

Mandatory Disclosures as Part of Limitations on Terms of Consumer Credit Extended to Service  
Members and Dependents (0704-0444)  
Supporting Statement Part A

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 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, Federal Reserve Board, Federal Trade Commission, Federal Deposit Insurance Corporation, the National Credit Union Administration and the Consumer Financial Protection Bureau. The proposed revision to the regulation, 32 C.F.R. Part 232 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 being amended as follows:

Creditor (as defined in 232.3(i)): Creditor, except as provided in § 232.8(a)<sup>1</sup> and § 232.8(f)<sup>2</sup>, means a person who is—

- (1) Engaged in the business of extending consumer credit; or
- (2) An assignee of a person described in paragraph (1) of this subsection with respect to any consumer credit extended.
- (3) For the purposes of this paragraph (h), a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates

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<sup>1</sup> For the purpose of the limitation described in § 232.8(a) , the definition of creditor is limited 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 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.

<sup>2</sup> For the purpose of the limitation described in § 232.8(f) , the definition of 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).

meets the transaction standard for a “creditor” under Regulation Z with respect to extensions of consumer credit to covered borrowers.

Consumer credit (as defined in 232.3(f)): 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.<sup>3</sup>

The covered borrower is defined in 232.3 (g): 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).

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 (as defined in 232.6(a)):

- (1) The Military Annual Percentage Rate (MAPR) applicable to the extension of consumer credit;
- (2) Any disclosures 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

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<sup>3</sup> Exceptions. Notwithstanding paragraph (f) 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.

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) and (3) would not represent a burden associated 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

Additionally, the information described in paragraphs (a)(1) and (a)(3) of this section 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.

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) and (a)(3) of this section.

Furthermore, the statement of the MAPR required in 232.6(a)(1) of this section:

(1) A creditor may satisfy the requirement 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) 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.

Paragraph 232.6(b) requires the creditor to also provide oral disclosure of requirements 232.6(a) (1) and (3) in addition to the written disclosure. 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.

### **3. Improved Information Technology**

The revision of consumer credit in 232.3(f) allows for an estimate of up to 37,500 creditors to potentially be impacted. There is no clear estimate of how many of these creditors have a presence online to offer covered credit, but a Federal Reserve Board survey of consumer behavior estimates that 42 percent of credit transactions requiring a TILA disclosure occur online.

#### **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. Efforts to streamline the disclosures, such as in 232.6(c), where a model statement has been provided that can be included with preprinted application materials, demonstrates that every opportunity has been taken in the proposed changes to minimize the anticipated burden on small entities.

#### **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 was published September 29, 2014 ( DOD-2013-OS-0133/RIN 0790-AJ10). Section 232.6 of this rule contains information collection requirements. In response to DoD's Notice Proposed Rulemaking, the following comments on the paperwork burden were received:

##### 232.6, Mandatory disclosures:

The Department's existing rule requires each of these categories of information to be provided "clearly and conspicuously" to a covered borrower.<sup>4</sup> When issuing the Proposed Rule, the Department stated that, even though the MLA does not require any information to be provided "clearly and conspicuously," 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

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<sup>4</sup> 32 CFR 232.6(a).

clear and conspicuous.<sup>5</sup> In light of the scope of the Proposed Rule, the Department proposed that 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. Staff of the FTC urge the Department to retain the requirement that information be delivered to a covered borrower in a manner that is clear and conspicuous.<sup>6</sup> According to the staff of the FTC, if the existing clear-and-conspicuous requirement is eliminated, information required by the MLA to be provided to a covered borrower could be buried in fine print or hidden in one or more documents, among unrelated terms and conditions.<sup>7</sup>

