Bank of America
Legal Department
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101 South Tryon Street
Charlotte, NC 28255

March 28, 2005

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

Via Electronic Submission: Regulation.comments@federalreserve.gov

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

Dear Ms. Johnson:

Bank of America Corporation ("Bank of America" or "Company") appreciates the opportunity to comment on the Federal Reserve Board's (the "FRB") advanced notice of proposed rulemaking relating to the format and content of open end credit disclosures, and substantive protections provided under Regulation Z, which implements the Truth in Lending Act ("Regulation Z").

Bank of America is one of the world's leading financial services companies that provides financial products and services to 33 million consumer households. Bank of America is the fourth largest issuer of consumer credit cards in the United States with nearly $60 billion in average outstandings.

OVERVIEW

In conducting its review of Regulation Z, Bank of America believes the FRB should reevaluate its existing requirements in light of changes in consumer credit marketing and communication technology since its last major revisions. The increased usage of the Internet, for example, has provided consumers with easy access to information about products and terms and expanded the opportunities for creditors to efficiently and effectively deliver information to many consumers. These new technologies should also be considered by the FRB as an additional channel to deliver educational information to consumers.

Bank of America supports the FRB's goals of insuring that new consumers are provided clear, effective and useful disclosures that will allow them to make informed choices regarding their selection and use of credit. The Company strives to ensure that all of its communications with consumers meet these goals. While Bank of America believes that there are a number of provisions in Regulation Z that should be modified in order to facilitate informed credit shopping and to improve consumer understanding of open-end credit plans, we believe that all of the issues raised in this ANPR cannot be addressed effectively by adding or changing current provisions and that the FRB should consider achieving its goals by using multiple approaches such as modifying Regulation Z, creating other mechanisms for educating consumers, and working with other agencies to create best practices for addressing issues concerning open-end credit.

SPECIFIC COMMENTS

Q1. Scope of the review.

The FRB has requested comment on the feasibility and advisability of reviewing Regulation Z in stages beginning with open-end credit but not including home-secured lending. Although Bank of America supports the review process taking place in stages and addressing different types of credit, the Company would discourage any required implementation of changes until Regulation Z has been reviewed in its entirety and can be implemented uniformly. Changes to Regulation Z may result in the need for a financial institution to make process and systems changes throughout its entire organization and if it is forced to implement changes on a piecemeal basis it would require duplicative efforts throughout the enterprise and drive additional costs associated with such changes.

FORMAT AND CONTENT OF DISCLOSURES

Account Opening (Question 2-3)

Q2. What formatting rules would enhance consumers' ability to notice and understand account-opening disclosures? Are rules needed to segregate certain key disclosures from contractual terms or other information so the disclosures are more clear and conspicuous? Should the rules require that certain disclosures be grouped together or appear on the same page? Are minimum type-size requirements needed, and if so, what should the requirements be?

We believe the existing provisions in Regulation Z, together with additional guidance from other regulatory agencies, provide adequate guidelines to creditors while allowing them the flexibility to format and position those disclosures in a manner that can be managed to a variety of products, systems and vendors. Any dramatic changes specifying strict requirements could require creditors to redesign systems, change internal policies and procedures, and replace large volumes of marketing materials at a substantial cost to the industry. Moreover, to dictate specific formatting by regulation would squelch innovation in clearer customer communication.

Bank of America would support clarification as to how existing requirements translate into disclosures made through alternative marketing channels such as the Internet and telephone. For example, type size requirements do not translate into Internet functionality. Current provisions were designed with the limited approach of mail and print materials and this does not translate well into new technology.

Q3. Are there ways to use formatting tools or other navigational aids for TILA's account-opening disclosures that will make the disclosures more effective for consumers throughout the life of the account? If so, provide suggestions.

We believe that the FRB should provide a model form for the initial disclosures and revise or replace the model forms contained in the existing regulation. However, we believe the FRB should not mandate certain type sizes, bolding or grouping of key terms that could cause creditors to revise systems and materials. We believe that the model forms should be tested with consumers and should present only key information in a format that is understandable and meaningful to consumers. In addition, model forms should provide a safe harbor for institutions that choose to use them.

Statements (Question 4-6)

Q4. Format rules could require certain disclosures to be grouped together or appear on the same page where it would aid consumer's understanding. For example, some card issuers disclose a 25-day grace period on the back of the periodic statement that can be used to calculate the payment due date; the same card issuer might also show a "please pay by date" on the front of the periodic statement that is based on a 20-day period. Some consumers might assume the 20-day period reflects the due date; other consumers may ascertain the actual due date by looking on the back of the statement. Potential consumer confusion might be reduced by requiring creditors to disclose the grace period or the actual due date on the first page of the statement, adjacent to the "please pay by" date. Is such a rule desirable? Are there other disclosures that should be grouped together on the same page?

