

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Piaggio Aero Industries S.P.A.: Docket No. FAA-2007-27532; Directorate Identifier 2007-CE-021-AD.

Comments Due Date

(a) We must receive comments by May 11, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to P-180 airplanes, serial numbers 1004 through 1112, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

One P 180 aircraft experienced a jamming of its longitudinal flight control cables. Investigations revealed that its fuselage drain holes were plugged, and water was trapped in the lower fuselage.

As a consequence of plugged drain holes, water can accumulate and freeze when the aircraft reaches and holds altitudes where temperature is below the freezing point. If not corrected this may cause the loss of control of the airplane.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) At the next scheduled maintenance inspection or 1 month after the effective date of the AD, whichever occurs later, and repetitively thereafter at intervals not to exceed every 12 months, inspect fuselage drain holes and the passenger evaporator drain line for proper operation and do all the necessary corrective actions, following the accomplishment instructions of the Piaggio Aero Industries S.p.A. Mandatory SB-80-0220, dated August 8, 2006.

Note 1: We have established the repetitive inspection times of this AD so that they may coincide with annual inspections.

Note 2: We encourage you to update your maintenance program by inserting the Temporary Revision of the Piaggio P 180 Avanti Maintenance Manual (AMM) attached to the Piaggio Aero Industries S.p.A. Mandatory SB-80-0220, dated August 8, 2006.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: We have added repetitive inspection requirements in the AD to coincide with the

Piaggio P 180 Avanti Maintenance Manual temporary revision referenced in the Piaggio Aero Industries S.p.A. Mandatory Service Bulletin SB-80-0220, dated August 8, 2006.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI EASA AD No. 2007-0031, dated February 9, 2007; and Piaggio Aero Industries S.p.A. Mandatory SB-80-0220, dated August 8, 2006, for related information.

Issued in Kansas City, Missouri, on April 4, 2007.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[DOD-2006-OS-0216]

RIN 0790-AI20

Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Department of Defense (DoD).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Department of Defense (the Department or DoD) proposes to

amend our regulations by adding a new part to implement the consumer protections covered by Public Law 109-364, the John Warner National Defense Authorization Act for Fiscal Year 2007, section 670, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents" (October 17, 2006). Section 670 of Public Law 109-364 created 10 U.S.C. 987 and requires the Secretary of Defense to prescribe regulations to carry out the new section. The proposed regulation is intended to regulate the terms of consumer credit extended by creditors to active duty service members and their dependents.

DATES: Comments must be received no later than June 11, 2007.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) and title, by any of the following methods:

—*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

—*Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. George Schaefer, (703) 588-0876.

SUPPLEMENTARY INFORMATION:

I. Background

Today's joint force combat operations require highly trained, experienced and motivated troops. We are fortunate that the All Volunteer Force of today is comprised of individuals who fit the stringent requirements needed for success on the battlefield. The military has seen a lot of changes since it became an All Volunteer Force in 1973. The technological advances over the ensuing 34 years have made remarkable transformations to the capabilities of the Armed Forces.

These advances would not have been as easily attained if it were not for the All Volunteer Force. The members of this force have higher levels of aptitude, stay in the military longer, and as a consequence, perform better than their conscript predecessors. During the Vietnam era draft, 90 percent of

conscripts quit after their initial two-year hitch, whereas retention of volunteers is five-times better today—about half remain after their initial (four-year) military service obligation. Said another way, two thirds of the military was serving in its first two years of service prior to 1973, where as today, the number is about one-fourth.

Today's Service members are still younger than the population as a whole, with 46 percent 25 years old or less. Thirty eight percent of these young Service members 25 years old or less are married and 21 percent of them have children. This is compared with approximately 13 percent of their contemporaries in the U.S. population 18 through 24 who are married (2000 Census). The majority of recruits come to the military from High School, with little financial literacy education.

The initial indoctrination provided to Service members is critical, providing basic requirements for their professional responsibilities and to successfully adjust to military life. Part of this training is in personal finance which is seen as an integral part of their responsibilities. The Department continues to provide them messages to save, invest and manage their money wisely throughout their career.

Service members and their families are experiencing the sixth year of the Global War on Terror. The Department views the support provided to military families as essential to sustaining force readiness and military capability. From this perspective, it is not sufficient for the Department to train Service members on how best to use their financial resources—financial protections are an important part of fulfilling the Department's compact with Service members and their families.

Social Compact

The Department of Defense (DoD) believes that assisting Service members with their family needs is essential to maintaining a stable, motivated All Volunteer Force. As part of the President's February 2001 call to improve the quality of life for Service members and their families, the Department of Defense developed a social compact reflecting the Department's commitment to caring for their needs as a result of their commitment to serving the Nation. The social compact involved a bottom-up review of the quality-of-life support provided by the Department, which articulated the linkage between quality-of-life programs as a human capital management tool and the strategic goal of the Department—military readiness.

The social compact is manifested in the programs the Department of Defense provides to support the quality of life of Service members and their families. This social compact includes personal finances as an integral part of their quality of life. The Department equates financial readiness with mission readiness. When asked in 2005 on a blind survey to rate the stressors in their lives, Service members (as a group) rated finances as a more significant stressor than deployments, health concerns, life events, and personal relationships. They only rated work and career concerns as a higher stressor in their lives. As part of the social compact for financial readiness, the Department established a strategic plan to:

- Reduce the stressors related to financial problems—the stress associated with out of control debt can impact the performance of Service members and have major negative impact on family quality of life.
- Increase savings—establishes personal and family goals, motivates Service members to control their finances and live within their means.
- Decrease dependence on unsecured debt—reduces the stressors and vulnerabilities associated with living from paycheck to paycheck.
- Decrease the prevalence of predatory practices—provide protection from financial practices that seek to deceive Service members or take advantage of them at a time of vulnerability.

The Department has taken action on obtaining these outcomes by providing financial awareness, education and counseling programs; by advocating the marketplace deliver beneficial products and services; and by advocating for the protection for Service members and their families from harmful products and practices.

Financial Education

The Military Services are expected to provide instruction and information to fulfill the needs of Service members and their families. To this end, the Department established policy in November 2004: DoD Instruction 1342.27, Personal Financial Management Programs for Service Member.

As outlined in the Government Accountability Office (GAO) Report 05-348, the Military Services have their own programs for training first-term Service members on the basics of personal finance. These programs vary in terms of venue and duration; however, all Military Service programs must cover the same core topics to the level of competency necessary for first

term Service members to apply basic financial principles to everyday life situations.

The Department has tracked the ability of Service members to pay their bills on time as a reflection of their competency and ability to apply basic financial principles. Since 2002, self reported assessments through survey data have shown Service members are paying better attention to keeping up with their monthly payments.

To assist the Military Services in delivering financial messages, the Department established the Financial Readiness Campaign in May 2003, which has gathered the support of 26 nonprofit organizations and Federal agencies. In the past three years, Service members have benefited from the materials and assistance from over 20 active partnerships. These partnerships are on-going and have been developed to allow the Military Services to choose which partner programs can best supplement the education, awareness and counseling services they provide. The materials and services are not mandatory and do not take the place of the programs offered by the Military Services.

Aspects of predatory lending practices are covered as topics in initial financial education training and in refresher courses offered at the military installations. The Military Services provide over 10,000 classes and train approximately 24 percent of the force, as well as nearly 20,000 family members on an annual basis. These classes are primarily conducted on military installations located in the United States.

In addition to these classes, Financial Readiness Campaign partner organizations conduct over a thousand classes for informing over 60,000 Service members and family members per year. These classes are primarily provided by the staff of banks and credit unions located on military installations (military banks and defense credit unions). These institutions provide these classes as part of their responsibilities outlined in the DoD Financial Management Regulation. Other organizations involved include local Credit Counseling Agencies, State financial regulatory agencies, the InCharge Institute and the NASD Foundation.