The Department realizes that by eliminating the requirement to provide certain information in a manner that is clear and conspicuous there is a risk that a creditor might minimize the prominence of the statement of the MAPR or the clear description of the covered borrower's payment obligations amidst other disclosures, contract documents, statements, or marketing materials; in that circumstance, an ordinary covered borrower might not appreciate those items that, under the MLA, are intended to assist the borrower. Nonetheless, the Department has determined that, under the final rule, the interests of an ordinary covered borrower still would be served because: (i) insofar as § 232.6(a)(3) permits a creditor to provide the relevant disclosure pursuant to Regulation Z as a mechanism for providing the "clear description of the payment obligation of the borrower," the disclosure could be delivered in a manner which is clear and conspicuous; and (ii) even if the borrower is provided a description of the charges that the creditor may impose to calculate the MAPR that is not clear and conspicuous, the creditor separately must adhere to the requirements of the rule when computing the MAPR. In this regard, a covered borrower could overlook the statement of the MAPR, yet remain protected by the substantive requirements that limit the costs associated with the borrower's transaction or account involving consumer credit.

Section 232.6(a)(1) requires 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 rule. 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)."<sup>8</sup> As stated in the Proposed Rule, 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 final rule, would be covered under the MLA.

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<sup>5</sup> When adopting its rule in 2007, the Department addressed the disclosure requirements of Regulation Z, see, e.g., 72 FR at 50,588, but did not address the purposes of imposing a clear-and-conspicuous requirement under 10 U.S.C. 987(c).

<sup>6</sup> Staff of the Federal Trade Commission, Dec. 22, 2014, at 8-9. But see Bellco Credit Union, Dec. 19, 2014, at 6 ("removing the clear and conspicuous requirement for the disclosure would not affect the presentation of the disclosure").

<sup>7</sup> Staff of the FTC, Dec. 22, 2014, at 9.

<sup>8</sup> 72 FR at 50,589.

Section 987(c)(1)(A) of the MLA does not 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].”<sup>9</sup> Taken singly and in 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, § 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.<sup>10</sup> The Department believes that, in light of § 987(i)(4) (“‘annual percentage rate’ has the same meaning as in section 107 of [TILA], as implemented by the [Bureau]”), § 987(c)(1)(A) of the MLA (“A statement of the annual percentage rate of interest”) should be interpreted so as not 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 § 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 §§ 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 is not be required to provide to a covered borrower two different numerical disclosures, which inevitably would lead to confusion.<sup>11</sup>

In light of the scope of the definition of consumer credit, which encompasses open-end credit products, the Department exercises its discretion under the MLA<sup>12</sup> to interpret 10 U.S.C. 987(c)(1)(A) more straightforwardly to require, in § 232.6(a)(1), a creditor to provide “statement of the MAPR” which may be satisfied (under § 232.6(c)) by a description of “the charges the creditor

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<sup>9</sup> 10 U.S.C. 987(c)(2). As enacted, the MLA refers in this section to regulations “issued by the 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).

<sup>10</sup> See 12 U.S.C. 1026(c).

<sup>11</sup> 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 §§ 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.

<sup>12</sup> 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]”).

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.” Section 232.6(c)(1) also clarifies that a creditor is not 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 concludes 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 final rule, 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, § 232.6(c)(3) provides a model statement that a creditor could use. Section 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,<sup>13</sup> § 232.6(c)(2) expressly provides that the statement of the MAPR is not required in any advertisement relating to consumer credit.

Section 232.6(b) establishes rules relating to transactions involving a creditor and assignee or multiple creditors. More specifically, § 232.6(b)(1) provides 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.” Accordingly—and particularly in light of the general timing requirement for providing disclosures when the transaction occurs or the account originally is established<sup>14</sup>—a creditor who is an assignee is not required to provide the information described in paragraphs (a)(1) and (a)(3) of § 232.6. (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).) Relative to the Proposed Rule, § 232.6(b)(2) has been modified to clarify that only one of two or more creditors involved in a transaction for consumer credit must provide the disclosures, and the multiple creditors are permitted to agree among themselves as to which creditor may provide the information required under the MLA.

