Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

April 7, 2005

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

Subject: Docket No. R-1217

Dear Ms. Johnson:

This letter responds to the request by the Board of Governors of the Federal Reserve System (Board) for comment on issues relating to open-end credit under the Truth in Lending Act (TILA) and Regulation Z. The Office of the Comptroller of the Currency (OCC) strongly supports this undertaking. As we describe below, increasing public concern about the effectiveness of consumer disclosures, especially in the context of the credit card industry, coincides with the evolution of credit card terms and marketing practices to make the Board's review of its rules in this area particularly timely.[1]

Introduction

The OCC supervises many of the largest credit card issuers in the United States, as well as many other national banks that provide open-end credit products. As we carry out these responsibilities and apply the current rules in this area, we have identified instances where we believe those rules do not effectively address current industry practices and developments in the credit card marketplace.

Our perspectives are also based on the individual consumer concerns handled by the OCC's Customer Assistance Group (CAG). The CAG unit fields thousands of inquiries and complaints from consumers each year (many of which are related to credit cards and other open-end credit products). These efforts provide us with very concrete information about the complaints that consumers make, and their views of the sufficiency and clarity of the information they receive about credit cards and other open-end credit products and services.

[1] The Board notes that it may conduct in the future a review of other aspects of Regulation Z not included in this pending review. In this regard, we encourage the Board to review the home equity line of credit disclosure rules to see if they are adequate to inform and protect consumers in today's market, given the evolution and change in home equity credit products since the rules were adopted in 1989.

Based on this experience, we believe that there are gaps between the information that Regulation Z requires to be disclosed and the information that consumers appear to need and want. In some cases, we have been able to address these issues through supervisory guidance to national banks or – where we have found overreaching or abusive conduct that constitutes an unfair or deceptive practice – through bank-specific enforcement actions brought under Section 5 of the Federal Trade Commission Act (FTC Act). However, these measures are not a substitute for needed revisions to Regulation Z.

Our supervisory and customer assistance experiences, in addition to informing our comments in this letter, make clear that it is a highly appropriate time for the Board to be reviewing Regulation Z open-end credit disclosure requirements. Regulation Z generally has been successful in the past in providing consumers with information that they need to select and use credit products in an informed manner. The multiplicity of pricing options (including the introduction of new types of fees) that exist today and other developments in the credit card industry, however, seem to have increased the disparity between what Regulation Z requires and what consumers need to know. Revisiting Regulation Z at this time provides an opportunity to reflect these industry developments and to address the more recent and emerging sources of consumer confusion and misunderstanding.

The Board's initiative also provides an opportunity to address any anomalies that have developed in the Regulation Z provisions treating open-end credit – whether resulting from changes in industry practices or coming from other sources. As this letter describes in further detail below, we believe that there are a number of such anomalies that the Board should address.

Finally, in connection with this review, we strongly encourage the Board to reconsider the decades-old approach to disclosures that is embedded in Regulation Z (and that has been followed as a model in countless other rules). As explained more fully below, we urge the Board to consider whether the current approach – detailed, prescriptive rules specifying the content of information to be disclosed – is best suited to consumer and industry needs in today's rapidly evolving consumer credit markets.

We hope that this letter is helpful to the Board in revising Regulation Z to help ensure that consumers are provided the information they need to make informed and responsible decisions about credit, and that such information is provided in a form that consumers can understand and use, in each case without undue burden on lenders. We look forward to supporting that effort.

Consumer Research and Testing

A fundamental tool for evaluating the effectiveness of consumer disclosures is the use of testing. We applaud the Board for committing to use consumer focus groups and other research in developing any proposed revisions or additions to the disclosure requirements, and model forms or clauses. We believe this input is vital to determining how consumers interpret and are able to use various forms of disclosures.

The OCC's experience leads us to believe that simpler, standardized consumer disclosures, focused on certain key information, would benefit consumers. But we believe that it is vital that whatever disclosure requirements the Board ultimately adopts be based on what the testing suggests that consumers will notice, read, understand, *and* be able to use when shopping for, and using, credit.