The Military Service financial educators, along with partner organizations, also distributed over 200,000 brochures and pamphlets, with the Military Services and Federal Trade Commission the primary provider of these products. In addition, Military Money Magazine has run several

articles, to include two cover article editions on predatory lending. The free distribution of the magazine is through military commissaries, family support centers, other service agencies on the installation, residents on the military installations and home addresses off the installation upon request. The distribution is approximately 250,000 per quarter.

Lending Practices Considered Predatory

As identified in GAO Report 05-349, DOD's Tools for Curbing the Use and Effects of Predatory Lending Not Fully Utilized, April 2005, the review of practices that are considered predatory has not benefited from a consistent definition that has been universally applied. However, sources studying the issue of predatory lending have focused on similar characteristics. GAO Report 04-280, Federal and State Agencies Face Challenges in Combating Predatory Lending, January 2004, said the following:

While there is no uniformly accepted definition of predatory lending, a number of practices are widely acknowledged to be predatory. These include, among other things, charging excessive fees and interest rates, lending without regard to borrowers' ability to repay, refinancing borrowers' loans repeatedly over a short period of time without any economic gain for the borrower, and committing outright fraud or deception.

This definition has been reiterated in the FDIC Office of the Inspector General Audit Report 06-0111, June 2006, which stated:

Characteristics associated with predatory lending include, but are not limited to (1) abusive collection actions, (2) balloon payments with unrealistic repayment terms,

(3) equity stripping associated with repeat financing and excessive fees, and (4) excessive interest rates that may involve steering a borrower to a higher-cost loan.

These same characteristics were also identified in the DoD Report to Congress on Predatory Lending Practices Directed at Members of the Armed Forces and Their Dependents, August 9, 2006:

Predatory lending in the small loan market is generally considered to include one or more of the following characteristics: High interest rates and fees; little or no responsible underwriting; loan flipping or repeat renewals that ensure profit without significantly paying down principal; loan packing with high cost ancillary products whose cost is not included in computing interest rates; a loan structure or terms that transform these loans into the equivalent of highly secured transactions; fraud or deception; waiver of meaningful legal redress; or operation outside of state usury or small loan protection law or regulation. The effect of the practices include whether the loan terms or practices listed above strip earnings or savings from the borrower; place the borrower's key assets at undue risk; do not help the borrower resolve their financial shortfall; trap the borrower in a cycle of debt; and leave the borrower in worse financial shape than when they initially contacted the lender.

While the Report to Congress provides a more expansive definition, there are several commonalities between the definitions listed above:

- Lending without regard of the borrowers ability to repay;
- Excessive fees and excessive interest rates;
- Balloon payments with unrealistic repayment terms;
- Wealth stripping associated with repeat rollovers/financing; and

—Fraud and deception.

The Department started collecting information on high cost lending in 2004 as part of the Defense Manpower and Data Center annual surveys of active duty Service members. The survey requested input on payday loans, rent-to-own, refund anticipation loans and vehicle title loans. GAO Report 05-359 focused on these four practices and obtained feedback from "command leaders, [Personal Financial Management] PFM program managers, command financial counselors, legal assistance attorneys, senior noncommissioned officers (pay grades E8 to E9), chaplains, and staff from the military relief/aid societies," concerning these practices. Input from these individuals, among others was that "The extent to which active duty Service members use consumer loans considered to be predatory in nature and the effects of such borrowing are unknown, but many sources suggest that providers of such loans may be targeting Service members."

The Report to Congress reviewed five products (payday loans, vehicle-title loans, rent-to-own, refund anticipation loans and military installment loans) identified by installation-level financial counselors (employed as PFM program managers and employed by the Military Aid Societies) and legal assistance attorneys who regularly counsel service members on indebtedness issues. When compared against the common characteristics listed above, the five products reviewed in the Report to Congress measure up somewhat differently:

Lending product	Without regard for borrowers ability to repay	Excessive fees and interest	Unrealistic payment schedule	Repeated rollover/refinancing
Payday loan	X	X	X	X
Vehicle title loan	X	X	X	X
Military installment		X		
Refund anticipation		X		
Rent-to-own	X	X		

A major concern of the Department has been the debt trap some forms of credit can present for Service members and their families already burdened with debt and recurring bills. The combination of little to no regard for the borrower's ability to repay the loan, unrealistic payment schedule, high fees and interest and the opportunity to rollover the loan instead of repaying it, can create a cycle of debt for financially overburdened Service members and their families.

Consumer groups, news media, and academics have chronicled concerns about payday loans and the propensity for this lending practice to create a cycle of debt. For example, M. Flannery and K. Smolyk state the following in their June 2005 FDIC Financial Research Working Paper No. 2005-09:

Although as economists we find it hard to define what level of use is excessive, there seems little doubt that the payday advance as presently structured is unlikely to help people regain control of their finances if they start with serious problems.

Likewise, vehicle title loans are similarly structured, with potentially similar results. According to a November 2005 report by the Consumer Federation of America, vehicle title loans are generally made for 30 days with high interest/fee structures (average of 295 APR). Limits on title loans vary by State concerning interest rates, duration, rollover allowances and rules on repossession of the vehicle. Only four states cap interest rates at less than 100% APR. In many states these loans can be rolled over by the borrower

several times if the borrower is unable to pay the principal and interest when due. If not paid or rolled over, many states allow the creditor to repossess the vehicle and in some states the borrower is not entitled to any portion of the proceeds of the vehicle sale. Loan amounts average 55 percent of the value of the vehicle.

Rent-to-own, refund anticipation loans and some military installment loans present products with high fees and interest. Rent-to-own, which is not covered as credit under the Truth-in-Lending Act (TILA), can represent an expensive alternative to credit when used as a means of purchasing an item. Military installment loans (an installment loan marketed primarily or exclusively to the military) can represent a high cost over the duration of the loan, particularly when other non TILA fees and charges are added to the interest rate. Tax refund anticipation loans also cost Service members and their families high fees when they can easily obtain rapid returns through electronic filing with the assistance of their installation legal assistance office.

Refund anticipation loans (RALs) provide a limited time advantage (approximately 10 day reduction in the time required to receive a tax return) in comparison to the cost involved (\$39–\$100). As a consequence, the annual percentage rate for this credit can be triple digit. A study by Gregory Elliehausen of the Credit Research Center (CRC) (Monograph #37, April 2005) showed that more individuals below 35 years old use RALs (61 percent) as compared to the percentage under 35 years old who head households (28.6 percent). Seventy nine percent of Service members are age 35 or below.

The rationale for a borrower wanting to obtain a RAL vary; however, the CRC study showed that 41 percent of borrowers obtaining RALs did so to pay bills, 21 percent due to unexpected expenditures, 15 percent to make purchases, 15 percent because of impatience and 7 percent for other reasons. Less than one percent said they obtained a RAL to pay for tax preparation. Through the Armed Forces Tax Council, in collaboration with the IRS, Volunteer Income Tax Assistance (VITA) sites are located on all active duty military installations to assist Service members and their families with preparation and electronic filing of their tax returns.

As with other forms of short term high cost credit, the Department would prefer Service members and their families to consider low cost alternatives to resolve their financial crisis with the

perspective that they should establish a more solid footing for their personal finances. The CRC study showed similar patterns of use of credit and debt burden between users of RALs and payday loans. Additionally, through education the Department attempts to persuade Service members that planning is an important part of managing finances, and a high cost 10 day loan does not reinforce this lesson.