Bank of America does not believe that additional formatting requirements for periodic billing statements are necessary. Regulation Z outlines sufficient guidance that allows creditors to determine the best way to present required information to their customers. In the example provided above, we believe requiring that both the "payment due date" and the "please pay by date" be disclosed on the statement would cause greater customer confusion. For example, Bank of America does not disclose these items separately on its statements since the dates for both requirements are the same for the customer. In addition, much of the information required on billing statements is provided to the consumer in account opening disclosures and other materials that fully describe such terms as grace periods and finance charge calculations. It is not clear that consumers derive any additional value by repeating such information each month on their statements.

Q5. Could the cost of credit be more effectively presented on periodic statements if less emphasis were placed on how fees are labeled, and all fees were grouped together on the *periodic statement? Are there other approaches the FRB should consider? If so, provide suggestions.*

Bank of America does not believe requiring that all fees be grouped together would provide any greater clarity to customers in effectively presenting the cost of credit. There are various ways that required information can be presented effectively and creditors should be permitted to determine the best approach for their products and customers based on their systems and customer feedback.

Q6. How could the use of formatting tools or other navigational aids make the disclosures on periodic statements more effective for consumers?

We believe that model forms providing for certain formatting of monthly statements may be useful, they should not be mandated. There are various ways that required information can be presented effectively and creditors should be permitted to determine the best approach for their products and customers based on their systems and customer feedback.

Applications (Questions 7-8)

Q7. Is the "Schumer box" effective as currently designed? Are there format issues the FRB should consider? If so, provide suggestions.

Bank of America believes that the changes made by the FRB in 2000 to the tabular application disclosures resulted in significant improvements and was effective in providing consumers more readable and understandable disclosures. These changes required banks to incur significant expense in re-engineering card applications and we see no value in further revisions.

We would support further guidance in this area on clarifying "safe harbors" as it relates to marketing on the Internet since current type size requirements do not translate into electronic disclosures. We suggest that the FRB clarify that creditors may fulfill various disclosure, advertising, and "clear and conspicuous" requirements using various Internet tools, such as (pop-up windows, secondary browsers, scroll boxes, etc.,) and other methods rather than forcing consumers to scroll through lengthy pages of content. We also recommend a definitive statement that creditors fulfill their regulatory requirements using such technology, even in cases where individual consumers have installed tools designed to prevent such presentations from appearing on their displays.

Q8. Balance transfer fees and cash advance fees may be disclosed inside the "Schumer box" or clearly and conspicuously elsewhere on or with the application. 12 CFR § 226.5a(a)(2)(i). Given the prevalence of balance transfer promotions in credit card applications and solicitations, should balance transfer fees be included in the Schumer box?

We believe that all fees related to the cost of credit, such as cash advance fees, should be included in the tabular disclosures to insure consistency in practices among creditors.

Q9. Are there formatting tools or navigational aids that could more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures, such as those accompanying convenience checks and balance transfer checks? If so, provide suggestions.

We believe that formatting tools similar to the tabular Schumer-box format may be useful in providing consistent disclosure of subsequent offers made to customers for convenience and balance transfer checks. We do not believe that linking account-opening disclosures to subsequent offers would be effective due to the varying lengths of time between the two occurrences. Customers will be more likely to read and understand the terms of a specific offer at the time the offer is presented to them.

Q10. Should existing clauses and forms be revised to improve their effectiveness? If so, provide specific suggestions.

Bank of America supports the need for changes to Model Forms and Clauses. The clauses and forms should contain understandable disclosures and should be tested with consumers. New Model forms may also assist in clarifying new disclosure requirements that may function as safe harbors.

Q11. Would additional model clauses or forms be helpful? If so, please identify the types of new model clauses and forms that the FRB should consider developing.

See answer to Q10.

Q12. In developing any proposed revisions or additions to the model forms or clauses, the FRB plans to utilize consumer focus groups and other research. The FRB is aware of studies suggesting that, for example, bolded headings that convey a message are helpful, but using all capital letters is not. Is there additional information on the navigability and readability of different formats, and on ways in which formatting can improve the effectiveness of disclosures?

We are not aware of specific studies in this area, but agree that customer focus groups and other research would be useful in determining which formats in fact improve the effectiveness of the disclosures.

IMPROVING CONTENT OF DISCLOSURES

Q13. How could the FRB provide greater clarity on characterizing fees as finance charges or "other charges" imposed as part of the credit plan? Under Regulation Z, finance charges include fees imposed as a condition of the credit as well as fees imposed "incident *to" the credit. This includes "service, transaction, activity, and carrying charges." 12 CFR § 226.4(b)(2). What types of fees imposed in connection with open-end accounts should be excluded from the finance charge, and why? How would these fees be disclosed to provide uniformity in creditors' disclosures and facilitate compliance?*

Bank of America would encourage the FRB to establish clearer rules and principles that can be used by creditors, courts, agencies and others to determine a standard that can be used to determine when charges paid by a consumer are and when they are not finance charges. Recent proposed changes to the official staff interpretation of Regulation Z dealing with expedited payment fees are a step in the right direction. In particular, current rules, provide that a charge is a finance charge if it is "imposed" by a creditor as an "incident to or a condition of the extension of credit," have been unclear to creditors, courts and others for years. As a result, there has been confusion by creditors and inconsistent treatment of charges paid by consumers. We do not believe that consumers understand why certain fees are finance charges and others are not. Clear guidelines on this issue would provide creditors with a standard for determining with greater certainty, which fees are and are not finance charges and provide the consumer with consistent disclosure information about fees.

