CUNA & Affiliates
A Member of the Credit Union System

Credit Union
National Association, Inc.

601 Pennsylvania Ave. NW, South Bldg.
Suite 600
Washington, D.C.
20004-2601

Telephone:
(202) 638-5777
Fax:
(202) 638-7734

Web Site:
www.cuna.org

VIA E-MAIL: regs.comments@federalreserve.gov

March 28, 2005

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

Re: Docket No. R-1217 – Review of Regulation Z Open-end Credit Rules

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the advance notice of proposed rulemaking (ANPR) on possible changes to the open-end credit rules under Regulation Z, the Truth in Lending Act. The ANPR is the first stage of a comprehensive review of Regulation Z in its entirety, and this first stage will focus on open-end credit accounts that are not home secured, specifically general-purpose credit cards and merchant-specific credit plans. CUNA represents approximately 90 percent of our nation's 9,300 state and federal credit unions.

Summary of CUNA's Comments

- It is our understanding that the significant purpose of the ANPR is to address credit card fraud and deception. Any changes the Fed may consider in response to this problem should not necessarily impact other types of open-end credit, such as home equity lines of credit (HELOCs) or multi-feature home equity loans.
- We generally support the review of Regulation Z in stages. However, to ensure consistency within Regulation Z, we suggest that additional changes to the open-end rules should not be precluded when this process shifts to a review of Regulation Z's closed-end loans.
- If any changes are made with regard to open-end credit, we request that there be a significant period between the time the changes are made and the time that compliance becomes mandatory. We anticipate that a period of at

least one year may be necessary, especially if there are a large number of changes.

- We encourage the Fed to consider including a "Schumer Box" type of disclosure within the initial account-opening disclosures that is similar to the current ones used for credit card solicitations and applications. However, the current Schumer Box should be modified to some extent to improve clarity, such as by categorizing the information by rates, penalties, and fees. For risk-based lending, creditors should be permitted to include in the Schumer Box the range of interest rates that could be charged to the consumer.
- Minimum type-size requirements are not practical with regard to electronic disclosures.
- It is not necessary to impose type-size requirements for credit card solicitations and applications.
- The "due date" and "please pay by date" on the periodic statement should be grouped together in an effort to minimize consumer confusion. We also suggest changing the term "please <u>pay</u> by" to "please <u>mail</u> by" in a further effort to eliminate this confusion.
- The Fed should consider eliminating the requirement to included the effective, or "historical" annual percentage rate (APR) on periodic statements, which includes the interest, as well as other fees and costs that are required under Regulation Z to be included in the historical APR calculation. The historical APR is confusing and can be misleading for consumers. The dollar amount of these fees should continue to be disclosed and could be aggregated for both the statement period and the year to date.
- We suggest that consistent headings among the various documents involved in open-end credit may be helpful for consumers, such as among the credit card solicitation, application, and credit card agreement.
- It may be more helpful for consumers if all the fees and charges were simply listed as a "fee" or "cost of credit," as opposed to a "finance charge" or "other charge," as these are terms they are most likely to understand. Creditors can then simply inform the consumer that these fees may increase the cost of credit, without incorporating these fees in the APR.
- As part of this Regulation Z review, the Fed needs to look at all types of fees and determine how they should be disclosed. Not every fee needs to be classified as a "finance" or "other charge," as currently required. Under certain circumstances, disclosure of the fee should only be required when the consumer inquires about using the service and verbal disclosures should be acceptable. We would include skip payment and expedited payment fees under this category.
- We believe a simpler interpretation for the term "other charge" may be any charge that can be avoided by the consumer through his or her actions.
- There are significant differences between open-end and closed-end credit. Because of these and other differences, we do not believe there needs to be uniformity between these types of credit.
- It is very difficult for credit unions to explain their practices regarding the approval of a transaction that exceeds the credit limit. Additional disclosures

explaining the online and offline scenarios in an easily understood manner would be very difficult to develop and would simply not be feasible.

- We believe that improving financial literacy will help consumers to better understand their cost of credit. Ensuring that consumers have a general understanding of credit will also help eliminate the need to provide the excessive information that is now required under the current disclosure rules.
- We would support a change that would require a 30-day advance notice before changing certain terms of an open-end credit plan, instead of the current 15-day requirement. This will benefit consumers by providing them with the additional time needed so they can shop around to determine if it would be beneficial to close their account and open a new account with another creditor.
- If the interest rate or other finance charge increases due to a default or delinquency, then notice should be provided at the time of the default or delinquency, since that is the time the information will be of most value and relevant for the consumer. Credit unions also generally oppose the practice of a credit card issuer changing the interest rate solely because of a default on another account that the consumer may have with another creditor.
- If the Fed were to require disclosures regarding the effects of making minimum payments, we believe it should take the form of an example, using a sample dollar amount and a sample rate that the creditor may realistically impose, as opposed to a customized example for each consumer.
- It would be very difficult to disclose how credit card payments are allocated in a manner that consumers would easily understand. Consumers primarily care about the amount of interest they pay and that their payments are applied correctly, information that is already available on the periodic statement.
- We do not believe there are any specific types of accounts, such as subprime accounts, that would need specialized disclosure rules.
- We believe it would be very difficult to determine the income and asset level of borrowers for purposes of providing waivers.
- We believe the substantive provisions of the Regulation Z open-end credit rules are adequate as they are generally favorable to the consumer. These include provisions regarding billing disputes, cardholder liability for unauthorized card use, issuing cards only upon the consumer's request or for renewal or substitution of an accepted card, and the manner that consumers make and the manner that the creditor post payments.
- Credit unions are very concerned about the current use of convenience checks as there have been a number of problems regarding these types of checks. Convenience checks are often forged, counterfeit, or otherwise unauthorized and are often returned when there is a billing dispute. Because of these and other problems, we suggest that financial institutions should be permitted to place a long hold time when these types of checks are deposited at the institution. We also believe the financial services industry should consider eliminating the continued use of these checks. If the use of convenience checks continues, then we believe they should be subject to the