The five products reviewed in the Report to Congress represent two kinds of financial problems for Service members and their families: Those products that contribute to a cycle of debt (payday and vehicle title loans) and those products that can cost the military consumer high fees and interest costs (rent-to-own, installment loans and refund anticipation loans). Cycle of debt represents a more significant concern to the Department than the high cost of credit.

Alternatives

The Department would prefer Service members and their families who experience financial duress seek out the alternatives available through Military Aid Societies, military banks and defense credit unions rather than credit products that would more likely mire them in a cycle of debt. These institutions have established programs and products designed to help Service members and their families resolve their financial crises, rebuild their credit and establish savings.

The Military Aid Societies are strong advocates for limiting the cost associated with credit and for creditors to develop alternative products for Service members who cannot otherwise qualify for loans. Within their own resources they provided \$87.3 million in no cost loans and grants to Service members and their families in 2005. These funds were provided for emergencies and essentials, such as rent, food, and utilities.

Banks and credit unions located on military installations also understand the need to provide products and services that can help those who mishandle their finances and who may need remedial assistance. A review of on-base financial institutions surfaced 24 programs on 51 military installations in the U.S. providing alternative small loan products designed to help Service members and their families to recover from their financial problems. These financial institutions supplement the emergency funding made available by the nonprofit Military Aid Societies that provide grants and no-interest loans to needy Service members and families.

These banks and credit unions provide low denomination loans at reasonable annual percentage rates designed to assist their members who need to get out of high cost credit and into more traditional lending products. Financial counseling and education are often prerequisites for the short term loan and some institutions have attached a requirement to develop savings as part of the loan.

Many of these military banks and credit unions use their products and services to maintain a watchful eye over their members to ensure they do not abuse services designed to assist them, such as overdraft protection, which if used on a chronic basis, can become very expensive and propel someone already overextended into a deeper spiral of debt. Representatives of the Association of Military Banks of America had an opportunity to showcase their alternative small loan products at a FDIC Conference held in December of 2006. FDIC hosted this conference to spotlight the need to develop more of these types of products for Service members and their families and several banks and credit unions described above that currently provide such favorable credit to Service members participated in the conference.

Efforts To Curb the Prevalence and Impact of Predatory Loans

The Department has found that it has a small window of opportunity to inform and convince young Service families of what may constitute a beneficial product that can fit their circumstances, particularly when they receive many messages to the contrary. Nonetheless, the Department has attempted to use the processes and resources available within the Department to curb the prevalence of high cost short term lenders, particularly those that can contribute to a spiral of debt.

Predatory lenders have seldom been placed off-limits, primarily because the process associated with placing commercial entities off-limits, through the review and recommendations of the Armed Forces Disciplinary Control Board (AFDCB), is not well suited to this purpose. The AFDCB, covered by Joint Army Regulation 190–24, is designed to make businesses outside of military installations aware that their practices cause morale and discipline concerns and to offer these businesses an opportunity to modify their practices to preclude being placed off-limits. When the commercial entity refuses to comply, the AFDCB recommends to the regional command authority to place the business off-limits for all Service

members within the region (regardless of Service).

Normally concerns are raised when a business has demonstrated practices that violate state or federal statute, and remediation involves the business curtailing these illegal practices. In the case of the loan products listed above, businesses usually offer their services within the legal limits. Since the AFDCB takes on businesses one at a time, bringing a lender under scrutiny has been difficult if the lender is complying with the same rules as its competitors. Additionally, the magnitude of mediating with the number of outlets surrounding military installations has exacerbated the process. As illustrated in research by Professor Steven M. Graves and Professor Christopher L. Peterson published in the *Ohio State Law Journal*, Volume 66, Number 4, 2005, "Predatory Lending and the Military: The Law and Geography of 'Payday' Loans in Military Towns," there are large numbers of payday lenders which can be found in communities around military installations.

Also, without appropriate authority, commanders and AFDCBs have difficulty citing lenders offering payday, auto title and refund anticipation loans as needing to take remedial action. In States that authorize these types of loans, AFDCBs must establish their own local guidelines in addition to the provisions of Federal and State law, ensure all affected businesses are aware of these new rules, and then require these businesses to comply.

The Department has considered establishing guidelines that would ameliorate the concerns posed by lenders characterized above, but establishing these policies within DoD poses legal problems and raises the potential for litigation against the Department. Prior to the Talent-Nelson Amendment of the John Warner National Defense Authorization Act of 2007 (10 U.S.C. 987), there has not been any established authority for DoD to make rules governing credit offered by off-base private businesses. Commercial businesses offering these loans could view DoD rules as restrictions outside of the existing statutes and policies governing these entities and burdens provided without sufficient statutory authority to establish rules governing their businesses. Without sufficient authority, the Department would have difficulty making "off limits" declarations enforceable and could lead to legal action.

As State governments have considered restricting or controlling payday lending, the Department has

provided information concerning this issue and has extended its support for these measures to the extent that these provisions protect Service members and their families. Internet lenders claim jurisdiction in States with lax protections and unlimited rates and often attempt to bypass the State credit, usury or payday loan laws of the State where the borrower receives the loan. State regulators have successfully enforced home-State law against Internet payday lenders making loans to consumers in their States in Colorado, New York, Massachusetts, Kansas, Pennsylvania, and the District of Columbia.

As stated above, the Department will continue to provide education, awareness and counseling programs to influence skills and attitudes towards managing personal resources wisely. There still remains a gap between the opportunity to influence a young Service member or family concerning the best way to manage their finances, and the level of experience and capability necessary to be successful. The Department has a limited opportunity to impress upon these young people the importance of managing their resources, and does not have sufficient control over the behavior of Service members and their families to preclude them taking on financial risks that can impact not only their quality of life, but also the mission performance of Service members.

The Department will continue to send Service members messages that they and their families need to manage their resources wisely for their own benefit and to maintain personal readiness. The Department's call for responsibility competes with market messages from the sub-prime financial industry to get cash now for purchases, vacations, and paying bills. Their marketing stresses the ease and convenience of obtaining these loans, with virtual guarantee of approval. These messages can be particularly alluring to Service members and families already overburdened with bills and debts. A 2006 survey accomplished by the Consumer Credit Research Foundation stated that the primary reason Service members choose payday loans is because they are convenient. Certainly, obtaining "fast cash" from a payday lender is far more convenient than considering uncontrolled debt or addressing inherent overspending that creates situations where sub-prime loans are needed.

Service members have inherently understood that limits on interest rates are appropriate, even if these limits would decrease the availability of

credit. When asked in a 2006 survey conducted by the Consumer Credit Research Foundation if Service members strongly/somewhat agree or disagree with the statement: "The government should limit the interest rates that lenders can charge even if it means fewer people will be able to get credit," over 74 percent of the Service members surveyed agreed with the statement (with over 40 percent strongly agreeing). Similarly when asked their position on the statement "There is too much credit available today," 75 percent of Service members not using payday loans and 63 percent of Service members using payday loans agreed (with 51 percent of non users strongly agreeing).

"Limitations on Terms of Consumer Credit Extended to Service Members and Dependents," John Warner National Defense Authorization Act for Fiscal Year 2007

After both the Congressional Banking and Armed Service Committees reviewed the issue of predatory lending directed at members of the Armed Forces and their dependents, the Armed Service Committees included § 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. The Secretary is to accomplish the regulation prior to October 1, 2007, when the statute goes into effect, and to draft the regulation in consultation with the Department of Treasury, Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve System, Federal Trade Commission, Federal Deposit Insurance Corporation, and the National Credit Union Administration. Specifically, section (h)(2) requires the Secretary of Defense to define key terms as part of developing the regulation:

"(A) Disclosures required of any creditor that extends consumer credit to a covered member or dependent of such a member.