Today, fees that clearly must be included in the calculation of the finance charge are assessed on specific types of activity that occur only when consumers make specific one-time transactions that invoke the fee (such as taking a cash advance). Typical consumer behavior does not repeat these patterns on a regular basis and may in fact only occur once in the lifetime of an account relationship. Consumers tend to understand these as fees as it relates to their specific behavior and do not necessarily connect those limited occurrences to their overall cost of credit and APR. Clearly separating the two categories would provide the consumer greater clarity in understanding each respective cost on their account.

Q14. How do consumers learn about the fees that will be imposed in connection with services related to an open-end account, and any changes in the applicable fees?

Consumers learn about the specific fees applicable to their open-end credit plans from required disclosures and from the terms of their credit agreements. With respect to fees for related services, however, it is a common practice for creditors to inform consumers of these fees when the consumer makes the request for a service. The FRB should not mandate the form or timing of disclosure of service fees, as these fees are optional or voluntarily incurred by the consumer and, therefore, are not directly related to the extension of the credit. In addition, it is more effective for creditors to explain such fees at the time the service is requested by the consumer. More broadly, Bank of America believes that consumers would have a better understanding of these fees if they had access to a Web site that included general information on the structure of open-end plans and the fees typically imposed in connection with such plans

Q15. What significance do consumers attach to the label "finance charge," as opposed to "fee" or "charge?"

Bank of America believes consumers tend to understand the cost of their credit in separate categories of either fees OR finance charges and understand finance charges as determined by their specific APRs and periodic rates. Clearly distinguishing between the two categories and disclosing them clearly on the billing statement would greatly increase the consumer's ability to understand their cost of credit.

Q16. Some industry representatives have suggested a rule that would classify fees as finance charges only if payment of the fee is required to obtain credit. How would creditors determine if a particular fee was optional? Would costs for certain account features be excluded from the finance charge provided that the consumer was also offered a credit plan without that feature? Would such a rule result in useful disclosures for consumers? Would consumers be able to compare the cost of the different plans? Would such a rule be practicable for creditors?

In open-end credit plans, finance charges should be limited to fees based on the amount and duration of the credit. Specifically, any fee that is based on the amount and duration of the credit, such as the periodic rate, is a necessary condition of the credit and, therefore, is not optional. Regulation Z should provide that fees for services not required by a creditor, such as fees akin to an expedited payment fee, and that do not directly affect the amount, availability, or terms of the underlying credit are not part of the open-end credit plan and, therefore, should not be disclosed under the plan as either a finance charge or other charge. Accordingly, where the choice to use the service or feature is made by the consumer and is not required by the creditor, a fee for use of that service should not be considered a finance charge or a part of the plan. Reflecting optional fees in the APR would impair consumer educational efforts about the APR because the fees are unrelated to a specific extension of credit and distort the APR.

Q17. Some industry representatives have suggested a rule that would classify a fee as a finance charge based on whether the fee affects the amount of credit available or the material terms of the credit. How would such a standard operate in practice? For example, how would creditors distinguish finance charges from "other charges?" What terms of a credit plan would be considered material?

See Answer to Question 16.

In addition, the FRB should not classify fees based on whether the fee affects the amount of credit available or the material terms of credit. This approach would require a creditor to make determinations about what is "material." Such an approach likely would cause problems similar to the problems that result from the current classification. Again, we encourage the FRB to reconsider whether such classifications are meaningful to consumers.

OTHER CHARGES

Q18. TILA requires the identification of other charges that are not finance charges and may be imposed as part of the plan. The staff Commentary interprets the rule as applying to "significant charges" related to the plan. Has that interpretation been effective in *furthering the purposes of the statute? Would another interpretation be more effective? Criteria that have been suggested as relevant to determining whether the FRB should identify a charge as an "other charge" include: the amount of the charge; the frequency with which a consumer is likely to incur the charge; the proportion of consumers likely to incur the charge; and when and how creditors disclose the charge, if at all. Are those factors relevant? Are there other relevant factors?*

The current definition of other charges is not clear and subject to interpretation. Other charges should include any fixed fees that may be incurred as a necessary incident to usage of the plan and should be distinguished from fees for optional services that should not be included in other charges.

Q19. What other issues should the FRB consider as it addresses these questions? For instance, in classifying fees for open-end plans generally, do home equity lines of credit present unique issues?

