By electronic delivery

12 October 2007

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20 and C Streets, NW
Washington, D.C. 20051

Re: Proposed amendments to
Regulation Z
Truth in Lending Act
Docket No. R-1286
72 *Federal Register* 32948, 14 June 2007

The American Bankers Association (ABA)[1] and America's Community Bankers (ACB)[2] are pleased to submit our comments to the Federal Reserve Board's (Board) proposed amendment to Regulation Z, which implements the Truth in Lending Act. The Board is proposing changes to format, timing, and content requirements for the five main types of open-end credit disclosures governed by Regulation Z: (1) credit and charge card application and solicitation disclosures (2) account-opening disclosures; (3) periodic statement disclosures; (4)change-in terms notices; and (5) advertising provisions. The proposed changes primarily affect open-end lines of credit that are not secured by a home, such as credit cards and overdraft lines of credit.

[1] The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

[2] America's Community Bankers is a national trade association representing the nation's community banks of all charter types and sizes, including state and federally chartered savings institutions and commercial banks. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities. ACB members represent $1.7 trillion in assets across the nation and are both stock and mutually owned.

ABA and ACB commend the Board for its efforts to improve and update open-end credit disclosures and ensure that consumers receive important account information in an understandable and usable manner. Clear disclosures ensure that consumers are able to make informed financial decisions. Many of the proposed changes are consistent with comments and suggestions made in the comment letters submitted separately by ABA and ACB in March and December of 2005 responding to the Board's Advance Notice of Proposed Rulemaking.

There is no doubt that the proposed changes, particularly with regard to periodic statements and the advance notices of change in terms and increased rates will impose substantial costs on lenders, which in significant part are absorbed by consumers. In addition, the proposed advance notices of changes in terms and rate increases will result in blunting the effectiveness of risk-based pricing, causing cross-subsidization between borrowers, particularly from less risky borrowers to more risky borrowers. Since lenders will have to adapt to sub-optimal risk-based pricing regimes, the proposal will also cause significant repricing of credit cards.

We believe that with regard to the solicitation and account opening disclosures, the Board has succeeded in making the disclosures more concise, readable, understandable, and relevant. In addition, the Board has generally tried to limit disclosures to the most important items and thus avoid cluttering the disclosures. Limiting disclosures to the terms that are most important to most people means that they are more likely to be read and affect consumer behavior.

We also support the use of model terminology for applications, solicitations, and account opening disclosures to promote uniformity and consistency, which will allow consumers to compare account terms better. However, we urge the Board to allow greater flexibility in periodic statements so as to foster innovation that enables lenders to serve their customers better and promote competition. Periodic statements are intended to communicate actual costs based on account usage as well as other non-cost information important to the consumer, such as transaction information, promotions, and special deals that are valuable to and interest consumers. Moreover, different types of customers prefer different formats. Lenders should be permitted to respond to customers' format preference and continue to use periodic statement formats as a competitive tool.

Our comments will focus on refining the disclosures so that they are more useful to consumers, more accurate, and in some cases less costly to implement. Given the variety of credit card products and features, some adjustment and refinements are necessary to avoid unintended consequences and potential consumer confusion. We encourage the

Board to continue consumer testing, especially where it is not yet clear which approach, format, or terminology is most effective. Finally, because the Board's consumer testing to date focused on credit cards, the Board should consider limiting application of the final changes to credit cards. It should not apply them to other non-credit card open-end plans not secured by a home without consumer testing for those products.

Section 226.2 Definitions

(a)(20) Open-end credit.

Under the current Regulation Z and its Commentary, some credit products are treated as open-end plans, with open-end disclosures given to consumers, when such products might be better treated as closed-end. The Supplementary Information cites the example of so-called "multi-featured" open-end plans. Under these plans, car loan transactions, for example, are approved and underwritten separately from other credit made available on the plan. Customers who pay the entire car loan are not permitted additional advances on that "feature" and must reapply if they wish to obtain another loan. The Board thus proposes to revise the Commentary to clarify that while a customer's account may contain different sub-accounts, each with different terms, each sub-account must generally replenish the credit line for that sub-account so that the borrower may continue to take advances under the plan to the extent outstanding balances are repaid, without having to obtain separate approval for each subsequent advance.

We appreciate the potential abuses the Board is attempting to address, that is, lenders circumventing the closed-end requirement by structuring as open-end credit loans that more closely resemble closed-end credit, but believe that the proposed change will have too broad an application. Specifically, the proposed change could be interpreted to apply to certain special programs or promotions that could be classified as "sub-accounts" that do not replenish. For example, card issuers often offer introductory or promotional rates for certain types of purchases or transactions, or for transactions made during a specified time period. This could include, for example, convenience checks subject to special rates sent to eligible customers. [3] However, while the general line of credit replenishes, the balance subject to the promotion does not. Requiring that balances subject to promotional programs such as 0% APRs be replenished in order to be considered open-end credit would cause such promotions to be discontinued for the obvious reason that it would compel creditors to commit to a 0% APR indefinitely. In addition, it would not make sense to replenish the "sub-account," for example, if the sub-account balance relates to transactions made during a specified period.

[3] Because balances related to convenience check or promotional purchase offers are often priced differently than other balances (for example, purchase, balance transfers, or cash advances), issuers typically treat such balances as separate balance types.

Using underwriting as a criterion to determine whether the credit is open or closed-end also will not solve the issue because creditors may separately underwrite and approve those borrowers eligible for the promotion. We are also concerned that under the proposal, requests for additional credit under an existing line of credit could be covered, as they also are subject to underwriting. Unless the Board can define sub-accounts in a fashion to exclude balances subject to special terms, it should delete this proposed provision.

Section 226.3 Exempt transactions.

(g) Employer-sponsored retirement plans.

The Board proposes to exempt from the regulation loans taken by employees against their employer-sponsored retirement plans and tax-sheltered annuities, provided that the credit is comprised of fully-vested funds from the participant's account and is made in compliance with the Internal Revenue Code. We agree with the amendment. As the Board notes, the payments on these loans are reinvested into the participant's own account, and no third party is receiving or imposing interest. Moreover, Regulation Z disclosures on these loans are of limited if any value as a comparison tool because consumers in effect pay interest to themselves.

