

## SUPPORTING STATEMENT - PART A

Mandatory Disclosures and Covered-Borrower Check as Part of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents — OMB Control Number 0704-0444

### 1. Need for the 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, and as amended by sections 661-663 of the National Defense Authorization Act for Fiscal Year 2013, 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 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) and 32 C.F.R. § 232.5(b)(2), 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 the Information

The purpose of this information collection is to ensure disclosures required by 10 U.S.C. § 987 (c)(1) and discretionary covered-borrower checks stipulated in 32 C.F.R. § 232.5(b)(2) 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(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.

<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).

(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 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;

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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 refinancing 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.

(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

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(d)(2) 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.

Additionally, a creditor may, at its discretion, identify the status of a consumer-applicant, as permitted under 32 C.F.R. § 232.5(b) and, in the event that the information 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 so obtained.

3. Use of 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. A Federal Reserve Board survey of consumer behavior estimates that 42 percent of credit transactions requiring a TILA disclosure occur online.

4. Non-duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another cleared source.

5. Burden on Small Businesses

This information collection does not impose a significant economic impact on a substantial number of small businesses or entities.

6. Less Frequent Collection

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. Paperwork Reduction Act Guidelines

This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

8. Consultation and Public Comments

Part A: PUBLIC NOTICE

A 60-Day Federal Register Notice (FRN) for the collection published on Friday, August 17, 2018. The 60-Day FRN citation is 83 FR 41070.

No comments were received during the 60-Day Comment Period.

A 30-Day Federal Register Notice for the collection published on Tuesday, October 30, 2018. The 30-Day FRN citation is 83 FRN 54332.

## Part B: CONSULTATION

No additional consultation apart from soliciting public comments through the Federal Register was conducted for this submission.

### 9. Gifts or Payment

No payments or gifts are being offered to respondents as an incentive to participate in the collection.

### 10. Confidentiality

A Privacy Act Statement is not required for this collection because we are not requesting individuals to furnish personal information for a system of records.

A System of Record Notice (SORN) is not required for this collection because records are not retrievable by PII.

A Privacy Impact Assessment (PIA) is not required for this collection because PII is not being collected electronically.

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 questions considered sensitive are being asked in this collection.

### 12. Respondent Burden and its Labor Costs

## Part A: ESTIMATION OF RESPONDENT BURDEN

### 1) Collection Instrument(s)

[Mandatory Disclosures]

- a) Number of Respondents: 37,500
- b) Number of Responses Per Respondent: Varies by type of respondent
- c) Number of Total Annual Responses: 238,000,000
- d) Response Time: 30 seconds
- e) Respondent Burden Hours: 2,000,000 hours

- 2) Total Submission Burden (Summation or average based on collection)
  - a) Total Number of Respondents: 37,500
  - b) Total Number of Annual Responses: 238,000,000
  - c) Total Respondent Burden Hours: 2,000,000 hours

Part B: LABOR COST OF RESPONDENT BURDEN

- 1) Collection Instrument(s)  
[Mandatory Disclosures]
  - a) Number of Total Annual Responses: 238,000,000
  - b) Response Time: 30 seconds
  - c) Respondent Hourly Wage: Varies by respondent.
  - d) Labor Burden per Response: \$0.01
  - e) Total Labor Burden: \$3,000,000
- 2) Overall Labor Burden
  - a) Total Number of Annual Responses: 238,000,000
  - b) Total Labor Burden: \$3,000,000

13. Respondent Costs Other Than Burden Hour Costs

There are no annualized costs to respondents other than the labor burden costs addressed in Section 12 of this document to complete this collection.

14. Cost to the Federal Government

There is no cost to the Federal Government to implement the required disclosures.

15. Reasons for Change in Burden

The burden has decreased since the previous approval due to its status as a low-burden disclosure statutory requirement. There is no further need for investment of time to set up the MAPR disclosures on the part of respondents, and the burden has accordingly diminished.

16. Publication of Results

The results of this information collection will not be published.

17. Non-Display of OMB Expiration Date

We are not seeking approval to omit the display of the expiration date of the OMB approval on the collection instrument.

18. Exceptions to "Certification for Paperwork Reduction Submissions"

We are not requesting any exemptions to the provisions stated in 5 CFR 1320.9.