

(3) For the purposes of this definition, a creditor is engaged in the business of extending consumer credit if the creditor considered by itself and together with its affiliates meets the transaction standard for a “creditor” under Regulation Z with respect to extensions of consumer credit to covered borrowers.

(j) *Department* means the Department of Defense.

(k) *Dwelling* means a residential structure that contains one to four units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and manufactured home.

(l) *Electronic fund transfer* has the same meaning as in the regulation issued by the Bureau to implement the Electronic Fund Transfer Act, as amended from time to time (12 CFR part 1005).

(m) *Federal credit union* has the same meaning as “Federal credit union” in the Federal Credit Union Act (12 U.S.C. 1752(1)).

(n) *Finance charge* has the same meaning as “finance charge” in Regulation Z.

(o) *Insured depository institution* has the same meaning as “insured depository institution” in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(p) *Military annual percentage rate (MAPR)*. The MAPR is the cost of the consumer credit expressed as an annual rate, and shall be calculated in accordance with § 232.4(c).

(q) *Open-end credit* means consumer credit that (but for the conditions applicable to consumer credit under this part) is “open-end credit” under Regulation Z.

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

(s) *Regulation Z* means any rules, or interpretations thereof, issued by the Bureau to implement the Truth in Lending Act, as amended from time to time, including any interpretation or approval issued by an official or employee duly authorized by the Bureau to issue such interpretations or approvals. However, for any provision of this

part requiring a creditor to comply with Regulation Z, a creditor who is subject to Regulation Z (12 CFR part 226) issued by the Board of Governors of the Federal Reserve System must continue to comply with 12 CFR part 226. Words that are not defined in this part have the same meanings given to them in Regulation Z (12 CFR part 1026) issued by the Bureau, as amended from time to time, including any interpretation thereof by the Bureau or an official or employee of the Bureau duly authorized by the Bureau to issue such interpretations. Words that are not defined in this part or Regulation Z, or any interpretation thereof, have the meanings given to them by State or Federal law.

(t) *Short-term, small amount loan* means a closed-end loan that is—

(1) Subject to and made in accordance with a Federal law (other than 10 U.S.C. 987) that expressly limits the rate of interest that a Federal credit union or an insured depository institution may charge on an extension of credit, provided that the limitation set forth in that law is comparable to a limitation of an annual percentage rate of interest of 36 percent; and

(2) Made in accordance with the requirements, terms, and conditions of a rule, prescribed by the appropriate Federal regulatory agency (or jointly by such agencies), that implements the Federal law described in paragraph (t)(1) of this section, provided further that such law or rule contains—

(i) A fixed numerical limit on the maximum maturity term, which term shall not exceed 9 months; and

(ii) A fixed numerical limit on any application fee that may be charged to a consumer who applies for such closed-end loan.

§ 232.4 Terms of consumer credit extended to covered borrowers.

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

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

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

(3) Not specifically prohibited by this part.

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

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

(i) Any credit insurance premium or fee, any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement;

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit; and

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

(A) Finance charges associated with the consumer credit;

(B) Any application fee charged to a covered borrower who applies for consumer credit, other than an application fee charged by a Federal credit union or an insured depository institution when making a short-term, small amount loan, provided that the application fee is charged to the covered borrower not more than once in any rolling 12-month period; and

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

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

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

(ii) *Open-end credit.*—(A) *In general.* Except as provided in paragraph (c)(2)(ii)(B) of this section, for open-end credit, the MAPR shall be calculated following the rules for calculating the effective annual percentage rate for a billing cycle as set forth in § 1026.14(c) and (d) of Regulation Z (as if a creditor must comply with that section) based on the charges set forth in paragraph (c)(1) of this section. Notwithstanding § 1026.14(c) and (d) of Regulation Z, the amount of charges related to opening, renewing, or continuing an account must be included in the calculation of the MAPR to the extent those charges are set forth in paragraph (c)(1) of this section.

(B) *No balance during a billing cycle.* For open-end credit, if the MAPR cannot be calculated in a billing cycle because there is no balance in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except that the creditor may impose a fee for participation in any plan or arrangement for that open-end credit so long as the participation fee does not exceed \$100 per annum, regardless of the billing cycle in which the participation fee is imposed; *provided, however,* that the \$100-per annum limitation on the amount of the participation fee does not apply to a bona fide participation fee imposed in accordance with paragraph (d) of this section.