rules that apply to checks, as opposed to being treated as credit card payments, and should no longer be subject to error resolution rights or other protections that apply to credit card transactions.
- We believe creditors should be allowed to issue more than one credit card for an existing account at any time, even when it is not for the renewal or substitution of existing cards, as long as appropriate safeguards are in place.
- The date and time that payments must be received in order to avoid additional fees should be disclosed, and we believe the current disclosure requirements are adequate. Credit unions often rely on a third-party processor to determine when the payment is received for purposes of posting and crediting the payment. No new guidance is necessary as this is a contractual relationship between the credit union and the processor in which the obligations among the parties are defined.
- Payments received by mail after the close of business can be received, but are often stored overnight and not processed until the next day. For this reason, we would not support a rule requiring all payments to be credited on the date received, regardless of the time they are received.
- The APR requirement should be eliminated if the finance charge is 50 cents or less. Consumers are likely not interested in this type of information if the finance charge is at these very low levels.
- We believe that credit unions should be permitted to use an interest rate calculation for purposes of calculating the eighteen percent interest rate ceiling under the Federal Credit Union Act that is not based on the "finance charge" definition under TILA and Regulation Z. We would support legislative action as a means to accomplish this result and would welcome the opportunity to work with the Fed on this issue.
- For smaller credit unions, complying with Regulation Z and other regulatory requirements is particularly difficult because they do not have sufficient staff to ensure compliance and they often have to rely on outside counsel. Also, penalties can be more easily absorbed by larger institutions that earn significant profits, as opposed to smaller financial institutions that do not earn such profits. To help smaller financial institutions, we suggest the Fed consider reducing penalties for those smaller institutions that inadvertently violate Regulation Z. We suggest that penalties could be determined on a sliding scale, based on the assets, equity, or net worth of the institution, while ensuring that the consumer is compensated for any financial impact resulting from the Regulation Z violation.

Since the ANPR was issued by the Federal Reserve Board (Fed) on December 3, 2004, CUNA has been actively involved in soliciting feedback from our member credit unions on how the open-end credit rules can be amended to accomplish the dual goals of making the required disclosures easier for consumers to understand, as well as minimizing additional burdens for credit unions, or possibly even reducing current burdens. We are optimistic that these goals can be accomplished, and CUNA enthusiastically embraces the opportunity to participate in this process.

As part of this process, CUNA has formed a working group to coordinate these efforts, which includes members of CUNA's Consumer Protection Subcommittee, as well as other interested credit unions and representatives from our credit union leagues. We are pleased at this time to provide the Fed with comments from our working group, as well as from our other credit union members, and we would welcome the opportunity to meet with Fed staff at the appropriate time in this process.

In the ANPR, the Fed requested comments on specific questions relating to the disclosures and substantive provisions of Regulation Z's open-end credit rules and assigned numbers to these questions. These questions are outlined below, followed by CUNA's responses to these questions:

Scope of Regulation Z Review

Question 1 – Should the review of Regulation Z be in stages, which begins with this review of open-end credit? Are some issues with regard to open-end credit so intertwined with other TILA issues such that another approach to this review should be considered? If so, what are those issues and what other approaches should be considered?

CUNA's Response – We generally support the review of Regulation Z in stages. However, to ensure consistency within Regulation Z, we suggest that additional changes to the open-end rules should not be precluded when this process shifts to a review of Regulation Z's closed-end loans. The ability to comment on possible additional changes to the open-end rules should still be available until all comments on the closed-end rules are received and reviewed. It is only then that proposed rules on both the open-end and closed-end rules should be issued.

For example, the Fed has requested comments on a number of issues regarding "Finance Charges" and "Other Charges." Any changes in this area will also impact closed-end loans. When the review shifts to closed-end loans, we should than have the opportunity to review and possibly refine the comments we submitted earlier on open-end credit to ensure they are consistent with the comments we submit on closed-end loans.

We also want to take the opportunity to note that it is our understanding that the significant purpose of the ANPR is to address credit card fraud and deception. Any changes the Fed may consider in response to this problem should not necessarily impact other types of open-end credit, such as HELOCs or multi-feature home equity loans.

Account-opening Disclosures

Question 2 – What formatting rules would enhance the ability of consumers to understand account-opening disclosures? Should certain key disclosures be segregated from contractual terms or other information so that these disclosures are more clear and conspicuous? Should certain disclosures be grouped together or appear on the same page? Are minimum type-size requirements necessary and what should those requirements be?

CUNA's Response – We encourage the Fed to consider including a "Schumer Box" type of disclosure within these initial account-opening disclosures that is similar to the current ones used for credit card solicitations and applications. We believe these prominent boxes on solicitations containing key information about rates and fees have proven helpful for consumers to understand these key terms and to compare them with other offers that they receive. Again, since the purpose of changes such as these would be to address deception and confusion with regard to credit cards, we suggest that any such changes here should only apply to credit cards, not for other types of open-end credit.

We believe these new Schumer Boxes for initial disclosures should contain information that the Fed believes will address its concerns regarding consumer confusion and deceptive practices. However, the overriding goal with regard to these new Schumer Boxes should be to maintain simplicity and to ensure that the information is not overwhelming to the extent that such simplicity is undermined. We believe these new Schumer Boxes should help achieve the Fed's goal of ensuring that consumers receive clear and understandable information, a goal the Fed was trying to achieve with the proposal last year that would have imposed a uniform definition of "clear and conspicuous" for a number of consumer protection rules, including Regulation Z.

We look forward to a specific proposal from the Fed regarding these new Schumer Boxes, at which time we can provide more specific comments as to exactly what types of information should be included. One suggestion we have at this time would be to include information that defaulting on another credit card can impact the interest rate. We understand the Fed and consumer advocacy groups are particularly concerned that this practice is increasing and not well understood by consumers, similar to concerns that we have with this practice, as noted in our response to Question 27 below. This and any other information having a direct economic impact on consumers, such as the rates and fees that will be charged, should be included in these new boxes, as well as certain other information that is already included in the current Schumer Box used for solicitations and applications.

Since simplicity should be the main goal for these new Schumer boxes, we also believe certain types of information should not be included and perhaps should no longer be required in any open-end disclosure. One example would be information on balance calculation methods, which is very complex and not very useful. Although this information could certainly be made available to consumers upon request, we do not believe consumers use or even want this type of complex information.

We also believe this new Schumer Box should be consistent with the Schumer Box that is currently included in the solicitations and applications. This may require changing the current Schumer Box, but we believe such consistencies will reinforce the information and reduce confusion between these two disclosures, which will benefit both consumers and creditors.