Section 226.4 Finance charges.

Under the regulation, premiums or other charges for credit life, accident, health, or loss-of-income insurance are finance charges if the insurance or coverage is "written in connection with" a credit transaction. However, creditors may exclude from the finance charge premiums for credit insurance if they disclose the cost of the insurance and the fact that the insurance is not required to obtain credit. Debt cancellation fees are currently subject to these provisions. The Board is proposing to apply the same rules that apply to debt cancellation coverage to debt suspension coverage. We agree. As the Board observes in the Supplementary Information:

> Debt cancellation coverage and debt suspension coverage are fundamentally similar to the extent they offer a consumer the ability to pay in advance for the right to reduce the consumer's obligations under the plan on the occurrence of specified events that could impair the consumer's ability to satisfy those obligations.

Section 226.5 General disclosure requirements.

(a) Form of disclosure.

(1) General.

(ii) The Board is proposing that certain charges may be disclosed after account opening. Thus, charges that are not specifically identified by the regulation as subject to written disclosure requirements may be disclosed orally so long as they are provided before the customer agrees to pay or becomes obligated to pay for the charge. We agree with this practical approach. It helps to streamline important written disclosures so that customers are more likely to read them and provides other information when it may be more relevant to the customer, that is, when the customer is inquiring about or contemplating using a particular service. We also believe that this will facilitate compliance by providing much needed clarity.

(2) Terminology

(iii) Under the proposal, for disclosures that are required to be presented in a tabular format, the term grace period must be used. We strongly recommend that the Board reconsider and retest to identify a more understandable and accurate term to describe this concept. The Board found in its testing that some participants "incorrectly thought that the 'grace period' referred to the amount of time after the due date during which they could make a payment without being charged a late fee."[4] This is hardly surprising, as it is commonly used that way, including for example, in the context of mortgage payments. We suggest that the Board identify a term that does not compete with an existing term that commonly has a very different and potentially misleading meaning. The Board should continue to consider the term "interest-free period," which participants in the Denver, Colorado interviews favored "because it was more descriptive."[5] While "interest-free period" may not yet be familiar to consumers, it is more accurate and more likely to convey the true nature of the time period and the nature of the transaction so that over time, consumers will better understand the true concept being conveyed and make better informed decisions.

(b) Time of disclosures.

(1) Account opening.

(iii) Telephone purchases. The proposal adds a provision that account opening disclosures may be provided as soon as reasonably

[4] *Design and Testing of Effective Truth in Lending Disclosures,* (Macro) pp.11, 23
[5] *Ibid.* 31.

practicable after the first transaction if: 1) the first transaction occurs when a consumer contacts the merchant by phone to purchase goods and at the same time the consumer accepts the offer to finance the purchase by opening an open-end plan, 2) the merchant permits the consumer to return goods and reject the plan and return the goods free of costs after receiving the disclosures, and 3) the consumer's right to reject the plan and return the goods is disclosed to the consumer as part of the offer to finance the purchase.

We suggest that the final regulation clarify that the provision applies even if the consumer is immediately transferred to the creditor when the merchant is not the creditor. For the same reasons that it is appropriate to allow delaying disclosures for situations when the merchant and creditor are the same, it is appropriate to provide the same flexibility in situations where the merchant is offering the same option, at the time of the purchase, just through a third-party creditor. There is no disadvantage to the consumer, and not permitting the same option will present a competitive disadvantage to merchants and creditors working jointly to offer credit.

(2) Periodic statements.

Under Section 163(a) of the Truth in Lending Act, creditors who provide grace periods (interest-free periods) on open-end credit plans must send out statements at least 14 days before the grace period ends. The Board notes that it is aware of "anecdotal evidence" of consumers receiving statements relatively close to the payment due time, with little time remaining before the payment must be mailed to meet the due date. The Board requests comment on whether it should recommend to Congress that the 14-day period be increased to a longer time period to ensure that consumers have additional time to receive and "mail" their payments so that they arrive on time.

It would seem strange to suggest extending the time borrowers have to receive and send documents since, in the almost thirty years since Congress selected the 14-day period, borrowers have easier and more convenient access to their account activity and statements and have, and increasingly use, faster and more convenient means to make payments. An extension of the time period would seem to run against the tide.

Nor is it necessary to extend this period. Fourteen days, even if mail is delayed, is sufficient time to review and arrange payment, even for those relying solely on the U.S. Postal Service for statement receipt and check delivery. Those relying on the mail are familiar with standard times for mail delivery to plan accordingly, as they do with any bill. Increasingly, however, borrowers are taking advantage of electronic options to review account activity, anticipate the amount due, and schedule payment in advance or pay instantaneously. For the increasing number of borrowers in this category, clearly additional time is not necessary.

One result of extending the period would be to lengthen the interest-free period: there is a tendency for consumers to take advantage of the interest free-period and pay or schedule payment close to the due date, regardless of when the statement was delivered. The cost of an extension of the interest-free loan would have to be absorbed elsewhere, potentially by re-pricing.

Extending the period would also decrease the already short time lenders have to perform quality assurance testing on billing statements before mailing. This could cause an increase in the number of incorrect statements customers receive. One option might be to move to longer billing cycles for all customers, but that would make payment due dates less predictable. In addition, some borrowers might pay more interest as interest continues to accrue in the longer cycle.

We are not aware of any evidence that there is a problem on a systemic basis. The Board itself reports it has only “anecdotal” evidence. Rather than changing the rule, which would have far-reaching implications for issuers and customers, specific anecdotal instances where customers did not believe that had sufficient time to pay should be dealt with on an individual basis.

226.5a – Credit and Charge Card Applications and Solicitations.

The Truth in Lending Act requires credit card issuers to provide certain cost disclosures on or with an application or solicitation to open a credit or charge card account. Disclosures for applications and solicitations provided by direct mail or electronically must be presented in a table. The Board is proposing a number of substantive and technical revisions, including revisions to the format and content of the disclosures, in order to make them more meaningful and easier to understand.