No comment at this time.

Q20. How important is it that the rules used to classify fees for open-end accounts mirror the classification rules for closed-end loans? For example, the approach of excluding certain finance charges from the effective APR for open-end accounts is not consistent with the approach recommended by the FRB for closed-end loans. In a 1998 report to the Congress concerning reform of closed-end mortgage disclosures, the FRB endorsed an approach that would include "all required fees" in the finance charge and APR.

Since open-end and closed-end credit are fundamentally different, we believe the rules for open-end credit should not mirror the rules for closed end credit.

OVER-THE-LIMIT FEES

Q21. The staff Commentary to Regulation Z provides guidance on when a fee is properly excluded from the finance charge as a bona fide late payment charge, and when it is not. See Comment 4(c)(2)–1. Is there a need for similar guidance with respect to fees imposed for exceeding a credit limit, for example, where the creditor does not require the consumer to bring the account balance below the originally established credit limit, but imposes an over-the-credit-limit fee each month on a continuing basis?

Bank of America believes the FRB should address over limit fees in the same fashion as suggested in responses to previous questions. As noted above, we believe consumers do not understand the inclusion of certain fees being included in the finance charge disclosure in certain instances and excluded in others. This approach would likely result in consumer confusion thereby hindering the ability of consumers to understand the costs of credit. If the FRB believes that consumers need to better understand the implications or consequences of not paying down the outstanding balance on the account enough to avoid being accessed another over-limit fee, we believe that this issue could be better addressed through consumer education, rather than complex disclosures. In addition, if the FRB believes there are misleading or deceptive practices in the application of over-the limit fees, the FRB and other federal agencies should address these issues through their unfair and deceptive acts and practices authority.

Bank of America believes the fee acts as a deterrent and is akin to a late payment fee and therefore should not be included as a finance charge. The current disclosure of the dollar amount of the over-the-limit fee is adequate.

Q22. Because of technical limitations or other practical concerns, credit card transactions may be authorized in circumstances that do not allow the merchant or creditor to determine at the moment of the transaction whether the transaction will cause the consumer to exceed the previously established credit limit. How do card issuers explain to consumers their practice of approving transactions that might result in the consumer's exceeding the previously established credit limit for the account and being charged an over-the-credit limit fee? When are over-the credit-limit fees imposed; at the time of an approved transaction, or later such as at the end of the billing cycle? The FRB specifically requests comments on whether additional disclosures are needed regarding the circumstances in which over-the-credit-limit fees will be imposed.

The circumstances that determine the imposition of over-the-limit fees is highly discretionary and fact specific and may vary from customer to customer. These practices reflect the uncertainty of real-time balances, the nature of over-the-limit fees and the different conditions for imposing these fees. For example, because there may be outstanding authorizations on the account, such as authorizations for hotel rooms, car rentals or preauthorized transfers, creditors may not know at the time of the transaction whether the consumer is over the limit. Further, even if a creditor knows that a consumer has exceeded his or her credit limit, a creditor may elect not to impose a fee unless the condition has persisted for some time or is a frequent occurrence.

Consumers are informed about over-the-limit fees in solicitations and initial disclosures. In addition, the imposition of the specific charge is reflected on the periodic statement. Disclosures about over-the-limit fees would not materially advance consumer understanding of over-the-limit fee practices. On the other hand, consumer understanding could be significantly advanced through FRB educational efforts.

HISTORICAL APR

Q23. Have changes in the market and in consumers' use of open-end credit since the adoption of TILA affected the usefulness of the historical APR disclosure? If so, how? The FRB seeks data relevant to determining the extent to which consumers understand and use the historical APR disclosed on periodic statements. Is there data on how disclosure of the historical APR affects consumer behavior? Is it useful to consumers to include in the historical APR transaction charges such as cash advance fees and fees to transfer balances from other accounts?

Bank of America does not believe consumers use or understand the historical APR and strongly encourages the FRB to eliminate its use. As card products have evolved over the years and become subject to varying types of fees, the inability for the consumer to understand the inclusion and exclusion of certain fees into the calculation has led to a great deal of confusion to customers and has no value at that point in time of allowing consumers to compare the cost of credit. Since consumers typically understand the concept that fees may be imposed at different points in time depending on their own actions, they do not understand the basis behind accounting for certain fees as finance charges nor do they understand how this calculation ends up appearing to impose APRs at a much higher rate than they are accustomed to seeing regularly on their periodic statements due only to the fact that they have undertaken some one-time action that invokes a fee and increases the historical APR. We feel separating the APR and the fees will best serve the consumer so the consumer may separately compare the actual interest rate that applies to their balance and the occasional fees charged only at the time they are applied.

Q24. Are there ways to improve consumers' understanding of the effective APR, such as by providing additional context for the disclosure? For example, should consumers be informed that the effective APR includes fees as well as interest, and that it assumes the fees relate to credit that was extended only for a single billing period?

