § 987, consistent with applicable laws, executive orders, regulations and prudent business practices.

6. Consequences of Not Collecting the Information

If the disclosure is not made, the creditor will be in violation of the requirements outlined in U.S.C. § 987(c)(1). These requirements are intended to ensure the covered borrower is aware of the full impact of all fees and charges have on the cost of the consumer credit being borrowed.

7. Special Circumstances

There are no special circumstances. This disclosure will be conducted in a manner consistent with the guidelines contained in 5 C.F.R. 1320.5(d)(2).

8. Agency 60-Day Federal Register Notice and Consultation Outside the Agency

The 60-day and 30-day notices were included in the preamble of the proposed rule that published April 11, 2007 (72 FR 18157-18170). Section 232.6 of this rule contains information collection requirements. In response to DoD's invitation in the Proposed Rule to comment on any potential paperwork burden associated with this rule, the following comments were received.

232.6. Mandatory disclosures:

Section 232.6 describes the disclosures that must be provided to covered borrowers before they become obligated on a consumer credit transaction. This includes the new disclosures established under 10 U.S.C. § 987 and also includes disclosures that creditors are already required to provide pursuant to the Federal Reserve Board's Regulation Z, which implements the TILA. Regulation Z contains certain requirements pertaining to the format of the TILA disclosures for closed-end credit transactions, including a requirement that they "shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related" to the disclosures required under Regulation Z. The Department intends that the disclosures required under this proposal be provided consistent with the format requirements of Regulation Z. Accordingly, the covered borrower identification statement described in §232.5 and the disclosures provided pursuant to §232.6(a)(1), (3), and (4) should not be interspersed with the TILA disclosures.

The general rule is that disclosures required by §232.6(a) (1), (3), and (4) must be provided orally as well as in writing. However, in credit transactions entered into by mail or on the internet, a creditor complies with this requirement if the creditor provides covered borrowers with a toll-free telephone number on or with the written disclosures and the creditor provides oral disclosures when the covered borrower contacts the creditor for this purpose. Consumer groups that commented stated that providing borrowers with a toll-free telephone number would not be sufficient and because it places the burden on the borrower instead of the lender. Many industry respondents expressed concern about the costs of providing the disclosures, to include developing software, training employees about the new rules, and updating all their forms. The Department believes providing consumers with a toll-free telephone number to access oral disclosures fulfills the intent of the statute and balances overall considerations for protection with access to credit.

The Department has received several comments about potential disparities in disclosures required by this regulation as opposed to TILA. Many respondents felt that the current APR disclosures are barely understood by consumers and that adding a new MAPR disclosure to the mix will only serve to create more confusion. As with other aspects of the statute, the Department's intention has been to develop a regulation that is consistent with the statutory intent. The Department recognizes the potential confusion inherent in mandating the disclosure of two differing annual percentage rates (the MAPR required by this regulation and the APR required by TILA). As previously stated, the Department is responsible for training Service members and making similar education available for spouses. The differences between APR and MAPR will be added to their training, along with explaining their rights as a covered borrower. Some respondents sought clarification on whether MAPR disclosures would be required in advertising. These same respondents suggest that including MAPRs and APRs in marketing initiatives would be confusing to consumers. Under section 232.6 of the final rule, creditors must provide the required disclosures in writing before consummation of the transaction. Disclosure of the MAPR in advertisements is not required.

Consultations concerning the overall statute and proposed rule making, to include disclosure requirements outlined in the statute, were conducted at the request of potentially impacted organizations. Representatives of the Department met with representatives of the American Bankers Association, Independent Community Bankers Association, America's Community Bankers, Commercial Bankers Association, Association of Military Banks of America, American Financial Services Association, Financial Service Roundtable, National Federal Credit Union Association, Pioneer Financial Services Inc., Daimler-Chrysler Corporation, Ford Credit Corporation and the National Pawnbrokers Association.

9. Payments to Respondents

No payment or gifts will be made to respondents.

10. Assurance of Confidentiality

No data will be collected as part of this requirement from the respondent or by the respondent from the general public that is not already obtained as part of the credit transaction.

11. Sensitive Questions

No questions are asked of the respondent or the general public as part of this requirement.

