March 28, 2005

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

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

Dear Ms. Johnson:

This comment letter is submitted by the American Financial Services Association ("AFSA")[1] in response to the Board of Governors of the Federal Reserve System's ("Board") advance notice of proposed rulemaking ("ANPR") concerning the open-end credit rules under Regulation Z. AFSA appreciates the opportunity to comment on this very important matter.

General Comments:

AFSA applauds the Board's willingness to review the provisions that apply to open-end credit under the Truth in Lending Act ("TILA") and Regulation Z. In general, we believe that any revisions to the open-end credit rules in Regulation Z should further the goals of TILA and Regulation Z. The two primary goals of TILA and Regulation Z, as articulated by Congress, are: (1) to ensure meaningful disclosure of credit terms so that consumers may comparison shop for credit; and (2) to protect consumers against inaccurate and unfair credit billing and credit card practices. Overall, we believe that several of the issues identified in the ANPR may contribute to these goals. However, we believe that a number of the matters proposed in the ANPR could detract from those goals and, if adopted, may actually thwart the ability of consumers to shop for credit or understand the terms of their open-end credit plans.

In addition, we urge that the Board be guided by three principles as it reviews the specific issues it raised in the ANPR. We believe that it is essential that the Board use these or similar principles to ensure that consumers benefit from any changes to the rules

[1] Founded in 1916, the American Financial Services Association (AFSA) is the trade association for a wide variety of market-funded providers of financial services to consumers and small businesses. AFSA members are important sources of credit to the American consumer, providing approximately over 20 percent of all consumer credit. AFSA member companies offer or are assigned many types of credit products including credit cards, retail credit, automobile retail installment contracts, and mortgage loans.

in Regulation Z and also to ensure that any changes do not impose inappropriate burdens and costs on creditors. Changes to Regulation Z should not be considered if they will not enhance consumer understanding of accounts, including the ability to shop for accounts or if they will impose such burdens or costs that they may result in a reduction of the variety of products offered by lenders to consumers. Thus, we believe the Board should guided by the following principles.

Guiding Principles

More Disclosure is Not Necessarily Better. As the Board and many others have recognized, more disclosure is not necessarily better for consumers. That is, providing additional details and information about some aspects of the operation of credit card plans may not assist consumers in shopping for credit or help most consumers understand the most important features of a credit card account. This point was recently made by Julie L. Williams, the Acting Comptroller of the Currency, who stated that "the reams of disclosures [creditors] are obliged to provide aren't working very well to inform your customers about the things those customers really want to know."[2]

In particular, we believe the Board should require new disclosures, or expand on the information currently given to consumers, only if the Board has determined through the use of consumer focus groups or other means, that the disclosures will help *most* consumers shop for credit. Increased disclosures about the technical details of a credit card plan, such as disclosure about the payment allocation rules will likely not help the overwhelming majority of consumers, and may actually serve to detract attention from more important disclosures. Similarly, adding more disclosures, particularly, with respect to periodic statements, would impose significant programming and compliance costs on creditors, which are not justified in terms of consumer benefits and can increase the likelihood of needless litigation.

Contract Law Is Sufficient in Many Cases to Inform Consumers. In many cases, it is not necessary to revise Regulation Z to require additional disclosures because contract law will ensure that information is disclosed to consumers. That is, making a contract term a required "disclosure" is not always necessary to ensure consumers are informed about fees and account features. Moreover, expanding Regulation Z disclosures can, as discussed below, give rise to needless litigation. For example, the Board should affirm that ancillary fees that are not major features of accounts are not required to be disclosed under Regulation Z. The Board affirmed this principal in a recent rulemaking on expedited payment and credit card delivery fees, concluding that these fees are not finance charges or other charges. Such fees and features are addressed through contractual provisions or consumers are informed about such fees if/when they request such services. Contract law principles ensure that consumers receive a sufficient description of the most important fees and account terms. The Board should only expand

[2] Remarks by Acting Comptroller of the Currency Julie L. Williams to the Independent Community Bankers of America, San Antonio, Texas, March 11, 2005.

disclosure requirements for the most important terms that the majority of consumers need to know to better shop for and be informed users of credit.

Additional Technical Disclosures Are Not Needed And Will Likely Generate Needless Litigation. Plaintiffs alleging open-end disclosure violations typically do not attempt to prove actual detrimental reliance.[3] These plaintiffs effectively concede that they did not rely to their detriment on the creditors' alleged misinformation; that is, plaintiffs do not seek to establish that they were harmed by a creditor's failure to comply with, what is often, a technical disclosure violation. This means that consumers generally do not detrimentally rely on the technical disclosures that generate most Truth in Lending litigation today. *This point is critical* because many of the additional disclosures raised in the ANPR seem to involve issues litigated by class action lawyers to exploit and expand on the more technical aspects of Regulation Z. TILA litigation typically does not concern disclosures that relate to the primary goals of The TILA – meaningful disclosure to enhance credit shopping and to help consumers understand and verify their billing statements – but deals with esoteric issues that are not important to achieve these purposes.

As a result, we urge the Board to carefully weigh any possible changes to Regulation Z to determine if they would enhance the primary goals of the Truth in Lending Act. If a revision would merely provide additional details about minor aspects of a credit card plan, or not assist the consumer in shopping for an account, we believe the Board should not propose such a change. If the Board adds additional technical requirements, TILA could quickly regress back to the pre-simplification days of Regulation Z when numerous matters were litigated at great expense to lenders, with little or no benefit to consumers.

