Joshua L. Peirez
Senior Vice President &
Associate General Counsel

MasterCard International
Law Department
2000 Purchase Street
Purchase, NY 10577-2509
914 249-5903
Fax 914 249-3648
E-mail joshua_peirez@mastercard.com
www.mastercard.com

MasterCard International

December 16, 2005

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

Re: Docket No. R-1217

Dear Ms. Johnson:

This letter is submitted on behalf of MasterCard International Incorporated ("MasterCard")[1] in response to the second advance notice of proposed rulemaking ("ANPR") regarding the open-end credit rules of Regulation Z that was published by the Federal Reserve Board ("Board") in the *Federal Register* on October 17, 2005. MasterCard appreciates the opportunity to provide its comments on the ANPR.

Integrated Approach to a Review of Regulation Z

The Board published last December an initial advanced notice of proposed rulemaking regarding the open-end credit rules of Regulation Z ("Initial Notice"). The Initial Notice commenced a comprehensive review of open-end credit rules and sought comment on a variety of issues relating to Regulation Z. The Bankruptcy Abuse and Consumer Protection Act ("Bankruptcy Act") was enacted shortly after the comment period for the Initial Notice closed. The Board has stated in the ANPR that it intends to implement the Bankruptcy Act amendments to the Truth in Lending Act ("TILA") as part of the broader review of Regulation Z. In particular, the Board states that "[b]y incorporating the Bankruptcy Act amendments into the Regulation Z review, the Board can coordinate the changes and make all changes to the periodic statement disclosures at one time." MasterCard strongly agrees with the Board's approach and urges the Board to make the upcoming revisions to Regulation Z in an integrated process. The Board correctly notes that implementing the Bankruptcy Act amendments as part of the broader review of Regulation Z should involve less regulatory burden by allowing creditors to make the

[1] MasterCard is an SEC-registered private share corporation that licenses financial institutions to use the MasterCard service marks in connection with a variety of payments systems.

necessary adjustments at one time. We also believe that adopting the changes in a single process will result in less consumer confusion than a process that results in repeated changes to consumer disclosures in a short period of time.

General Minimum Payment Disclosure Requirements in the Bankruptcy Act

The Bankruptcy Act amends Section 127(b) of TILA to require creditors that extend open-end credit to provide a clear and conspicuous minimum payment disclosure on the front of each periodic statement.[2] The minimum payment disclosure includes a "warning" statement and a hypothetical generic example of how long it would take to repay a specified balance making only the minimum payments. Furthermore, the disclosure must include a toll-free telephone number that the consumer may call to obtain an estimate of how long it would take to repay the consumer's actual account balance. The creditor must disclose in response to a request made through such toll-free number only the estimate of months as calculated by the Board under Section 127(b)(11)(H) of TILA. Alternatively, a creditor other than one regulated by the Federal Trade Commission ("FTC") may establish a toll-free number to provide the consumer with the actual number of months that it would take a consumer to repay a balance making only the minimum payments. A creditor that establishes such a number is not subject to the requirements of Section 127(b)(11)(A) or (B), but still must provide a certain minimum payment disclosure as part of the periodic statement.

It is important to understand the intent of the minimum payment disclosure requirements. The information provided to consumers is intended solely as an illustration of the general impact associated with making only the minimum payment. The information is not intended to be an exact number to be used by consumers as though it were a financial planning tool. In particular, Congress did not expect creditors to provide, or consumers to use, the repayment period provided under TILA as a mechanism by which consumers could plan their ultimate "payoff date." Instead, Congress intended to provide consumers a sense of the "order of magnitude" of the length of time it would take to repay if only the minimum payment is made each month. This is clear from the fact that the hypothetical estimate disclosed on the periodic statement and the estimate provided using the table developed by the Board are inherently very general in nature. Indeed, the estimates are predicated on assumptions which are rarely true, such as that the consumer will make only minimum payments for the duration of the credit extension and that the consumer will not further transact with the account. Therefore, it would be more logical to conclude that the information provided is meant to be illustrative at best. This is not to say that Congress did not provide some incentives for creditors to choose to provide examples that will more closely reflect each cardholder's specific situation. As we discuss below, Congress did provide such incentives. However, the broader policy objective was to require only illustrative examples in all cases—albeit some more illustrative than others. We will discuss this point below in the context of the implementation of Section 127(b)(11) of TILA.