With regard to minimum type-size requirements, we do not believe such requirements are practical with regard to electronic disclosures. The type size appearing on one computer may appear as a different size when viewed on another computer, and creditors have no control over computer settings on other computers. To resolve this issue, any such requirements for electronic disclosures should only require that certain information should be in comparatively larger type than the other information within the particular disclosure.

Question 3 – What formatting or other navigational aids will make the account-opening disclosures more effective throughout the life of the account? One idea may be a table of contents that a consumer could refer to on an as-needed basis throughout the life of the account.

CUNA's Response – A table of contents would be very burdensome to create and even harder to track and update as the disclosures change during the course of the account relationship. We believe that with the new Schumer Box for initial disclosures, there may not be a need for a table of contents or other such formatting or navigational aids. The Schumer Box should become an easy reference guide and be useful throughout the life of the account. It will likely be more useful to the consumer than a table of contents and would not be as burdensome to create and update as would be the case with a table of contents.

Periodic Statements

Question 4 – Are there disclosures on the periodic statement that should be grouped together on the same page that would help consumer understanding? One idea may be to group together the "due date" and "please pay by date," which is the suggested date to submit payment in order for it to be received by the due date. Some consumers may now be confused and consider the "please pay by date" as the "due date" if these two dates are on different parts of the statement.

CUNA's Response – We agree that the "due date" and "please pay by date" should be grouped together in an effort to minimize consumer confusion. We also suggest changing the term "please pay by" to "please mail by" in a further effort to eliminate this confusion.

Question 5 – Could the cost of credit by more effectively presented on the periodic statement if less emphasis were placed on how the fees are labeled and all fees were grouped together? What other approaches should the Fed consider?

CUNA's Response – We urge the Fed to consider eliminating the requirement to include the effective, or "historical" APR on periodic statements, which includes the interest, as well as other fees and costs that are required under Regulation Z to be included in the historical APR calculation. Although we support the disclosure of the APR that is currently required on solicitations and applications, which includes the interest charge only, the Fed's comprehensive review of Regulation Z presents a unique opportunity to examine the continued usefulness of the historical APR on periodic statements.

For those fees that are required to be included in the historical APR, we certainly believe these fees should be disclosed in dollar terms. However, we believe the disclosure of the "historical" APR, which expresses these fees in percentage terms in addition to the interest cost, does not necessarily provide useful information to consumers, and in certain cases can actually be misleading and confusing for consumers.

The historical APR is confusing because if these fees are incurred by consumers, the APR on the periodic statements will be much different than the APR that may have been reflected in the account-opening or other disclosures that the consumer may have relied upon at the time he or she entered into the account relationship. This confusion will always continue, regardless of the verbiage that creditors include in an effort to explain this discrepancy.

The historical APR can also be misleading. One-time fees can result in a much higher APR in one statement period than for others in which these one-time fees are not incurred. This is not only confusing, but is inaccurate because the APR is a calculation that assumes that the interest and fees included in the APR are charged continuously throughout the annual period. Therefore, when a one-time fee is included in the historical APR during a particular statement period, the APR assumes the fee will likewise be charged throughout the annual period, which is often not the case.

The Fed in the past has excluded charges from the APR calculation in recognition of the effect that such charges can have on the calculation. Examples are certain fees in connection with HELOCs, such as fees to open the account and an annual fee when there is no balance. The Fed should now use this approach with regard to the historical APR.

Instead of disclosing certain fees and charges as part of the historical APR calculation, we believe the disclosure of such information will be more useful to consumers if these were expressed in dollar terms and disclosed in a more useful manner for consumers, allowing them to understand the amounts being charged and to help them compare these costs with other credit products, if they so desire.

Under our approach, the interest charge for the account period would be listed, both as an APR and in dollar terms. There could also be a disclosure indicating the aggregated amount of interest that has accrued for the year to date. Then, there would be a separate listing of fees, expressed in dollar terms, that could be disclosed in two separate boxes or areas within the periodic statement that would recognize the current distinction between "finance charges," which are currently required to be included in the APR, and "other charges," which are not currently included in the APR. The box or listing for finance charges would be itemized clearly, and the fees in each of these categories and the total could be aggregated for both the statement period and the year to date. The box or listing for "other charges" would continue to be a list of certain fees incurred within the statement period, similar to the disclosure requirements that currently apply to other charges.

We realize these changes may require changes to the TILA statute and would welcome the opportunity to work with the Fed to achieve this result.

<u>Question 6</u> – How can formatting tools and navigational aids make the periodic statements more effective for consumers?

<u>CUNA's Response</u> – We have no specific proposals at this time, but plan to review and comment on any future changes the Fed proposes as a result of the comments received in response to the ANPR. If any changes are ultimately made with regard to formatting, navigational aids, or any other issue with regard to open-end credit, we request that there be a significant period between the time the changes are made and the time that compliance becomes mandatory. Many credit unions depend on software vendors and rely on them to make the changes, as well as for the timing for such changes. We anticipate that a period of at least one year may be necessary, especially if there are a large number of changes. Also, we want to again reiterate that any changes to periodic statements should be limited to credit cards, since this is the product that seems to raising concerns with regard to open-end credit disclosures.

Credit Card Application Disclosures/"Schumer Boxes"

Question 7 – For credit card applications, certain disclosures must be presented in the form of a table, known as the "Schumer Box" (the Fed provides a model form for Schumer Boxes.) Is the Schumer Box effective, as currently designed? What format improvements should the Fed consider?

CUNA's Response – In 2000, the Fed amended Regulation Z by imposing type size requirements for credit card solicitations and applications, including 18-point type for the APR and suggesting 12-point type for other disclosures. We do not believe it is necessary to impose such type size requirements. We agree these disclosures should be clear and that perhaps certain disclosures should be of a type size that is comparatively larger than other disclosures. However, these changes imposed in 2000 arose because certain lenders have not been complying with the underlying purpose of the TILA. In these situations, we believe the Fed should address these issues directly with the specific lenders. Credit unions and other lenders fully comply with TILA and Regulation Z and should not be impacted by problems caused by a very small number of other lenders.

We also encourage the Fed to consider amending the current Schumer Box in a manner that we believe will improve the clarity of the disclosures. One approach could be to create the following three separate smaller boxes or categories that would comprise the Schumer Box:

- One category that would list the various APRs that may apply, such as the APR that would generally apply and the APR that may apply if certain events happen, such as a late payment
- Another category that would list the possible penalties that may be imposed, such as penalties for late payments.
- A third category could be a list of the fees that would apply, such as the over-the-limit fee, the cash advance fee, and the balance transfer fee.