Additional disclosures with respect to the historical APR, as it is used today, likely will only generate further consumer confusion and increase the costs for creditors who must explain the calculations to consumers. More fundamentally, we do not believe that any amount of additional educational efforts can resolve the current consumer confusion regarding the functioning of the historical APR.

Q25. Are there alternative frameworks for disclosing the costs of credit on periodic statements that might be more effective than disclosing individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of all account-related fees assessed during the billing cycle, or the total dollar amount of fees by type? Would a cumulative year-to-date total for certain fees be useful for consumers?

See answer to question 4.

ADVANCE NOTICES AND DEFAULT RATES

Q26. Is mailing a notice 15 days before the effective date of a change in interest rates adequate to provide timely notice to consumers?

Bank of America believes that the current change in terms provision provides sufficient notice to consumers regarding upcoming changes to their account. The current provisions of Regulation Z also provide for additional time frames when the change has retroactive impact. Rate increases due to default by the consumer are currently required and disclosed to customers in their initial account disclosures allowing customers the ability to initially compare terms and make informed choices. The current requirements are sufficient to adequately inform consumers of the circumstances that would initiate a rate change.

Q27. How are account-holders alerted to increased interest rates due to consumers' default on this account or another credit account? Are existing disclosure rules for increases to interest rates and other finance charges adequate to enable consumers to make timely decisions about how to manage their accounts? If not, provide suggestions.

Bank of America informs its cardholders of the events that trigger a default and the applicable default rate in both their account opening and initial disclosures. The rate is subsequently reflected on the periodic statement. We also include a statement message that tells the consumer when they have met any of the triggering events and when the default rate has been triggered. The questions received from consumers makes it clear that they are aware of the APR increase, although this awareness can be impeded by the confusion caused by the existing historical APR disclosure.

BALANCE CALCULATION METHOD

Q28. How significantly does the balance calculation method affect the cost of credit given typical account use patterns?

While the various balance calculation methodologies described in Regulation Z result in some fluctuation of the cost of credit, Bank of America does not believe that these distinctions have much influence on consumers' use of credit or prompt consumers to compare open end credit plans based on these factors.

Q29. Do consumers understand that different balance calculation methods affect the cost of credit, and do they understand which balance calculation methods are more or less favorable for consumers? Would additional disclosures at account-opening assist consumers and, if so, what type of disclosures would be useful?

Balance calculations are by nature a complex formula, and while necessary, most likely do not have much bearing on a consumers' decision-making process. Additional disclosures describing the mathematical process would only add to an already complex process and should not be considered. We believe that in lieu of additional written disclosures, the written calculation methodology requirement should be removed or from the periodic statement and replaced with a simpler example of how the finance charges that appear on the front of the statement are derived and more clearly indicate the fields on the statement that are used in determining the finance charge amount. In addition, we believe it would be more effective to provide customers with directions for finding further educational information on a Web site maintained by the FRB.

Q30. Explanations of balance calculation methods are complex and may include contractual terms such as rounding rules. Precise explanations are required on account-opening disclosures and on periodic statements. Should the FRB permit more abbreviated descriptions on periodic statements, along with a reference to where consumers can obtain further information about the calculation method, such as the credit agreement or a toll-free telephone number?

See Answer to Question 29.

MINIMUM PAYMENT DISCLOSURES

Q31. Is it appropriate for the FRB to consider whether Regulation Z should be amended to require: (1) Periodic statement disclosures about the effects of making only the minimum payment (such as, disclosing the amortization period for their actual account balance assuming that the consumer makes only the minimum payment, or disclosing when making the minimum payment will result in a penalty fee for exceeding the credit limit); (2) account-opening disclosures showing the total of payments when the credit plan is specifically established to finance purchases that are equal or nearly equal to the credit limit (assuming only minimum payments are made)? Would such disclosures benefit consumers?

Q32. Is information about the amortization period for an account readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of implementing such a rule?

Q33. Is there data on the percentage of consumers, credit cardholders in particular, that regularly or continually make only the minimum payments on open-end credit plans?

Bank of America does not believe the FRB should add requirements to Regulation Z that would require disclosure to consumers of the impact of only making minimum payments on an open end account. By its nature, open end credit is designed to allow customers the flexibility to use and pay for credit according to each individual's unique needs and spending habits and in fact there are hundreds of scenarios that could be identified to determine how consumers use their credit. Requiring disclosures that in fact only apply to a subset of cardholders would do nothing more than exacerbate the disclosure burdens that exist today and provide no additional value to the majority of cardholders. In addition, because there are so many different scenarios that influence the amortization of account balances, factors change from month to month as old balances change. Providing examples of specific calculations or even a general description of what the effect of paying only the minimum would be difficult and could set misleading expectations to consumers. These types of disclosures are valuable and suitable in closed end loan scenarios, but do not work for revolving credit.

