March 24, 2005

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

RE: Docket No. R-1217

Dear Ms. Johnson:

Mellon Financial Corporation, Pittsburgh, Pennsylvania, appreciates the opportunity to comment on the Board's proposal to update and improve the Truth in Lending rules governing non-home secured open-end credit.

In general, we do not believe that radical revision of these rules would be in the interests of either creditors or consumers. The existing regulatory scheme has been in place for over 20 years without major revision (except for the addition of disclosures for credit card applications and solicitations under §226.5a of Regulation Z). During that time, the Regulation has done an admirable job of clarifying for consumers the sometimes complex workings of open-end credit plans.

As the Board observed in the ANPR, open-end disclosures are subject to few formatting rules, and creditors have considerable flexibility in the presentation of required information. In our view, this is an advantage not only for creditors but for consumers. Open end credit plans vary a great deal in their terms, partly due to wide variation in the underlying operating systems. Uniformity and simplicity in disclosure may be theoretically desirable goals, but the extent to which they can be attained without oversimplification is greatly limited. This is especially true in the case of periodic statements. Further, an attempt to impose excessive uniformity in disclosures may have the unintended effect of stifling innovation in credit products.

We believe that segregating TIL disclosures in a prescribed "box" or other format will simply be perceived by consumers as a redundant presentation of information, or one more piece of paper among the many they already receive. A separate TIL disclosure form or segregated disclosure section on an agreement may even have the perverse effect of discouraging the consumer from reading the actual agreement as thoroughly as he or she

otherwise might. And because disclosures are required by Regulation Z to be clear and conspicuous, their integration into contractual documents leads to clearer and more understandable contractual documents – an advantage that would be lost if disclosures are mandated to be separate from contractual terms.

A fundamental change in the way open-end TIL disclosures are presented would, obviously, be the occasion of substantial expense to creditors. The industry would be required to revise every open-end credit agreement, and perhaps create entirely new forms. The legal expenses, production expenses, programming expenses, and training costs would be enormous on a nationwide basis. Further, as with any new set of disclosure requirements, the potential for monetary recovery for violations will inevitably give rise to litigation over interpretive issues. Such costs are ultimately borne at least in part by consumers; and we do not see that any substantial corresponding benefit to consumers would be likely to result.

This is not to say that there are not specific improvements that might be made in the provisions of Regulation Z affecting open-end credit. We would like to propose four:

(1) In the closed-end section of the Official Staff Commentary, Comment 17(b)-2 states in part: "*Converting open-end to closed-end credit.* Except for home equity plans subject to §226.5b in which the agreement provides for a repayment phase, if an open-end credit account is converted to a closed-end transaction under a written agreement with the consumer, the creditor must provide a set of closed-end credit disclosures before consummation of the closed-end transaction.... If consummation of the closed-end transaction occurs at the same time as the consumer enters into the open-end agreement, the closed-end credit disclosures may be given at the time of conversion...."

We are uncertain what was originally contemplated by this comment. But reading it in its entirety, it is difficult to escape the conclusion that a non-home secured line of credit that has a fixed draw period requires both open-end *and* closed-end disclosures, because it will "convert" to closed-end credit if there is a balance to be amortized after the expiration of the draw period. This is a highly unfortunate result for unsecured lines of credit, since it leads to an extra set of disclosures that are of little informational value to the consumer, and, in fact, may be positively bewildering.

The exception for home equity lines, which virtually always have fixed draw periods, was certainly well-advised, and there is no reason to treat unsecured lines differently in this regard. We strongly urge that Comment 17(b)-2 be rescinded, or, alternatively, that its application be clarified. There is no reason to confuse consumers who open revolving credit plans with an additional set of disclosures – closed-end disclosures with hypothetical numbers – simply because the plan has a preset termination date. This was

recognized with regard to home equity plans, and it is just as true for all other open-end plans.

(2) Comment 3(b)-2 explains the applicability to open-end credit of the general rule that credit over $25,000 not secured by real property or a dwelling is exempt from Regulation Z. The comment sets forth two alternate tests which will result in exemption for a line of credit greater than $25,000. A plan is exempt if either the creditor "makes a firm commitment to lend over $25,000" or the initial advance on the line exceeds $25,000.

Given that meeting the second test is often impractical, the first test is the crucial one. However, it is not always easy to determine what constitutes a "firm commitment." The Regulation and Commentary are silent on the question; but all commitments are subject to events of default, and possibly other conditions or exceptions. Rather than tying the applicability of the Regulation to the determination of whether the terms of a line of credit amount to a "firm commitment," we believe it would be appropriate to exempt *all* open-end credit plans with *bona fide* credit limits in excess of $25,000.

It may be argued that this would create a less objective standard; but in fact it would be similar to the longstanding test for determining whether an extension of credit constitutes open-end credit in the first place. In the language of §226.3(b) and the Commentary thereto, assuming that the creditor reasonably contemplates repeated transactions, that the total amount of credit that may be extended during the existence of the plan is unlimited because available credit is generally replenished as earlier advances are repaid, and that the consumer has a reasonable expectation of obtaining credit as long as he or she remains current and within the preset credit limits, an unsecured line with a credit limit greater than $25,000 should be exempt from Regulation Z.

(3) Comment 5(b)(1)-3 states: *'Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new initial disclosures are required. No new initial disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the new account then continues on the same terms."

This rule should be modified by expanding the circumstances under which new disclosures may be dispensed with in reopening an account. It sometimes happens that an account is closed in error. It also occurs that an account is closed intentionally, but within a short time is reopened at the customer's request, typically due to new information. If the same account is merely being reactivated, after a relatively brief interval and with no change in terms, new initial disclosures should not be necessary.

Not only will they be confusing to the customer; in many cases it may be unduly burdensome for the creditor to give them, since the initial disclosure forms currently in use by the creditor may reflect terms that differ from those of the account being reactivated.

(4) Regulation Z §226.12(d) prohibits banks from exercising a right of setoff against deposit account balances for delinquent credit card debt. While we recognize that this prohibition was mandated by Congress, we doubt that Congress intended to extend it beyond traditional credit cards. However, due to Regulation Z's expansive definition of a "credit card" (embodied in §226.2(a)(15) and the commentary thereto), *any* line of credit may be subject to the setoff prohibition if certain conditions are present. For example, a credit line is considered a "credit card account," and subject to §226.12(d), if it covers overdrafts on a checking account which is accessible by a debit card. Similarly, a credit line is subject to the setoff prohibition simply because it is accessible by a telephone billpaying arrangement involving the use of a PIN.

The result is an impairment of a bank's ability to recover defaulted debts that was probably never contemplated by Congress. Furthermore, because the applicability of the setoff prohibition to cash advance lines of credit depends on factors that typically do not apply to all the lines in a portfolio, the bank is required to analyze each situation to determine the presence or absence of those factors. This can be confusing to the employees who are responsible for taking timely action to prevent loss to the bank.

We therefore urge the Board to consider placing limitations on the reach of §226.12(d) similar to the limitations applicable to credit card application and solicitation disclosures found in §226.5a(a)(3).

If you would care to discuss the comments in this letter, please feel free to call the undersigned at 412-234-1537, or Charles F. Miller, Associate Counsel, at 412-234-0564.

Sincerely,

Michael E. Bleier
General Counsel