12. Estimates of Annual Response Burden and Labor Cost for Hour Burden to the Respondent for Collection of Information

a. Annual Response Burden

Total annual respondents: 51,725

Frequency of response: 1 per response

Total annual responses: 1,219,035

Burden per response: 2 – 2.5 minutes, plus one business day to revise processes and two business days to revise applicable websites.

Total burden hours: 182,105

b. Explanation of How Burden was Estimated

The annual burden on respondents varies based on the category of creditor potentially impacted by the proposed regulation. To accomplish the estimate, the following assumptions and calculations were made, by category of creditor:

(1) Payday lender, operating from a storefront location:

Number of lenders: 22,854. This number was derived from the 2005 Stephens Inc. Industry Report on the Payday Loan Industry.

Frequency of calculation of MAPR and required oral disclosure: 1 per response

Total annual responses for calculation of MAPR and required oral disclosure: 1,035,000. This number represents the approximate number of payday loans obtained by Service members in 2005, as determined by the following calculation: Approximately 1.5 percent of the payday lending market is made up from military customers (225,000), times 4.6 loans per customer as reported in the April 2006 Defense Manpower Data Center Survey of Active Duty Service Members.

Burden per response: 2.5 minutes. The burden of providing the MAPR calculation is negligible since the calculation to determine the Annual Percentage Rate (APR) (required by Regulation Z) is normally based on the same cost factors that would be used to calculate the MAPR for a payday loan. The calculation would be different if the creditor requires a fee that is not currently required by Regulation Z in the calculation of the APR. Nine States authorizing payday loans allow for application, origination and/or verification fees which would not be included in the APR. This impacts 4,865 stores, according to the 2005 Stephens Inc Industry Report. For the purposes of measuring the potential impact, calculating the MAPR is applied to all 22,854 stores. The burden of providing the oral disclosure is estimated at being 2 minutes per response. Overall burden is estimated to be 2.5 minutes.

Additionally, one business day (8 hours) is added for each respondent to add/modify forms used as part of the application to include the written MAPR. Several of the payday lending locations are part of national chains which would provide applicable documents for stores within their network. Fifteen companies operate 9,683 locations according to the 2005 Stephens Inc. Industry Report, with the remaining 13,171 outlets affiliated with smaller companies or individually owned operations. The total burden hours for all outlets is calculated as 15 companies times 8 hours plus the remaining 13,171 outlets times 8 hours, which equals 105,488 hours.

Total burden hours: 148,613. This equals 2.5 minutes per response times 1,035,000 responses per year, divided by 60 minutes per hour, plus 105,488 hours.

(2) Payday lenders operating on the Internet:

Number of lenders: 220. Determining the number of lenders operating on the Internet is difficult to ascertain. A search of the worldwide web using a search engine like “Google” produces over a million responses, which includes commentaries, lists of other websites, blogs, etc. To more accurately determine the number of operators on the Internet, the search using Google was focused by searching only English speaking “.com” sites and asking for “payday loan application” in the title of the website. The resulting search returned 220 websites that appeared to offer either creditors offering payday loans or lists of website offering these loans. A similar search using “military payday loan” in the title of the website brought up 210 websites.

Frequency of calculation of MAPR and required oral disclosure: 1 per response

Total annual responses for calculation of MAPR and required oral disclosure: 65,160. This number represents the approximate number of internet payday loans obtained by Service members in 2005, as determined by the following calculation: the number of military customers who acknowledged obtaining an payday loan over the Internet as reported in the April 2006 DMDC Survey of Active Duty Service Members (27,150), times the average number of loans they acknowledged obtaining (2.4).

Burden per response: 2 minutes. Since the MAPR can be calculated as part of the application on the website, the time involved in accomplishing this requirement has been extracted from the burden per response included for storefront operations.

The burden associated with programming a change to the 220 lender websites, to include the new MAPR and the toll-free phone number, is estimated at one business day for realign processes and two business days to adjust information on the website. This would add 5,280 hours to the total annual burden.

Total burden hours: 7,452. This equals 2 minutes per response times 65,160 responses per year, divided by 60 minutes per hour, plus 5,280 hours.

(3) Vehicle title lenders, operating from a storefront:

Number of lenders: 6,000. This is an approximation since there was no source found to determine the number of vehicle title lenders operating in the United States. The approximation was determined by finding what information was available from States authorizing vehicle title lending (144 in Illinois, 279 in Missouri, and 703 in Tennessee). The average of these three states is 375 which multiplied by the number of states authorizing vehicle title lending (16) equals 6,000.

