SEC. 605. CHANGE TO THE DEFINITION OF DEPENDENT FOR PURPOSES OF LIMITING THE TERMS OF CONSUMER CREDIT FOR CERTAIN MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS.

Section 987(i)(2) of title 10, United States Code, is amended to read as follows:

"(2) DEPENDENT.—The term 'dependent', with respect to a covered member, has the meaning given that term in subparagraphs (A), (D), (E), and (I) of section 1072(2) of this title.".

Section-by-Section Analysis

The proposed amendment will align the definitions used in section 987 of title 10, United States Code, with the definitions of child and certain other dependents in section 1072 of title 10, used to establish eligibility for military medical care and included in the Defense Eligibility Enrollment Reporting System (DEERS) database. This proposal will make it easier to identify individuals eligible for the consumer credit protections pursuant to section 987. Section 987(i)(2)(B) currently refers to the definition of a child in title 38, United States Code, to determine veterans benefits.

Section 987 of title 10, United States Code, is implemented through Part 232, title 32 of Code of Federal Regulation. This regulation limits the terms of closed-end payday, vehicle title and tax refund anticipation loans, and requires lenders to apply these limits when providing these types of loans to the borrowers identified in the statute. Not doing so may have both civil and criminal consequences. The regulation currently provides the creditor a "safe harbor" from criminal liability if the borrower signs a declaration stating that he or she does not fit one of the definitions listed in section 987(i).

The Defense Manpower Data Center (DMDC) currently operates a website (https://www.dmdc.osd.mil/mla/owa/home) to permit creditors to determine if an individual is on active duty or is a dependent of such an individual. The website accesses data from DEERS to verify (yes or no) whether the borrower should be covered by the law. This website would be an effective tool for creditors except that the present definition in section 987(i)(2)(C) may include an individual outside the DEERS database.

Presently, the definitions in section 987(i)(2)(C) can include individuals (i.e., friends) who receive a stated level of funding from a Service member sponsor but who do not live in a household maintained by the Service member. Also, the requirement that the individual have received this support for 180 days immediately preceding an extension of a covered loan is not compatible with maintaining a database to define this group.

Applying definitions that are consistent with the ones used in the DEERS database will provide verifiable identification that is efficient and user friendly. This approach will allow creditors a more efficient method of assuring they are complying with the law and regulators a consistent approach they can apply during their compliance examinations. Most importantly, this approach will relieve the borrower of the burden of proving (or disproving) that an individual is covered by the regulation.

Budget Implications: There are no additional costs associated with this proposal.

RESOURCE REQUIREMENTS (MILLIONS)								
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**
O&M	0	0	0	0	0	NA	NA	NA
Total	0	0	0	0	0			

NUMBER OF PERSONNEL AFFECTED					
	FY 2013	**FY 2014**	**FY 2015**	**FY 2016**	**FY 2017**
Army	570,700	570,700	570,700	570,700	570,700
Navy	328,200	328,200	328,200	328,200	328,200
Marine Corps	201,500	201,500	201,500	201,500	201,500
Coast Guard	0	0	0	0	0
Air Force	335,000	335,000	335,000	335,000	335,000
Total	1,435,400	1,435,400	1,435,400	1,435,400	1,435,400

Cost Methodology: The requested change has no impact on current DMDC website administration. The only change that will occur as a result of this statutory change will be an update to the regulation requiring creditors to use the website to identify the covered borrower instead of the current declaration process. The manpower costs associated with the update to the regulation will be absorbed into the current workload and will not result in any additional costs.

Changes to Existing Law: This proposal would make the following changes to section 987 of title 10, United States Code:

§ 987. Terms of consumer credit extended to members and dependents: limitations

(a) INTEREST.—A creditor who extends consumer credit to a covered member of the armed forces or a dependent of such a member shall not require the member or dependent to pay interest with respect to the extension of such 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 section.

(b) ANNUAL PERCENTAGE RATE.—A creditor described in subsection (a) may not impose an annual percentage rate of interest greater than 36 percent with respect to the consumer credit extended to a covered member or a dependent of a covered member.

(c) MANDATORY LOAN DISCLOSURES.—

(1) INFORMATION REQUIRED.—With respect to any extension of consumer credit (including any consumer credit originated or extended through the internet) to a covered member or a dependent of a covered member, a creditor shall provide to the member or dependent the following information orally and in writing before the issuance of the credit:

(A) A statement of the annual percentage rate of interest applicable to the extension of credit.

(B) Any disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(C) A clear description of the payment obligations of the member or dependent, as applicable.

(2) TERMS. - Such disclosures shall be presented in accordance with terms prescribed by the regulations issued by the Board of Governors of the Federal Reserve System to implement the Truth in Lending Act (15 U.S.C. 1601 et seq.).