Generally, we support the revisions. As discussed in ABA’s 29 March 2005 letter commenting on the Board’s Advanced Notice of Public Rulemaking, it is critical that the disclosures be “concise, readable, and understandable.” In addition, summary disclosures such as those in solicitations, and account-opening disclosures should “avoid information overload and limit disclosures to those most consumers will find most important.” ACB’s 29 March 2005 comment letter read in part, “Customers do not need additional information; they need better information.” We believe that generally the Board has achieved this goal.

(b) Required disclosures.

(1) APR.

(i) Variable rate information. Under the proposal, if the rate is a variable rate, the fact that the rate may vary and how the rate is determined must be disclosed. In addition, the proposal states, "In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table." We generally agree with this disclosure, so long as the margin may be disclosed outside the table. Consumers are frequently interested in the index and the margin, so card issuers should have the flexibility to provide them. In addition, we suggest that the Board permit creditors to include the floor and ceiling of the variable rate in the table so that consumers are aware of the potential variations in the rate.

(iv) Penalty rates. Under the proposal, if a rate may increase as a penalty for one of more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose certain other information in the table. This provision would appear to include promotional rates that may go to the "standard" rate in the event of a specified event such as a late payment.

Promotional rates may be offered when an account is opened or as a special offer to existing customers. They often have conditions, requiring, for example, that cardholders make a minimum number of transactions within a certain period or a minimum number of purchases with certain merchants or types of merchants. They also may require that customers pay on time or stay within their limit, for example. The promotional rate is unchangeable so long as the borrower meets the conditions. Often the rate will expire after a certain period.

It would be misleading and confusing to consumers to classify as a penalty rate the "go to" rate of a promotional rate that is the same as the standard rate. Classifying it as a penalty rate may also encourage card issuers to go to the true penalty rate. Therefore, we suggest that if the go to rate for a promotional rate is a standard rate for similar transactions, then the go to rate not be considered a penalty rate.

(3) Minimum finance charge.

We again recommend that the Board delete this disclosure from the table unless the minimum finance charge is over a certain nominal amount ($2). In most cases, the minimum finance charge is typically so small (under $2) as to be irrelevant to consumers. It should only be required in the table if the minimum finance charge is a significant amount. The purpose of the summary table is to highlight the most relevant terms that consumers use in evaluating credit card applications. It seems highly unlikely that their choice will be influenced by such a minimal charge. The retention of an irrelevant fee clutters the summary table, detracting from other more important terms.

It is unclear how eliminating the requirement would "undercut the uniformity of the table," as the Board suggests, because under proposed Comment 4 to 226.5a(a)(2), "Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table." Presumably, then, the Board does not believe that providing only applicable disclosures undercuts the uniformity of the table. In addition, customers will be alerted if a minimum finance fee greater than a nominal fee were to be imposed after account opening; under the proposal, the creditor would have to highlight the change in a change in terms pursuant to Section 226.9. Further, it is not clear why currency transaction fees are *not permitted* to be in the table, yet are probably more relevant than nominal minimum finance charges which *are required* to be disclosed in the table.

(4) Transaction charges.

We recommend that the Board clarify whether currency transaction fees must be disclosed. The proposed regulation requires card issuers to disclose "any transaction charge imposed by the card issuer" except "[a] card issuer shall not disclose in the table . . . a fee imposed by the issuer for transactions in a foreign currency or that take place in a foreign country." The proposal specifically requires that the balance computation method be disclosed, specifically indicating it should be disclosed directly below the table. However, the proposal does not specifically provide that currency transaction fees are required to be disclosed outside the table. Thus, it is not clear whether card issuers must disclose currency transaction fees. If the Board feels that currency transaction fees should be disclosed, the regulation should make the requirement clear and indicate whether or not it should be below the table as required for the balance computation method.

(6) Balance computation method.

The Board is proposing to require that the balance computation method be disclosed outside the table, noting that, based on consumer testing, it is not useful to consumers and that it is only relevant when a consumer changes from being a nonrevolver to a revolver. We agree. However, we recommend that the Board continue testing to determine whether it is feasible to explain briefly, where applicable, that customers retroactively lose all or part of the interest free period if they do not pay in full, making clear the impact on nonrevolvers shifting to revolving status. In any case, it should be explained in the materials on the Board's website. The Board should also test whether the concept might be more effective if it were explained in the grace period disclosure. In that case, the balance computation method disclosure could be eliminated.

(15) Payment allocation.

The Board is proposing to add to the table information about payment allocation. If a card issuer offers a discounted initial rate on a balance transfer or cash advance that is lower than the rate on purchases, the issuer offers a grace period on purchases, and the issuer may allocate a payment to the lower rate balance first, then the issuer has to disclose certain information to explain the practice.

We agree that consumers should understand how payments are allocated. However, the proposed disclosure only applies to one narrow circumstance and does not cover more common practices. We believe a briefer, general statement about payment allocation, e.g., that the card issuer will first apply payments to the balance with the lowest rate along with the consequences will be more useful to consumers. Moreover, the Board should allow the payment allocation to be a separate heading to streamline the disclosure so that it is not necessary for the payment allocation to be repeated in each row with an APR heading. The Board should continue testing consumers to determine the most understandable disclosure. The disclosure should be brief to avoid clutter so that consumers are more likely to review the information.

(17) Reference to web site for additional information.

We agree with the Board's inclusion of a Board website for consumers to learn more about credit cards. As suggested in ABA's 29 March 2005 letter commenting on the Advance Notice of Proposed Rulemaking, such a document would complement specific product disclosures to improve consumers' understanding of credit card practices and pricing generally to assist them in shopping and card use. Shifting explanations about common credit features, fees, and practices to a readily available source helps to ensure that the product-specific disclosures remain concise, readable, and easily understood. We have attached as an abbreviated sample an approach we believe is suitable for the Board's website, ABA's *Guide to Credit Cards*, which is intended to educate consumers in an easy-to-read and easy-to-understand fashion about basic credit card terms and conditions. It also offers tips to assist customers in managing their credit card accounts. The Board's website should complement the revised disclosures so that consumer may connect the website information to the application, account-opening, and periodic disclosures.