[2] The ANPR implies that the statute requires the generic minimum payment disclosure to be made in a prominent location in all instances. However, the prominent location requirement pertains only to the disclosures required under Section 127(b)(11)(B) and (C), not to those required under Section 127(b)(11)(A).

Exemptions from Minimum Payment Disclosure Requirements

Exemptions for Certain Open-End Credit Plans

As amended by the Bankruptcy Act, TILA requires minimum payment disclosures in connection with open-end credit accounts. The statute specifically states that the minimum payment disclosure requirements do not apply to charge card accounts. The Board asks in the ANPR whether certain open-end accounts should be exempt from some or all of the minimum payment disclosure requirements.

The Board has correctly noted that the legislative history relating to the minimum payment disclosures focuses almost exclusively on their applicability to credit card accounts. However, there are other types of open-end credit accounts for which the minimum payment disclosures could be required under the statute. The ANPR provides that home-equity lines of credit ("HELOCs") and reverse mortgages are examples of other types of open-end credit available to consumers. While the minimum payment disclosures have, at best, limited relevance to credit card accountholders, MasterCard does not believe that they have any relevance to other types of open-end credit. For example, consumers know exactly how long it will take to pay a HELOC making only the minimum payments because the date of final payment is disclosed as part of the account opening. Many types of reverse mortgages do not even have a minimum payment feature, thereby making minimum payment disclosures impossible to provide.

MasterCard believes the minimum payment disclosures would be inappropriate (or even impossible) for open-end credit accounts that are not credit card accounts. Furthermore, we are not aware of any legislative history suggesting that Congress intended to impose such requirements on any accounts other than credit card accounts. In fact, the legislative history suggests Congress was focused solely on credit card accounts with respect to the minimum payment disclosures.[3] Therefore, we urge the Board to apply the requirements only to open-end credit card accounts.

Exemptions for Certain Accountholders

The Board also asks whether it should permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders, regardless of the

[3] *See, e.g.*, statement of Rep. Sensenbrenner ("In addition, S. 256 requires certain monthly credit card billing statements to include specified disclosures regarding the increased interest and repayment time associated with making minimum payments.") 151 Cong. Rec. H2049 (daily ed. April 14, 2005), statement of Rep. Castle ("Credit card billing statements will now reflect the actual time it would take to repay a full balance at a specified interest rate; contain warnings to alert consumers that paying only the minimum will increase the amount of interest; and list a toll-free number for consumers to call for an estimate of the time it would take to repay the balance if only the minimum is paid.") 151 Cong. Rec. H2073 (daily ed. April 14, 2005), statement of Sen. Hatch ("This bill also includes new consumer protections under [TILA], such as new required disclosures regarding minimum monthly payments and introductory rates for credit cards.") 151 Cong. Rec. S2459 (daily ed. March 10, 2005), and statement of Sen. Grassley ("The bill also provides that consumers will be given a toll-free number to call where they can get information about how long it will take to payoff [*sic*] their own credit card balances if they only make minimum payments on their balance.") 151 Cong. Rec. S2469 (daily ed. March 10, 2005).

account type. The ANPR includes as potential examples consumers who typically do not revolve balances or who make monthly payments that regularly exceed the minimum payment required.

The minimum payment disclosures are designed to illustrate to consumers the general length of a repayment period associated with making only the minimum payments in repaying an open-end credit balance. MasterCard notes that a very low percentage of cardholders makes only the minimum payment on a credit card balance on a consistent basis. According to an article prepared by Thomas A. Durkin of the Board staff, *Credit Cards: Use and Consumer Attitudes, 1970-2000*, in 1999 and 2000 only 7% of consumers who had a bankcard reported that they "hardly ever pay more than the minimum." Therefore, the minimum payment disclosures will have little or no relation to the behavior of *at least* 93% of cardholders who receive periodic statements. With respect to those consumers who make only the minimum payments on a consistent basis, the disclosures will benefit only a limited number of such consumers. The benefit of the disclosures on this small subset of consumers is limited because certainly some, if not most, of the consumers who make only the minimum payment do so because they cannot afford to make a larger payment for that billing cycle. A minimum payment "warning" will not alter consumer behavior for those who cannot afford to repay more.