(d) PREEMPTION.—

(1) INCONSISTENT LAWS.—Except as provided in subsection (f)(2), this section preempts any State or Federal law, rule, or regulation, including any State usury law, to the extent that such law, rule, or regulation is inconsistent with this section, except that this section shall not preempt any such law, rule, or regulation that provides protection to a covered member or a dependent of such a member in addition to the protection provided by this section.

(2) DIFFERENT TREATMENT UNDER STATE LAW OF MEMBERS AND DEPENDENTS PROHIBITED.—States shall not—

(A) authorize creditors to charge covered members and their dependents annual percentage rates of interest for loans higher than the legal limit for residents of the State; or

(B) permit violation or waiver of any State consumer lending protections for the benefit of residents of the State on the basis of nonresident or military status of a covered member or dependent of such a member, regardless of the member's or dependent's domicile or permanent home of record.

(e) LIMITATIONS.—It shall be unlawful for any creditor to extend consumer credit to a covered member or a dependent of such a member with respect to which -

(1) the creditor rolls over, renews, repays, refinances, or consolidates any consumer credit extended to the borrower by the same creditor with the proceeds of other credit extended to the same covered member or a dependent;

(2) the borrower is required to waive the 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;

(3) the creditor requires the borrower to submit to arbitration or imposes onerous legal notice provisions in the case of a dispute;

(4) the creditor demands unreasonable notice from the 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 borrower, or the title of a vehicle as security for the obligation;

(6) the creditor requires as a condition for the extension of credit that the borrower establish an allotment to repay an obligation; or

(7) the borrower is prohibited from prepaying the loan or is charged a penalty or fee for prepaying all or part of the loan.

(f) PENALTIES AND REMEDIES.—

(1) MISDEMEANOR.—A creditor who knowingly violates this section shall be fined as provided in title 18, or imprisoned for not more than one year, or both.

(2) PRESERVATION OF OTHER REMEDIES.—The remedies and rights provided under this section are in addition to and do not preclude any remedy otherwise available under law to the person claiming relief under this section, including any award for consequential and punitive damages.

(3) CONTRACT VOID.—Any credit agreement, promissory note, or other contract prohibited under this section is void from the inception of such contract.

(4) ARBITRATION.—Notwithstanding section 2 of title 9, or any other Federal or State law, rule, or regulation, no agreement to arbitrate any dispute involving the extension of consumer credit shall be enforceable against any covered member or dependent of such a member, or any person who was a covered member or dependent of that member when the agreement was made.

(g) SERVICEMEMBERS CIVIL RELIEF ACT PROTECTIONS UNAFFECTED.—Nothing in this section may be construed to limit or otherwise affect the applicability of section 207 of the Servicemembers Civil Relief Act (50 U.S.C. App. 527).

(h) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to carry out this section.

(2) Such regulations shall establish the following:

(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.

(3) In prescribing regulations under this subsection, the Secretary of Defense shall consult with the following:

(A) The Federal Trade Commission.

(B) The Board of Governors of the Federal Reserve System.

(C) The Office of the Comptroller of the Currency.

(D) The Federal Deposit Insurance Corporation.

(E) The Office of Thrift Supervision.

(F) The National Credit Union Administration.

(G) The Treasury Department.

(i) DEFINITIONS.—In this section:

(1) COVERED MEMBER.—The term "covered member" means a member of the armed forces who is—

(A) on active duty under a call or order that does not specify a period of 30 days or less; or

(B) on active Guard and Reserve Duty.

(2) DEPENDENT.—The term “dependent”, with respect to a covered member, has the meaning given that term in subparagraphs (A), (D), (E), and (I) of section 1072(2) of this title. ~~means-~~

~~(A) the member's spouse;~~

~~(B) the member's child (as defined in section 101(4) of title 38); or~~

~~(C) 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 section.~~

(3) INTEREST.—The term "interest" includes all cost elements associated with the extension of credit, including fees, service charges, renewal charges, credit insurance premiums, any ancillary product sold with any extension of credit to a servicemember or the servicemember's dependent, as applicable, and any other charge or premium with respect to the extension of consumer credit.

(4) ANNUAL PERCENTAGE RATE.—The term "annual percentage rate" has the same meaning as in section 107 of the Truth and Lending Act (15 U.S.C. 1606), as implemented by regulations of the Board of Governors of the Federal Reserve System. For purposes of this section, such term includes all fees and charges, including charges and fees for single premium credit insurance and other ancillary products sold in connection with the credit transaction, and such fees and charges shall be included in the calculation of the annual percentage rate.

(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.

(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.