226.6 Account-opening disclosures.

We support the Board's proposed requirement that certain key terms of credit card plans be provided in tabular format in account opening disclosures. We believe that the tabular format will highlight important terms so that customers will better understand account terms when they open the account. The table format will also be useful as a reference once the customer starts using the account.

However, we recommend that the Board redesign this section of the regulation so that it is easier to understand. While the requirements become clearer when the model disclosures are reviewed, the regulation should not follow the model. The regulation should be understandable independent of the model.

Section 6 simply begins with the statement, "Creditors shall disclose the items in this section, to the extent applicable." However, the "items" are interspersed in unrelated subsections with confusing headings. Following the general instruction to disclose "items," is

(b)Rules affecting open-end (not home-secured plans.
- (1) *Charges* imposed as part. . . of plans, e.g., finance charges
- (2) *Rules* relating to rates for open-end (not home-secured) plans (which includes, for example, APRs)
- (3) *Voluntary credit insurance* . .
- (4) *Tabular format requirements*
  - (i) tabular format requirement
  - (ii) – (x) APR and other items to be disclosed

It is not clear why "charges" are "rules" or why an APR disclosure is now a "rule" and not simply a required disclosure and why it appears in two places. Nor is it clear why items that are not to be included in the table are under "tabular format." It will be very challenging for compliance officers to locate easily which disclosures must be provided in account-opening disclosures and in what format.

We suggest that the items that have to be disclosed be "grouped together" and labeled as "required disclosures." Related terms such as APR and periodic rates should be "closely proximate." A section on format requirements could indicate which disclosures must be in the table and what terms must be in bold.

The Board proposes to apply the tabular summary requirement to all open-end loan products, except home equity lines of credit (HELOCs). We recommend that the Board only apply disclosures to credit card plans and exclude other open-end credit plans such as overdraft lines of credit. Clearly, the proposed disclosures are designed for credit cards and indeed based on consumer testing of credit cards. Credit cards are very distinct from other types of open-end credit, as evidenced by the fact that many of the fees and practices highlighted in the proposed account opening disclosures simply are not part of non-credit card lines of credit. For example, overdraft lines of credit do not usually have multiple types of balances with varying APRs and terms or a grace period. The website for information about credit cards also would not be relevant. In addition, it may be that for these products, consumers are interested in other information that is not included in the proposed table.

Similarly, the proposed disclosure and formatting requirements for periodic statements do not fit other non-credit card open-end products. Many depository institutions' overdraft lines of credit and other non-credit card lines of credit systems reside on the HELOC system. They would either have to develop a separate system or incorporate, as permissible, the changes to HELOCs as well. The costs and complications of providing the disclosures could discourage small and mid-size banks from offering these products. One bank with about $40 billion in assets, estimates it would cost $730,000 just to make the periodic statement changes for covered credit that is not credit card. Moreover, there has been no groundswell of complaints that customers are confused about the terms and conditions of non-credit card open-end products, such as overdraft lines of credit. For these reasons, we suggest that the Board not apply the proposed account opening and periodic statement provisions to non-credit card lines of credit. In any case, if non-credit card lines of credit are subject to the new provisions, the Board should provide separate model disclosures to facilitate compliance.

(4) Tabular format requirements for open-end (not home-secured.)

(ii) APR. The proposal properly requires that account opening disclosures include the APR. We suggest that the regulation permit the APR to be disclosed in a separate notice or receipt. The proposal appropriately permits creditors to substitute the application and solicitation disclosures with the account-opening disclosures. If that flexibility is to have any meaning in the context of risk-based pricing or variable rate pricing, creditors should have the option to provide the APR on a separate notice or receipt. This is especially relevant for in-person and online account openings where the account opening disclosures are used as application disclosures. A separate notice or receipt will also highlight to customers the specific rate more than duplicate disclosures (except for the APR) so that customers are more aware of the final rate.

226.7 Periodic Statement.

(b) Rules affecting open-end (not home secured plan).

We commend the Board for its efforts to make the periodic statements more useful to customers so that they understand important information related to costs and payments. However, we recommend that the Board allow more flexibility in how items are disclosed in the periodic statement. For example, the Board requires that charges imposed be disclosed “in proximity” to transactions. We suggest that the final regulation not dictate the order of disclosures. The Board should recognize that periodic statements contain other information important to many customers beyond that identified in the proposed regulation. Accordingly, it should retain the traditional flexibility for periodic statements. Specifically, we recommend that the Board eliminate the requirement that certain disclosures be sequential.

It is not necessary to infuse uniformity into periodic statements as it may be to do so for solicitations and account opening disclosures. A uniform format makes sense for shopping and reference purposes, because it provides a predictability that makes comparison and reference easier. However, unlike solicitations and account opening disclosures, periodic statements are personalized and dynamic so 1) will never look uniform and 2) do not need to look uniform.

Periodic statements provide information beyond the fee and terms, including information unique to each customer. This includes information such as transactions, but also the customers’ actual costs, based on their behavior. Thus, because the majority of the information is unique, it cannot be compared even with other periodic statements, let alone application and account opening disclosures. If the periodic statement is being used to compare with other existing accounts or a credit card offer, it is better for the customer to refer to the account opening and application and solicitation tables, where critical information is highlighted and uniformly displayed. Customers consulting the periodic statements for purposes of comparing APR, fees, and other important information, will still be able to locate the information easily if under the regulation it must be clear and conspicuous.

The benefits and purpose of strictly uniform periodic statements are marginal at best. Yet rigid requirements will compromise their usefulness. Flexibility in the placement of disclosures in the periodic statement is necessary to recognize the diversity of customers, their preferences, priorities, and financial habits. The sequential requirements of the proposal subjectively assume that all customers will have the same priorities and place the same value in each item. This not the case, based on card issuers’ experiences with their customers. Some customers may indeed wish to have certain cost or payment information as proposed --

others will have other preferences. Some may be more interested in reviewing transactions, so as to review their spending or protect themselves against identity theft. Others may be more interested in learning about promotions and other perks (reward summaries, balance transfer offers, promotional offers). In the future, card issuers may be able to allow individual customers to choose their own format. Card issuers should have the flexibility to respond to the marketplace and technological innovation and tailor periodic statements based on their customer base's preferences. Indeed, periodic statements are a competitive differentiator that inspires innovation.