Section 232.6(d) establishes rules relating to the methods of delivery, which are substantively similar to the provisions of the existing rule and, yet, allow for greater flexibility. Under § 232.6(d)(1), a creditor must provide the information required under the MLA “in writing in a form the covered borrower can keep.” And under § 232.6(d)(2), consistent with the structure of the existing rule,<sup>15</sup> a creditor must orally provide the information required by paragraphs (a)(1) and (a)(3) of § 232.6(a). However, in order to satisfy the requirement to orally provide certain disclosures, a creditor may provide the information in person or provide a toll-free telephone number that a covered borrower can use to obtain the information. Thus, whereas the Proposed Rule would have permitted the provision of a toll-free telephone number only in the context of a mail transaction, an internet transaction, or a credit transaction conducted at the point-of-sale in

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<sup>13</sup> 72 at 50,589.

<sup>14</sup> 12 CFR 232.6(a) (“before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit”).

<sup>15</sup> See 10 U.S.C. 987(c)(1) (requiring information to be provided “orally”).

connection with the sale of a nonfinancial product or service, the final rule allows a creditor to use that method for any transaction or account involving consumer credit.

Under 10 U.S.C. 987(c)(1), a creditor must provide to a covered borrower certain information “orally and in writing,” but 10 U.S.C. 987(c)(2) provides that “[s]uch disclosures shall be presented in accordance with terms prescribed [in Regulation Z].” By requiring the disclosures to be “presented in accordance with” Regulation Z, the MLA is ambiguous as to the nature of the requirement to “orally” provide the disclosures because, in general, Regulation Z requires the disclosures required by TILA only to be presented to a consumer “in writing, in a form that the consumer may keep.”<sup>16</sup> Regulation Z contains certain provisions that allow for disclosures to be made orally, but only in the context of “an oral response to a consumer’s inquiry.”<sup>17</sup> More generally, even though the MLA provides that a creditor must “orally” provide certain information “before the issuance of the credit,” the law applies that requirement to “any extension of consumer credit (including any consumer credit originated or extended through the internet).” Thus, the law is conspicuously vague as to precisely when (or even whether) the creditor must orally deliver the information to a covered borrower (say, in person or over the telephone), since the technological constraints of conducting a credit transaction “through the internet” make oral delivery of disclosures an impossibility.

In light of the ambiguities in 10 U.S.C. 987(c), and particularly in the context of conducting transactions involving consumer credit “through the internet,” the Proposed Rule had tracked the existing rule by allowing a creditor who is conducting a mail or internet transaction to provide to a covered borrower a toll-free telephone number that the borrower could use to obtain the oral disclosures.<sup>18</sup> The Department recognized that when a creditor is not present to interact orally with a covered borrower—including when obtaining consumer credit at the point-of-sale for a nonfinancial product or service—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.

Several comments raise general concerns about the requirement to orally provide the disclosures required by the MLA. The Associations<sup>19</sup>, for example, state that in many transactions, creditors will face difficulties “persuad[ing] covered borrowers to listen to the oral disclosures at the time an account is opened, especially if they are not in a private setting. In addition, providing oral disclosures will require specialized training to ensure that the depository institution employee, at the right time, first identifies the customer as a covered borrower, and then, second, provides the oral disclosures.”<sup>20</sup> The Associations urge the Department to modify the requirement so that the use of the toll-free telephone to provide the required disclosures is permitted in any “bank [or] credit union branch setting.”<sup>21</sup> Another commenter similarly argues that, if possible, the term “consumer credit” should be defined “so that oral disclosures are not required, unless requested by the Service member prior to the Service member becoming

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<sup>16</sup> 12 CFR 1026.5(a)(1)(i) (open-end credit); see also 12 CFR 1026.17(a)(1) (closed-end credit).

<sup>17</sup> 12 CFR 1026.

<sup>18</sup> See 79 FR at 58,639 (§ 232.6(d)(2)).

<sup>19</sup> The Associations refers to American Bankers Association, the Association of Military Banks of America, the Consumer Bankers Association, the Independent Community Bankers of America, and the National Association of Federal Credit Unions, which sent a joint comment letter dated December 18, 2014.

<sup>20</sup> Associations, Dec. 18, 2014, at 53.