For risk-based lending, creditors should be allowed to include a range of rates. We understand the concern that the range could possibly be wide to the extent that it may be meaningless. However, we believe it is important to include this information, which will help reinforce the notion to consumers that credit card interest rates are based on creditworthiness.

Question 8 – Should balance transfer fees be included in the Schumer Box? (Under current rules, this is optional, as long as the fees are clearly disclosed elsewhere on or with the application.)

CUNA's Response – We agree that balance transfer fees should be disclosed and have no objection if the Fed were to require that the disclosure be in the Schumer Box, consistent with our response to Question 7 above.

Subsequent Disclosures (including change in account terms and terms for new credit features or access devices offered after the account is opened)

Question 9 – How can formatting tools or navigational aids be used to more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures (including those that accompany convenience and balance transfer checks)?

CUNA's Response – We have no specific proposals at this time, but plan to review and comment on any future changes the Fed proposes as a result of the comments received in response to the ANPR.

Model Forms and Clauses

Questions 10 & 11 – The Fed provides model forms and clauses to facilitate TILA compliance. How can the existing clauses and forms be revised to improve their effectiveness and what additional model forms and clauses should the Fed develop?

CUNA's Response – We suggest a model form incorporating our new "Schumer Box" for credit card agreements, as described in our response to Question 2 above.

Question 12 – What additional information is available regarding the navigability and readability of different formats or ways in which the formatting can improve the effectiveness of disclosures? (For example, certain studies suggest that using bold headings is helpful, while the use of all capital letters is not helpful.)

CUNA's Response – We suggest that consistent headings among the various documents involved in open-end credit may be helpful for consumers, such as among the credit card solicitation, application, and credit card agreement.

Improving the Rules for Classifying Fees as "Finance Charges" and "Other Charges"

Question 13 – How can the Fed provide greater clarity with regard to categorizing fees as either "finance charges" or "other charges?" What types of fees should not be included as a "finance charge" and why should they be excluded? How should these fees be disclosed in order to provide uniformity with regard to disclosures and to facilitate compliance?

CUNA's Response – Please see our response to Question 5 above in which we suggest that "finance charges" need only be disclosed in dollar terms. As we described in that response, we believe this will provide clarity with regard to these disclosures, consistent with the intent of TILA and Regulation Z. This will also eliminate the problem when a one-time fee is included in the historical APR during a particular statement period in which the APR then assumes the fee will be charged throughout the annual period, which is often not the case.

Question 14 – How do consumers learn about open-end credit fees and about any changes in these fees?

CUNA's Response – Credit unions' experiences indicate that members tend to learn about fees, and any changes to those fees, by review of their periodic statements and other mailings they receive throughout the life of the account.

Question 15 – What significance do consumers attach to the term "finance charge," as opposed to "fee" or "charge?"

CUNA's Response – We believe the vast majority of consumers attach no significance to the terms "finance charge," as opposed to other fees and charges, and likely do not know the difference between finance charges and the other fees and charges that they may incur. Consumers are certainly interested in the cost of their credit and for this reason, it may be most helpful for consumers if all the fees and charges were simply listed as a "fee" or "cost of credit," as these are terms they are most likely to understand.

Question 16 – Some have suggested classifying a fee as a finance charge if the payment is required to obtain credit. How would creditors determine if a fee was optional? Would this include a fee being excluded as a finance charge if the consumer was offered a credit plan without this feature? Would this approach result in useful disclosures for consumers and would they be able to compare costs of different credit plans? Would this approach be practical for creditors?

CUNA's Response – We have no specific comments with regard to this approach. However, we would like to take this opportunity to mention that there are certain specific fees in which it has been unclear as to how they should be disclosed. Specific examples include fees to skip a payment and fees to expedite a payment, such as through the automated clearinghouse system. We believe that as part of this Regulation Z review, the Fed needs to look at all types of fees and determine how they should be disclosed.

We also believe that not every fee needs to be classified as a "finance" or "other charge." Certain fees are completely within the control of the consumer and are for services that are not often used on a regular basis. Under these circumstances, disclosure of the fee should only be required when the consumer inquires about using the service and verbal disclosures should be acceptable.

We would include skip payment and expedited payment fees under this category, and would encourage the Fed to make the necessary amendments to confirm that these fees should be disclosed in this manner. Disclosure of these fees at the time the service is rendered would also be helpful to consumers because they would not need to remember or refer to information that they previously received.

Question 17 – Some have suggested classifying a fee as a finance charge if the fee affects the amount of credit available or the material terms of the credit. How would this operate in practice? For example, how would creditors distinguish finance charges from “other charges?” What terms would be considered “material?”

CUNA’s Response – We have no specific comments on this approach at this time, but plan to review and comment on any future changes the Fed proposes as a result of the comments received in response to the ANPR.

Question 18 – The Regulation Z official staff commentary interprets “other charges” as those that are “significant” and related to the credit plan. Has this interpretation been effective? Is there a better interpretation? Other criteria to determine whether a fee should be considered an “other charge” may include the following: the amount of the fee, the frequency in which the fee is likely to be incurred by a consumer, the proportion of consumers likely to incur the fee, and when and how the creditor discloses the fee. Are these relevant factors and are there any others?

CUNA’s Response – We believe a simpler interpretation for “other charge” may be any charge that can be avoided by the consumer through his or her actions. For example, late fees can be avoided by making payments on time and cash advance fees can be avoided by not utilizing the cash advance service. Regulation Z provides a number of examples of fees that are not considered finance charges, and we would welcome any additional examples or exceptions that the Fed may choose to propose.

Question 19 – What other issues should be considered with regard to classifying fees? For example, do home equity lines of credit present unique issues?

CUNA’s Response – As noted above in our response to Question 1, it is our understanding that the significant purpose of the ANPR is to address credit card fraud and deception. Therefore, we believe that any changes the Fed may consider in response to this problem should not necessarily impact other types of open-end credit, such as HELOCs or multi-feature home equity loans.

Question 20 – How important is it that the classification of fees for open-end accounts mirrors the classifications for closed-end loans? For example, excluding certain charges from the APR for an open-end account is not consistent with a Fed recommendation in 1998 that “all required fees” be included in the APR for closed-end loans.