Assuming that the minimum payment disclosures have any value, MasterCard believes that only a small portion of consumers would benefit from them. However, providing the minimum payment disclosures as required under Sections 127(b)(11)(A), (B), and (C) will have negative consequences with respect to *all* cardholders. First, the disclosures generally must be made on the front of the billing statement. Therefore, a disclosure of limited or no benefit to most consumers could relegate information of importance to all consumers (*e.g.*, transaction information) to other portions of the periodic statement. We also note that the increased disclosures will undoubtedly lengthen millions of periodic statements to the point of requiring another page. Creditors, and ultimately consumers, will incur higher costs due to increased paper usage and the resulting increase in postage costs. We do not believe such a result is justified for a disclosure designed to benefit approximately 5% of cardholders.

For the reasons described above, MasterCard strongly urges the Board to allow creditors to omit the minimum payment disclosures unless the accountholder consistently makes only minimum payments on the account. MasterCard proposes that creditors provide the required disclosures only to consumers who make only the minimum payment for three consecutive billing cycles and have a balance of more than $500. If this approach were adopted, the disclosures would be provided only to those consumers who may intend to make only minimum payments as a matter of practice on significant balances. Such an approach would also preserve the existing utility of periodic statements to consumers who would not benefit from the intrusive minimum payment disclosure. Of course, by limiting the population of cardholders who will receive the disclosures, the Board would spare creditors and consumers from the costs associated with unnecessary disclosures as well.

Hypothetical Examples for Periodic Statements

The hypothetical examples included in Sections 127(b)(11)(A), (B), and (C) are based on a 17% interest rate. However, Section 127(b)(11)(E) directs the Board to recalculate "as necessary" the interest rate and repayment period under subparagraphs (A), (B), and (C). There is no statutory guidance as to when such a recalculation is "necessary". We do not believe it is necessary to recalculate the interest rate and repayment period at this time.

Although Congress did provide the Board with flexibility to use a rate other than 17% for the hypothetical examples, we urge the Board to retain the 17% example provided in the statute. The Board correctly notes in the ANPR that the 17% used in the statute is higher than the average APR for credit cards on the whole as well as for the subset of cards that revolve a balance. On the other hand, it is possible that the average interest rate on credit cards may exceed 17% at some point in the future. However, the statute is intended to be only an *example* of how making only the minimum payment may affect the cardholder—it is not intended to reflect any particular account features.

MasterCard is concerned that if the Board recalculates the interest rate and the repayment period now, there will be frequent calls to do so in the future as interest rates fluctuate. If such recalculations are made, it would force creditors to adjust their account statement disclosures each time a change is made. This would result in unnecessary compliance costs. Furthermore, consumers would also be given varying disclosures from year to year, which could create consumer confusion or unnecessary customer service inquiries. Because the hypothetical example is meant only to be generally illustrative, we do not believe these costs would be justified by a continually changing APR in the hypothetical example. We therefore believe the Board should not to recalculate it or the repayment period at this time.[4]

Assumptions to Be Used by the Board in Developing a Table

The Board has asked what assumptions should be used when developing its formulas to estimate repayment periods. The ANPR notes that several assumptions were made by Congress in developing the hypothetical disclosure in the statute: (i) the previous balance method is used as the balance calculation method; (ii) no grace period applies to any portion of the balance; (iii) there is no residual interest; (iv) a minimum payment amount of no more than 2% for amounts owed to banks (no more than 5% for amounts owed to creditors regulated by the FTC) and (v) the minimum payment floor is $20 for banks ($15 for creditors regulated by the FTC).

We believe that the Board's assumptions should be the same as those made by the statute. As a general matter, we believe that each of the assumptions is reasonable on its

[4] There may be events in the future which would support a recalculation of the interest rate and repayment period, such as unusually low interest rates for credit cards. If the Board were to require the minimum payment disclosures for open-end credit plans other than credit cards, it may be reasonable to recalculate the interest rate and repayment period once at the outset depending on whether prevailing interest rates for those types of plans are significantly less than 17%.

face. Furthermore, none of the assumptions would provide for a number that is sufficiently different from one developed using more common creditor practices to justify a deviation between the hypothetical disclosure provided on the periodic statement and the one provided through the toll-free telephone number. In this regard, if the consumer were to dial the toll-free number and input a $1,000 balance with a 17% interest rate, the Board's calculations should result in an 88 month repayment period disclosed over the telephone. We believe it would be difficult for consumers to understand why the estimate provided in the hypothetical example provided on the account statement is different than the estimate provided using the toll-free number.