There have been no complaints that consumers do not understand their periodic statements or overlook important information. The concern here is clarity, which can be achieved without dictating the order of the disclosures. So long as the disclosures are clear and conspicuous, there is little need to mandate their order as the proposal does.

We also believe that non-credit card open-end credit products such as overdraft lines of credit should not be subject to the periodic statement requirements for the reasons explained in our comments to Section 226.6.

(6) Charges imposed.

The Board proposes to eliminate disclosure of "finance charges" on the basis that customers do not have a good understanding of its meaning, and in its place substitute "interest and fees." We strongly agree. We believe that this approach aligns more closely with customers' understanding.

(7) Effective annual percentage rate.

We believe strongly that disclosures of the effective or "historical" APR should be eliminated. As previously discussed in ABA's earlier letter commenting on the Board's Advanced Notice of Proposed Rulemaking, the historical APR does not work for short term loans because it inflates APRs in a manner that puzzles and misleads customers. Moreover, it is not necessary given that the proposal requires that fees be totaled by period and year to date.

The Board conducted research of consumers understanding of the APR. In the Supplementary Information, it reports:

> In most of the rounds, a minority of participants correctly explained that the effective APR for cash advances in the last cycle was higher than the corresponding APR for cash advances because a cash advance fee had been imposed. A smaller minority correctly explained that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee

had been imposed on purchases. A majority offered incorrect explanations or did not offer any explanation. Results changed at the final testing site, however, when a majority of participants evidenced an understanding that the effective APR for cash advances would be elevated for the statement period when a cash advance fee was imposed during that period, that the effective APR would not be as elevated for periods where a cash advance balance remained outstanding but no fee had been imposed, and that the effective APR for purchases was the same as the corresponding APR for purchases because no transaction fee had been imposed on purchases.

While the research attempted to study whether the term might be understandable as an academic matter, it did not determine whether 1) customers are likely to review it, especially if fee totals and other competing information are disclosed in the periodic statement as proposed, or 2) they would make different choices. It is far more realistic that customers will still look at the $3 cash advance fee, and perhaps the total fees for the period and year to date -- not the effective APR -- to determine the value of the charge and whether they should in the future find an alternative. Indeed, in the Board's report on its consumer testing, participants who said they looked at finance charges were asked whether they focused more on their interest rate or the dollar amount being charged. "Most said that the dollar amount was more important, since that was what they would have to pay." [6] Also, it is unnecessary to provide a historical APR, because the proposal requires disclosure of fee totals, by period and year to date. Requiring both adds unnecessary cost for no clear benefit.

Given the lack of value of the effective APR to the customer, the costs of providing it, especially if required separately for each type of balance, the requirements to provide fee totals, and the goal of keeping the periodic statement as uncluttered and manageable as possible, we strongly recommend its elimination.

(11) Due date; late payment costs.

Under the proposal, creditors must disclose any cut-off time for receiving payments closely proximate to each reference of the due date, if the cut-off time is before 5 P.M. If cut-off times prior to 5 P.M. are different depending on the method of payment, the creditor must state the earliest time without specifying the method to which it applies.

While we agree with the Board's goal of avoiding information overload, we believe that the disclosures could be misleading to customers. Instead, we suggest that the regulation permit creditors to

[6] *Ibid.* p.7.

provide with the due date a notice that cut-off times are explained on the back of the statement. The statement back would then disclose a specific cut-off time for payments made by mail and contain information about how to find out the cut-off time for payments made by other channels. The cut-off time disclosures on the statement back would have to be clear and conspicuous so that customers could locate the information easily.

Issuers commonly offer four methods of payment: by mail, by telephone, online, and in person at a branch. Different payment channels typically have different cut-off times. In addition, within any one channel, there may be different cut-off times for different customers. For example, the cut-off time for in-person payments may vary from branch to branch, depending on the size of the branch, its hours, and the time zone in which it is located.

Providing the earliest cut-off time, as proposed, will mislead customers if, in fact, as is common, they have alternatives to make an on-time payment by paying through a different channel which has a later cut-off time. Equally, if the earliest cut-off time is after 5 P.M., (so that no disclosures need to be provided) customers may assume the applicable cut-off time is much later and pay late based on the erroneous assumption. Finally, there may be confusion about time zones.

To give customers useful and complete information in a manner that does not clutter the statement, we suggest that the regulation permit a simple direction to refer to the statement back for cut-off times. The cut-off disclosures on the statement back would have to be clear and conspicuous so that customers could locate them easily.

(12) Minimum payment.

Under the proposal, card issuers have four options for providing information about the effect of only paying the minimum payments. The specific disclosure depends on whether:

- the minimum payment does not exceed 4% of the balance
- the minimum payment exceeds 4% of the balance.

In the alternative, creditors may elect to provide instead a more abbreviated disclosure that provides either:

- a toll-free number for providing the actual repayment disclosures or
- the actual repayment period.

The requirement does not apply to a "billing cycle where a consumer has paid the entire balance in full for that billing cycle and the previous billing cycle, or had a zero outstanding balance or credit balance in those two billing cycles." The ending balance and minimum payment disclosures must be “closely proximate” to the minimum payment due and thus on the front of the periodic statement. However, the statute specifically provides that the briefer notice containing a toll-free number with which to obtain an actual repayment period may be provided on the back of the statement.

The Board in the Supplementary Information strongly urges card issuers to provide the actual repayment disclosure on periodic statements and solicits comment on whether the Board can take other steps to provide incentives for card issuers to use this approach. One incentive to promote that approach is to allow card issuers to provide the information on the back of the statement, the same incentive Congress selected. Given that the disclosures will only be relevant to the small percentage of people who consistently make the minimum payment and the Board’s concern about ensuring a simple, clean statement in order to highlight important information, this option is appropriate.