Significant Concerns

In addition, to being guided by the principles discussed above, we want to highlight four issues that we believe deserve special attention as the Board proceeds to the next stage of its review – specific proposed changes to Regulation Z. In particular, we urge the Board to: (1) consider a safe harbor for the format of the "initial" disclosures (the section 226.6 disclosures); (2) revise the rules regarding the calculation of the "historical" annual percentage rate ("APR") disclosed on periodic statements, while avoiding other expensive and excessive changes to the periodic statement requirements; (3) provide principles and clearer guidance for determining what fees are finance charges, which are "other" charges, and which fees are neither finance charges or other charges; and (4) modify the rules to permit credit card issuers to provide a second credit card to existing card holders, even if not in connection with a renewal or substitution of the original card. We address each of these issues below.

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[3] See, e.g., *Schuster v. Citibank (South Dakota), N.A.*, 2002 WL 31654984 (S.D.N.Y. 2002); *Demry v. Citibank (South Dakota), N.A.*, 2003 WL 179772 (S.D.N.Y. 2003).

Safe Harbor for Format of Initial Disclosures. The Board has raised questions about whether the format rules that currently apply to the initial disclosures are appropriate. We share the Board's concern that the format use by some creditors to provide the initial disclosures may not best aid consumers in understanding the most important aspects of their accounts. We support the use of a format and guiding principles which will accomplish this goal; otherwise both creditors and consumers are wasting their time in supplying information, which while accurate and potentially useful, simple is not being communicated in an optimum fashion to assist *most* consumers. For example, some consumers may not locate certain key initial disclosures because they may be interspersed among the other federal and/or state required disclosures and contractual provisions.

As an alternative to the current format provisions for the initial disclosures, we believe many creditors might find beneficial format provisions for the key terms, similar to the so-called Schumer Box approach required for certain credit card solicitations and applications. We believe such an approach could assist consumers in identifying key credit card terms and, *if designed with appropriate flexibility*, might not impose unwarranted or excessive costs and burdens on institutions. It would be essential to clearly determine which fees and account terms should be provided in any such new format requirement, however. In addition, a creditor that provides the section 226.5a disclosures at the same time as the section 226.6 disclosures should not be required to provide two such boxes; such an approach would be confusing to consumers.

Historical APR Calculation and Periodic Statement Changes. In general, any revisions to the periodic statement requirements will prove the most costly and difficult for the industry to implement. Complex computer software programs generate the information for the periodic statements, which are then printed on specialized industrial printers. *We strongly urge the Board to avoid proposing any changes to periodic statement disclosures absent a clear and pressing need.* Even seemingly simple or minor changes can impose significant costs on institutions. Moreover, as discussed earlier, the purpose of the periodic statement disclosures should be to enable the consumer to verify transactions, such as purchases, to ensure that the consumer can dispute any unauthorized or erroneous transactions.

Notwithstanding the above concern, we strongly encourage the Board to make one change to the periodic statement: the rules dealing with the calculation of the historical APR. This disclosure poses an ongoing and significant source of customer confusion and misunderstanding when the rate differs from the interest rate that is applicable to a consumer's balance. From time to time, the historical APR can be significantly higher than the interest rate, for example, because the consumer obtains a small advance and the finance charge imposed during that billing cycle is not amortized over a term greater than one month. For example, a balance transfer fee may cause an 8.99% APR to balloon to more than a 25% historical APR, even though the consumer will repay the transferred balance over many billing cycles.

The fiction underlying the historical APR provides no benefit to consumers. Even one of its purported benefits to consumers as a "shock-disclosure[4]" is suspect in its efficacy. Consumers clearly cannot and do not use the figure to comparison shop for credit. In addition, the figure does not better enable consumers to verify periodic statement information. Moreover, disclosure of a dollar amount of finance charge for a specific service clearly allows consumers to understand the cost of, for example, a cash advance, or other service. The historical APR not only does not assist consumers in understanding the cost of credit, but by disclosing a figure that virtually no consumers understand and can use for a valid purpose, the disclosure tends to diminish the usefulness and meaning of the APR. Finally, the distortion of this rate increases the volume of customer service calls, for which no understandable response can be given to consumers and ultimately increases the cost of credit by requiring creditors to devote significant time to trying to explain this figure. Thus, we believe the Board should propose changes to the calculation of the APR, and provide that this figure should only reflect finance charge due to the application of an interest rate to the balance in the account. .

<u>Rules related to Determining Finance Charges and Other Charges</u>. Much of the needless litigation generated under TILA over the past few years has involved which fees are included in the finance charge disclosure. We believe that it is essential for the Board to provide clearer and more precise guidance on which fees are finance charges, which are other charges, and which are neither. In general, we believe the Board should provide that, for open-end credit, the finance charge s includes only non-voluntary, fees required by the creditor to obtain credit. The Board should make any exceptions to this general rule clear and unambiguous. For example, some creditors have sought to offer voluntary debt-cancellation coverage that does not fit precisely into the definition of voluntary debt-cancellation coverage provided in Regulation Z that the creditor may, with proper disclosure, exclude from the finance charge. This potential uncertainty regarding voluntary debt-cancellation fees under the current rules discourages the development of new voluntary products that might interest – and benefit – consumers.