<sup>21</sup> Associations, Dec. 18, 2014, at 53.



obligated on the transaction or [establishing] an account for the consumer credit.”<sup>22</sup> Still another comment states that “at the very least, the Department should allow a toll-free number to be provided in all transactions, not just mail transactions, internet transactions, and transaction conducted at the point of sale in connection with the sale of a nonfinancial product or service.”<sup>23</sup>

The Department concludes that the requirement in 10 U.S.C. 987(c) to deliver certain disclosures “orally . . . before the issuance of the credit” should be interpreted in a manner that provides a creditor straightforward mechanisms to do so at that time. Moreover, the Department has determined that a creditor should be afforded the latitude to develop the same (or consistent) systems to orally provide the required disclosures—regardless of the particular context of the transaction or account involving consumer credit (e.g., an in-person, mail, or internet transaction)—in order to promote reliability and economy of those systems so that covered borrowers can actually receive the disclosures. Accordingly, the Department adopts § 232.6(d)(2) so that the essential mandate of 10 U.S.C. 987(c)(1)—orally provide the disclosures—remains intact, yet allows a creditor to fulfill that mandate either by (i) providing the information directly, “in person” or (ii) including a toll-free telephone number that a covered borrower can use to obtain the oral disclosures. Section 232.6(d)(2)(iii) clarifies that if a creditor elects to provide the toll-free number, then the creditor must include that number on either (i) the application form that the creditor has directed the consumer to use for that transaction or account involving consumer credit or (ii) a written disclosure that the creditor provides in order to meet the requirement in § 232.6(d)(1).

Section 232.6(e) keeps intact the current provision, currently found in § 232.6(c) of the existing rule, 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.”

Under the Proposed Rule, § 232.6(a)(4) would have required 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,<sup>24</sup> 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. 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.<sup>25</sup> In light of other aspects of the Department’s rule, the Department concludes 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 the interests of covered borrowers in

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<sup>22</sup> Bellco, Dec. 19, 2014, at 6-7.

<sup>23</sup> AFSA, Dec. 22, 2014, at 15

<sup>24</sup> 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 18,165.

<sup>25</sup> 10 U.S.C. 987(h)(2)(A).

receiving useful information with the interests of creditors in reducing compliance burdens; thus, the Department has taken certain steps to reduce the overall amount of and to simplify the information relating to extensions of consumer credit. Accordingly, the Department has determined to eliminate § 232.6(a)(4) of the Proposed Rule, which would have required a creditor to provide the Statement of Federal Protections.

## **9. Payments to Respondents**

No payment or gifts will be made to respondents.

## **10. Assurance of Confidentiality**

No data will be collected or records retained 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 sensitive 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**

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 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 final rule amends the provisions relating to the information required by the MLA, first, to simplify the information that a creditor must provide to a covered borrower when extending consumer credit, and, second, to streamline the methods of orally providing the required disclosures. More specifically, the final rule: relieves a creditor of the obligation to disclose "clearly and conspicuously" the information required by the MLA; relieves a creditor of the obligation to provide the Statement of Federal Protections; no longer requires a creditor disclose a numerical value for the MAPR or "the total dollar amount of all charges" and, instead, requires a creditor to provide a description of the charges that the creditor may impose; and provides a generally applicable mechanism through which a creditor may orally provide the required disclosures by permitting a creditor to provide a toll-free number to orally deliver those disclosures. In order to facilitate compliance, the final rule provides a model statement that a

creditor could use to fulfill the requirement to provide a statement of the MAPR. Consistent with the Department's interpretation of its existing rule, the final rule expressly provides that the statement of the MAPR would not be required in any advertisement relating to consumer credit.

a. Number of Respondents: 37,500

Responses per Respondent: Varies by type of respondent

Annual Responses: 238 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 (100 million); 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 disclosures, as well as a process for conducting covered-borrower checks and retaining records. Annual Burden Hours: 3,375,000 set-up burden hours in the first year; 2,000,000 ongoing burden hours each year.

b. Explanation of How Burden was Estimated

The Department estimates that there are approximately 238 million transactions each year in which creditors would provide the required information,<sup>26</sup> 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 37,500 creditors would be subject to the regulation.<sup>27</sup>