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

(2) *Ineligible items.* The exclusion for bona fide fees in paragraph (d)(1) of this section does not apply to—

(i) Any credit insurance premium or fee, including any charge for single premium credit insurance, any fee for a debt cancellation contract, or any fee for a debt suspension agreement; or

(ii) Any fee for a credit-related ancillary product sold in connection with the credit transaction for closed-end credit or an account for open-end credit.

(3) *Standards relating to bona fide fees*—(i) *Like-kind fees.* To assess whether a bona fide fee is reasonable under paragraph (d)(1) of this section, the fee must be compared to fees typically imposed by other creditors for the same or a substantially similar product or service. For example, when assessing a bona fide cash advance fee, that fee must be compared to fees charged by other creditors for transactions in which consumers receive extensions of credit in the form of cash or its equivalent. Conversely, when assessing a foreign transaction fee, that fee may not be compared to a cash advance fee because the foreign transaction fee involves the service of exchanging the consumer's currency (*e.g.*, a reserve currency) for the local currency demanded by a merchant for a good or service, and does not involve the provision of cash to the consumer.

(ii) *Safe harbor.* A bona fide fee is reasonable under paragraph (d)(1) of this section if the amount of the fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by 5 or more creditors each of whose U.S. credit cards in force is at least \$3 billion in an outstanding balance (or at least \$3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.

(iii) *Reasonable fee.* A bona fide fee that is higher than an average amount, as calculated under paragraph (d)(3)(ii) of this section, also may be reasonable under paragraph (d)(1) of this section depending on other factors relating to the credit card account. A bona fide fee charged by a creditor is not unreasonable solely because other creditors do not charge a fee for the same or a substantially similar product or service.

(iv) *Indicia of reasonableness for a participation fee.* An amount of a bona fide fee for participation in a credit card account may be reasonable under paragraph (d)(1) of this section if that amount reasonably corresponds to the

credit limit in effect or credit made available when the fee is imposed, to the services offered under the credit card account, or to other factors relating to the credit card account. For example, even if other creditors typically charge \$100 per annum for participation in credit card accounts, a \$400 fee nevertheless may be reasonable if (relative to other accounts carrying participation fees) the credit made available to the covered borrower is significantly higher or additional services or other benefits are offered under that account.

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

(ii) *Effect of charges for non-bona fide fees.* If a creditor imposes any fee (other than a periodic rate or a fee that must be included in the MAPR pursuant to paragraph (c)(1) of this section) that is not a bona fide fee and imposes a finance charge to a covered borrower, the total amount of those fees, including any bona fide fees, and other finance charges shall be included in the MAPR pursuant to paragraph (c) of this section.

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

(B) In a credit card account under an open-end (not home-secured) consumer credit plan during a given billing cycle,

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Creditor B imposes on a covered borrower a fee for a debt cancellation product (as described in paragraph (c)(1)(i) of this section), a finance charge (as described in paragraph (c)(1)(iii)(A)), a bona fide foreign transaction fee that qualifies for the exclusion under this paragraph (d), and a bona fide, but unreasonable cash advance fee. All of the fees—including the foreign transaction fee that otherwise would qualify for the exclusion under this paragraph (d)—and the finance charge must be included when calculating the MAPR.

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

§ 232.5 Optional identification of covered borrower.

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

(b) *Safe harbor—(1) In general.* A creditor may conclusively determine whether credit is offered or extended to a covered borrower, and thus may be subject to 10 U.S.C. 987 and the requirements of this part, by assessing the status of a consumer in accordance with this paragraph (b).

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

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

borrower as of the date of that transaction or as of the date that account was established.

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

(3) *Determination and recordkeeping; one-time determination permitted.* A creditor who makes a determination regarding the status of a consumer by using one or both of the methods set forth in paragraph (b)(2) of this section shall be deemed to be conclusive with respect to that transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor timely creates and thereafter maintains a record of the information so obtained. A creditor may make the determination described in this paragraph (b), and keep the record of that information obtained at that time, solely at the time—

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

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

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