In addition, we believe the Board should consider abolishing arcane rules that offer no meaningful benefit to the consumer. For example if a creditor always charges a $50 annual membership fee, the fee is excluded from the finance charge. However, if the creditor offers to waive this same fee based on account usage, the fee is treated as a finance charge. Such a distinction does not assist consumers in better understanding or shopping for accounts and, in many instances, will actually confuse consumers. Such an approach offers no benefit to the consumer, and the Board should consider streamlining such complex rules where consumers obtain no benefits from such distinctions. *We submit that, in general, every single disclosure required under the present rules which*

[4] We are referring here to a disclosure, which when brought to the attention to the consumer, is intended to be so shocking in its magnitude that rational consumers will be forever influenced to change their behavior to avoid the activity which caused the 'shock disclosure' in the first place. Anecdotal evidence suggests that shock disclosures have limited influence on most consumers (witness the effect these disclosures have had on the payday lending industry—one of the fastest growing consumer financial businesses in the United States right now.)

provides marginally useful information to most consumers can either be dropped entirely in favor of highlighting the disclosures which truly do provide useful information, or alternatively in some cases, replaced with information which clearly would benefit more consumers in their credit shopping, and enhance their knowledge about the most important features of their particular credit product or plan.

Modification of the Credit Card Issuance Rules. Under Regulation Z, credit card issuers may provide a second credit card to existing credit card holders in connection with the renewal or substitution of the existing card. That is, a card issuer may replace an accepted credit card with more than one renewal or substitute cards provided the consumer's liability does not increase, and that certain other conditions have been met.

We encourage the Board to propose changes to its credit card issuance rules to permit a card issuer to provide more than one credit card to a consumer in connection with opening an account, or in other circumstances, assuming the consumer has requested a card, or that the additional card is being provided for an existing account. We believe that there is no legal or policy reasons to limit the ability of credit card issuers to provide an additional card only in connection with a renewal or substitutions of a credit card. We also believe the conditions identified by the Board, such as providing that the consumer's total liability for unauthorized use of the account does not increase, provides appropriate and substantial protections for consumers. Such an approach would faithfully implement TILA and also provide greater consumer choice and convenience.

Responses to Specific Questions

Question 1. The Board solicits comments on the feasibility and advisability of reviewing Regulation Z in stages, beginning with the rules for open-end credit not home-secured. Are some issues raised by the open-end credit rules so intertwined with other TILA rules that other approaches should be considered? If so, what are those issues, and what other approach might the Board take to address them?

The Board could conduct a stand-alone review of Section 226.5a disclosure requirements, as Regulation Z does not intertwine Section 226.5a requirements with disclosure requirements applicable to home-secured open-end credit. However, any review of Section 226.6, 226.7, 226.8, 226.10, 226.11 or 226.13 disclosure requirements would affect home-secured open-end credit. The Board may find any changes made to these sections of Regulation Z very difficult to implement only with respect to non-home secured open-end credit. Similarly, all but subsections (e) and (f) of Section 226.9 apply equally to home-secured and non-home secured open-end credit. In addition, Section 226.12 would apply to any open-end credit plan accessible by credit card, including home-secured open-end credit. For creditors that offer both home-secured and non-home secured open-end credit, changes to any of these provisions that affect only non-home secured open-end credit could force creditors to adopt two separate sets of procedures, periodic statement forms, and periodic statement computer programs.

Alternatively, if the Board plans the proposed revisions to apply with equal effect to both home-secured and non-home secured open-end credit plans and waits to revise those sections that apply solely to home-secured credit, it should take additional care to avoid new technical requirements. The consequences of a disclosure error for creditors that offer home-secured open-end credit plans can be far more significant. In particular, additional technical requirements and the possibility of error can increase the risk that the transaction may be subject to an extended rescission period.

Finally, to the extent that the Board focuses its current open-end credit review principally on non-home secured open-end credit plans accessible by credit card (which would appear to be the case), it should identify the potential impact any changes would have on unsecured lines of credit, traditional store accounts and other forms of unsecured personal lines of credit that do not include or permit credit card access.

Question 2. The Board seeks comment on whether formatting rules are necessary with respect to account-opening disclosures.

As discussed above, we believe the Board might consider proposing a 'standard formatting and content regime" (hereinafter referred to as a "Schumer box approach") for key initial (section 226.6) disclosures. It would be essential for such an approach to provide flexibility to creditors and to ensure that only the most important disclosures are included in this type of arrangement. At the same time, it is essential for the Board to recognize that not all disclosures can or should be included in any new box, or otherwise constricted format. Many open-end disclosures are complicated and several disclosures require a narrative description.

Aside from a Schumer-box approach for certain key disclosures, we believe that no change to the format or type size requirements should be proposed for the other disclosures. Such an approach would result in highlighting certain terms and not other terms (such as contract or state law provisions) and could create a document that will serve to confuse rather than assist consumers in identifying and understanding the terms of the account.

Moreover, requiring specific type sizes for account-opening disclosures or mandating special formatting requirements would impose significant costs on creditors without any necessary benefit to consumers. The Finance Charge and Annual Percentage Rate, the two most important terms, must already be more conspicuous than any other required disclosure. Requiring creditors to make other initial TILA disclosures more prominent than other disclosures would likely lead to significant litigation over whether the other required disclosures have thereby been rendered non-conspicuous. Disclosures required by the Fair Credit Reporting Act, the Gramm-Leach-Bliley Act, the Fair Credit Billing Practices Act, the USA PATRIOT Act and various state laws are all important, as are fundamental contract terms (reward/rebate terms, mandatory arbitration provisions, etc.,) and changes to the format rules for TILA disclosures could, in practice, require creditors to make the same font and formatting changes throughout the account-opening disclosure document. This would significantly increase the total size of the disclosure document, without making the majority of TILA disclosures any more conspicuous relative to the other disclosures. Open-end credit card agreements are typically divided and captioned by section, thus, there is no apparent advantage to be gained by or for consumers as a result of additional formatting requirements.