(a) Statement of the MAPR

For creditors who currently provide disclosures to covered borrowers (under the existing rule), the final rule is expected to reduce some of their compliance costs by eliminating the

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<sup>26</sup> The Department's methodology for estimating the number of accounts that will be affected each year is discussed in greater detail at the text accompanying note 280, *infra*. 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 (February 2015). For the six months prior to the first quarter of 2013, there were approximately 175 million credit inquiries. The Department assumes that 68 percent of these inquiries were for credit accounts that would be consumer credit under § 232.3(f). This estimate does not differentiate between credit applications and accounts established. If most creditors only supply the required information as part of 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 this estimate.

<sup>27</sup> The Department bases this estimate on relevant numbers of establishments published by the Bureau of Labor Statistics, the FDIC, and the NCUA. See U.S. Dep't of Labor, Bureau of Labor and Statistics, Quarterly Census of Employment and Wages, NAICS 522291 Consumer Lending, NAICS 522298 All Other Nondepository Credit Intermediation (Annual Average for 2013) (the annual average number of establishments for consumer lending is 14,882; the annual average number of all other nondepository establishments for credit intermediation is 9,609); FDIC Institution Directory, available at <http://www2.fdic.gov/IDASP/> (reporting 6,444 insured institutions as of March 26, 2015); and NCUA 2013 Annual Report, available at <http://www.ncua.gov/Legal/Documents/Reports/AR2013.pdf> (reporting 6,554 credit unions). At the time that the Department assessed the Proposed Rule, there were approximately 40,000 creditors that fell within these parameters; the updated estimate of the affected creditors reflects the change in the overall number of establishments within the same categories from the Bureau of Labor Statistics, the FDIC, and the NCUA.

requirement to disclose a numerical value for the MAPR. The Department largely maintains for the final rule the estimates generated in developing the Proposed Rule, and updates that estimate to reflect more recent wage and dollar value figures.<sup>28</sup> The Department estimates that eliminating the requirement under the existing rule to disclose a numerical value for the MAPR would reduce the compliance costs for creditors who currently offer forms of consumer credit by \$73,065 per year. Over 10 years, the Department estimates that the total savings to this class of creditors would be between \$0.51 million (at a 7 percent discount rate) and \$0.62 million (at a 3 percent discount rate).

The requirement that creditors provide a statement of the MAPR, which may be satisfied through the use of a model statement, is anticipated to cost all creditors approximately \$24.01 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).<sup>29</sup> One commenter notes that some creditors may need to redesign their disclosure forms to make room for the statement of the MAPR.<sup>30</sup> The Department estimates that, on an ongoing basis, providing the statement of the MAPR would require one-quarter of a printed page when included in standard account disclosures.

The Department 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.<sup>31</sup> The Department estimates that the ongoing costs for additional printing would be approximately \$2.98 million per year.<sup>32</sup> Over 10 years, the total costs to creditors of providing a printed statement of the MAPR would be between \$18.12 million (at a 7 percent discount rate) and \$25.38 million (at a 3 percent discount rate).

Under the framework of the Proposed Rule, the Department had estimated that the cost of providing the statement of the MAPR orally at the time of sale in face-to-face transactions would be \$0.69 million per year. Several commenters urge the Department to modify § 232.6 to permit a creditor to satisfy its obligation to orally provide disclosures by providing a toll-free telephone number, as the Department has permitted for transactions conducted over the internet. In the

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<sup>28</sup> The Department has also revised wage compensation estimates to include an adjustment for the non-wage component of employee compensation.

<sup>29</sup> 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 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, Table 1 (May 2014) (mean hourly wage for data entry and information processing workers is \$15.48; mean hourly wage for supervisors of office and administrative support workers is \$26.15; mean hourly wage for legal counsel is \$64.17), available at [http://www.bls.gov/oes/current/oes\\_nat.htm#23-0000](http://www.bls.gov/oes/current/oes_nat.htm#23-0000). The Department further estimates a non-wage component of compensation to be an additional 30% of estimated wages. The Department, therefore, calculates a total estimated wage cost of approximately \$18.47 million by multiplying the mean hourly wage by the portion of time for each classification of worker expected to be involved in modifying the documents. The Department's total estimated cost reflects an additional 30% adjustment for non-wage compensation.