CUNA's Response – There are significant differences between open-end and closed-end credit. Closed-end credit generally consists of a loan with a specific repayment arrangement whereas for open-end credit, there is often additional credit available and options for repayment, with credit cards being the primary example. Because of these and other differences, we do not believe that there needs to be uniformity between these types of credit.

Again, we want to take this opportunity to reiterate that the Fed's efforts should focus on ensuring that the consumer has clear and concise information on the fees and charges they may incur. We believe it would be most helpful to consumers if all the fees and charges were simply listed as a "fee" or "cost of credit," as these are terms they are most likely to understand. Creditors can then simply inform the consumer that these fees may increase the cost of credit, without incorporating these fees in the APR.

Consumers generally view the APR as an interest rate, similar to the interest rate they receive on their checking and savings account. Providing the information in the manner described above will clearly inform the consumer that fees do impact the cost of credit, while maintaining the simplicity and the commonly understood view of what the interest rate or APR means. Other information is not necessary and would add confusion, such as the balance calculation methods, as discussed in our response to Question 2 above.

Over-the-limit Fees

Question 21 – Fees for exceeding a credit limit are not considered "finance charges" but are considered "other charges." Should these fees always be excluded as a "finance charge," such as when a creditor does not require the consumer to bring the account balance below the established credit limit and then imposes the over-the-limit fee each month on a continuing basis?

CUNA's Response – We believe the over-the-limit fee should be considered an "other charge," consistent with the Fed's current interpretation.

Question 22 – Credit card transactions may be authorized in situations in which the merchant or creditor cannot at that time determine if the credit limit will be exceeded by that transaction. How do card issuers explain their practice of approving transactions that may result in exceeding the credit limit and would, therefore, incur over-the-limit fees? Are these fees imposed at the time of the approved transactions or later, such as at the end of the billing cycle? Are additional disclosures needed regarding the circumstances in which these fees will be imposed?

CUNA's Response – It is very difficult for credit unions to explain these practices, either in the credit card agreement or elsewhere. Although monitoring credit limits may be rather simple when there is online communications and tracking systems with the credit card companies, it is much more difficult for those that communicate with the credit card companies on an offline basis, such as by sending batched transactions on a daily basis.

Offline communication may also occur when the online systems are down or not otherwise operating. For offline communications, the credit card companies have predetermined credit amounts that they may approve and neither the credit card company nor the financial institution has the “real time” information necessary to know or control those accountholders who are approaching or exceeding their credit limit.

For these reasons, additional disclosures explaining the online and offline scenarios in an easily understood manner would be very difficult to develop and would simply not be feasible. If disclosure requirements were imposed, we are concerned that credit unions, especially those that communicate with the credit card companies offline, would have to institute practices to ensure that the credit limit is never exceeded as an alternative to making these disclosures, which would be very difficult to develop. Not only would this restrict credit for these members, but the members of these credit unions may be treated differently as compared to consumers using financial institutions that communicate online with credit card companies, since those other institutions have a greater ability to monitor credit limits.

As for when the over-the-limit fee is imposed, we believe credit unions generally charge the fee only once in a statement period in which the limit is exceeded, regardless of how many charges are incurred after the limit is exceeded. This may be different than other creditors that may charge the fee for each transaction after the limit is exceeded or may charge a fee each day the limit is exceeded. Also, a number of credit unions will not charge the fee until the member has exceeded the limit by a certain amount, such as when the balance exceeds the limit by more than ten percent.

Use of the “Effective” or “Historical” APR Disclosures on Periodic Statements

Question 23 – For each billing cycle, an “effective” or “historical” APR is disclosed, which includes other “finance charges” that are imposed, in addition to the interest. This may result in a very high APR on periodic statements that is substantially higher than the interest rate on the account because non-interest finance charges are amortized over one billing cycle for purposes of calculating the historical APR for that cycle. How have changes in the market and consumers’ use of open-end credit affected the usefulness of the effective APR? Is there data on how disclosure of the effective APR affects consumer behavior? Is it useful to include transaction charges, such as cash advance and balance transfer fees?

CUNA's Response – Please see our response to Question 5 above regarding our suggestions on how eliminating the historical APR and simplifying the disclosure of the "finance" and "other" charges will benefit consumers' understanding of the cost of their credit. We do not believe the historical APR has ever been useful for consumers and either does not affect behavior or may even affect their behavior detrimentally. For example, if a consumer incurs a charge that is incorporated into the historical APR for a specific statement period on a credit card account that otherwise has a low APR, then that consumer may switch to another credit card with a higher APR, even though it may be lower than the historical APR that applied on the original account for a certain specific statement period.

In addition to simplifying disclosures, we believe that improving financial literacy will help consumers to better understand their cost of credit. CUNA supports these efforts, which includes our involvement in the National Endowment for Financial Education and the JumpStart Coalition. Ensuring that consumers have a general understanding of credit will also help eliminate the need to provide the excessive information that is now required under the current disclosure rules.

Question 24 – Are there ways to improve consumers' understanding of the effective APR by providing additional context? For example, should the consumer be informed that the effective APR includes interest, as well as fees, and that the calculation assumes the fees relate to credit that was extended only for a single billing period, which results in an APR substantially higher than the interest rate?

CUNA's Response – Please see our response to Question 5 above, in which we explain our position that fees should not be included within the APR.

Question 25 – Are there other methods for disclosing the costs of credit on periodic statements that may be more effective than disclosing the individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of fees imposed during the billing cycle, or a total dollar amount of fees by type? Would a cumulative year-to-date total of certain fees be useful for consumers?

CUNA's Response – Please see our response to Question 5 above, in which we explain how the fees should be disclosed on periodic statements in a manner that achieves the goal of providing this information to consumers so that it is simple and easy to understand

Disclosures of Rate Changes

Question 26 – Certain changes to the terms of an open-end plan require additional notice. For these change-in-terms notices, the general rule is that 15 days' advance notice is required to increase the finance charge (including the interest rate) or an annual fee. Is this adequate to provide timely notice to consumers?

CUNA's Response – We would support a change that would require a 30-day advance notice before changing certain terms of an open-end credit plan, instead of the current 15-day requirement. The current 15-day period is not enough time for consumers to analyze these changes and switch their account if they do not want to accept the new terms. Changing the requirement to 30 days will benefit consumers by providing them with the additional time needed so they can shop around to determine if it would be beneficial to close their account and open a new account with another creditor. Also, from an operational perspective, credit unions generally provide these notices along with the periodic statement and are already giving their members a 30-day notice.