We urge the Board to employ qualitative research methods in addition to the proposed focus groups, including in-depth interviews that employ usability testing. In addition, once qualitative testing has been concluded, and the Board has developed proposed revisions to open-end credit disclosures, we recommend that the Board engage in quantitative testing of the proposed disclosures. [2]

The process used to develop the Food and Drug Administration's (FDA's) "Nutrition Facts" label is illustrative of the kind of approach that we believe would aid consumers in understanding sometimes complex information about open-end credit transactions. The FDA was charged with developing a disclosure that would help the public "to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet."[3] In developing the food label to fulfill this congressional mandate, the FDA drew upon extensive internal research; input from the food industry, public health experts, consumer groups, and the general public; and other factors.[4]

The FDA conducted both qualitative and quantitative research involving thousands of consumer participants in developing the disclosure. Qualitative research methods, such as focus groups, generated numerous candidate disclosure forms and components. Quantitative research methods, such as randomized experimental design, rigorously tested the candidate forms and identified those that would best fulfill the FDA's congressional mandate.[5] The FDA's experience underlines the importance of conducting a rigorous program of research with both qualitative and quantitative components. [6]

The Board may also wish to note the results of some studies conducted by the Financial Services Authority (FSA) in the United Kingdom. Over the past several years, the FSA has revised the disclosure requirements for many products, including packaged investment products (such as life insurance with an investment element or personal pensions) and mortgages.[7] The revised

[2] The OCC, the Board, and several other federal agencies currently are engaged in this type of qualitative, usability testing to develop financial institution privacy notices that are easy for consumers to use and understand. The agencies also are planning to conduct quantitative testing to validate the results of the qualitative testing.

[3] Nutrition Labeling and Education Act of 1990, Pub. L. 101-535, § 2(b)(1)(A).

[4] Alan S. Levy, Sara B. Fein, & Raymond E. Schucker, "Performance Characteristics of Seven Nutrition Label Formats," *Journal of Public Policy and Marketing*, Vol. 15(1) (Spring 1996) at 9.

[5] The information that is required to be included in the food label is listed at 21 U.S.C. § 343(q).

[6] Had the FDA relied solely on attitudinal information of the kind typically solicited in focus groups – i.e., what forms consumers preferred – the agency would likely have selected a different, less-effective disclosure than the one they adopted. "Subjects' opinions about which formats were likely to be most or least useful did not predict actual performance when using the formats. In this respect, the findings are consistent with … much of the literature on consumer preferences and ability to use information." Levy, Fein, & Schucker, *supra* note 4, at 9.

[7] The FSA's proposed disclosure revisions in connection with packaged investment products were discussed in Consultation Paper 170 "Informing consumers: product disclosure at the point of sale" (Feb. 2003)(hereinafter CP

disclosures were adopted after conducting qualitative research, including in-depth, one-on-one interviews, into the effectiveness of the consumer disclosures.[8] In 2003, the FSA published disclosure research conducted in connection with packaged investment products. That research found, among other things, that the following features were likely to increase the effectiveness of initial consumer disclosures:

- Branding disclosure documents with a "Key Facts" logo, trademarked by the FSA, to make the disclosure material stand out from other information provided by the seller;
- Using a two-tiered approach to disclosures:
    - Focusing only on "Key Facts," or core product information[9] – material identified as central to the consumer's making a sound decision at point of sale – in a separate initial disclosure document;
    - Providing supplementary information separately in a clear, fair, and not misleading manner, with "signposting" in the Key Facts document that directs the reader to the information;
- A standardized disclosure format for Key Facts information in a form that is distinct from the supplementary information provided by the financial entity; and
- A user-friendly manner of disclosure: for example, the use of a questions and answers style of presentation; a plain language communication style; a glossary of financial terms; and a clear explanation how to use the information provided in the disclosure.[10]

The FSA research found that "less is more" in the context of initial consumer product disclosures: "To try to highlight in that document every aspect of a product, its terms, conditions, and even its risks, would be self-defeating, as many consumers would continue to discard the document unread."[11] In the mortgage context, the FSA's "Key Facts" disclosure, a stand-alone document that supplements the product disclosures otherwise provided by lenders or brokers, consists of a template with the format and layout, but only some of the text, prescribed.[12] The lender provides the supplementary information about the product in a separate document.