The Board could also encourage card issuers to provide the actual repayment period by being generous with the assumptions and generous with tolerances. Certainly fear of liability for a fairly complicated calculation, to be provided on millions of statements, printed each month, is a factor in deciding whether to choose this risky option. The Board, should, for example, allow at least a two-month tolerance. It makes little difference in the overall impact of the message to the customer, but provides comfort to card issuers about liability for inadvertent and good faith errors. In addition, in Appendix M2, part (a)(5), which lists the assumptions, the instructions should permit card issuers to use uniform months of 30 days rather than require the use of 30.41667 days. Some systems do not easily recognize fractions of days. Instead of “i.e., 30.41667 days” the Appendix should read “e.g., 30.41667 days.”

We also appreciate the Board’s recognition that the minimum payment disclosure is not appropriate or necessary for all customers by exempting from the notice requirement customers who have paid the entire balance in full, had a zero balance, or a credit for two consecutive billing cycles. We strongly recommend that the Board expand the exemption to include other situations where the minimum payment notice is clearly not useful. Specifically, the Board should only require the disclosure for customers who revolve for more than three consecutive billing cycles.

Arguably, the information is only useful to those who consistently pay the minimum or close to the minimum, because the notices are so definitively written and designed to target this group, and indeed this group was the target of the legislation. However, if the Board determines to provide it more broadly, it should focus on consistent not occasional revolvers. Again, Congress’ intent was that certain consistent revolvers be aware of the potential term of the loan. It is not clear how relevant this message is for those revolving less often than three consecutive months or whether they will relate to the notice in a meaningful way. We believe that this approach offers a balance between providing a notice to those who some believe may receive a benefit and the cost of providing the notices.

We also believe that this approach will appropriately address situations where the customers' typical behavior changes in response to a crisis. Under this approach, consistent revolvers will continue to receive the notice, whether or not there is a crisis. However, for those who do not carry a balance but begin to revolve in response to a crisis, the notice will be delayed for a short period but before an outstanding balance is likely to become unmanageable. Presumably, in a crisis, customers are making choices different from their usual ones based on their current abilities and limitations in the crisis and appreciate the flexibility. To the degree the crisis abates and they are tempted to continue revolving, the notice will be provided.

226.9 Subsequent Disclosure Requirements

(b) Convenience checks.

Under the proposal, if checks that access a credit card account are provided more than 30 days after account opening, creditors must include certain information related to rates, fees, and grace periods "on the front of the page containing the checks." We recommend that the Board clarify that the notice is only required when the customer does not specifically request the checks. Customers are permitted and do order checks separately, but they may be supplied through third-party check-printers who do not have access to the disclosure information. Presumably, customers requesting checks are familiar with the terms and conditions.

In addition, under the proposal a variable APR applicable to account access checks is one in effect within 30 days of when the disclosures are provided. We recommend that the Board either 1) expand this time period to 60 days, (the same period in effect for disclosures provided with direct-mail applications under Section 226.5a(c)), or 2) permit the APR to be disclosed as of a specified date.

Card issuers will find it difficult, if not impossible, to comply with the 30-day requirement. The reason is that the APR effective for transactions in a billing cycle sometimes is not known until the end of the cycle. As an example, many issuers define their index (for example, the Prime Rate) as the value of the index of the last day (or a day very close to the last day) of a billing cycle.[7] Therefore, the APR on the issuer's system for any

[7] By using a determination date as late in the cycle as possible, issuers are able to implement changes in the index (up or down) more quickly and thus more closely align their finance charge revenue to their cost of capital – a financial risk management practice important for safety and soundness reasons.

particular cycle may not be precisely accurate until the cycle date. Because issuers must print checks (and thus obtain APRs from their system of record) several days before the checks are actually mailed, the APR obtained from the system sometimes will not be one in effect within 30 days of the mail date for customers who cycle between the print date and the mail date.

(c)(2) Change in terms: Rules affecting open-end (not home-secured) plans.

(g) Increases in rates due to delinquency or default or as a penalty.

Under the proposal, for open-end plans not secured by a home, terms required to be disclosed in account opening disclosures and changes related to security interest disclosures must be provided 45 days prior to the effective date of the change (change in terms notices). In addition, creditors must provide a 45-day advance notice of rate increases due to a customer's delinquency or default or a rate increase that is a penalty for one or more events specified in the account agreement (automatic rate increase). We note that in effect, the 45-day time period will likely be much longer if, for example, creditors provide the notice with the periodic statement and do not change rates mid-cycle.

We recognize the value of providing customers choice and advance notice about changes to terms and rate increases, but note that the proposed 45-day advance notice requirement carries significant consequences related to creditors' ability to respond quickly to increased risk and mitigate its impact. In addition, the practical difference it makes to consumers is not clear in the vast majority of cases.

The proposed advance notice for both the automatic rate increase and the change in terms is based on the notion that customers who object to the increase or change will use the time to find an alternative. In concept, this appears to have merit, but may have little practical impact on customers.

The advance notice approach assumes that customers whose APRs are increasing, for example 1) will have lower rates available to them, and 2) that customers will act to move to a lower rate.

Presumably, card issuers endeavor to raise the rates only of riskier borrowers, because those customers who merit lower rates will have attractive options in a very competitive market and simply move to a competitor if not offered comparably attractive terms to remain with their creditor -- creditors have a strong interest in retaining good, creditworthy customers. If this is true, then those customers whose rates are increasing because they are actually now riskier borrowers, in fact will have limited choices with regard to a rate that is sufficiently lower to make more than a nominal difference. Thus, the 45-day period will simply only change the timing of the rate change, not the rates available to a customer.

If one assumes that card issuers are not raising rates on the basis of risk, but are raising them arbitrarily, relying on the inertia of consumers to act to find an alternative, then again, the 45-day period will not change consumer behavior. There is no reason to believe that if there are consumers who are now inert, that they will be less inert based on the fact that they now have 45 days to find an alternative. In fact, it may well be that consumers are much more likely to act when the actual event arrives and more likely to procrastinate knowing they have more time.