Additionally, there are many factors involved in a document's readability including leading, kerning, borders, margins, "white space," plain language, sentence length, and the like. Adopting minimum type-size requirements would not necessarily lead to the desired conclusion of improved disclosures. Moreover, inclusion of the factors listed above would lead to great complexity. We believe that the standards of 'clear and conspicuous' and 'more conspicuous than other required disclosures' are not deficient and do not impede the effectiveness of the disclosures.

Changes to disclosure requirements are also likely to lead to years of wasteful and expensive litigation as plaintiffs' attorneys take issue with banks' interpretation of the rules and extract nuisance settlements without increasing consumers' understanding of the costs associated with their open-end credit accounts. Thus, changes should only be made for the most compelling of reasons, and those do not exist in this case.

The Schumer Box applies to written solicitations of open-end credit card accounts - the vast majority of open-end non-home-secured credit. There is no evidence that the Schumer Box is difficult to notice or understand or that a reiteration of it is necessary on account agreements. If the Schumer Box were mandated for initial disclosures, it should be clarified that only one box is required on forms that are combined solicitations/applications/account agreements rather than mandating needless duplication.

Having the Board design additional and more effective Model Forms and the safe harbor they involve could advance the effectiveness of disclosures without providing regulatory disruption associated with mandated changes, while providing maximum flexibility for creditors.

Question 3. 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.

Credit card initial disclosures and account agreements are typically captioned and divided by sections. We believe those formatting tools are appropriate. Other suggestions, such as additional boxes or indexing, are simply unnecessary with respect to credit card agreements and not likely to increase consumers' understanding of essential terms or otherwise advance the purposes of TILA.

Additionally, customers seeking information about the terms of their account have ready alternatives to relying on account-opening disclosures. Issuers make plain-English explanations of important account terms and requirements available in other formats, such as through issuers' websites and through 24-hour customer service centers with representatives trained to explain terminology and answer questions, web sites with

"Frequently Asked Questions" pages, and even customer service via "live chat" or e-mail.

Question 4. **Format rules (for periodic statements) could require certain disclosures by grouped together or appear on the same page where it would aid a consumer's understanding. Confusion could be reduced, for example, by requiring the due date to avoid finance charges and "please pay by date" by grouped together. Is such a rule desirable? Are there other disclosures that should be grouped on the same page?**

Disclosing two due dates for payments (the grace period or the "actual" due date, in addition to the "please pay by" date) will only confuse consumers as to which date to rely upon, and will likely result in increasing the number of late payments by consumers who decide to use the "actual" due date and do not send payment early enough to avoid the possible imposition of a late fee. The resulting late fees, increased interest rates, dissatisfaction and complaints will not serve consumers well[5].

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[5] AFSA notes the importance of using correct terminology regarding the dates often used in credit plans today in order to avoid adding to the confusion. Possible dates that might appear on a statement are –

1. Section 226.5a(b)(5) refers to a "grace period" (the date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge);
2. Section 226.7(j) refers in the heading to a "free-ride period" (the date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges);
3. There may also be a date by which the customer must pay to avoid a late charge;
4. There will also be a date by which the customer must pay to avoid being in default; and
5. The billing cycle closing date.

Having the free ride period disclosed next to the due date may reduce confusion in some cases, but it will increase confusion in others. For example, the free ride period may be disclosed as a description of the time period instead of as a numerical date. If the description is something like –

> To avoid additional finance charges, pay the New Balance within 25 days after the Billing Date

Requiring that the free ride period be grouped with the billing date instead of with the due date might improve consumer understanding of the free ride period in this example, but it would reduce consumer understanding in other areas. For example, the billing date (the closing date of the billing cycle) and the balance outstanding on that date (the new balance) are both required disclosures under section 226.7(i). Creditors often group these two disclosures together because they are closely related. If creditors had to group the billing date together with the free ride period disclosure instead of with the new balance, consumer understanding of the new balance disclosure would be reduced.

There are many variations in open-end credit accounts. Requiring certain disclosures to be grouped together may improve consumer understanding for some open-end credit accounts, but would be likely to reduce consumer understanding for other variations of open-end accounts. There is no clear benefit to consumers for this change, but it would be costly and difficult for creditors to implement.

In developing any requirements that specify the location of disclosures, care should be taken to ensure that the requirements would be clearly and easily applied to electronic disclosures, where the concept of a "page" may not be the same as with paper disclosures.

Question 5. 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 Board should consider? If so provide suggestions.

We do not believe that grouping all costs of credit on the monthly statement would be more effective or, at best, only marginally so. It is not clear that any benefit to consumers would result since such grouping would clearly disrupt the chronological listings currently used and with which consumers are familiar. Also, changes to statement formats can also be extremely expensive for creditors and would likely lead to significant litigation.

Question 6. How could formatting tools or other navigational aids make the disclosures on periodic statements more effective for consumers?

We are not aware of any evidence that *most consumers* find periodic statements difficult to use, or difficult to navigate[6]. While layout, design, and formatting might make monthly statements more easily comprehensible to some consumers, it is not clear that mandating a particular format or requiring "navigational aids" would add any significant benefit for consumers while some would obviously constrain innovation on the part of creditors and may pose severe operational costs on others.

Question 7. Is the Schumer Box effective as currently designed? Are there format issues the Board should consider? If so, provide suggestions.

We believe that the Schumer Box is effective as currently designed[7]. However, we believe that the Board should eliminate the 18-point type-size requirement for the

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[6] Again, AFSA's comments are premised on the guiding principle of providing the most useful information to most consumers. We believe that it is virtually impossible to come up with a mandated 'one size fits all' disclosure regime which works. Such a regime would necessarily detract from the usefulness of important information intended for *most* consumers, and transform the disclosures into something with more of a consumer education purpose—something which AFSA believes has happened in the past and has simply not worked. Disclosures should provide information to be used for specific purposes. Yes, consumer education should most certainly be conducted, but not in the realm of the mandated disclosure regime.