170), which can be found on the FSA's website at http://www.fsa.gov.uk/Pages/Library/Policy/CP/2003/170.shtml. Additional information about the FSA's consumer research in connection with packaged investment products can be found in "The Development of More Effective Product Disclosure: Report on market research commissioned by the Financial Services Authority" (Mar. 2003) at http://www.fsa.gov.uk/pubs/consumer-research/crpr18.pdf.

[8] *See* Annex 2 to CP 170.

[9] The FSA's "With-Profits Review: Issues Paper 3 – Disclosure to Consumers" (Jan. 2002) at 16 explains: "The basis for the distinction of 'core' information is that which consumers are considered most likely to use and, if not disclosed, would most likely lead to consumer detriment." Issues Paper 3 can be found at http://www.fsa.gov.uk/pubs/other/wp_issue3.pdf.

[10] FSA, CP 170 at 54.

[11] FSA, CP 170 at 50. Firms would still "disclose all information that might be considered relevant to a consumer's decision whether or not to invest, and ... deliver the information to consumers in a clear, fair and not misleading way before the consumer completes the transaction." *Id.*

[12] FSA, Consultation Paper 146 "The FSA's approach to regulating mortgage sales" (Aug. 2002). An explanation geared to consumers of the Key Facts disclosure prescribed for mortgages is found on the FSA website at http://www.fsa.gov.uk/consumer/07_MORTGAGES/KFI_diagram/index.html.

We urge the Board to conduct similar consumer testing to ensure that the open-end credit disclosures required by Regulation Z are effective in conveying the information that is most important to consumers.

Prescribed Disclosures

Historically, Regulation Z has relied predominantly on disclosure requirements that prescribe for creditors the specific items of information they must provide to consumers, when those items of information must be provided, and the precise format in which each such item of information must be provided. Any failure to follow these rules, regardless of whether consumer misunderstanding results, can expose the creditor to potential civil liability and administrative enforcement actions. Conversely, if the creditor "checks all the boxes" required by Regulation Z, full compliance has been achieved – even if the consumer has not been informed of important features of the particular credit product being offered.

Our supervisory and customer assistance experience indicates that exclusive or predominant reliance on the current specific prescribed disclosures may produce a number of outcomes that are not consistent with an effective disclosure regime, including:

- *Information Overload.* Attempting to ensure that consumers have all the information they need by specifying what that information should be, in all cases, carries an inherent risk of providing more information than consumers can use effectively.

- *Unnecessary Requirements.* Extensive prescribed disclosures necessarily involve a "one size fits all" approach that will be overinclusive and require the provision of information that may be unnecessary to an informed decision on a particular product, or by a particular targeted market.

- *Omission of Important Information.* Conversely, because credit products are different – and because consumers have different priorities and use credit products differently – any finite list of items of information to be disclosed is highly unlikely to provide all consumers with the information they most need. (In this regard, we note that in our various enforcement actions against open-end creditors under the FTC Act, the creditors' disclosures were, in most cases, in compliance with TILA and Regulation Z requirements.)

- *Insufficient Flexibility.* No set of specific prescribed disclosures will be flexible enough to adapt to or reflect changes in credit products and industry practices in a manner that will permit useful innovation while ensuring meaningful disclosure of information to consumers.

- *Obscuring Important Information.* Any lengthy set of specific prescribed disclosures – especially if subject to requirements of prominence or conspicuousness – risks overwhelming other information that may be very important to the consumer in the context of the credit product at issue.

- *Regulatory Burden.* Regulatory burden is present, of course, whenever specific disclosures are required. Prescriptive disclosures may cause unnecessary regulatory burden if they are not appropriately tailored in scope or are not particularly understandable or useful to consumers.

These risks suggest considerations that bear on the Board's reassessment of Regulation Z's disclosure requirements for open-end credit. In particular, they suggest that the adage "less is more" may well be applicable in this context. Regulation Z might add more to overall consumer understanding if it reduced the number of items of information that creditors must provide to consumers in every case, while making provision for other information to be provided or made available in a supplemental fashion.

Industry Developments

A second general issue that we urge the Board to consider in revisiting Regulation Z relates to ensuring that credit disclosure rules keep pace with developments in credit terms and products. As indicated previously, the pending review of Regulation Z provides an opportunity to reflect industry developments that have occurred since Regulation Z requirements were last reexamined.