Question 27 – There are exceptions to the 15-day notice requirement. If the interest rate or other finance charge increases due to default or delinquency, notice is required, but does not have to be given in advance. Also, a change-in-terms notice is not required if the creditor specifies in advance the circumstances in which an increase will occur. How are account-holders alerted to interest rate increases due to default on the account or on another account that the consumer has with another creditor? Are the existing rules for disclosing increases in interest rates and other finance charges adequate and timely for the consumer? How can they be improved?

CUNA's Response – If the interest rate or other finance charge increases due to a default or delinquency, then notice should be provided at the time of the default or delinquency, since that is the time the information will be of most value and relevant for the consumer. If the information is provided in advance, then it should be incorporated in the new Schumer Box that we suggest should be developed for credit card agreements, as described in our response above to Question 2.

Credit unions generally oppose the practice of a credit card issuer changing the interest rate solely because of a default on another account that the consumer may have with another creditor. This should not be relevant to any account that is not in default. The interest rate on each account should be priced based on the payment record on that specific account. Changing a rate on an account in which the consumer is current penalizes the consumer more than once for one specific transgression. An analogy would be if a motorist were given two fines for running a red light because two police officers happened to witness the violation. This should not be acceptable.

Balance Calculation Methods

Question 28 – Under TILA and Regulation Z, consumers receive information about how account balances are calculated, although there is no requirement as to which methods creditors must use. How significantly does the balance calculation method affect the cost of credit, given typical use patterns?

CUNA's Response – Changing the calculation method can result in changes to the cost of credit. Some formulas benefit the creditor more than others. An example would be if the rate were applied to the highest balance during a statement period, as opposed to an average balance. One method that credit unions often use is calculating the average daily balance for the specific statement period and then use the applicable APR to calculate the interest cost for that period. We view this as a fair calculation method, although we recognize this can be manipulated by other creditors in a manner that further increases the cost of credit.

Question 29 – Do consumers understand that different balance calculation methods affect the cost of credit and do they understand which methods are more or less favorable to them? What additional disclosures would be helpful for consumers?

CUNA's Response – We believe consumers generally do not understand how different balance calculation methods affect the cost of credit or which ones may be more or less favorable to them. As we indicated in our response to Question 2 above, this is a very complicated area and doubt that additional disclosures will help consumers.

Question 30 - Precise explanations with regard to balance calculation methods are required on account-opening disclosures and on periodic statements, which can be very complex. Should the Fed permit more abbreviated descriptions on periodic statements, with a reference to where consumers can obtain further information, such as the credit agreement or a toll-free telephone number?

CUNA's Response – We would certainly support the option of providing abbreviated descriptions. However, we would oppose any requirement to include and maintain a toll-free telephone number, which would be very burdensome and costly for smaller financial institutions, such as credit unions.

Disclosing the Effects of Making Only Minimum Payments

Question 31 – Should Regulation Z be amended to require: 1) that periodic statements should disclose the effects of making only the minimum payment, such as how long it will take to pay the balance or disclosing that making the minimum payment may result in additional penalty fees for exceeding the credit limit if the payment does not bring the balance under the limit; and 2) account-opening disclosures showing the total payments for those credit plans specifically established to finance purchases that are equal or nearly equal to the credit limit, assuming only minimum payments are made? Would these benefit consumers?

CUNA’s Response – If the Fed were to require disclosures regarding the effects of making minimum payments, we believe it should take the form of an example, using a sample dollar amount and a sample rate that the creditor may realistically impose, as opposed to a customized example for each consumer. We believe this will provide helpful information to the consumer, without the significant burden of providing customized examples, especially for accounts in which the interest rate may vary. The information can be clearly labeled as an example to ensure that consumers will not mistakenly believe that the information is based on their personal situation. Also, if the Fed does require such a disclosure, we believe there should be a significant period between the time the Fed issues such a requirement and the time that compliance will be mandatory in order to ensure that creditors have sufficient time to prepare these new disclosures.

Question 32 – Is information about amortization periods for an account readily available or would new systems need to be developed? What would the costs be to implement the changes in Question 31?

CUNA’s Response – Significant software changes would be necessary to implement these changes.

Question 33 – Is there data on the percentage of cardholders that regularly or continually make only the minimum payments on open-end credit plans?

CUNA’s Response – We do not believe credit unions maintain this type of information.

Payment Allocations

Questions 34 and 35 – Some accounts apply different interest rates to certain features, such as purchases, cash advances, and balance transfers. How a payment is allocated between these features on an account can affect the consumer’s cost of credit. Neither TILA nor Regulation Z requires a creditor to use a particular allocation method or disclose the method that is used. What are the common methods of payment allocation and how do they affect the cost of credit for a consumer? Do creditors typically disclose their allocation methods and how are they disclosed?

CUNA’s Response – Credit unions generally do not charge different rates for purchases, cash advances, and balance transfers so different payment allocation methods would not impact their members’ cost of credit.

Question 36 – Should Regulation Z require disclosure of the allocation method on the periodic statement? Would this benefit consumers and avoid consumer confusion or misunderstanding? What would be the cost of providing the disclosure? What level of detail would provide useful information while avoiding information overload?

CUNA's Response – We believe it would be very difficult to disclose the allocation method in a manner that consumers would easily understand. We also question the usefulness because consumers would not likely be able to compare allocation methods among creditors. Consumers primarily care about the amount of interest they pay and that their payments are applied correctly. The periodic statements currently disclose how the previous payment was actually allocated among the different credit features, and we support continuing this type of disclosure. This provides consumers with the practical information as to how their money is allocated, as opposed to a complicated description of the method that was used. Although we believe the payment allocation method should be disclosed at least once during the credit relationship, we see very little benefit in requiring periodic disclosures of this type of information, other than a disclosure if the allocation method changes.

Tolerances

Question 37 – TILA allows the Fed to permit tolerances for numerical disclosures other than the APR. What tolerances should the Fed consider? Should the Fed expressly permit an overstatement of the finance charge for open-end credit? Would that address concerns over proper disclosure of fees? How narrow should any tolerance be to ensure that uniformity of disclosures is preserved?

CUNA's Response – We have no specific proposals at this time, but plan to review and comment on any future changes the Fed proposes as a result of the comments received in response to the ANPR.