Creditors typically have a variety of data available on customer accounts that can be requested on an ad hoc basis and reported according to detailed criteria that is requested at the time of the report. While we do not have automated reporting regarding habitual minimum payers we have processes in place allowing us to track and monitor specific behavior patterns of our customers.

Bank of America believes that the FRB could play a more active role in this area by providing consumers access to a variety of credit education materials that allow them to become more informed about responsible use of credit prior to establishing credit.

PAYMENT ALLOCATION

Q34. What are the common methods of payment allocation and how much do they affect the cost of credit for the typical consumer?

Q35. Do creditors typically disclose their allocation methods, and if so, how?

Q36. Is it appropriate for the FRB to consider whether Regulation Z should be amended to require disclosure of the payment allocation method on the periodic statement? Would such a disclosure materially benefit consumers? Some creditors offer a low promotional rate, such as a 0% APR for cash advances for a limited time and a higher APR for purchases. Creditors typically do not allocate any payments to purchases until the entire cash advance is paid off. Are additional disclosures needed to avoid consumer confusion or misunderstanding? What would the cost be to creditors of providing such a disclosure? What level of detail would provide useful information while avoiding information overload?

The extent to which a certain methodology would affect the cost of credit will depend on the credit plan components and features, the consumer's payment practices and the consumer's usage of the account. Payment allocation methodologies are defined by system parameters typically determined by the options available on the issuer's processing system. There may be dozens of methodologies available that include many variations of fees, finance charges, purchase balances, cash balances and promotional balances that can in turn be structured according to APR hierarchies.

Bank of America discloses its allocation methodology in its Cardholder Agreement and also provides summary disclosures in various marketing materials when deemed to impact a particular offer. We do not believe additional disclosure would materially benefit consumers due to the complexity of the operational components driving the methodology and feel that issues concerning payment allocation methods would be better addressed through consumer education.

Q37. What tolerances should the FRB consider adopting pursuant to this provision? Should the FRB expressly permit an overstatement of the finance charge on open-end credit? Would that adequately address concerns over proper disclosure of fees? How narrow should any tolerance be to ensure TILA's goal of uniformity is preserved?

Bank of America believes that the FRB should expressly permit an over statement of the finance charge in open-end credit and increase current tolerances. Finance charges on open-end credit are difficult to calculate because of the definition of finance charge, as well as the variety of rates and transactions that may be involved. The ability to overstate the finance charge would make it easier to disclose finance charges and reduce litigation.

Q38. In considering changes to the disclosures required by Regulation Z, the FRB seeks data relevant to the costs and benefits of the proposed revisions. Accordingly, commenters proposing revisions to the disclosure requirements are requested to provide data estimating the cost difference in complying with the existing rules compared to any proposed alternatives, including any one-time costs to implement the changes.

Bank of America is not able to calculate specific costs associated with many of the FRB's suggestions, however significant modifications would cause us to incur disclosure re-design costs and possible system changes that may result in substantial expense to the Company. In addition, we would incur substantial other compliance costs associated with ensuring that revisions are properly implemented, as well as training costs for employees in connection with ensuring proper compliance. Thus, it is critically important that revisions to Regulation Z be carefully considered to ensure that the benefits are meaningful and that the resulting costs can be justified by the benefits achieved.

Q39. Are there particular types of open-end credit accounts, such as subprime or secured credit card accounts, that warrant special disclosure rules to ensure that consumers have adequate information about these products?

Educating consumers about particular types of products would be far more appropriate and far more effective than requiring special disclosures based on arbitrary distinctions. Special disclosures requirements would significantly increase costs, and any theoretical benefits are likely to be elusive. Moreover, differing disclosure requirements will only impede the ability of consumers to comparison shop for credit accounts.

Q40. Are there additional issues the FRB should consider in reviewing the content of open-end disclosures? For example, in 2000, the FRB revised the requirements for disclosures that accompany credit card applications and solicitations. 65 FR 58903, October 3, 2000. Is the information currently provided with credit card applications and solicitations adequate and effective to assist consumers in deciding whether or not to apply for an account?

See answer to question 7.

Q41. Are there classes of transactions for which the FRB should exercise its exemption authority under 15 U.S.C. § 1604(a) to effectuate TILA's purpose, facilitate compliance or prevent circumvention or evasion, or under 15 U.S.C. § 1604(f) of TILA because coverage does not provide a meaningful benefit to consumers in the form of useful information or protection? If so, please address the factors that the FRB is required to consider under the statute.

No specific recommendations at this time.

Q42. Should the FRB exercise its authority under 15 U.S.C. § 1604(g) to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?

Yes, sophisticated customers should be allowed to waive the requirements of TILA. Both the securities and commodities laws recognize that many consumer protections are not necessary for sophisticated customers.

Is There a Need To Modify the Rules That Implement TILA's Substantive Protections for Open-End Accounts?