While consumer research and testing will help to identify and clarify the current sources of consumer confusion and misunderstanding, our experience strongly indicates that one important source of these problems relates to change-in-terms practices by creditors (sometimes referred to as a "repricing"), and information that consumers receive about those practices. Typically, a credit card agreement provides that the interest rate applicable to the account may increase upon the occurrence of a default (as that term is defined in the particular credit card agreement), and, further, provides for a general reservation of rights to the issuer that permits it, unilaterally, to change any term in the agreement, including changes to the interest rate and fees, and changes in the method of allocating payments, that can increase the consumer's costs.

As supervisor of banks with significant credit card operations, we believe it is important that lenders retain the right to close or reprice accounts due to factors such as fluctuations in the interest rate environment, adjustments in business strategy, market developments, or an increased credit risk associated with an individual consumer or similarly situated groups of consumers. At the same time, customers need to be reasonably informed of the circumstances under which their rates will be, or may be, changed. Absent effective disclosure of this information, a creditor's exercise of its right to adjust credit card terms can conflict with customer expectations. And from a customer's perspective, particular changes in terms may be not only unexpected, but also perceived as unfair, such as the application of a penalty rate to *existing* balances, rather than to only new transactions. Understandably, consumer confusion and concern about these matters are heightened when an interest rate increase on an account is not tied to an increase in general interest rates or to deterioration in the borrower's performance with the particular credit card. These concerns are confirmed by the OCC's experience in its customer assistance function: the single largest category of inquiries and complaints to the OCC's CAG unit relates to changes in terms on credit cards. In many cases, these changes are permitted under the customer's credit card agreement, and thus, these complaints underscore the need for consumers to have a clear understanding of the circumstances under which the rate can be changed.

Amendments to Regulation Z could address some of this confusion and concern. Although matters relating to repricing may well be more important to consumers than other information that is currently disclosed in a prominent or conspicuous manner (for example, balance computation methods), Regulation Z currently addresses the various ways in which an account may be repriced in very different – and perhaps anomalous – ways. For example, the Schumer box disclosure requirements do not treat all repricing mechanisms the same:

- *Variable Rates.* Specific disclosure is required of the fact that the rate may vary and an explanation of how the rate will be determined, as well as detailed rules about the actual numerical rate that is disclosed.

- *Promotional Rates.* Specific disclosure of the promotional rate and a large print disclosure of the rate that will apply after expiration of the promotional rate is required, but *no disclosure* is required of the different circumstances under which the promotional rate will be or may be terminated.

- *Penalty Rates.* Specific disclosure of the increased penalty rate that may apply upon the occurrence of one or more specific events is required, but the disclosure of those events is not required to be particularly detailed, or necessarily prominent, and *no disclosure* of the duration of the penalty rate is required.

- *Reservation of Rights. No disclosure* is required of the issuer's reservation of a unilateral right to increase the interest rate, fees, or any other terms of the account.

Solicitation and application disclosures

In light of the growing concerns regarding repricing practices, it may be particularly appropriate for the Board to revisit these rules, with the objective of finding the most effective way to ensure that consumers understand how material terms may change. One approach to explore is the possibility of an integrated description of potential changes of pricing and other terms, regardless of the cause or source, that would permit consumers to understand and readily compare this aspect of different credit offers. Such a description could also include disclosure, for example, of whether pricing changes would apply retroactively to existing balances, and whether and how consumers may be able to "opt out" of the changed terms.

At a minimum, we urge the Board to address the anomalies in the credit card solicitation and application disclosures suggested above – for example, the absence of any disclosure requirement with respect to unilateral reservations of rights (even for accounts advertised as "fixed rate" accounts) in contrast with detailed requirements relating to standard variable rate accounts (as well as certain required disclosures for promotional and penalty rates). We would hope that the Board's revisions to Regulation Z also would address the adequacy of current requirements relating to penalty rates (especially in light of the rise of cross-default provisions commonly referred to as "universal default" clauses) and promotional rates.