[7] As suggested in response to an earlier question, there is some sentiment among AFSA members that the Board could build on the Schumer Box's success by making certain changes (using the recommendations of creditors and consumers, and the findings of perhaps, some focus group testing). For example, the default interest rate could be provided in the Box, and any other triggers that can lead to repricing could be included. While some AFSA members are willing to examine the proposition that there could be some benefit to consumers if balance transfer fees were included in the Schumer Box, the majority sentiment of AFSA members is that, even if this placement were found to be beneficial to *some* consumers, creditors would be reluctant to support a new rigid mandate for informing the consumer as to occasional and

Annual Percentage Rate in section 226.5a (b)(1). Setting a specific type size does not necessary result in a disclosure being more conspicuous. What is important is that the box be recognized as containing important disclosures, not what type size one of the components in the box is.

Question 8. Should balance transfer fees be included in the Schumer Box given their prevalence in promotions?

No. Currently, balance transfer fees must be disclosed clearly and conspicuously on or with the application. We believe that approach clearly alerts the consumer to any such fee. Balance transfer fees are only occasional fees - and fees that are completely within the consumer's control. The Schumer Box, as mandated by TILA, does not contain such fees. The Schumer Box should only include such important terms that will apply over the life of the account, *and are equally applicable to most or all* of the consumers utilizing the specific plan—not just to those who occasionally use discretionary features of the plan which may result in additional fees to those particular consumers.

Question 9. 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?

No. Change in terms notices or other subsequent disclosures are typically captioned as such. Mandating more specific formatting or navigational aids are not likely to produce any benefit to consumers.

Question 10. Should existing clauses and forms be revised to improve their effectiveness?

Yes. The existing clauses and forms are dated and fail to encompass all of the variations of terms typically available in the marketplace. We believe that clauses and model forms could address more types of fees and could aid in compliance.

Question 11. Would additional model clauses or forms be helpful? If so, please identify the types of new model clauses and forms that the Board should consider developing?

Yes, as set forth in the previous response. The best way to achieve not only optimal compliance but also optimal understanding is to have as many different model

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"consumer-driven" fees (activated by a decision of the individual consumer). Generally, such fees are not appropriate for Schumer box treatment or some other mandated form of disclosure grouping because they would only be of interest to a limited number of consumers who tend to use such discretionary features more than the majority. However, focus group testing may yield a different conclusion, and AFSA is prepared to support new ideas which are derived from measuring consumer understanding to certain new proposals if they can be sufficiently substantiated through a rigorous focus group process, or some other method of ascertaining the efficacy of new proposals in the real marketplace.

forms and clauses as possible - reflecting the many variations in fees and forms available in the marketplace. Because of the safe harbor afforded by the use of model forms, the Board could greatly enhance compliance by having variations that reflect the typical credit practices being used in the marketplace.

Question 12. Is there additional information [available] on the navigability and readability of different formats and on ways in which formatting can improve the effectiveness of disclosures?

There is an abundance of information available. However, there is no general consensus on either optimal forms design or readability. Consequently, the Board should be very reluctant to adopt and mandate any particular approach to the format of disclosures. As noted above, the existing standards of “more conspicuous than any other required disclosure” and “clear and conspicuous” are not deficient and are generally understood. Adoption of any other standard or standards will only serve to increase creditors’ cost of compliance without any necessary improvement in consumers’ understanding of the terms while creating considerable additional litigation risk exposure for the credit industry.

Question 13. How could the Board 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?

The Board’s proposed revision of Regulation Z is a welcome opportunity to provide greater clarity on the subject of the “finance charge” and what fees or charges to include in it or exclude from it.

The approach to fees and charges outlined below involves substantial simplification of the concept of “finance charge”, because we think such simplification will bring greater clarity for consumers. The guiding principle is that, for open-end credit, the finance charge should generally be the amount that varies in proportion to the amount of debt outstanding. We believe that this is the meaning that is the natural one and most easily communicable to consumers The APR as initially disclosed will be the APR that continues to be disclosed on a periodic basis, subject to a change in terms, customer default, or variation based on an underlying index. As a corollary to our general principle, fees should not be treated as finance charges in the calculation of APRs. When such fees are amortized over a single billing period, inclusion of them in the finance charge causes the APR to vary materially, in a way that is confusing and unhelpful to consumers. In our experience, these variations are difficult to explain intelligibly to customers, leading to less understanding, rather than greater understanding, by consumers. We believe that customers tend to ignore the effective-APR information.

In the disclosure framework outlined below, fees would be disclosed – clearly and prominently – but not as part of the finance charge, and would be easy to compare across different creditors.

Examples of fees to exclude from the finance charge[8] are:

- Membership fees
- Cash advance fees
- Balance transfer fees
- Any per-transaction fees
- Default fees, such as:
  - Past-due fees
  - Overlimit fees
  - Returned-check fees

Question 14. 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?

The fees are typically disclosed in or directly below the "Schumer box" on applications and solicitations. Some fees may be disclosed as part of the contract or may be described orally at the time a consumer orally requests a service.

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

As described above (Question 13), some customers do not seem to have a clear understanding of the concept of "finance charge" distinct from other charges or fees. We recommend that Regulation Z reflect the concept that the "finance charge" is equivalent to the commonly understood and easily disclosed notion of "interest" – the amount determined by applying the previously-disclosed APR to the customer's account balance.

Question 16. 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?