The Board also requests guidance on other assumptions that should be made as part of its calculations for the "detailed table" described in Section 127(b)(11)(H) of TILA. In developing the table, we urge the Board to make the table as simple as possible while still providing consumers with an estimate of the time it would take to repay a balance making only the minimum payments based on the inputs provided by the consumer. In order to develop the table, even using the assumptions described above, the Board must obtain or assume information relating to the: (i) APR on the account; (ii) balance owed; and (iii) minimum payment formula.

Source of Information

As a general matter, MasterCard strongly believes that the information obtained in connection with disclosing information from the table developed by the Board should be provided by the consumer or assumed by the Board. For example, the cardholder could provide certain information, such as APR information, over the telephone. There may be information that the consumer is not in a position to provide, such as the minimum payment formula. This information can be assumed by the Board and still provide a reasonable estimate.

We urge the Board to avoid any requirements on creditors to provide information to be used in connection with disclosures generated by the table developed by the Board. We do not believe that such a requirement is necessary to provide cardholders with the estimates required by the statute. In this regard, the minimum payment disclosure informs a cardholder that he or she can obtain an "estimate" of how long it would take to repay his or her balance. It is not necessary to obtain account-specific information other than what the cardholder can provide in order to provide such an estimate. MasterCard does not believe that requiring account-specific information from creditors materially furthers the goal of the statute, but it would impose significant and unnecessary costs on creditors to implement.

We also note that the statute requires the FTC and the Board in various circumstances to maintain the toll-free numbers through which consumers can receive the estimated number of months it would take repay a balance making only the minimum payments. Had Congress envisioned a process dependent on account-specific information, we believe that there would have been significant discussion on the costs associated with the FTC and the Board establishing a system that has retrieval capabilities from the thousands of entities who may use the number provided by the respective agencies. We also note a lack of congressional discussion relating to the feasibility and wisdom of providing the FTC with unprecedented access to such a large amount of account information through its maintenance of the toll-free number.[5] In short, we do not believe it is necessary for creditors to provide account-specific information in order to provide consumers with the required estimates, nor do we believe Congress intended to impose such a burden on creditors.

Substantive Regulation Z Revisions

The ANPR asks whether certain existing provisions of Regulation Z should be amended in order to provide the consumer with certain information that could be used in connection with obtaining the estimated number of months to repay a balance making only the minimum payments. We strongly urge the Board to refrain from amending existing provisions of Regulation Z as a result of Section 1301 of the Bankruptcy Act. As a general matter, we believe that had Congress intended for substantive revisions of TILA, and therefore Regulation Z, to be made in order to provide the estimates envisioned in Section 127(b)(11) of TILA, Congress would have debated the issue and made the requisite amendments as part of its amendments to TILA. However, there is no legislative history suggesting a need to review other portions of TILA or Regulation Z to effectuate Section 127(b)(11). We also respectfully note that it is difficult to justify a requirement for all open-end creditors to revise their periodic disclosures in order to improve marginally the information that is intended to be only an "estimate" (*i.e.*, the repayment period) to consumers who call the toll-free number. As noted above, the estimate is intended to be an illustrative example as opposed to a number to be relied upon by the consumer. In short, there is no need to amend existing portions of Regulation Z to meet the goal of the statute.

APR(s) on the Account

One of the key factors necessary to provide an estimated repayment period using the Board tables is the APR on the account. Although the Board could assume an APR for all cardholders, such as the average APR for credit cards that carry a balance, the consumer could also provide APR information applicable to his or her account when calling the toll-free number. If the Board believes it is appropriate to obtain APR information from the cardholder, we believe it would be appropriate for the cardholder to provide a single APR for use in connection with the Board tables. Not only would multiple APRs complicate the calculations necessary to provide the cardholder an estimate, but it may not be simple in all circumstances for the consumer to discern which APRs will apply to which portions of the balance. We do not believe that such complexity is necessary in order to provide the consumer with a suitable estimate. Therefore, if the Board believes the consumer should provide an APR, the request to the consumer should be for the nonpromotional APR used for purchases. This is generally the most commonly used APR and would therefore provide the most appropriate estimate for the largest number of cardholders.