Frequency of calculation of MAPR and required oral disclosure: 1 per response

Total annual responses for calculation of MAPR and required oral disclosure: 13,575

The total annual responses equate percentage of active duty Service members who reported using vehicle title loans in the April 2006 DMDC Survey of Active Duty Service Members (one percent of 1,357,500). No data was collected on the average number of loans where taken out by the survey respondents.

Burden per response: 2.5 minutes.

Additionally, one business day (8 hours) is added for each respondent to add/modify forms used as part of the application to include the written MAPR. Most outlets are owned by parent companies that would adjust forms and procedures for subordinate outlets. In reviewing data from the Tennessee Department of Financial Institutions, of the 703 outlets licensed in the state, 22 percent were run by single operators, 30 percent were managed by operators owning 2 – 9 stores, 19 percent owned 10 – 24 stores and 29 percent owned 25 or more stores. Multiplying these percentages against 6,000 and then dividing by the bottom of the ranges (2, 10 and 25) equals 2,404 potential owners. The total burden hours for owners is calculated as 2,404 times 8 hours, which equals 19,232 hours.

Total burden hours: 19,798. This equals 2.5 minutes per response, times 13,575 responses per year, divided by 60 minutes per hour, plus 19,232 hours.

(4) Vehicle title lenders operating on the Internet:

Number of lenders: 40. Determining the number of lenders operating on the Internet is difficult to ascertain. Using the methods employed to determine the number of payday lenders on the Internet brought up 181 possible websites. In reviewing these sites, the majority were “luciddomain” sites which provided links to other sites, many being lists of other websites. Researching the referenced sites brought up approximately 20 sites offering auto or vehicle title loans. Several of these sites were associated with businesses within a specific region. In order to accommodate sites that may have been overlooked, the number has been doubled.

Frequency of calculation of MAPR and required oral disclosure: 1 per response

Total annual responses for calculation of MAPR and required oral disclosure: 0. There is no data showing that Service members or their families accessed vehicle title loans from the Internet. The April 2006 DMDC Survey of Active Duty Service Members, only asked for the number of individuals using vehicle loans and did not differentiate between storefront and Internet sources. Burden hours will be adjusted once more data becomes available.

Burden per response: 2 minutes.

The burden associated with programming a change to the website, to include the new MAPR and the toll-free phone number, is estimated at one business day for realign processes and two business days to adjust information on the website. Many of the sites had toll-free

phone numbers already posted on the website. This would add approximately 960 hours to the total annual burden.

Total burden hours: 960.

(5) Refund anticipation loans (RALs) offered through storefront tax preparers.

Number of lenders and agents: 22,500. There appears to be a limited number of banks involved in making RALs. A review of consumer advocate literature reveals only six banks in the United States making these loans. The number of tax preparation offices providing RALs is estimated at over 20,000, since H&R Block operates 12,000 offices, Jackson Hewitt operates 6,000, and Liberty operates 2,400. The number of independent tax preparers who offer RALs is unknown and estimated at ten percent of the total (2,040 rounded up to approximately 2,100).

Frequency of calculation of MAPR and required oral disclosure: 1 per response

Total annual responses for calculation of MAPR and required oral disclosure: 54,300. This number represents the approximate number of RALs obtained by Service members in 2005, as determined by the number of military customers who acknowledged in the April 2006 DMDC Survey of Active Duty Service Members as having taken a RAL.

Burden per response: 2 minutes. The primary burden per response would involve providing the oral disclosure. The calculation of the MAPR would be accomplished by the bank providing the loan, which would be programmed into the software used to produce the disclosure materials at the point of application (tax preparation office).

The burden associated with programming a change to the software that produces the additional disclosure to include the new MAPR is estimated to take a business day. Since there are a limited number of banks involved in providing RALs, the additional burden would be less than 100 hours added to the total annual burden.

Total burden hours: 1,910. This equals 2 minutes per response times 54,300 responses per year, divided by 60 minutes per hour, plus 100 hours.