Other Questions Regarding the Content of Disclosures

Question 38 – For any changes suggested regarding disclosures, what would be the costs and benefits of these changes, including one-time costs?

CUNA's Response – The benefits of the suggestions we have made are outlined above under the various questions that solicited specific information about these changes. We do not at this time have specific information on the costs involved.

Question 39 – Are there particular types of open-end accounts, such as subprime or secured credit card accounts, that should require special disclosure rules to ensure that consumers have adequate information about these products?

CUNA's Response – We do not believe there are any specific types of accounts that would need specialized disclosure rules.

Question 40 – Are there other issues the Fed should consider in reviewing the content of open-end credit disclosures? Is the information currently provided with credit card applications and solicitations adequate and effective for consumers?

CUNA's Response – Other than our responses to the above questions, we have no other specific proposals at this time, but plan to review and comment on any future changes the Fed proposes as a result of the comments received in response to the ANPR.

Question 41 – Are there classes of transactions in which the Fed should exercise the exemption authority it has in order to further TILA's purpose, facilitate compliance, prevent circumvention or evasion, or because TILA coverage does not provide meaningful information or protection?

CUNA's Response – We have no specific proposals at this time, but plan to review and comment on any future changes the Fed proposes as a result of the comments received in response to the ANPR.

Question 42 - Should the Fed exercise its authority to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?

CUNA's Response – We believe it would be very difficult to determine the income and asset level of borrowers for purposes of providing such a waiver. Even if such amounts could be determined, they would have to be continually indexed and changed to take into account future inflation.

Modifying the Rules Regarding Substantive Protections

Question 43 – The Fed is requesting comment on revising TILA's substantive provisions for open-end accounts. These include provisions regarding billing disputes, cardholder liability for unauthorized card use, issuing cards only upon the consumer's request or for renewal or substitution of an accepted card, and the manner that consumers make and the manner that the creditor post payments. Are these provisions adequate and are the creditors' responsibilities clear? Do these provisions need to be updated to address particular types of accounts, practices, or to address technological changes?

CUNA's Response – We believe these substantive provisions are adequate as they are generally favorable to the consumer. Please see our response to Question 45 below regarding the applicability of these provisions to convenience checks.

Accessing Credit Card Accounts

Question 44 – The Fed is requesting information on the extent that the industry has developed open-end credit plans allowing consumers to conduct transactions using only account numbers and that do not involve physical devices, such as an actual credit card. For these types of plans, what are the policies for resolving accountholder claims when disputes arise?

CUNA's Response – We have no specific response to this question, but generally believe that the requirements for these types of open-end credit plans should be the same as those involving the physical device.

Convenience Checks

Question 45 – TILA's protections regarding merchant disputes, unauthorized use of the account, and prohibition against unsolicited issuances does not apply to convenience checks that are offered by credit issuers. Have consumers experienced any problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should all of TILA's protections be extended to other extensions on credit card accounts, such as convenience checks?

CUNA's Response – Credit unions are very concerned about the current use of convenience checks as there have been a number of problems regarding these types of checks. Convenience checks are often forged, counterfeit, or otherwise unauthorized and are often returned when there is a billing dispute. This problem is facilitated because these checks can be easily stolen from the consumer's mailbox. A common problem that credit unions experience is when these checks are altered to make them appear as cashiers' checks, which are then instantly credited to the member's account, and then it is later discovered that these checks are counterfeit. Until the appearance of convenience checks, credit unions were comfortable in relying on cashiers' checks and crediting them to the members' account upon deposit. Because of these and other problems, we suggest that financial institutions should be permitted to place a long hold time when these types of checks are deposited at the institution.

Credit unions have been opting out of providing convenience checks to their members as a means to access credit, and we believe the financial services industry should consider eliminating the continued use of these checks. Credit unions have also observed that their members are reducing their use of convenience checks, as there are a number or other means in which they may access their credit or otherwise pay for their purchases, such as by using debit cards or accessing their money electronically through home banking programs.

If the use of convenience checks continues, then we believe they should be subject to the rules that apply to checks, as opposed to being treated as credit card payments, since they are processed through the check payment system. These checks should not be considered credit card transactions and should no longer be subject to error resolution rights or other protections that apply to credit card transactions.

Unsolicited Issuance of Credit Cards

Question 46 – TILA generally prohibits creditors from issuing credit cards, except in response to a request or application. There is an exemption for cards issued as renewals or substitutions to replace an accepted card in which more than one card may be replaced, subject to certain conditions. This allows issuers to use new formats and technologies to issue cards to supplement the traditional card. Should Regulation Z be revised to allow creditors to issue additional cards at anytime, even if it is not for the renewal or substitution of the previously issued card? Should conditions or limitations be attached in these situations, such as a requirement that the card be sent unactivated or providing written, prior notice to the consumer that additional cards will be sent?

CUNA's Response - CUNA believes creditors should be allowed to issue more than one credit card for an existing account at any time, even when it is not for the renewal or substitution of existing cards. We also agree that appropriate safeguards are necessary, which should include the requirement to send additional cards unactivated and to provide consumers with prior notice before sending the cards.

Prompt Crediting of Payments

Questions 47 & 48 – TILA requires that a payment made on an open end-credit plan must be credited to the account as of the date the payment is received by the creditor and that creditors may impose reasonable payment requirements. Creditors may also specify a "cut-off" hour for the payment to be received in order to be credited on that day. What are the cut-off hours used by most card issuers? How do issuers determine cut-off hours? Do card issuers' payment instructions and cut-off hours differ according to whether the consumer makes payment by check, electronic fund transfer, telephone, or by the Internet? What proportion of consumers make payments by mail, as opposed to expedited options, such as electronic payments?

CUNA's Response – Credit unions generally do not impose "cut-off" hours, other than requiring payment by the close of the business day in order for it to be posted on that day. Credit unions will often post the payment on the day it is received, even if the payment is processed at a later time, if due to a backlog or certain other reasons that are beyond the control of the member.

Question 49 – Do the rules and creditor disclosures clearly inform cardholders of the date and time that payments must be received in order to avoid additional fees? How can the disclosure requirements be improved?

CUNA's Response –The date and time that payments must be received in order to avoid additional fees should be disclosed, especially if the date and time is other than the close of the business day. We believe the current disclosure requirements are adequate, and no new rules are necessary at this time.