(B) The method for calculating the applicable annual percentage rate of interest on such obligations, in accordance with the limit established under this section.

(C) A maximum allowable amount of all fees, and the types of fees, associated with any such extension of credit, to be expressed and disclosed to the borrower as a total amount and as a percentage of the principal amount of the obligation, at the time at which the transaction is entered into.

(D) Definitions of ‘creditor’ under paragraph (5) and ‘consumer credit’ under paragraph (6) of subsection (i), consistent with the provisions of this section.

(E) Such other criteria or limitations as the Secretary of Defense determines appropriate, consistent with the provisions of this section.”

This broad latitude allows the Department of Defense to determine the scope and impact of the regulation, consistent with the provisions of the statute. These provisions have been established to protect Service members and their families from potentially abusive lending practices and products. The provisions, or terms, of the statute provide several limitations on credit transactions, and the statute allows the Department to focus these limitations on areas that create the most concern.

Through correspondence received from numerous creditors and trade associations representing creditors, the Department has learned of the potential unintended consequences of these limitations that could potentially preclude Service members and their families from receiving a multitude of credit products not determined as harmful. These commenters suggested, as a simple way to limit the potential unintended consequences of the rule and adverse impact on the availability of credit for Service members by regulated depository institutions and their subsidiaries, that the regulations include a complete or limited carve-out from the “creditor” definition of insured depository institutions and their subsidiaries. As described in the section-by-section description that follows, the Department did not specifically propose to exclude any types of lenders from the regulatory definition of “creditor.” The intent of the statute is clearly to apply these limitations so that their impact is upon credit practices evaluated as negative without impeding the availability of credit that is benign or beneficial to Service members and their families. The Department is proposing a regulation it believes is fully consistent with this intent.

QUESTION 1: However, we seek comment on whether the final regulation should exclude regulated banks, credit unions and savings associations and their subsidiaries from coverage by the regulation generally, or in limited circumstances such as in the following circumstances: (1) the depository institutions are subject to supervision and regulation by a federal regulatory agency; (2) the institution extends covered “consumer credit”; (3) the extension of consumer credit by the

institution is subject to supervisory guidance by the federal bank regulatory agency that addresses consumer protection, disclosure, and safety and soundness criteria applicable to such lending; and (4) the federal bank regulatory agency agrees to act on matters referred to it by the Department concerning complaints that such lending to a covered member may be inconsistent with the supervisory guidance, applicable law, or is having an adverse effect on military readiness. Would depository institutions find an exclusion that is limited in this manner useful? The Department notes that if the final regulatory definition includes additional limitations on the definition of covered “creditor,” it would not be precluded from expanding that definition in the future as appropriate to address new concerns or changed circumstances.

II. Description of the Regulation, By Section:

232.1 and 232.2, Authority, purpose and coverage, and Applicability: No further descriptions provided other than that contained in the regulation.

232.3, Definitions:

In drafting a regulation to implement the statute, the Department has chosen to use the opportunity to define the terms “creditor” and “consumer credit” judiciously, having heard from numerous groups through comments received in response to **Federal Register** notice DoD–2006–OS–0216, solicited and unsolicited comments and through meetings requested of the Department that applying the provision broadly would create numerous unintended consequences. These unintended consequences would have a “chilling effect” on the availability of consumer credit covered as part of the statute.

In defining the term creditor, the statute provides the following:

“(5) **CREDITOR**.—The term ‘creditor’ means a person—

(A) who—

(i) is engaged in the business of extending consumer credit; and
(ii) meets such additional criteria as are specified for such purpose in regulations prescribed under this section; or

(B) who is an assignee of a person described in subparagraph (A) with respect to any consumer credit extended.”

Consistent with the statute, the proposed regulation defines “creditor” as any person who extends consumer credit covered by part 232. For this purpose a “person” includes both natural persons as well as business entities, but would exclude

governmental entities. Pursuant to the Department’s authority to specify additional criteria, a person would be a creditor only if the person is also a “creditor” for purposes of the Truth in Lending Act. For clarity, the Department has implemented the provision covering assignees by including a specific reference to assignees in each section of the regulation that would apply to an assignee, in lieu of including assignees in the definition of “creditor.” See sections 232.4, 232.8 and 232.9.

The definition of consumer credit provided in the statute is as follows:

“(6) **CONSUMER CREDIT**.—The term ‘consumer credit’ has the meaning provided for such term in regulations prescribed under this section, except that such term does not include (A) a residential mortgage, or (B) a loan procured in the course of purchasing a car or other personal property, when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured.”

This proposed regulation seeks to address the concerns addressed by many institutions and associations that corresponded with the Department by limiting the scope of the products upon which the provisions of the statute would apply. It is clearly the intent of the statute that consumer credit be defined by the Department, as long as it does not include the two listed exemptions. The definition in this proposed regulation clearly excludes these two types of loans and focuses on three problematic credit products that the Department identified in its August 2006 Report to Congress on the Impact of Predatory Lending Practices on Members of the Armed Forces and Their Dependents: payday loans, vehicle title loans, and refund anticipation loans.

With respect to exclusion of “residential mortgages” the proposed regulation clarifies that the exclusion applies to any credit transaction secured by an interest in the borrower’s dwelling. Thus, home-purchase transactions, refinancings, home-equity loans, and reverse mortgages would be excluded. Home equity lines of credit are also excluded. In addition, the property need not be the consumer’s primary dwelling to qualify for the exclusion. A “dwelling” includes any residential structure containing one to four units, whether or not the structure is attached to real property, and would also include an individual condominium unit, cooperative unit, mobile home, and manufactured home.

The Department’s proposed definition of the term “consumer credit” is intended to narrow the regulation’s

impact to consumer credit products and services that are potentially detrimental and for which there are DoD-recommended, alternative products or services available to Service members and their families. DoD believes that a narrow definition can prevent unintended consequences while affording the protections granted by the statute.

In addition to the above criteria, the Department intends to use the definition of consumer credit to encourage the financial services industry to offer affordable small loans for Service members and their families.

Payday Loans

Payday loans have common characteristics that make them detrimental to a Service member's financial well being and inferior to alternative sources of emergency support. These characteristics can exacerbate a cycle of debt, particularly if the borrower is already over-extended through the use of other forms of credit. The proposed regulation defines "Payday loans" based on certain characteristics, in order to distinguish them from other financial products. A payday loan is defined as a closed-end credit transactions having a term of 91 days or less, where the amount financed does not exceed \$2,000. The "amount financed" is not defined in this regulation, but must be determined based on the definition of that term in the Federal Reserve Board's Regulation Z, which implements the Truth in Lending Act. In addition, the definition of "payday loan" is limited to transactions where the borrower contemporaneously provides a check or other payment instrument that the creditor agrees to hold, or where the borrower contemporaneously authorizes the creditor to initiate a debit or debits to the covered borrower's deposit account.

Payday loans, otherwise known as deferred presentment loans, are allowed in 39 States as a separate credit product from other forms of credit regulated by Federal or State statute. States authorizing these types of loans require payday lenders to obtain a license to operate within the State. States have defined these products and services, primarily through the basic process used to secure a payday loan, either through holding a check or by obtaining access to a bank account through electronic means. These basic processes have been included as part of the definition of payday loans in the regulation (Section 232.3(c)). Many States have also established limits to the amount that can be borrowed and the

duration of the loan as part of the authorized activities of lenders licensed to offer these products and services. A review of State limits for payday loans establishes a foundation for the definition used in this regulation.