[8] One possible way to group, identify, and disclose fees and charges would be as follows:

1. Interest charges (dollar amount and as APR);
2. Account membership or usage fees: Membership fees, balance transfer fees, cash advance fees;
3. Default fees: past-due fees, overlimit fees, returned-check fees;
4. Other fees for optional functionality, such as payment by phone or foreign transactions.

We do not recommend a rule that would classify fees as finance charges if payment of the fee is required to obtain credit, because it would require a change in the current disclosure regime moving away from, rather than aligning more closely with, the simple and commonly understood approach that we describe above (Question 13).A leading example is the account membership fee, which must be paid in order to access the account but which is not related to outstanding balances and currently is clearly and conspicuously disclosed, but not as part of the finance charge.

We think it is especially important that fees imposed for violations in terms of the account – notably including past-due fees, overlimit fees, and returned-check fees – be specifically excluded from the finance charge. They are not a condition of obtaining credit, but rather are fees that compensate for the additional cost risk imposed by the customer's behavior.

Question 17. 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?

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 would not, in our view, lend needed clarity to the concept of finance charge, because we believe the rule would not provide unambiguous guidance in specific cases. We do not recommend such a rule.

Question 18. 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 Board 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 interpretation that charges must be "significant" to be disclosed as "other charges" does not provide sufficient guidance to market participants. As an alternative to providing a somewhat subjective standard of that nature for issuers to apply, we suggest that the Board simply provide examples, and include them in model forms.

Question 19. What other issues should the Board 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?

Home equity lines of credit should be considered separately to determine whether any of the general open-end credit rules should be modified with respect to that type of credit.

Question 20. 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 Board for closed-end loans. In a 1998 report to the Congress concerning reform of closed-end mortgage disclosures, the Board endorsed an approach that would include "all required fees" in the finance charge and APR.

Closed-end loans and open-end credit are different products with different value propositions. Closed-end products provide certainty, and open-end products provide flexibility in future borrowing. It is not important that the fee classification rules be consistent. It is more important that the Board provide clear rules for these products.

Question 21. 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?

As we stated above, (Question 13), we think that clarity and simplicity of disclosure require that fees not be included in the finance charge or APR. Therefore, we believe that providing guidance on inclusion of overlimit fees in finance charges would not be useful.

Question 22. 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 Board specifically requests comments on whether additional disclosures are needed regarding the circumstances in which over-the-credit-limit fees will be imposed.

Card issuers explain their authorization and fee practices to interested customers, usually by phone, including the types of transactions that are not authorized in real time by the issuer, transactions that are authorized under circumstances in which the overlimit status of the account may not be known, recurring preauthorized transactions, and many other related matters. In addition, issuers explain in their customer agreements that some authorized transactions may exceed the credit limit and be assessed an overlimit fee.

There is variation among card issuers as to when overlimit fees may be imposed: some at the time of an overlimit transaction, some at the end of the billing cycle.

Some creditors allow customers to opt out of the issuer's authorization of overlimit transactions if they wish. The opt-out may not, for operational reasons, apply to all transactions.

Question 23. 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 Board 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?

We believe that consumers may not understand the effective APR required to be disclosed on periodic statements. Issuers' experience with customer calls indicates that the concept is very hard to explain. It is unrealistic and confusing to amortize fees over a 30-day period on credit that is not required to be paid in 30 days. Consequently, we believe that inclusion of fees in the affected APR actually devalues the APR as an informative statement about the customer's account. The practice may cause disaffection with the disclosure system and may create a perception that credit cards are part of a complex financial system that they cannot understand. We believe that such effects can be avoided by clear disclosure of the various categories of fees and charges as we recommend above (Question 13).

Question 24. 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?

The best way to improve customers' understanding of the effective APR would be to adopt a consistent method of disclosing fees as dollar amounts, and to exclude properly disclosed fees from the effective APR.

Question 25. 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?

As stated in our response to Question 5, AFSA believes that a mandated grouping of disclosures would have, at the best only minimum utility to the consumer which is outweighed by the potential liability and technical problems which would be imposed on creditors. However, if the Board determines that an alternative framework of disclosing the cost of credit is warranted and can be achieved by some degree of grouping of consumers, AFSA suggests that the rules for such disclosures be clear and unambiguous, with ample guidance provided through Model Forms.

Question 26. Is mailing a notice 15 days before the effective date of a change in interest rates adequate to provide timely notice to consumers?

For a rate change that is not a result of a delinquency or other default or of a variable rate feature disclosed at account opening, 30 days could be more helpful to consumers than 15 days. In today's market it is easy to locate credit options appropriate to a consumer's creditworthiness, but applying, qualifying and transferring a balance may take longer than 15 days.

Question 27. 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.

Consumers are typically alerted to the consequences of delinquency or default on their account in advance, in the disclosures at account opening. Normally, the new rate triggered by the delinquency or default appears on the periodic statement. To facilitate comparison among competing offers from different issuers, consumers and creditors could benefit from a standardized format or model language to describe the particular issuer's grounds for repricing (i.e., which violations of account terms trigger repricing), and the consequences of default, at account-opening or on direct mail solicitations, so that the rules could be compared among credit offers. Consumer education efforts would also be beneficial here. The Regulation or the staff commentary should provide a safe harbor for initial disclosures using model language or substantially similar language. The periodic statement should reflect the new rate for the billing cycle in which the change takes place.

For the proposed model language, it would be desirable to obtain data on consumers' understanding of the word "default" or other terminology.

Question 28. How significantly does the balance calculation method affect the cost of credit given typical account use patterns?