Q43. The FRB solicits comments on whether there is a need to revise the provisions implementing TILA's substantive protections for open-end credit accounts. For example, are the existing rules adequate, and if not, why not? Are creditors' responsibilities under the rules clear? Do the existing rules need to be updated to address particular types of accounts or practices, or to address technological changes?

No comment at this time.

Q44. Information is requested on whether industry has developed, or is developing, open-end credit plans that allow consumers to conduct transactions using only account numbers and do not involve the issuance of physical devices traditionally considered to be credit cards. If such plans exist, what policies do such creditors have for resolving accountholder claims when disputes arise?

No comment at this time.

Q45. Have consumers experienced problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should the FRB consider extending any of TILA's protections for credit card transactions to other extensions on credit card accounts and, in particular, convenience checks?

There have been few complaints concerning convenience checks. At present, there is little evidence suggesting that TILA's protections for credit card transactions should be extended to convenience checks. The supplemental information accompanying the ANPR, however, suggests that the billing error provisions apply to convenience checks. We believe that the suggested application of the billing error provisions to convenience checks is problematic because those checks are not subject to the chargeback system for credit cards. Unlike credit card transactions, convenience checks are not processed through a payment card system and are not subject to chargeback mechanisms that are incorporated in the payment card associations' operating guidelines and regulations. Under the chargeback mechanism, creditors have contractual obligations with merchants accepting the cards. Since convenience checks can be provided to merchants that are not within the payment card system, there would be no chargeback rights for such mechanisms. Billing disputes for transactions that are not subject to the chargeback system are costly for financial institutions to resolve and in many instances institutions end up bearing the cost of such disputes. Thus, it is inappropriate to subject convenience checks to the billing error provisions.

Further, there are significant practical impediments to applying substantive protections, such as cardholder claims and defenses or billing error provisions, to convenience checks. Indeed, in many ways, convenience checks are more like a cash advance than a transaction with a merchant using a credit card. There is no chargeback system for convenience checks based on disputes with a merchant. A convenience check can only be returned by the operator of an open-end credit plan based on a fraudulent signature. Accordingly, providers of convenience checks would have to absorb the losses associated with customer claims or assertions of billing errors. At the same time, convenience checks provide consumers with real benefits in the form of the ability to make payments to persons who do not accept credit cards. For these reasons, convenience checks should not be covered by the claims and defenses provisions of TILA and should only be considered to be a billing error if the check itself was not authorized by the customer.

Q46. Should the FRB consider revising Regulation Z to allow creditors to issue additional credit cards on an existing account at any time, even when there is no renewal or substitution of a previously issued card? If so, what conditions or limitations should apply? For example, should the FRB require that the additional cards be sent unactivated? If activation is required, should the FRB allow issuers to use alternative security measures in lieu of activation, such as providing advance written notice to consumers that additional cards will be sent?

Bank of America strongly urges the FRB to implement changes to Regulation Z that would permit issuers to send additional credit cards or other devices to existing consumers where there is no additional credit being extended to the cardholder, even when it is not being done in connection with a renewal of or substitute for an existing credit card. Issuers should be permitted to provide additional value and benefits to their customers through unique options given many new breakthroughs in technology and system capabilities. While there may be a concern around security of customers account information, there are clearly many protections available today that both deter and prevent fraud and provide the customer with zero liability protection in the event of such a rare circumstance.

CUT-OFF HOURS AND PROMPT CREDITING

Q47. What are the cut-off hours used by most issuers for receiving payments? How do issuers determine the cut-off hours?

Q48. Do card issuers' payment instructions and cut-off hours differ according to whether the consumer makes the payment by check or electronic fund transfer, or by using the telephone or Internet? What is the proportion of consumers who make payments by mail as opposed to using expedited methods, such as electronic payments?

Q49. Do the existing rules and creditors' current disclosure practices clearly inform cardholders of the date and time by which card issuers must receive payment to avoid additional fees? If not, how might disclosure requirements be improved?

Q50. Do the operating hours of third party processors differ from those of creditors, and if so, how? Do creditors treat payments received by a third-party processor as if the payment was received by the creditor? What guidance, if any, is needed concerning creditors' obligation in posting and crediting payments when third-party processors are used?

Q51. Should the FRB issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time?

Bank of America believes that the current provisions in Regulation Z together with past criticisms and litigation on this subject matter has appropriately guided the industry into its current state that we believe has led to best practices. Cut off times can be driven by a variety of factors, both internal and external, that lead to varying practices. Issuers need the flexibility to work with their external vendors and internal processes and systems that will to some extent dictate this issue.

REQUEST FOR COMMENT ON ADDITIONAL ISSUES

Q52. Providing guidance not expressly addressed in existing rules. FRB staff is asked to provide informal oral advice on an ongoing basis about how Truth in Lending rules may apply to new products and circumstances not expressly addressed in Regulation Z and its official staff Commentary. The FRB invites the public to identify issues where they believe staff's informal advice should be formalized or addressed anew. Should such changes be adopted after notice and public comment, they would apply prospectively and compliance would become mandatory after an appropriate implementation period.