The majority of States have a maximum dollar amount, maximum time limits and maximum fees that regulate the product. Six States (New Mexico, Oregon, Texas, Utah, Wisconsin and Wyoming) have no dollar limit on the amount that can be loaned, and nine States (Alaska, Arizona, Idaho, New Mexico, Rhode Island, South Dakota, Virginia, Wisconsin and Wyoming) have no maximum limit established for the duration of a payday loan. Of the States with dollar and duration limits, the maximum amount loaned is \$1,000 (Idaho and Illinois) and the maximum duration of a loan is 180 days (Ohio). The average dollar limit is \$519 and the average duration limit is 46 days.

Payday loans offered over the internet often originate in States with no limits on fees or maximum loan amounts. A survey of Web sites offering payday loans indicates \$1,500 as generally the maximum amount loaned. A review of sites marketing "Military Payday Loans" refer to loans of up to 40 percent of a Service member's take home pay. This amount can vary considerably based on rank, other entitlements, tax withheld and military allotments. For married enlisted Service members in the grade of E-6 and below (no deductions for taxes or other allotments), the proposed limit would cover a loan made for 40 percent of take home pay. The limits established in the definition for payday loans reflect the maximum duration and amount anticipated for loans based on current State practices, to include internet payday loans originating from locations without limits. *QUESTION 2: The Department seeks comments concerning whether the duration limit and monetary limit on the amount of the loan included in the definition of payday lending creates any unintended consequences for other credit products.*

The definition provided in 232.3(b)(1)(A)(ii) includes the following statement: "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." This exemption only applies if the depository institution has a right of offset under State or other applicable law.

As previously stated, the Department's intention is that the definition of payday loans does not impede creditors providing alternatives

to payday loans with high fees. The Department's August 2006 report to the Congress describes a variety of affordable credit products that banks and credit unions located on military installations offer to members of the armed services. Such loans generally had annual percentage rates (APRs) for Truth in Lending Act purposes of 18% or less. Because the loans may be for a small dollar amount, any flat fee charged by the lender in connection with originating the loan could cause the Military Annual Percentage Rate (MAPR), defined by the proposed regulation, to exceed 36% even though the interest rate may be much lower.

Vehicle Title Loans

The Department believes that vehicle title loans meet the proposed definition of consumer credit, and that subjecting them to the proposed rule is consistent with the Department's intent in developing the regulation. The definition for "vehicle title loans" limits the rule's coverage to loans of 180 days or less. Many States have not established statutes overseeing these loans. A 2005 survey of States conducted by the Consumer Federation of America (CFA) found that, of the 16 States authorizing vehicle-title lending, 10 require 30 day or one month term limits (with authorized renewals or extensions), one State allows up to 60 days (with 6 renewals), one State requires installments and four States do not establish term limits. *QUESTION 3: The Department seeks comments as to whether the limits established for vehicle title loans for duration of the loan included as part of the definition cause any unintended consequences for other credit products.*

Refund Anticipation Loans

The Department believes that covering RALs is consistent with the intent of the Department's proposed regulation. RALs can also be defined to limit unintended consequences and refunds can be provided expeditiously. There have been only a few States that have developed statutes concerning RALs. Connecticut is the only state that has established a rate cap, and prohibit transactions where the APR exceeds 60 percent. Other states, such as California, Washington, Oregon and Nevada have established statutes specifying disclosure requirements for RALs.

The Department is interested in ensuring that lenders continue to offer responsible, small-dollar loan products that meet the credit needs of service members and their families. *QUESTION 4: Accordingly, the Department solicits comments on regulatory approaches*

that would encourage creditors to offer affordable, small-dollar, short-term loans to Service members and their dependents. For example, should transactions that would otherwise be covered as payday loans be exempt from coverage under these rules if the MAPR is less than 24% MAPR or some other rate specified in the rules? Would a similar rule be appropriate for vehicle-title loans or tax refund anticipation loans? Are there other approaches that DoD should consider?

The definition of MAPR creates a distinctive percentage rate that reflects the provisions of the statute. The MAPR does not include fees imposed for unanticipated late payments, default, delinquency or a similar occurrence, because such fees are imposed as a result of contingent events that may occur after the loan is consummated. Thus, such fees are not included in the computation of the maximum 36% MAPR cap imposed by these rules. *QUESTION 5: The Department solicits comment on whether there are other fees that should be expressly excluded for the same reason.*

232.4, Terms of consumer credit extended to covered borrowers: This section implements the statutory prohibition limiting the amount that creditors may charge for extensions of consumer credit to covered borrowers. The proposed rule mirrors the statutory language. This section also applies to “assignees” consistent with the statutory definition of “creditor.”

232.5, Identification of covered borrower:

The Department has received several comments expressing concern over the potential difficulty in identifying a covered borrower, particularly in light of the penalties for failing to provide the statutory protections to a covered borrower. While DoD recognizes this concern, the Department would emphasize that identifying the covered borrower is only relevant in the context of transactions defined by the regulation as consumer credit (for payday loans, vehicle title loans and refund anticipation loans).

The Department’s intent is to balance protections for covered borrowers (according to the statute) and protections for creditors. The Department understands creditors may otherwise decline offering beneficial credit products to covered borrowers as a result of concerns over penalties. To achieve an appropriate balance, the Department has proposed a safe harbor, under which the creditor may require the applicant to sign a statement declaring whether or not he or she is a covered borrower (using the definition

from the statute). If required by the creditor, this declaration provides a “safe harbor” for the creditor to prevent inadvertently violating the statute by failing to recognize a covered borrower.

There is one caveat to this “safe harbor” provision. If the loan applicant signs a declaration that denies being a covered borrower, but the creditor obtains documentation as part of the credit transaction reflecting that the applicant is a covered borrower (such as, a current military leave and earning statement as proof of employment, or a tax filing that takes advantage of a specific tax provision designed to benefit the military), the applicant’s declaration would not create a safe harbor for the creditor. In such cases creditors should seek to resolve the inconsistency, but if they are unable to do so, they may avoid any risk of noncompliance by treating the applicant as a covered borrower based on the documentation or by declining to extend credit due to the inability to verify information provided in the borrower’s signed declaration.

This caveat is being included to prevent creditors from using the declaration to allow covered borrowers to waive their right to the protections provided by the regulation. This may occur when the creditor recognizes the applicant is a covered borrower, as a result of the documents presented as part of the credit transaction. The intent of this caveat is not to hold the creditor accountable for false statements made by an applicant when there is no indication through the credit transaction that the applicant is a covered borrower.

The opposite situation, where an applicant claims to be a covered borrower without presenting proof of his or her status does not require further validation by the creditor. However, creditors have the option of verifying the applicant’s status as a covered borrower using several sources of information, but they are not required to do so. Thus, creditors may request applicants to provide proof of their current employment and income, for example by requesting from service members a copy of the most recent month’s military leave and earning statement. Creditors may also request service members or dependents to provide a copy of their military identification card.

These sources, however, might not always be determinative. For example, in some cases a leave and earnings statement might not reflect a recent change in the applicant’s active duty status. Military identification cards, that are the same as identification cards carried by members of the active

component, are issued to members of the National Guard and the Reserve regardless of their duty status. Hence, the proposed regulation states “[u]pon such request, activated members of the National Guard or Reserves shall also provide a copy of the military orders calling the covered member to military service and any orders further extending military service.” This would also be the case for their dependents. The proposed rule does not provide a safe harbor to creditors in the situation described in this paragraph.