There is less reason to provide an advance notice for automatic rate increases. Under the proposal, customers will receive important information about the events that trigger a rate increase and the highest potential rate on multiple occasions, in solicitations, applications, and account opening materials. In addition, they will get reminders about potential rate increases with every periodic statement if a late payment is an event triggering an increase. The repeated reminders of the terms should sufficiently warn customers of the consequences of paying later and in fact encourage them to pay on time. In addition, requiring the notices for automatic rate increases may provide incentives for card issuers simply to utilize the more flexible "change in terms" notice, which might be less consumer friendly in this context.

The greatest impact of the advance notice of changes relates to changes to APR based on risk. Risk-based pricing with regard to credit cards has acknowledged benefits as explained in Jon Orszag and Susan Manning's paper, "An Economic Assessment of Regulating Credit Card Fees and Interest Rate"*:* [8]

> Prior to 1990, when a credit card issuer decided to offer a credit card to a borrower, it did so with little variation in the credit terms, despite significant variation in borrowers' creditworthiness. Credit cards were effectively available only to high-income individuals with good credit histories and at fixed interest rate of around 20 percent.
>
> Since then, however, innovation and deregulation have allowed for more efficient risk-based pricing and management of individual cardholder risk. Changes in technology, such as credit scoring, automatic access to consumer reports, and response modeling and other risk analysis techniques, have enabled credit card issuers to better track and assess changes in an individual's risk profile. As

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[8] Jonathan M. Orszag, Susan H. Manning, "An Economic Assessment of Regulating Credit Card Fees and Interest Rates," October 2007. Commissioned by the American Bankers Association.

> issuers became better able to assess borrower risk, they could then offer a broader variety of credit products to borrowers with more diverse rates and fees.
>
> The ability to set a cardholder's interest rate and fee structure based on the cardholder's own risk profile benefits all consumers. Each cardholder now receives pricing that reflects the risk of the cardholder's individual account, which has caused prices to come down for most customers. In addition, issuers are able to offer credit cards to low income, higher risk consumers who would have been denied access to credit cards under a "one-size-fits-all" approach to rate-setting. A Federal Reserve economist concluded in a recent analysis that "[r]isk-based pricing has increased the availability of credit cards for all households, but its effect has been the greatest among riskier households. In particular, the rate of cardholding among households in the lowest quintile of the income distribution rose about half, from 29 percent to 43 percent, between 1989 and 2001 . . .whereas the rate of cardholding rose only 10 percent in the general population, from 70 percent to 76 percent."
>
> The use of risk-based pricing and management of individual borrower risk in the credit card industry is no different from risk-based pricing in other areas . . .The higher the rating, the lower the risk of default and the lower interest rate the borrower can obtain – just as a consumer with a better credit risk will be able to obtain a lower credit card interest rate because the borrower poses less of a default risk to the issuing bank.

Similarly, Mark Furletti in his discussion paper, "Credit Card Pricing Developments and Their Disclosures" explained the benefits to consumers as credit card issuers moved to risk-based pricing:[9]

> The lowest risk customers, who once paid the same price as high-risk customers, now enjoy rate discounts that can reach more than 800 basis points. At the other end of the risk spectrum, these strategies have enabled issuers to grant more people (e.g. immigrants, lower income consumers, those without any credit experience) access to credit, albeit at higher prices. Former Federal Reserve Governor Lawrence Lindsey has referred to this phenomenon as "the democratization of credit" (Black and Morgan 1998).

Under the proposed regulation, creditors will have to delay their responses to increased risk, blunting the effectiveness of risk-based pricing as a risk management tool. Responding quickly to changes in risk

[9] Mark Furletti, "Credit Card Pricing Developments and Their Disclosure," Federal Reserve Bank of Philadelphia, January 2003, pp.7,8.

is especially critical for credit card issuers, because pricing and terms are the key means of managing credit card risk. Unlike other types of consumer credit, there is no collateral, for example, on which to rely to encourage borrowers to repay or on which to rely for recovery in the event of a default.

Moreover, the inability of creditors to respond quickly to changes in risk that affect any portion of their card portfolio will have an adverse effect on their card portfolio as a whole. In sum, the entire pricing structure will be disturbed because creditors will be less nimble in responding to increased risks. This will promote cross-subsidization of borrowers with different risk profiles. It will also weaken the ability of banks to manage credit risk, a key safety and soundness practice.

Card issuers may respond to the increased risk posed by the proposed constraints in a number of currently suboptimal ways. They could: 1) reintroduce annual fees; 2) increase APRs, for riskier borrowers or across the board; 3) increase the penalty rates; or 4) reduce their exposure by reducing the availability of credit for riskier borrowers.

Instituting a 45-day advance notice may also promote unintended changes to card issuers' practices. For example, they would be encouraged to send the notice separately, rather than with periodic statements, in order to start the 45-day period as soon as possible after they have identified the riskier borrower. Consumers may be less likely to notice the disclosures if they are sent separately. In addition, creditors would be encouraged to change the rate mid-cycle, which could lengthen and complicate the periodic statement disclosures, especially those related to interest rates.

Thus, if advance notices are required, the time period should borrow the advance notice time requirement related to annual fees in Section 226.(9)(e), which provides that the notice be provided "at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which the renewal fee is initially charged. . ." We believe that this is sufficient time to allow borrowers dissatisfied with the term change or rate increase to make other arrangements, which the Board notes, is the intention of the proposal. Once borrowers receive the statement with the notice, they need only respond to one of the many solicitations card issuers regularly mail or go online or into a bank branch to find an alternative.

We also suggest that the final regulation add flexibility to permit card issuers to provide an integrated change in terms notice when terms other than those triggering the special notice are also changing. The periodic statement notice could alert the customer that terms are changing, specifically noting any type of term contained in the account opening table that is changing, e.g. "including your APR." The separate change in terms notice could highlight in a table the most important changes (that is, those required to be in the table of account opening disclosures) along with the other information required under the proposal. Directing customers to the separate notice will mean they are less likely to miss other important term changes, but still ensures that changes to the most important changes are highlighted to easily attract their attention. It will also provide them an integrated notice that is easy to file and easy to reference. In addition, it will also shorten the notice so other information in the periodic statement is not obscured.