<sup>30</sup> Nat'l Pawnbrokers Assoc., Nov. 24, 2014, at 17.

<sup>31</sup> 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 5,632, 5,654 (Feb. 3, 2012).

<sup>32</sup> 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 (238 million) by the cost per page (\$.05) and the portion of the page used for the disclosure (0.25 page).

final rule, the Department adopts § 232.6(d)(2) to allow a creditor to orally provide the required disclosures by providing to the covered borrower a toll-free telephone number, subject to certain conditions, and this option is permitted for all channels for conducting transactions or establishing accounts involving consumer credit. Solely for the purposes of its analyses under EO 12866 and EO 13563 and the other analyses in this section, the Department believes that the vast majority of creditors will avail themselves of this mechanism for orally providing the required disclosures.

While commenters urge the Department to permit creditors to provide oral disclosure through a toll-free number, these commenters do not provide any estimate of the costs or savings associated with this provision. Nonetheless, the Department, for purposes of assessing the final rule under EO 12866 and EO 13563, provides qualitative analysis of the potential costs that creditors could incur as a result of this final rule. For those creditors who choose to orally provide disclosures via a toll-free telephone number, the costs associated with the final rule include establishing a toll-free number (in the event that a creditor does not already have a such a line available for consumers), updating the script used by staff, and training staff in connection with questions that consumers might raise about the disclosures. Additionally, creditors could experience some increase in call volume and costs associated with providing oral disclosures or other aspects of this rule. Due to the lack of available data, the Department has not quantified the potential costs of any increase in call volume due to the disclosures required by the MLA to be provided to covered borrowers in transactions or accounts involving consumer credit.

(b) Statement of Federal Protections

Under the Proposed Rule, like the existing rule, a creditor would have been required to provide to a covered borrower the Statement of Federal Protections. Because the Proposed Rule would have applied the protections of 10 U.S.C. 987 to a broader scope of credit transactions, an additional 20,000 creditors would have been required to provide the Statement of Federal Protections. In the final rule, the Department determines that, in balancing the interests of covered borrowers in receiving useful information with the interests of creditors vis-à-vis facilitating compliance and reducing the costs associated thereto, eliminating the requirement that creditors provide a Statement of Federal Protections best serves these purposes. This modification will relieve those creditors that offer consumer credit subject to the existing rule from the obligation to provide a Statement of Federal Protections when providing that credit to Service members and their dependents. Relieving creditors of the obligation to provide a Statement of Federal Protections will reduce some costs for those creditors that currently extend consumer credit subject to the existing rule. However, the Department believes that, due to the relatively low number of creditors who currently offer loans subject to the existing rule, the impact of this amendment generally will be relatively minor; therefore, the Department does not account for the estimated reduction in burden in this analysis of the final rule.

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

Figure 3a: Estimated Benefits and Costs of Disclosures Under the Final Rule (2015 dollars in millions)

	First Year,	Annual, ongoing	PV 10-year, 7% discount	PV 10-year, 3% discount rate
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	set-up costs		rate	
Cost Savings of eliminating requirement to disclose numerical MAPR	\$0	\$0.07	\$0.51	\$0.62
Set up costs of Statement of the MAPR	(\$24)	n/a	n/a	n/a
Ongoing costs of Statement of the MAPR (oral and printed)	\$0	(\$3)	(\$18)	(\$25)
<b>TOTAL NET COSTS</b>	<b>(\$24)</b>	<b>(\$3)</b>	<b>(\$18)</b>	<b>(\$25)</b>

#### **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**

Changes in burden are described in section 12 above. Changes to the disclosure of the MAPR reduce the burden on the respondents; however, changes to the definition of consumer credit significantly increase the number of respondents, consequently, increasing the overall burden anticipated by the changes in the proposed revision to the regulation.

#### **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.