The balance calculation method can affect the cost of credit for typical consumers. As between the one-cycle and two-cycle average daily balance methods, the effect is most significant for consumers who cease to pay the account in full each month, and instead pay less than the full outstanding balance. An assessment of the average impact of this effect may be difficult to obtain because many unpredictable variables, including size and timing of payments, impact the calculation.

Question 29. 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?

We do not believe that consumers understand the effect of different balance calculation methods on the cost of credit. We believe that the subject is sufficiently arcane and complex that an effort to craft additional disclosures that are clear, concise, and meaningful to most consumers would likely be unsuccessful. We believe that disclosures should be accurate and concise, for the benefit of consumers who wish to pursue the subject further (see Question 30), and that the Board should satisfy itself that the balance calculation methods that are the subject of those disclosures are fair.

Question 30. 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 Board 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?

For the reasons described above (Question 29), we support a provision to allow standardized abbreviated descriptions at account-opening and on periodic statements with a clear reference for further information. The longer descriptions are likely to cause information overload if included in disclosures, particularly on the periodic statement. One review of customer service calls indicates that less than 1% of calls are about balance calculation but that it is a very challenging subject to attempt to explain on the telephone. The account agreement, a credit card "users' guide" or the internet would be a better location for the explanation to serve most consumers.

Question 31. Is it appropriate for the Board 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 default 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?

We note that minimum-payment disclosure is a subject of the bankruptcy reform bill currently pending before Congress. We expect that bill to be enacted. It will mandate the inclusion of standard illustrative examples on periodic statements, combined with a toll-free number that customers could call to receive disclosures specific to the facts of their accounts. When the bankruptcy bill becomes law, of course all credit card issuers will comply with it.

Our belief is that minimum-payment amortization disclosures of this kind are not useful to the majority of customers, who in fact pay more than the minimum payment required on their statements and substantially pay down their balances (adjusted for new purchases) over the course of a year. These disclosures might be useful to the small number of customers who make only the minimum required payment for an extended period. The disclosures that will be mandated by the bankruptcy bill meet that need, but are over-inclusive.

If making only the minimum payment required on the customer's periodic statement would not be sufficient to avoid a penalty fee, that fact should be disclosed on the periodic statement in conjunction with the minimum payment due.

Question 32. 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?

Account-specific amortization information is not readily available to creditors. New systems would have to be built the requirements of the bankruptcy bill, as described above, will cost less.

Question 33. 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?

Such data are available, but would pose comparison challenges across the industry. Different institutions use different minimum-payment standards; and the numbers would look quite different depending on how many payment cycles an institution assumes to be "regular or continual." We recommend that the Board provide the specific criteria that it would find meaningful, in order to promote comparability of the data that it receives.

Question 34. What are the common methods of payment allocation and how much do they affect the cost of credit for the typical consumer?

The prevailing method of payment allocation in the industry allocates payments first to finance charges and fees, then to outstanding principal balances in order of increasing APRs. Other methods include pro-rata allocation in proportion to the balances in the segments, or payment allocations in which different segments (such as cash, purchase, and transfer) are always paid in a predetermined order.

The effect of lowest-rate-first payment allocation, over time, is to shift balances from lower-rate payment categories to higher-rate payment categories, and to increase the blended interest rate paid on the aggregate outstanding balance as compared with pro rata payment allocation. However, the actual cost impact of payment allocation methods is dependent on the variance in rate among segments, the presence of balances in multiple segments, and the transactions executed over time in each segment and size of payments made by the customer. Therefore no quantitative generalization is possible.

Question 35. Do creditors typically disclose their allocation methods, and if so, how?

Payment allocation is a subject that is generally disclosed throughout the industry, but which, applying the principles of clarity and comparability described above, would benefit from greater prescribed standardization. Creditors frequently disclose payment allocation methods in application and solicitation materials for introductory-rate products or in the account agreement. The creditor generally discloses what the method is, or that the creditor will use the method most favorable to it.

Question 36. Is it appropriate for the Board 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 Board should require a brief, standardized disclosure of the payment allocation method in the initial disclosures (when the consumer is choosing among products) and possibly on the periodic statements. Minimal detail is required for this particular disclosure (example: "we apply your payments to the lowest-interest segment of your account first"), which should not be problematic except in combination with numerous or complex further disclosures (such as amortization or balance calculation) that would create confusion.

Question 37. What tolerances should the Board consider adopting pursuant to this provision? Should the Board 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?

In open end-credit, fees are disclosed as they are actually incurred or collected; they are not estimated and compiled in advance as on a closed-end loan. Therefore, the concept of tolerance is less important to open-end credit than to closed-end credit, and we do not recommend changing the existing tolerance provisions.

Question 38. In considering changes to the disclosures required by Regulation Z, the Board 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.

However, we believe that the proposals we have made in this letter are feasible, and affordable, and will provide significant benefit to consumers. Some disclosure changes may be more expensive than others, for example those that require increased customization of the periodic statement.

Question 39. 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?

All accounts should have simple and clear disclosures, including a clear disclosure of the available credit limit or, in initial solicitations, the range of credit limits that will be available. If such disclosures are in place for all accounts, then subprime accounts (which tend to have lower credit lines) do not warrant special rules.

For secured cards, certain elements may deserve standardized disclosure. These include: actual available open-to-buy in cases in which the deposit is not a money amount paid by the consumer but is instead charged to the card at account-opening; whether interest will be paid on the deposit; and the issuer's policy, if any, regarding upgrading the customer to an unsecured card.

Question 40. Are there additional issues the Board should consider in reviewing the content of open-end disclosures? For example, in 2000, the Board 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?