In connection with these issues, we note that in OCC Advisory Letter 2004-10, "Credit Card Practices" (September 14, 2004), the OCC provided supervisory guidance to national banks with respect to certain credit card disclosure practices to assist them in managing the reputation and compliance risks inherent in those practices. Major portions of the OCC's guidance dealt with promotional rate marketing and repricing issues. We advised national banks, among other things, that they should make full and prominent disclosure of temporal and other limits on the applicability of promotional rates, the circumstances under which penalty rates may apply, and the bank's reservation of rights to change terms unilaterally. We encourage the Board to address these issues through the exercise of its exclusive rulemaking authority under TILA to prescribe uniform rules for *all* covered creditors.

Subsequent disclosures

We also urge the Board to review the subsequent disclosure rules applicable to changes in credit terms, to ensure that those rules do not contain anomalies in light of industry practices. Currently, Regulation Z would require 15 days advance notice of an interest rate increase effectuated pursuant to the issuer's reservation of rights to change terms. It does not, however, require any explanation of whether the increase will apply to existing balances, or of whether and how the consumer may avoid the increase. Moreover, rate increases triggered by a "default" under the customer's agreement are not subject to a 15-day advance notice requirement (or subject to any requirement to disclose how the nonpenalty rate may be reinstated). This is currently true even where the "default" does not relate to the consumer's payment performance on the account in question (for example, where the default is defined in the credit agreement to include a reported late payment on another account or other changes to the borrower's credit profile that cause the issuer to believe that credit risk has increased). We urge the Board to consider whether these rules remain appropriate in light of industry practices and the impact of these practices on consumers, and whether the timing and substance of the subsequent disclosure requirements should change.

We also offer the following observations and more specific comments for the Board to consider when reviewing Regulation Z open-end credit disclosure requirements and conducting consumer testing.

Advertisements, Solicitations, Applications, and Initial Disclosures

Fundamentally, we believe that the Regulation Z disclosure requirements for advertisements, solicitations, applications, and initial disclosures should enable consumers to: (1) engage in informed comparison shopping for their credit products; and (2) make informed selections of credit products.

These goals, in turn, point to the types of questions that could be asked through consumer testing:

- On what bases do consumers shop for credit (e.g., low APR, absence of annual fee, etc.)?
- What other information do consumers want and need to know?
- How should information be provided so that it will be most useful to consumers?

The Board may learn through consumer testing that consumers use only certain information to shop for credit: for example, APR, the amount of annual or other unavoidable fees, the existence of a grace period before the imposition of finance charges, and whether and how such terms can be changed. If consumer testing indicates that consumers need and use only a fairly circumscribed set of information, we would urge that the Board reconsider whether prominent disclosure of other matters that are of less importance to consumers should continue to be mandated as they are today. The Board could, for example, adopt a two-tiered disclosure regime in which this key information is provided in a clear and prominent manner, with less vital information provided in a supplemental and/or optional disclosure.

We also urge the Board to consider the following specific issues relating to solicitations, applications, and initial disclosures.

- The Schumer box is a standardized consumer disclosure that must be prominently disclosed. As indicated above, this type of prominent standardized disclosure is likely a highly effective means for conveying important information to consumers.
    - The information contained in the Schumer box is statutorily prescribed (15 U.S.C. § 1632). However, the TILA directs the Board to require disclosure of this prescribed information in a tabular format *to the extent that the Board determines to be practicable and appropriate.* Further, 15 U.S.C. § 1604(a) gives the Board authority to prescribe regulations to carry out the purposes of the TILA. Under 15 U.S.C. § 1601(a), those purposes include promoting the informed use of credit by assuring a meaningful disclosure of credit terms and thereby enabling consumers to more readily compare available credit terms. Thus, it appears that the Board has some discretion in determining what information, in addition to or in lieu of the statutorily prescribed information, should be included in the Schumer box.
    - Accordingly, we urge the Board to reevaluate the information that is included in the Schumer box in light of the results of the Board's consumer testing, so that the information that is most important to consumers when shopping for a credit card is most effectively disclosed. For example, if the fact that the card issuer has reserved the right to change the terms of the account is more important to consumers than other information already included in the Schumer box (for example, the balance computation method), that preference should be reflected in Regulation Z's open-end credit disclosure requirements.