It is the Department’s understanding that providing proof of employment is a prerequisite to receiving a payday loan or a vehicle title loan. The military leave and earning statement is the document that provides validation of employment. There are several tax provisions which are directed toward assisting the military. If the tax preparer includes these provisions as part of the tax return, the creditor should be made aware of this disclosure in order to validate the status of the applicant prior to processing the application for a refund anticipation loan. *QUESTION 6: The Department would like feedback on the creditor’s involvement in tax filing aspects of a refund anticipation loan.*

The Department intends to provide access to a database to creditors to validate the status of an applicant. This arrangement is currently available to creditors to validate the active duty status of Service members as part of implementation of benefits authorized by the Service Members Civil Relief Act (<https://www.dmdc.osd.mil/scra/owa/home>). The proposed database will include the status of covered borrowers and can be used to resolve questions creditors may have about the status of an applicant who denies being a covered member and yet presents information during the credit transaction that is contrary to this declaration. In these situations, the database would provide the most accurate verification of the status of the applicant, to include activated members of the National Guard and Reserve and their dependents.

QUESTION 7: Since this issue is critical to the success of the regulation, and also protecting the reputation of the creditor, the Department solicits further comment on the proposed “safe harbor” concept and the methodology proposed to implement the intended balance in approach to identification.

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, which includes the new

disclosures established under 10 U.S.C. 987 but also includes disclosures that creditors are already required to provide pursuant to the Federal Reserve Board's Regulation Z, which implements the Truth in Lending Act (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.

As with identification of the covered borrower, the Department has received several comments about potential disparities in disclosures required by this regulation as opposed to TILA, as well as the difficulty of potentially presenting disclosures orally under part 232 when an offer is made through the mail or over the internet. *QUESTION 8: The Department requests comment on whether the proposed rule for providing certain disclosures orally adequately addresses the compliance difficulties associated with the statutory requirements for oral disclosures, or whether another approach is more appropriate.*

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. The Department also recognizes the potential confusion inherent in mandating the disclosure of two annual percentage rates (the MAPR required by this regulation and the APR required by TILA). *QUESTION 9: DoD therefore seeks comments on this proposed*

requirement and invites suggestions on alternative approaches.

232.7, Preemption: The proposed regulation would implement the statutory provision. Although revisions have been made to the statutory language for clarity, no substantive change is intended.

232.8, Limitations:

Section 232.8(a) implements the statutory provision in 10 U.S.C. 987(e)(1), which prohibits a creditor from extending consumer credit to a covered borrower in order to roll over, renew, or refinance consumer credit that was previously extended by the same creditor to the same covered borrower. The proposed regulation includes a limited exception to this prohibition, however, to permit workout loans and other refinancings that may benefit the borrower. *QUESTION 10: The Department solicits comment on whether it can or should adopt this approach.*

QUESTION 11: Assuming the final rule permits a creditor to roll over, renew or refinance credit that it previously extended to the same covered borrower in limited circumstances, the Department solicits comment on whether it can and should also adopt a rule clarifying that refinancings or renewals of a covered loan require new disclosures under § 232.6 only when the transaction would also be considered a new transaction that requires Truth in Lending Act disclosures. Whether or not new disclosures are required, the Department believes that when a creditor refinances or renews credit that it extended to a covered borrower the limitations on rates and terms apply in the same manner as they would for the original consumer credit transaction.

In some cases, a consumer might become a covered borrower after obtaining consumer credit. When consumers request to refinance or renew a short-term loan, creditors are likely to rely on their original determination that the consumer is not a covered borrower. The Department believes that it would be unnecessarily burdensome to impose a duty on creditors to make a new determination in each transaction given that a change in the borrower's status will infrequently occur with short-term transactions. Accordingly, the proposed rule would not apply when the same creditor extends consumer credit to a covered borrower to refinance or renew an extension of credit that was not covered by Part 232 because the consumer was not a covered borrower at the time of the original transaction.

QUESTION 12: The Department solicits comment on this approach. If such transactions were to be covered,

however, should the disclosures in § 232.6 only be required for transactions also deemed to be transactions requiring new disclosures under the Truth in Lending Act?

Subparagraph (a)(3) makes it unlawful for any creditor to extend consumer credit to a covered borrower if the "creditor requires the covered borrower to submit to arbitration or imposes other onerous legal notice provisions." The requirement is in accordance with 10 U.S.C. 987(e)(3). *QUESTION 13: The Department does not have the specific notice provisions or examples to include with this regulation and requests feedback on particular legal notice provisions that should be considered onerous.*

Similarly, subparagraph (a)(4) makes it unlawful for any creditor to extend consumer credit to a covered borrower if the "creditor demands unreasonable notice from the covered borrower as a condition for legal action." This requirement is in accordance with 10 U.S.C. 987(e)(4), and as with onerous legal notice provisions, the Department does not have specific unreasonable notices or examples to include in the regulation. *QUESTION 14: Feedback is also requested on this provision and particular notice requirements that should be considered unreasonable.*

Section 232.8(a)(5) provides an exemptions to creditors, with respect to consumer credit, to use electronic fund transfer to repay a consumer credit, require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, or take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transactions that are below 36% MAPR. This exemption is made with the recognition that this exemption must be provided in compliance with other applicable statutes governing the use of electronic fund transfers, savings and direct deposit of consumer's salary. The Department believes the flexibility provided by the 10 U.S.C. 987(h)(2)(E) may allow the Department the authority to provide this exemption to facilitate creditors to make alternative loans designed to assist covered borrowers with financial recovery. The Department believes providing this opportunity is important in fulfilling the Department's intended purpose of encouraging creditors to provide alternative loan products. *QUESTION 15: The Department solicits comments on whether it can or should adopt this proposed exemption.*

Section 8(a)(7) prohibits creditors from charging a prepayment penalty to

covered borrowers. The proposed rule does not define what constitutes a prepayment penalty, and the Department expects creditors to rely on existing state and federal laws, as applicable. *QUESTION 16: Comment is specifically solicited on this approach.*

232.9, Penalties and remedies:

This provision incorporates the penalties and enforcement provisions contained in the statute. Section 9 provides, among other things, that any credit agreement subject to the regulation which fails to comply with this regulation is void from inception. It further provides that a creditor or assignee who knowingly violates the regulation shall be subject to certain criminal penalties.

The statute, however, does not provide explicitly for enforcement of these rules beyond the provisions described above. The Department understands that the federal bank, thrift and credit union regulatory agencies have authority—derived from federal law unique to federally-regulated depository institutions—to enforce these rules with respect to the institutions that they supervise. However, the Department notes that this authority extends to a narrow category of depository institutions that it proposes to cover as “creditors” (See Question 1 above), but it does not extend to other creditors, such as nonbank lenders, that would also be covered creditors and that may be most likely to provide the types of consumer credit restricted by these rules. The Department is concerned that reliance solely on private litigation or criminal prosecution with respect to these other creditors may be insufficient to ensure uniform compliance with these rules with respect to all creditors. *QUESTION 17: Comment is requested on all aspects of these issues, and on how to ensure uniform implementation of, and compliance with, the statute by creditors not subject to oversight by the federal bank, thrift, and credit union regulatory agencies.*

232.10, Effective date and transition:

The comment period for this proposal is 60 days. The Department intends to review the comments in a timely manner in order to propose and publish final rules on or before September 1, 2007, which is 30 days before the rules would become effective on October 1, 2007. *QUESTION 18: Comment is solicited on the proposed timing for the publication of final rules. In particular, the Department requests comment on the ability of covered creditors to comply with the proposed rules by October 1 in light of the specific credit products that would be covered by the rules.*

Statutory Certification

Executive Order 12866, “Regulatory Planning and Review”

It has been determined that 32 CFR part 232 is not an economically significant regulatory action. The rule does not:

- (1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

Nevertheless, the proposed regulation was submitted to the Office of Management and Budget for review under other provisions of Executive Order 12866 as a significant regulatory action.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The North American Industrial Classification (NAIC) for the impacted businesses is 522390—“other financial activities related to credit intermediation.” According to the 2002 Economic Census, there are approximately 5,205 small businesses related to this classification, with 3,000 of these small businesses having less than 5 employees. These 5,205 businesses represent a portion of the 51,725 potential respondents cited in the Paperwork Reduction Act evaluation.