(6) RALs offered through the Internet:

Number of lenders: 60. Determining the number of lenders operating on the Internet is difficult to ascertain. Using the methods employed to determine the number of payday lenders on the Internet brought up 156 possible websites. In reviewing these sites, the majority were which provided links to other sites. Researching the referenced sites brought up approximately 30 sites offering RALs. In order to accommodate sites that may have been overlooked, the number has been doubled.

Frequency of calculation of MAPR and required oral disclosure: 1 per response

Total annual responses for calculation of MAPR and required oral disclosure: 0. There is no data showing that Service members or their families accessed RALs from the Internet. The April 2006 DMDC Survey of Active Duty Service Members, only asked for the number of individuals using RALs and did not differentiate between storefront and Internet sources. Burden hours will be adjusted once more data becomes available.

Burden per response: 2 minutes.

The burden associated with programming a change to the website, to include the new MAPR and the toll-free phone number, is estimated at one business day for realign processes and two business days to adjust information on the website. This would add 1,440 hours to the total annual burden.

Total burden hours: 1,440.

(7) Banks and credit unions offering alternative loan products which fall within the definition of payday, vehicle title or refund anticipation loans:

Number of lenders: 51. A survey of military banks and credit unions in June 2006 found 51 bank branches and credit unions offering loans which had low principal values and short durations, but with low interest rates in order to assist the Service member resolve recurring debt.

Frequency of calculation of MAPR and required oral disclosure: 1 per response

Total annual responses for calculation of MAPR and required oral disclosure: 51,000
No information was gathered in the survey to determine the number of loans provided to Service members and their dependents. The estimate is based on each location having provided 1,000 loans.

Burden per response: 2 minutes.

Additionally, one business day (8 hours) is added for each bank to add/modify forms used as part of the application to include the written MAPR. There were 29 banks and credit unions involved at the 51 locations. If each bank and credit union devotes a business day to revise their programs, there would be a total of 232 hours expended.

Total burden hours: 1,932. This equals 2 minutes per response, times 51,000 responses per year, divided by 60 minutes per hour, plus 232 hours.

c. Labor Cost to Respondent:

Bank compliance officer/store manager: \$7,975,750
Approximate annual salary of \$65,000, divided by 2080 hours per year = \$31.25 per hour, times two (factor in benefits) = \$62.50 per hour, times approximate hours required to change processes (127,612).

Computer programmer: \$285,491

Approximate annual salary of \$58,000, divided by 2080 hours per year = \$27.89 per hour, times two (factor in benefits) = \$55.76, times approximate hours required to modify websites (5,120).

Clerk/phone operator: \$617,163

Hourly salary of \$12.50 times approximate hours required to make oral disclosures (49,373)

Total labor burden for impacted creditors: \$8,878,404

13. Estimates of Other Cost Burden for the Respondent for Collection of Information

a. Total Capital and Start-up Cost.

Some creditors providing consumer credit defined in the regulation by means of the Internet may need to establish toll-free services to accommodate oral disclosures. A review of websites for payday lenders showed very few had any capability for a credit applicant to call the website provider. Approximately a third of car-title loan providers had existing toll-free numbers. For the purpose of estimating cost, the cost of setting up a toll-free number is applied to the estimated total number of websites for the three covered forms of consumer credit.

Set-up fees ranged from \$0 - \$30 (estimate uses \$25 for set-up). The approximate set-up cost for creditors using the Internet is \$8,000.

b. Operation and Maintenance Cost.

A review of toll-free services shows prices vary by purchased services and by provider. A median price for a product which covers approximately 1,000 – 2,000 call per month has a monthly fee of \$49.99 (rounded to \$50.00). Additional calls over the covered amount were billed at 2.9 cents per call. Applying an annual cost of \$600 to the total number of websites (320) provides an annual cost \$192,000. The projected number of calls would be covered by monthly fees.

14. Estimates of Cost to the Federal Government

There are no projected costs to the Federal Government to implement the required disclosures.

15. Changes in Burden

This increase in burden is due to the establishment of a new collection required by statute.

16. Publication Plans/Time Schedule

The results of the collection (disclosure) will not be published for statistical use.

17. Approval Not to Display Expiration Date

Approval not to display the expiration date is not being sought since there is no required form as part of this disclosure requirement.

18. Exceptions to the Certification Statement.

No exceptions to the certification statement are being requested.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Statistical methods are not employed for collection of this information.