We also propose that the regulation make clear that no advance notice requirement should apply to the termination or expiration of promotional rates when the promotional rate automatically shifts to the “standard” rate for that type of transaction. The advance notice should also not apply if the promotional rate shifts to a standard rate for that type of transaction if an event triggers a change. Promotional rates may be offered when an account is opened or as a special to existing customers. They often have conditions, requiring, for example, that cardholders make a minimum number of transactions within a certain period or a minimum number of purchases with certain merchants or types of merchants. They also may require that customers pay on time or stay within their limit, for example. The promotional rate is unchangeable so long as the borrower meets the conditions. Often the rate will expire after a certain period.

If the “go to” rate for not meeting a condition for a promotional rate is the standard rate applied to similar transactions, it is not a true “penalty” rate. Also, advance notice will not be practical or possible in some cases. What if the promotional rate is set to expire in less than 45 days? In that case, the rate will have automatically reverted to the standard rate before the end of the 45-day period. It is not clear what the creditor would explain to the customer. Moreover, the notice requirement will encourage card issuers to implement a higher penalty rate rather than the standard rate if the borrower fails to meet the conditions of the promotion.

We therefore suggest that the advance notice requirement not apply to promotional rates so long as the promotional rate cannot be changed during the promotion period if the borrower meets the conditions, and the promotional rate goes to the standard rate for that type of transaction.

Section 226.12(b) Liability of cardholder for unauthorized use.

The Board is proposing to add a new comment to clarify that if a cardholder furnishes a credit card to another person and that person exceeds the authority given, the cardholder is liable for that credit transaction unless the cardholder has notified (in writing, orally, or otherwise) the creditor that use of the credit card by that person is no longer authorized. We strongly support this proposed addition. Liability generally should rest with the party best able to manage the risk and avoid a loss. Customers are in the best position to determine whether those to whom they have given the card and authorized to use it are trustworthy and to contact them and recover from them if the person exceeds the authority given. The card issuer simply is not in a position to control unauthorized use by someone who has been given the card and authorized to use it, but exceeds that authority.

Section 226.13 Billing error resolution.

(a) Definition of billing error.

Under the proposal, the Board is adding a provision that provides that the term “billing error” includes:

> Disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer’s open-end credit plan when the goods or services are not accepted by the consumer or not delivered to the consumers as agreed. Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service.

We strongly oppose this addition. When a consumer uses a credit card to fund another account online, the consumer is in effect purchasing Internet currency. Indeed, the account may contain funds from a variety of sources. This situation is akin to a consumer using a convenience check to make a deposit into a checking account, not to pay a particular merchant. The funds from a particular credit card transaction into this Internet account may be used at any time, in conjunction with funds from other sources, and may reside in the account indefinitely. It is difficult conceptually to link then a particular purchase or transaction made with funds from this Internet currency account of commingled funds with one particular “deposit.” It is like trying to determine which egg came from which chicken in a plate of scrambled eggs. Indeed, under the proposal, consumers could make multiple claims for the same transaction with different card issuers.

Moreover, it is unfair to put the burden on card issuers, who have no relationship with the seller nor a mechanism to contact them. They have no ability to manage the risk because they lack the means to vet the merchant or resolve disputes. Indeed, if the customer were to make multiple claims, they could receive multiple credits because the card issuers lack a mechanism to resolve the dispute.

Practically, it is not clear even what the date of transaction would be. Presumably the billing dispute period would begin on the date of the credit card transaction as any other date would mean that the right to dispute period would be indefinite, clearly not the intention of the statute.

The provision may be workable if the card is used specifically for a particular purchase that can be identified, that is where funds from the credit card are used instantly, the amount of the purchase and "funding" are the same, and they can be traced and tracked. Otherwise, the proposed provision is unworkable and unfair. It could, in very real terms, cause the credit card issuer to guarantee the performance of a competing payments mechanism. This is particularly unfair (as well as risky), when trustworthiness of payment is a significant competitive difference between the two competing payments platforms, and the credit card company goes to extra expense to reinforce the trustworthiness of its payments system. The proposal would allow competitors to gain advantage by free-riding on the efforts of card issuers to provide reliable and trustworthy services.

Commentary to model forms.

The Commentary to the model forms provides, "Although creditors are not required to use a certain paper size" in disclosing disclosures required for solicitations, applications and account opening disclosures, they "are designed to be printed on an 8 x 14 sheet of paper." We suggest that the Board delete the explanation that they "are designed to be printed on an 8 x 14 sheet of paper." Bank examiners will raise questions, interpreting the explanation as a requirement, notwithstanding the statement that it is not required.

Effective date.

We strongly recommend that given the volume and complexity of the changes, the Board allow lenders 24 months to implement the proposed changes. The amendments to the regulation will entail major costs and changes to practices and to complex and dynamic systems and documents. Sufficient time is necessary to analyze and understand the final rules, make decisions not just on how to implement, but on what changes in practices are appropriate, and then budget for the changes. Moreover, the amendments will require extensive systems changes and simply cutting into the technology queue is disruptive and costly, exacerbated by the typical end-of-year black-outs. Obviously, less time may be necessary if there are fewer or less complicated changes. For example, if requirements for periodic statements are less stringent, it may be easier and less costly to implement the changes. Our members considered whether it would be feasible to implement the proposed changes in stages, but concluded that doing so would not lessen the burden as the proposed changes are too inter-connected.

Conclusion.

We are pleased to submit our comments to the Board's extensive and important changes related primarily to credit cards. We commend the Board for succeeding in updating, refining, and expanding credit card disclosures so that consumers will be able to make informed financial decisions. Nevertheless, the changes clearly will require significant restructuring and repricing of credit card plans and increase lenders' costs. Our recommendations focus on providing greater clarity and flexibility in the regulation and reduce some unnecessary costs to customers and creditors. We are pleased to provide additional information.

Sincerely,

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