The limitations and disclosures posed by this part impact a small percentage of the market served by the industries covered by this part. For example according to the payday lending trade

association, Service members and their dependents represent approximately 1–2 percent of the payday lending market. Thus there is not a significant economic impact on a substantial number of small entities.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

Section 232.6 of this proposed rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: Mandatory Loan Disclosures as Part of Limitations on Terms of Consumer Credit Extended to Service Members and Their Dependents.

Type of Request: New requirement.

Number of Respondents: 51,725.

Responses per Respondent: 1 per respondent.

Annual Responses: 1,219,035.

Average Burden per Response: 2–2.5 minutes, plus one business day to revise processes and two business days to revise applicable Web sites.

Annual Burden Hours: 182,105.

Needs and Uses: 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 member or dependent the following information clearly and conspicuously before consummation of the consumer credit transaction:

(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.

(3) A clear description of the payment obligation of the covered member or dependent, 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 family members 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 creditor shall provide the disclosures in writing in a form the covered borrower can keep. The creditor also shall provide the required disclosures orally. In mail and internet transactions, the creditor satisfies this requirement by providing a toll-free telephone number on or with the written disclosures that consumers may use to obtain oral disclosures.

Affected Public: Creditors making payday loans, vehicle title loans and refund anticipation loans.

Frequency: One for each loan transaction, which is equal to an occasional frequency.

Respondent's Obligation: Mandatory. Written comments and

recommendations on the proposed information collection should be sent to the Office of Management and Budget, Desk Officer for the Department of Defense, Room 10235, New Executive Office Building, Washington, DC 20503, fax number: (202) 395-6974 with a copy to the Office of the Under Secretary of Defense for Personnel and Readiness (MC&FP), DoD State Liaison Office, Attn: Mr. George Schaefer, 4000 Defense Pentagon, Washington, DC 20301-4000, telephone (703) 588-0876. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Office

of the Under Secretary of Defense for Personnel and Readiness (MC&FP), DoD State Liaison Office, Attn: Mr. George Schaefer, 4000 Defense Pentagon, Washington, DC 20301-4000, or telephone Mr. Schaefer at (703) 588-0876.

Executive Order 13132 Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of government.

The provisions of this part, as required by 10 U.S.C. 987, overrides State statutes inconsistent with this part to the extent that these provisions provide different protections for covered borrowers than those provided to residents of that State. As discussed in the section-by-section description of the proposed part, the provisions are more stringent for creditors providing consumer credit to covered borrowers (as defined in the part). In such circumstances, State laws would not be preempted by operation of this part.

In this respect, this proposed part, if adopted, would not affect in any manner the powers and authorities that any State may have or affect the distribution of power and responsibilities between Federal and State levels of government. Therefore, the Department has determined that the proposed part has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

List of Subjects in 32 CFR Part 232

Loan programs, Reporting and recordkeeping requirements, Service members.

For the reasons set forth in the preamble, chapter I of title 32, Code of Federal Regulations is proposed to be amended by adding part 232 to read as follows:

PART 232—LIMITATIONS ON TERMS OF CONSUMER CREDIT EXTENDED TO SERVICE MEMBERS AND DEPENDENTS

Sec.

232.1 Authority, purpose, and coverage.

232.2 Applicability.

232.3 Definitions.

232.4 Terms of consumer credit extended to covered borrowers.

232.5 Identification of covered borrower.
232.6 Mandatory loan disclosures.
232.7 Preemption.
232.8 Limitations.
232.9 Penalties and remedies.
232.10 Servicemembers Civil Relief Act protections unaffected.
232.11 Effective date and transition.

Authority: 10 U.S.C. 987.

§ 232.1 Authority, purpose, and coverage.

(a) **Authority.** This part is issued by the Department of Defense to implement 10 U.S.C. 987.

(b) **Purpose.** The purpose of this part is to impose limitations on the cost and terms of certain defined extensions of consumer credit to Service members and their dependents, and to provide additional consumer disclosures for such transactions.

(c) **Coverage.** This part defines the types of consumer credit transactions, creditors, and borrowers covered by this part, consistent with the provisions of 10 U.S.C. 987. In addition, this part:

(1) Provides the maximum allowable amount of all charges, and the types of charges, that may be associated with a covered extension of consumer credit;

(2) Requires creditors to disclose to covered borrowers the cost of the transaction as a total dollar amount and as an annualized percentage rate referred to as the Military Annual Percentage Rate or MAPR, which must be disclosed before the borrower becomes obligated on the transaction. The disclosures required by this regulation differ from and are in addition to the disclosures that must be provided to consumers under the Federal Truth in Lending Act;

(3) Provides for the method creditors shall use in calculating the MAPR, and;

(4) Contains such other criteria and limitations as the Secretary of Defense has determined appropriate, consistent with the provisions of 10 U.S.C. 987.

§ 232.2 Applicability.

This part applies to consumer credit extended by creditors to a covered borrower, as those terms are defined in this part.

§ 232.3 Definitions.

Terms used in this part are defined as follows:

(a) **Closed-end credit** means consumer credit other than "open-end credit" as that term is defined in Regulation Z (Truth in Lending), 12 CFR Part 226.

(b) **Consumer credit** means 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 less 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 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 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 less that is secured by the title to a motor vehicle 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 agrees to repay the loan with the proceeds of the borrower's refund.

(2) For purposes of this part, consumer credit does not mean:

(i) Residential mortgages, which are any credit transactions secured by an interest in the covered borrower's dwelling, including transactions to finance the purchase or initial construction of a dwelling, refinance transactions, home equity loans or lines of credit, and reverse mortgages;

(ii) Any credit transaction to finance the purchase or lease of a motor vehicle when the credit is secured by the property being purchased or leased;

(iii) Any credit transaction to finance the purchase of personal property other than a motor vehicle when the credit is secured by the property being purchased; and

(iv) Any other credit transaction that is not consumer credit extended by a creditor, is an exempt transaction, or is not otherwise subject to disclosure requirements for purposes of Regulation Z (Truth in Lending), 12 CFR Part 226.

(v) Credit secured by a qualified retirement account as defined in the Internal Revenue Code.

(c) *Covered borrower* means a person with the following status at the time he or she becomes obligated on a consumer credit transaction covered by this part:

(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 U.S.C. 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.

(d) *Credit* means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(e) *Creditor* means 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.

(f) *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.

(g) *Electronic fund transfer* (EFT) has the same meaning for purposes of this part as in Regulation E (Electronic Fund Transfers) issued by the Board of Governors of the Federal Reserve System, 12 CFR Part 205.

(h) *Military annual percentage rate* (MAPR). The MAPR is the cost of the consumer credit transaction expressed as an annual rate. The MAPR includes the following cost elements associated with the extension of consumer credit to a covered borrower if they are financed, deducted from the proceeds of the consumer credit, or otherwise required to be paid as a condition of the credit: interest, fees, credit service charges, credit renewal charges, credit insurance premiums including charges for single premium credit insurance, fees for debt cancellation or debt suspension agreements, and fees for credit-related ancillary products sold in connection with and either at or before

consummation of the credit transaction. The MAPR does not include a fee imposed for actual unanticipated late payments, default, delinquency, or similar occurrence. The MAPR does not include tax return preparation fees associated with a refund anticipation loan, whether or not the fees are deducted from the loan proceeds. The MAPR shall be calculated based on the costs in this definition but in all other respects it shall be calculated and disclosed following the rules used for calculating the Annual Percentage Rate (APR) for closed-end credit transactions under Regulation Z (Truth in Lending), 12 CFR Part 226.