Bank of America believes staff guidance should continue to be formally issued through annual updates to the official staff Commentary. While it is appropriate for the FRB staff to discuss issues that are unclear, and even to identify provisions contained in Regulation Z and the Commentary that are relevant to questions about how the rules might apply, staff guidance should not be issued unless interested parties have been provided with notice and an opportunity to comment on the guidance.

Q53. Adjusting exceptions based on de minimis amounts. To facilitate compliance, the FRB has provided a number of exceptions based on de minimis dollar amounts. For example, TILA's open-end rules require creditors to transmit periodic statements at the end of billing cycles in which there is an outstanding balance or a finance charge is imposed; the regulation relieves creditors of that duty if the outstanding debit or credit balance is $1 or less (and no finance charge is imposed). 15 U.S.C. § 1637(b); 12 CFR § 226.5(b)(2)(i). Similarly, the FRB provides for a simplified way to calculate the effective APR on periodic statements when a minimum finance charge is assessed and is 50 cents or less. 12 CFR § 226.14(c)(4). Should de minimis amounts such as these be adjusted, and if so, to what extent?

No comment at this time.

Q54. Improving plain language and organization; identifying technical revisions. The FRB is required to use "plain language" in all proposed and final rules published after January 1, 2000. 12 U.S.C. § 4809. The FRB invites comments on whether the existing rules are clearly stated and effectively organized, and how, in the upcoming review of Regulation Z, the FRB might consider making the text of Regulation Z and its official staff Commentary easier to understand. Are there technical revisions to the regulation or Commentary that should be addressed?

No comment at this time.

Q55. Deleting obsolete rules or guidance. A goal of the Regulation Z review is to delete provisions that have become obsolete due to technological or other developments. Are there any such provisions?

In the context of electronic banking, the FRB should evaluate the need for periodic statements when consumers have ready access to account information. Under Regulation Z, a creditor must send a consumer a periodic statement for each monthly cycle in which a credit transaction has occurred. It is unclear how the duty of a creditor to provide such periodic statements interacts with the growing practice of providing transactional history and other account information on a daily basis online. Bank of America believes that the FRB should modify appropriate Regulation Z requirements to permit creditors to meet the periodic statement requirement through online disclosure of a consumer's transaction history, and that if a creditor provides such daily online access, the creditor need not provide monthly or quarterly statements for such accounts.

Q56. Recommendations for legislative changes. Are there any legislative changes to TILA the FRB should consider recommending to the Congress? For example, where a rule is based on a dollar amount established by the statute, the FRB seeks comment on whether to recommend adjustments of those dollar amounts to the Congress, and if so, the amount of such adjustments.

No specific recommendations.

Q57. Recommendations for nonregulatory approaches. In addition to requesting comment on suggestions for regulatory or statutory changes, the FRB seeks comment on nonregulatory approaches that may further the FRB's goal of improving the effectiveness of TILA's disclosures and substantive protections. Such approaches could include guidance in the form of best practices or consumer education efforts. For example, calculation tools are widely available on the Internet. How might the availability of those tools be used to address concerns that consumers need better information about the effects of making only minimum payments on their account? Are there any data that indicate the extent to which consumers access calculation tools that are publicly available?

Bank of America believes that consumer education would be far more effective and valuable than continuing to add to the amount and length of disclosures. The FRB should take a more active role in educating consumers on the attributes of open-end credit rather than continuing to rely on TILA to support that goal. We believe that providing information around more complex elements of credit plans such as minimum payments, payment allocation and payment due dates would better serve customers in understanding those elements than requiring long technical disclosures as part of account opening and periodic statement disclosures.

Educational efforts could be accomplished in a variety of media including pamphlets, targeted media and online. That way, consumers may pick particular topics of interest that apply to their particular spending habits and use of credit rather than a one size fits all approach. These materials could also address more general guidance on responsible use of credit and could be updated and managed in a more efficient and cost effective method than requiring issuers to constantly destroy and reprint materials and pass along those expenses to consumers in the form of higher credit costs.

Bank of America also urges the FRB to consider similar activities being undertaken by other governmental agencies that may also impact the "disclosures overload" concern. As you are aware, the industry is still waiting on directions on a variety of issues relating to implementation of the FACT Act that will potentially cause other disclosures in addition to those already required under TILA as well as anticipated additional guidance by banking regulators related to unfair and deceptive practices. Ultimately, these new regulations and guidelines could result in more customer confusion and the inability of customers to focus on the truly important credit terms that is the focus of your inquiries.

Bank of America appreciates this opportunity to comment on these very important issues. We would be happy to discuss our views in greater detail at any time upon your request. If you have any questions concerning these comments or we may otherwise be of assistance to you, please do not hesitate to call me at 704-386-6637.

Sincerely,

JoAnn Powlus Carlton
Bank of America
Associate General Counsel