We believe that the disclosure revisions that the Board made in 2000 added valuable clarity and comparability for the benefit of consumers. We think, however, that enhancements can be made, especially to facilitate comparability among competing products, and we have made suggestions to that end in this letter. In particular, as we have discussed, greater standardization of content and placement of disclosure of repricing triggers would be desirable, and so would narrowing the concept of finance charge so that it does not include fees that are better disclosed separately.

Question 41. Are there classes of transactions for which the Board 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) 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 Board is required to consider under the statute.

The current exemptions are reasonable.

Question 42. Should the Board 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?

The current exemptions are reasonable.

Question 43. The Board 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?

Our comments on substantive protections are included in our responses to the other Board questions below.

Question 44. 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?

The existing protections are sufficient to cover card-not-present transactions such as telephone purchases. We do not have information on the specific type of plan referenced in the question.

Question 45. Have consumers experienced problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should the Board consider extending any of TILA's protections for credit card transactions to other extensions on credit card accounts and, in particular, convenience checks?

We are not aware of any unusual problems with convenience checks. We support extension of the Regulation Z unauthorized-use protections to convenience checks issued in connection with a credit card account. But we do not support extension of the merchant-dispute provisions of Regulation Z to convenience checks, because convenience checks are not processed through the card associations' networks and therefore the card issuer does not have the ability to charge transactions back to the merchant.

Question 46. Should the Board 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 Board require that the additional cards be sent unactivated? If activation is required, should the Board 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?

We support the Board's proposal to revise Regulation Z to allow creditors to issue additional credit cards on an existing account at any time, in addition to the currently allowed instances of renewal or substitution. There may be a number of instances in which the ability to issue such cards would be valuable.

We think the Regulation should allow issuers flexibility to employ security measures that are effective and feasible in the context of the issuers' particular systems and processes, which could include sending the new cards deactivated, sending advance notice, or employment of other security measures.

Question 47. What are the cut-off hours used by most issuers for receiving payments? How do issuers determine the cut-off hours?

While we have not yet determined whether there is industry uniformity as to cut-off times (although we suspect that such uniformity does not exist), at least one of AFSA's major credit card issuer member's payment cut-off time is 3:00 pm for payments received by all channels except telephone, for which the cut-off time is 6:00 pm.

Payment posting is a complex, multi-hour process. This issuer sets payment cut-off times such that all or nearly all conforming payments received by the cut-off time can be posted the same day without backdating them.

The cut-off hours must accommodate systems time, requirements set by the card associations, and the impact of personnel shifts and mail volume. Despite modern technology, payment processing still requires substantial human intervention and a great deal of time.

By setting a cut-off time of 3:00 pm for the great majority of payments, this particular issuer can post about 95% of incoming payments received by the cut-off time the same day. The remaining payments are mostly non-conforming in some way, often requiring research to establish which accounts they apply to, and are required to be backdated if they are to be posted as of the date received. *All* conforming payments received by the cut-off time are posted as of that day, even if in some small number of cases the payments must be backdated to achieve that.

Question 48. 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?

See response to Question 47 above.

The issuer described above receives approximately 65% of payments by check and 35% electronically or by phone. The percentage of electronic payments has been increasing by about 3% per year.

Question 49. 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?

The issuer described above discloses the mail cut-off time on the back of the remittance slip, along with instructions on where and how to submit the payment and an admonition to allow at least five business days for mail delivery. Customers who pay by phone are advised of the cut-off time during the telephone call by the customer service representative who handles the phone payment. Customers who pay on-line are advised of the cut-off time on the page of our web-site at which they make the on-line payment.

In light of the practices described above, we believe current disclosures are clear and helpful to customers, and we do not see a need for further regulatory disclosure requirements.

Question 50. 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?

We believe that it is the common practice in the industry to treat a payment delivered to a third-party processor as if it were delivered to the issuer at that time.

Question 51. Should the Board issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time?

The Board should not issue a rule requiring issuers to credit payments as of the day they are received regardless of the time. Because of the many systems and operational issues mentioned above (Question 47), it is impossible to process all payments for posting to their accounts on the day they are received. Consequently, under a rule such as the Board suggests, a large quantity of payments would have to be backdated.

This poses a serious problem for accounts whose statement cycle ends on the day that the payment is received. If the payment cannot be processed that day, but must be backdated, and the account incurs a late fee, that fee will be reflected on the billing statement that is cut as of midnight that day. When the payment is posted that day after being backdated, a credit must be made to the account, which the customer would not see until the next billing cycle. Substantial customer confusion would result.

We believe that the rule change the Board suggests does not justify such a cumbersome system and resulting confusion, and hence should not be made. No regulatory action is required as long as the cut-off times that card issuers commonly use are reasonable, in that they reflect actual processing times and enable most payments that arrive by the cut-off time to be processed the same day, and are clearly disclosed to the customer.

Credit cards do not differ from other bank products and services in requiring a cut-off time to allow for processing of items. For example, Regulation CC under the Expedited Funds Availability Act recognizes deposit cut-off times as early as 2:00 p.m. (12 C.F.R. § 229.19(a)(5)(ii), as does Uniform Commercial Code § 4-108(a) for bank processing of items more generally.

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Again, AFSA appreciates the opportunity to comment on this advanced notice of proposed rulemaking regarding open-end credit. Our members are committed to providing consumers with useful pricing and shopping information in the most effective and 'consumer friendly' format possible. We are dedicated to assisting the Board in developing new rules which will accomplish this objective in a manner which will provide maximum informational value to consumers while not unduly and unnecessarily imposing unreasonable additional burdens on creditors. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please feel free to contact me at (202) 466-8606.

Sincerely,

Robert McKew
Senior Vice President and General Counsel
American Financial Services Association