Question 50 – Creditors may use third-party processors for payments. How, if at all, do the operating hours of third-party processors differ from those of creditors? Do creditors treat payments received by a third-party processor as if they were received by the creditor? What guidance is needed concerning the creditors' obligation in posting and crediting payments when third parties are used?

CUNA's Response – Credit unions generally cannot verify independently when a payment is received by the third-party processor and cannot alter the day that the processor received the payment. Credit unions rely on the processor to determine when the payment is received for purposes of posting and crediting the payment. No new guidance is necessary as this is a contractual relationship between the credit union in which the obligations among the parties are defined. Credit unions always have the ability to use a different processor at the end of the contract period if there is dissatisfaction in the way payments are processed.

Question 51 – Some creditors' service centers are open 24 hours a day, 7 days a week, to receive mail delivery and electronic payments continuously. Should the Fed issue a rule requiring creditors to credit a payment as of the date it is received, regardless of the time?

CUNA's Response - We realize that electronic payments can be processed after the close of the business day and still be posted on that day if received prior to midnight. However, in these situations, payments received by mail after the close of business can be received, but are often stored overnight and not processed until the next day. For this reason, we would not support a rule requiring all payments to be credited on the date received, regardless of the time they are received.

Request for Comment on Additional Issues

Question 52 – The Fed is often asked for informal advice on how to apply TILA to new products and circumstances that are not addressed in the rules. Are there issues in which the Fed's informal advice should be formalized or addressed again?

CUNA's Response – We are not aware of any issues at this time in which the Fed's informal advice should be formalized.

Question 53 – The Fed provides exceptions based on de minimis, or minimum, dollar amounts. Examples include not requiring periodic statements if the balance is $1 or less and a simplified way to calculate the APR on periodic statements if the minimum finance charge is 50 cents or less. To what extent, if any, should amounts such as these be adjusted?

CUNA's Response – We have no position regarding adjusting these minimum dollar amounts, as these processes are generally automated at most credit unions. However, we suggest that the APR requirement should be eliminated if the finance charge is 50 cents or less. In these situations, the APR is rather meaningless since consumers are likely not interested in this type of information if the finance charge is at these very low levels.

Questions 54 & 55 – How can Regulation Z and the official staff commentary be amended so that it is more effectively organized and easier to understand? Are there technical revisions to the rules or the official staff commentary that should be addressed? Are there any provisions of Regulation Z that are obsolete due to technological or other developments?

CUNA's Response – We have no specific proposals at this time, but plan to review and comment on any future changes the Fed proposes as a result of the comments received in response to the ANPR.

Question 56 – Are there any legislative changes to TILA that the Fed should recommend to Congress? For example, for a rule based on a dollar amount that is in the TILA statute, should the Fed recommend adjustments to these dollar amounts and what should be the amount of the adjustments?

CUNA's Response – The Federal Credit Union Act imposes a ceiling on the maximum interest rate that federal credit unions may charge for loans, which is currently set at 18%. These credit unions are required to use the definition for "finance charge" that applies under TILA and Regulation Z for purposes of calculating the APR. We believe that credit unions should be permitted to use an interest rate calculation for purposes of calculating the interest rate ceiling that is not based on the "finance charge" definition under TILA and Regulation Z. We would support legislative action as a means to accomplish this result and would welcome the opportunity to work with the Fed on this issue.

Question 57 – Are there nonregulatory approaches that may improve the effectiveness of TILA's disclosures and substantive protections, such as best practices or consumer education efforts? For example, how might calculation tools that are widely available on the Internet be used to provide better education to consumers regarding the effect of making only minimum payments? Is there data as to the extent to which consumers use these and other types of calculation tools?

CUNA's Response – CUNA strongly encourages efforts to improve financial literacy that will help consumers better understand their cost of credit and will also help consumers use and understand the TILA disclosures, especially if they are simplified as a result of the Fed's Regulation Z review process. As noted in our response to Question 23 above, CUNA continues to support these efforts, which includes our involvement in the National Endowment for Financial Education and the JumpStart Coalition. We also believe that the Internet will continue to play an ever-growing role in helping to provide financial information and education, such as providing tools regarding the effect of making only minimum payments. Although we have no definitive data as to the extent to which consumers use these and other types of calculation tools, we believe such tools are gaining popularity, and will continue to do so, and that credit unions will continue to adopt such tools on their websites.

<u>Question 58</u> – Are there other areas of Regulation Z, in addition to the rules on open-end credit, that should be included in this initial stage of review? Also, Regulation Z specifies classes of transactions that are not covered under TILA. These include: 1) business, commercial, agricultural, or organizational credit; 2) credit over $25,000 that is not secured by real property; 3) public utility credit; 4) securities or commodities accounts; 5) home fuel budget plans; and 6) student loans. Should these be updated?

<u>CUNA's Response</u> – Credit unions do their best to comply with Regulation Z and all of the other regulatory requirements that are imposed on them. For the smaller credit unions, complying with Regulation Z and these other requirements is particularly difficult because they do not have sufficient staff to ensure compliance and they often have to rely on outside counsel. This imposes a significant cost burden on these credit unions, as compared to larger financial institutions that can more easily absorbed the cost of in-house staff or outside counsel. Also, penalties can be more easily absorbed by larger institutions that earn significant profits, as opposed to smaller financial institutions that do not earn such profits.

To help smaller financial institutions, we suggest the Fed consider reducing penalties for those smaller institutions that inadvertently violate Regulation Z. This is not to suggest that these institutions should be exempt from Regulation Z, as all credit unions take their responsibilities seriously with regard to Regulation Z and understand the need for their members to have adequate disclosures before they enter into loan transactions. However, we believe penalty relief is warranted to help ensure that these smaller institutions can survive inadvertent violations of Regulation Z.

We suggest that penalties could be determined on a sliding scale, based on the assets, equity, or net worth of the institution, while ensuring that the consumer is compensated for any financial impact resulting from the Regulation Z violation. We further believe that penalties for violations of a number of other regulations could also be based on such a sliding scale, although we recognize that this would be beyond the scope of the ANPR. We would welcome the opportunity to work with the Fed on this type of approach with regard to penalties.

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Thank you for the opportunity to comment on the ANPR regarding possible changes to the open-end credit rules under Regulation Z. If you have questions about our comments, please contact Senior Vice President and Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

Jeffrey Bloch
Senior Assistant General Counsel