- Under the current disclosure scheme, anomalies exist in the finance charge and APR definitions and calculations because certain fees and charges are required to be included while other, arguably similar, fees and charges are excluded. We urge the Board to address these finance charge and APR anomalies, including the following:

  - If a finance charge imposed during the billing cycle includes a loan fee or similar charge that relates to the opening of the account, that part of the finance charge is not included in the calculation of the APR on the periodic statement. Although finance charges incurred in opening an account must be excluded from the APR, a similar finance charge imposed when the card issuer increases the credit limit on an existing account (arguably the equivalent of "opening" a new credit account on different terms) must be included in the APR on the periodic statement.

  - Currently, a lender may advertise a 0% APR on an account even though substantial fees, such as application fees and annual participation fees, will be charged. In such a situation, the APR does not adequately portray the cost of credit or provide meaningful cost information to consumers.

- Under Regulation Z, a creditor must advertise only terms it actually offers. We urge the Board to consider the following questions as it revisits advertisement and solicitation disclosure requirements:

  - Are solicitations confusing or misleading to consumers when they offer credit "up to" a certain amount, or APRs "as low as" a particular percentage?

  - If so, how could these problems best be addressed? For example, should card issuers making "up to" offers also be required to disclose the lowest available credit line? Alternatively, if a consumer is approved for a significantly lower credit line, should the issuer be required to disclose that credit line before the consumer becomes contractually bound (or to disclose a mechanism to cancel the card)?

The Board's consumer testing also may reveal that consumers want to focus on certain information only in certain circumstances. For example, in the case of balance transfer fees, effective disclosure of the fees may be critically important to a consumer's consideration of a solicitation that highlights a balance transfer offer, but may warrant much less prominent disclosure in other solicitations.

Periodic Statements

With respect to the periodic statement disclosures required by Regulation Z, we believe that consumers should: (1) be able to understand the nature of all charges to the account, whether they are purchases or other transactions, finance charges, or other fees, which thereby enables them to protect their rights by disputing unauthorized transactions or asserting other billing errors; and (2) not be surprised by charges, such as late and overlimit fees, or penalty interest rates, that are imposed in circumstances provided in the credit agreement. The Board's consumer testing should assist the Board in ascertaining whether the current periodic statement requirements accomplish these objectives.

We suggest the Board also consider the following specific issues relating to periodic statements.

- Although the Board has mandated that certain information be provided in the periodic statement, the Board has not required a standardized format for periodic statements. The absence of this standardized format may make it difficult, particularly for consumers who receive many periodic statements each month, to readily locate key disclosures. The Board may wish to consider the extent to which a standardized format for periodic statements – or a portion thereof – would be beneficial to consumers by reducing consumer confusion resulting from variations among creditors and when the location and presentation of such information is changed by the creditor.

- As part of this review, the Board also could consider whether there is currently some information required on the periodic statement that is not useful to consumers. A standardized and simplified periodic statement – for example, one that sets forth only a list and description of transactions and other charges, the payment due date, the minimum payment amount due, and the total balance – may more effectively convey the information that consumers need to protect their rights and avoid unwanted charges.

- Most card issuers allow consumers to make relatively small minimum monthly payments on their accounts. Cardholders who make only the minimum monthly payments on their accounts could take years to pay off their credit card debt, even if no additional charges are made. The bankruptcy bills recently passed by the Senate[13] and currently pending in the House[14] would require that consumers be provided with a warning and an illustration to demonstrate that paying only the minimum monthly payment will increase the interest paid and the time it takes to repay the balance. Regardless of the final form, if any, of this legislation, we urge the Board to consider whether its current review of Regulation Z should address this issue, and, if so, the most effective and least burdensome ways to do it.

Substantive Protections

We believe a key goal of the substantive, non-disclosure consumer protections in Regulation Z should be to implement effective protections in a way that minimizes regulatory burden and does not unduly hinder industry advances that enhance consumer convenience.

Our supervisory experience has identified two general areas that suggest particular review is warranted. First, do existing rules in Regulation Z contain anomalies or ambiguities that fail to provide clear guidance for creditors and effective protections for consumers?

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[13] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, S. 256, 109th Cong., 1st Sess. (2005).
[14] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, H.R. 685, 109th Cong., 1st Sess. (2005).

