April 5, 2005

By Electronic Delivery *Regs.comments@federalreserve.gov*

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1217, Regulation Z – Advance Notice of Proposed Rulemaking

Dear Ms. Johnson:

First Horizon Bank National Association (and its operating subsidiary First Horizon Home Loan Corporation) (collectively, "First Horizon") appreciates the opportunity to comment to the Federal Reserve Board ("Board") on its Advance Notice of Proposed Rulemaking [Regulation Z; Docket No.R-1217]. The Notice seeks comment on a variety of issues relating to open-end credit rules in three broad categories including the format of open-end credit disclosures, the content of the disclosures, and the substantive protections provided under the Regulation. The stated goal of the Board is to improve the effectiveness and usefulness of open-end disclosures in keeping with the intended purpose of Reg. Z to enable consumers to make informed decisions about the use of credit, and to protect consumers against inaccurate and unfair credit billing and credit card practices.

RECOMMENDATIONS

First Horizon supports a comprehensive review of the open-end credit provisions of Reg. Z in light of the developments in marketing and communications technologies, as well as the increase in the number and variety of open-end consumer credit products. However, TILA and Reg. Z should not be viewed as the sole means of addressing issues related to open-end credit plans. In addition to revision of Reg. Z, First Horizon supports an expanded role by the Board in the financial education of consumers and the issuance of "best practices" guidance for open-end creditors.

Scope of Review

The Board has suggested the scope of this review will be limited to open-end (revolving) credit accounts that are not home-secured, such as general purpose credit cards and merchant specific credit cards. The Board solicits comment on the feasibility and advisability of reviewing Reg. Z in stages and asks if the issues raised by the open-end rules are so intertwined with other TILA rules that another approach should be considered.

First Horizon is both a credit card issuer and a home equity line of credit lender. Because of the overlap in a number of the Reg. Z open-end revolving credit disclosures and disclosures applicable to home equity line of credit loans (Reg. Z sections 226.6, 226.7, 226.8, 226.10, 226.11 and 226.13, as well as 226.9 (in part) and 226.12), First Horizon believes changes made to these sections of Subpart B of Reg. Z will be difficult to implement only with respect to non-home secured open-end credit. For creditors that also offer home-secured open-end credit, changes to any of the provisions that affect only non-home secured open-end credit could force the adoption of two separate sets of procedures, periodic statement forms, and periodic statement computer programs.

REG. Z SPECIFIC CONCERNS

First Horizon supports the simplification of required disclosures under open-end credit plans to those key terms that are important to consumers and enable them to comparison shop. Consistent with the recent remarks of Julie L. Williams, Acting Comptroller of the Currency, First Horizon believes additional information and detail will not assist consumers who are already overburdened by "reams of disclosures."

Periodic Statement

Revisions to the periodic statement requirements will prove costly and difficult for the industry to implement. However, First Horizon requests one change to the periodic statement.

The expression of the finance charge on periodic statements as the "historical APR" is misleading to consumers because it is based not only on the periodic rate but also on certain other finance charges. The calculation of this APR is determined by the type of finance charge imposed. Some finance charges are included, such as fixed, minimum or transaction charges (Reg. Z 226.14c; Official Staff Commentary226.14c-5), while others, such as charges related to opening, renewing or continuing the account are not (See Reg. Z 226.4c). As a result of the inclusion of certain fees, the historical APR can be skewed and fail to provide a useful, meaningful disclosure to the consumer who should be able to use the APR as the basis not only for understanding the periodic statement but also for comparison of the cost of credit with other open-end credit plans.

If, for example, the creditor imposes a $1 minimum finance charge on all balances below $50, and the consumer's balance for a particular cycle was $40, the APR required to be disclosed would be 30% (1/40 x 12). The inclusion of the $1 minimum fee results in a significant distortion of the APR, confusing consumers and imposing unnecessary costs and burdens on creditors whose customer service staff must then be trained to explain the distorted APR.

First Horizon believes the "historical" APR does not serve the intended purpose of meaningful disclosure for purposes of evaluation of the cost of credit, and should be eliminated. First Horizon recommends the APR only include charges that are based on the amount and duration of credit.

<u>"Other Charges" and "Finance Charges"</u>

In order to properly and consistently identify charges as either "other charges" or "finance charges," a clear standard is necessary. A precise rule for determining whether or not fees constitute "finance charges" will (1) aid creditors in determining with greater certainty which fees are finance charges, (2) provide consumers with uniform, consistent disclosure information about fees, and (3) provide the courts with a clearer understanding of which fees are or are not finance charges under TILA and Reg. Z. First Horizon agrees with industry commenters who have suggested the classification of a fee as a finance charge should include only non-voluntary required fees imposed by the creditor to obtain credit. As to the Board's question 13, how to provide greater clarity on characterizing fees as finance charges or "other charges" imposed as part of the credit plan, we agree with AFSA's comment letter, which proposes (1) the "finance charge is a fee that varies in proportion to the amount of debt outstanding" and (2) "non-recurring fees should not be included in the finance charge."

Finally, clarification in identifying fees that are not considered either "finance charges" or "other charges" is requested. Clarification is also requested on whether charges that are not considered "other charges" for purposes of the initial disclosure may also be excluded from the periodic statement. (See Reg. Z Official Staff Commentary 226.6(b)-2 and 226.7(h)).

<u>Default Pricing</u>

Comment is requested on whether existing Reg. Z disclosure rules are adequate to alert consumers to rate increases resulting from delinquency or other default. The terms of rate increases resulting from default are disclosed in both the early/application disclosures and the cardholder agreement.

Credit Card application/solicitation disclosures typically define the circumstances under which variable rate increases can occur due to defined default triggers. In credit card applications offering an initial discounted rate, creditors typically disclose the fact that the occurrence of a late payment or the account being over limit during the discount rate period results in the loss of the introductory rate.