(i) *Regulation Z* means any of the rules, regulations, or interpretations thereof, issued by the Board of Governors of the Federal Reserve System 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 Board of Governors of the Federal Reserve System to issue such interpretations or approvals. Words that are not defined in this part have the meanings given to them in Regulation Z (12 CFR part 226) issued by the Board of Governors of the Federal Reserve System (the "Board"), as amended from time to time, including any interpretation thereof by the Board or an official or employee of the Federal Reserve System duly authorized by the Board 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, or contract.

§ 232.4 Terms of consumer credit extended to covered borrowers.

(a) A creditor who extends consumer credit to a covered borrower and an assignee of the creditor, shall not require the member or dependent to pay a military annual percentage rate 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) A creditor described in paragraph (a) of this section or an assignee may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit to a covered borrower.

§ 232.5 Identification of covered borrower.

(a) This part shall not apply to a consumer credit transaction if the

conditions described in paragraphs (a)(1) and (2) of this section are met:
(1) Prior to becoming obligated on the transaction, each applicant is provided

with a clear and conspicuous "covered borrower identification statement" substantially similar to the following

statement and each applicant signs the statement indicating that he or she is not a covered borrower:

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to eligible applicants, we require you to sign one of the following statements as applicable:
I AM a member of the Armed Forces on active duty.

I AM a dependent of a member of the Armed Forces on active duty because I am the member's spouse, the member's child under the age of eighteen years old, or I am an individual for whom the member provided more than one-half of my financial support for 180 days immediately preceding today's date.

—OR—

I AM NOT a member of the Armed Forces on active duty (or a dependent of such a member).

Warning: It is important to fill out this form accurately. Knowingly making a false statement on a credit application is a crime

(2) The creditor has not determined, pursuant to the optional verification procedures in paragraph (b) of this section, that any such applicant is a covered borrower.

(b) The creditor may, but is not required to, verify the status of an applicant as a covered borrower by requesting the applicant to provide a current (previous month) military leave and earning statement, or a military identification card (DD Form 2 for members, DD Form 1173 for dependents), as described in DoD Instruction 1003.1, Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals, December 5, 1997. Upon such request, activated members of the National Guard or Reserves shall also provide a copy of the military orders calling the covered member to military service and any orders further extending military service.

(c) The creditor may, but is not required to, verify the status of an applicant as a covered borrower by accessing the information available at <https://www.dmdc.osd.mil/scra/owa/home>. Searches require the service member's full name, Social Security number, and date of birth.

(d) This part shall not apply to a consumer credit transaction in which the creditor rolls over, renews, repays, refinances, or consolidates consumer credit in accordance with § 232.8(a)(1) if § 232.5(a)(1) and (2) applied to the previous transaction.

§ 232.6 Mandatory loan disclosures

(a) *Required information.* With respect to any extension of consumer credit (including any consumer credit originated or extended through the Internet) to a covered borrower, a creditor shall provide to the member or dependent the following information clearly and conspicuously before consummation of the consumer credit transaction:

(1) The 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 paragraph (a)(2) of this section 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."

(b) *Method of disclosure.* (1) *Written disclosures.* The creditor shall provide the disclosures required by paragraph (a) of this section in writing in a form the covered borrower can keep.

(2) *Oral disclosures.* The creditor also shall provide the disclosures required by paragraphs (a)(1), (3) and (4) of this section orally before consummation. 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.

§ 232.7 Preemption.

(a) *Inconsistent laws.* 10 U.S.C. 987 as implemented by this regulation preempts any State or Federal law, rule

or regulation, including any State usury law, to the extent such law, rule or regulation is inconsistent with this part, except that any such law, rule or regulation is not preempted to the extent that it provides protection to a covered borrower beyond those protections provided by 10 U.S.C. 987 and this part.

(b) *Different treatment under State law of covered borrowers prohibited.* States may not:

(1) Authorize creditors to charge covered borrowers MAPRs for consumer credit higher than the legal limit for residents of the State, or

(2) Permit the violation or waiver of any State consumer lending protection that is for the benefit of residents of the State on the basis of the covered borrower's nonresident or military status, regardless of the covered borrower's domicile or permanent home of record, provided that the protection would otherwise apply to the covered borrower.

§ 232.8 Limitations.

(a) 10 U.S.C. 987 makes it unlawful for any creditor to extend consumer credit to a covered borrower with respect to which:

(1) The creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the covered borrower by the same creditor with the proceeds of other consumer credit extended by that creditor to the same covered borrower, unless the new transaction results in more favorable terms to the covered borrower, such as a lower MAPR.

(2) The covered borrower is required to waive the covered borrower's right to legal recourse under any otherwise applicable provision of State or Federal law, including any provision of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

(3) The creditor requires the covered borrower to submit to arbitration or

imposes other onerous legal notice provisions in the case of a dispute.

(4) The creditor demands unreasonable notice from the covered borrower as a condition for legal action.

(5) The creditor uses a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower, or uses the title of a vehicle as security for the obligation, except that, in connection with a consumer credit transaction with an MAPR consistent with § 232.4(b):

(i) The creditor may require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by Regulation E (Electronic Fund Transfers) 12 CFR Part 205;

(ii) The creditor may require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law; or

(iii) The creditor may, if not otherwise prohibited by applicable law, take a security interest in funds deposited after the extension of credit in an account established in connection with the consumer credit transaction.

(6) The creditor requires as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay the obligation.

(7) The covered borrower is prohibited from prepaying the consumer credit or is charged a penalty fee for prepaying all or part of the consumer credit.

(b) For purposes of this section, an assignee may not engage in any transaction or take any action that would be prohibited for the creditor.

§ 232.9 Penalties and remedies.

(a) *Misdemeanor.* A creditor or assignee who knowingly violates 10 U.S.C. 987 as implemented by this part shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

(b) *Preservation of other remedies.* The remedies and rights provided under 10 U.S.C. 987 as implemented by this part are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under the statute, including any award for consequential damages and punitive damages.

(c) *Contract void.* Any credit agreement, promissory note, or other contract with a covered borrower which fails to comply with 10 U.S.C. 987 as implemented by this regulation or which contains one or more provisions prohibited under 10 U.S.C. 987 as

implemented by this regulation is void from the inception of the contract.

(d) *Arbitration.* Notwithstanding 9 U.S.C. 2, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit involving a covered borrower pursuant to this part shall be enforceable against any covered borrower, or any person who was a covered borrower when the agreement was made.

§ 232.10 Servicemembers Civil Relief Act protections unaffected.

Nothing in this part may be construed to limit or otherwise affect the applicability of Section 207 and any other provisions of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

§ 232.11 Effective date and transition.

Applicable consumer credit—This part shall only apply to consumer credit that is extended to a covered borrower and consummated on or after October 1, 2007.

Dated: April 5, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DOD.

[FR Doc. 07-1780 Filed 4-6-07; 12:20 pm]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-07-017]

RIN 1625-AA08

Special Local Regulations for Marine Events; Rappahannock River, Essex County, Westmoreland County, Layton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary special local regulation for “2007 Rappahannock River Boaters Association Spring Radar Shootout”, power boat races to be held on the waters of the Rappahannock River near Layton, VA. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Rappahannock River during the event.

DATES: Comments and related material must reach the Coast Guard on or before May 11, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 391-8149. The Coast Guard Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Dennis Sens, Marine Events Coordinator, Fifth Coast Guard District, at (757) 398-6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-07-017), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On June 30, 2007, the Rappahannock River Boaters Association (RRBA) will sponsor the “2006 RRBA Spring Radar Shootout”, on the waters of the Rappahannock River near Layton, Virginia. The event will consist of approximately 35 powerboats participating in high-speed competitive races, traveling along a 3-mile strait line