For example:

- Would simplifying and clarifying the rules regarding "prompt posting" benefit consumers? In particular, it may be beneficial to revisit the potential inconsistency between the requirement that a creditor must credit payment on the day it is received and the creditor's ability to establish an early cut-off time that would cause any payments received after that time to be credited on the following day. The tension between these provisions could confuse consumers as to when their payments must be received (and sent).[15]

- The Board also may want to consider clarifying the requirements with respect to a card issuer's duty to investigate assertions of billing errors. In recent years, the OCC's CAG unit received a large number of complaints in which consumers alleged that their card issuer, when notified of an error or dispute, did not investigate adequately. In 2001, we issued an advisory letter[16] reminding national banks of their obligations under the Electronic Fund Transfer Act and Regulation E error resolution provisions and clarifying the OCC's expectations in this area. Subsequently, the number of consumer complaints to our CAG unit about error resolution has declined, not only with respect to Regulation E, but also in connection with *credit accounts* at national banks. We urge the Board to consider whether additional guidance (in Regulation Z or the staff commentary) is needed to ensure that *all* creditors conduct adequate investigations to resolve errors and disputes fairly and in accordance with TILA's requirements.

In addition, as in the case of the disclosure rules, anomalies in Regulation Z that have resulted from industry developments deserve attention. For example:

- The Board recently amended the staff commentary to Regulation Z to clarify that card issuers can provide duplicate or supplemental cards (for example, cards of different sizes or formats, such as key chain "fob cards") on an existing credit card account when replacing an accepted card. This position is a positive, but unnecessarily limited, development that provides some room for an industry innovation that enhances consumer convenience. However, we question whether providing new technology to consumers to access an existing account should be considered the "issuance" of a credit card. The substantive consumer protection rules under the TILA, like the disclosure rules, should not impede useful industry developments or obstruct customer convenience unless they are needed to protect against a clearly articulable risk of consumer harm.

- Conversely, new technologies or industry practices should not cause consumer protection to be weakened, and the Board should consider how to restore those protections that have been diluted by such developments.

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[15] We also encourage the Board to consider whether there is consumer confusion about when payments are required to be received when the disclosed grace period or payment due date falls on a weekend day or holiday and there is no explanation about when such payments will be posted.

[16] OCC Advisory Letter No. 2001-9, "Electronic Fund Transfer Act--Investigations of Unauthorized Transactions" (Sep. 7, 2001).

For example:

- Under Regulation Z, a cardholder can assert all claims and defenses against a card issuer that he could assert against the person honoring the card, subject to certain limitations. The limitations do not apply when the person honoring the credit card has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.[17] The limitations do appear to apply, however, if the solicitation made or participated in by the issuer occurs over the telephone or the Internet. The Board should consider addressing this anomaly by treating all solicitations made or participated in by the card issuer in the same manner.

- Many of Regulation Z's substantive protections do not apply to "convenience checks" tied to credit card accounts. Convenience checks are frequently accompanied by marketing materials that encourage consumers' use of the checks, with little or no disclosure of the difference in their rights under TILA when they use convenience checks rather than their cards. Many consumers thus may erroneously believe that convenience checks carry equivalent legal protections. The OCC's CAG unit receives complaints from consumers who have used convenience checks only to discover later that they could not avail themselves of the same rights under Regulation Z that apply to the use of their credit cards on the same account. The Board may wish to consider extending the protections of TILA to transactions where the consumers access their credit card lines via use of a convenience check, or, alternatively, enacting disclosure requirements for convenience checks that would alert consumers to the legal implications of using such checks.

Conclusion

The OCC strongly supports the Board undertaking its review of the open-end credit requirements in Regulation Z. We are hopeful that the Board's comment process and extensive consumer testing will result in a proposal that furthers our shared goals of enhancing the effectiveness of disclosures to consumers while also reducing undue regulatory burden and unnecessary constraints on market innovation in consumer credit products. If there are ways in which we can support the Board's efforts in this important area, we look forward to doing so.

Sincerely,

Julie L. Williams
Acting Comptroller of the Currency

[17] 12 C.F.R. § 226.12(c)(3) fn. 26.