Additionally, application disclosures direct applicants to the cardholder agreement which also describes how the default rate can subsequently be repaired and the contract rate reinstated (for example, 3 or 6 months of timely payments on the account will reduce the APR from the default rate to the rate originally provided in the cardholder agreement). Consumers are also alerted by disclosure of specific notice at account opening.

In addition to compliance with Reg. Z, First Horizon operates in compliance with the recently issued OCC Advisory Letter 2004-10 regarding credit card marketing and account management activities, which requires national banks, with respect to re-pricing, to fully and prominently disclose in promotional materials the circumstances under which the credit card agreement permits the bank to increase the consumer's APR or take other action to increase the consumer's cost of credit, and additionally, requires banks to disclose if the bank reserves the right to change the APR or other credit terms unilaterally.

The requirements imposed by TILA and Reg. Z, coupled with OCC's recent Advisory Letter on marketing practices and disclosure requirements, provide full and fair disclosure to consumers of rate increases due to delinquency or other default. The Federal Reserve Board is encouraged to develop a standardized format and model language for the disclosure of default triggers and re-pricing that would provide a safe harbor to creditors. Consumer education is also recommended.

Minimum Payment Disclosure

First Horizon questions the benefit of an additional disclosure on the consequences of making only minimum payments. Consumers already receive lengthy, complicated disclosures. However, if a disclosure on minimum payments were part of revamped, more focused consumer disclosures, it might prove to be of some benefit to consumers.

The imposition of the requirement of account specific amortization schedules on revolving open-end accounts would be costly to creditors and at best, confusing for consumers. Due to the inherent differences between closed-end and open-end credit, any amortization schedule would be "dated" or incorrect by the time it was calculated and delivered.

As an alternative, First Horizon believes that focused consumer financial education is the single most appropriate method of addressing consumer understanding of the consequences of making minimum payments, and more generally, the importance of managing spending commensurate with income.

Over Limit Fees, Payment Allocation Methods, and Payment Cut-Off Times

Over limit fees have been the recent subject of public attention and controversy. The fee is properly characterized as an "other charge" and is required to be disclosed on applications or solicitations, as well as in the cardholder agreement and on periodic statements for any cycle in which the fee was incurred (Reg. Z 226.5(b), 226.6 (b) and 226.7(h)). First Horizon believes further disclosure is unwarranted and would not be effective in encouraging consumers to act prudently and remain within established credit limits.

The more important issue with respect to over limit fees is not more disclosure, but prudent consumer spending. For the consumer, First Horizon believes an educational approach focused on the responsible use of credit is warranted. Additionally, creditor account management practices should focus on reasonable controls and timely repayment of amounts that exceed established credit limits. With respect to account management, interagency guidance on Account Management for Credit Card Lending (OCC Bulletin 2004-1) provides useful guidance for creditors. Lenders are expected to require minimum payments that will amortize the account balance over a reasonable period of time, consistent with the unsecured, consumer-oriented nature of the underlying debt and the borrower's documented creditworthiness.

The disclosure of Payment Cut-Of Times and Payment Allocation Methods for each account feature might prove helpful to more sophisticated accountholders. However, the addition of these disclosure terms would more likely contribute to disclosure overload rather than informative account management by consumers.

Tolerances

First Horizon urges the Board to adopt tolerances for open-end numerical disclosures of the finance charge and APR, consistent with the tolerances for closed-end credit (Reg. Z226.18 (d) (1) and (2)). First Horizon also asks the Board to expressly permit an overstatement of the finance charge on open-end credit. Tolerances are needed in real-estate secured open-end credit plans, where early disclosures of finance charge fees precede final negotiation of specific loan terms and determination of all closing costs, some of which are finance charges under Reg. Z.

"Convenience Checks"

TILA's protections regarding merchant disputes and the unauthorized use of the account should not apply to all credit extended under a credit card account, including convenience checks and any other device used to access the account. The network infrastructure that underlies credit card transactions does not apply to checks, and creditors would have no contractual recourse against merchants and would bear all of the dispute risk.

CONSUMER FINANCIAL EDUCATION

The Federal Reserve Board's Publications available at the Board's website, "Choosing a Credit Card," and the accompanying "Checklist" provide a consumer friendly, thorough explanation of credit card terms, how to make the appropriate choice of a credit card plan, and consumer remedies. The related Board publications on consumer complaints and where to file, and the survey of credit card products and available terms, serve to complete the information necessary for consumers.

These publications provide an excellent resource for consumers as well as the framework for a consumer financial education program to which could be added further information and instruction on managing an open-end account and on spending, generally, within budget/income constraints. First Horizon recommends the Board consider expanded, long-term educational initiatives rather than additional, complex disclosures to improve consumer understanding of the characteristics and appropriate uses of open-end credit. The Board publications available on its website should first be enhanced to address responsible consumer spending. First Horizon also recommends efforts beyond traditional pamphlets, such as financial education curricula for schools, interactive website programs, and mass media messages that address specific issues.

CONCLUSION

First Horizon recommends against revision of Reg. Z open-end credit rules as the sole means of addressing the 58 separate issues/questions raised by the ANPR. We support the overall goals of enhancing consumer understanding and facilitating informed credit decisions but strongly believe these goals can be more effectively attained through a broader approach that includes not only revision of Reg. Z but also consumer education and agency guidance on best practices. First Horizon, agrees with VISA's recommendation that each of the proposed revisions to Reg. Z be examined from this perspective to determine the most effective means of addressing each issue.

Sincerely,

Elizabeth A. Pritchard
Senior Vice President and Counsel
First Tennessee Bank National Association