---

[5] Unlike the Board, the FTC does not have broad examination authority with respect to institutions subject to its jurisdiction. Absent investigations or other similar activities, the FTC would not normally have access to personally identifiable account information.

The Board suggested a possible approach in the ANPR where the consumer provides both the highest and the lowest APR that could apply for the account. In return, the consumer would receive two estimates establishing a range for the estimated repayment period on the account. This is another reasonable approach, although it does have certain drawbacks. The range provided to the consumer may be so broad as to have very limited meaning, especially if none of the balance is subject to the highest or lowest APRs on the account. For example, the account may have widely differing APRs resulting in large range of repayment estimates.

Balance Owed

It is obviously important to know what balance is owed on an account in order to determine the repayment period on the account if only the minimum payments are made. We believe that the consumer could input the balance owed on the consumer's account at the end of the most recent billing period when calling the toll-free number to obtain the estimated repayment time.

Minimum Payment

Another important factor in determining the repayment period is the minimum payment amount to be made by the cardholder. However, the minimum payment formula applicable to a consumer's account is not necessarily disclosed to the consumer. Since this information is not necessarily available from the consumer, the Board must make an assumption to be used for purposes of providing an estimate using the Board's tables. We note that the congressional assumption for a minimum payment floor was $20. For the reasons discussed above pertaining to use of the assumptions used in the statute, the minimum payment floor assumption should be retained. With respect to other aspects of the formula, there is not an industry standard payment formula among card issuers. Indeed, a card issuer may have several minimum payment formulas depending on a variety of factors. However, we believe it is reasonable to assume that the minimum payment is 2% of the balance (with a $20 floor).[6] This assumption is based in part on the recent regulatory guidance pertaining to minimum payment amounts. The assumption is also consistent with the assumption used by Congress when drafting the statute.[7] We note that there may be other reasonable minimum payment assumptions, such as 1% of the balance plus finance charges.

<u>Providing Consumers with an More Accurate Repayment Period</u>

Congress provided an incentive for certain types of creditor to provide a consumer with a more accurate estimate of the number of months it would take for the consumer to repay the account balance if only the minimum payments are made and no additional credit

[6] In circumstances in which this would result in negative amortization due to the APR provided, the Board could assume a minimum payment of 1% of the balance plus finance charges.
[7] Using the same logic, the assumptions that would be used for creditors subject to the FTC's jurisdiction would be $15 floor and 5% minimum payment. Although we believe the disclosures should be limited only to credit card accounts, we understand that there may be a relatively small number of credit cards, such as store-issued proprietary credit cards, issued by entities subject to the jurisdiction of the FTC.

is extended under the account. Specifically, Sections 127(b)(11)(J) and (K) of TILA state that a bank that maintains a toll-free number for the purposes of providing customers with the actual number of months to repay a balance is not subject to the hypothetical minimum payment disclosure requirement on the front of the periodic statement.[8] Instead, the bank must make a less onerous minimum payment disclosure clearly and conspicuously anywhere on the billing statement.

MasterCard believes that the Board should adopt regulations that allow creditors an opportunity make disclosures under Sections 127(b)(11)(J) and (K) as opposed to those required under 127(b)(11)(A) and (B). If creditors have a meaningful choice between which disclosures to make, we believe many of the problems we describe above associated with the hypothetical disclosure are mitigated. In particular, the disclosures required under subparagraphs (J) and (K) may be provided clearly and conspicuously anywhere on the periodic statement, as opposed to on the front of it. Therefore, the effectiveness of other more important disclosures (such as transaction history) is less likely to be diminished. The length of the disclosure required under subparagraphs (J) and (K), combined with the flexibility for creditors to place it anywhere on the periodic statement, is also less likely to cause additional unnecessary paper to be used, reducing printing and postage costs relative to the more onerous disclosure.[9]

Despite the obvious appeal of disclosures made pursuant to subparagraphs (J) and (K), we note at the outset that it may be impossible to provide a cardholder with an "actual" number of months it would take to repay a balance making only the minimum payments. For example, the number of months it would take may necessarily depend on when in the billing cycle the consumer makes a monthly payment. If the consumer makes payments earlier in the billing cycle, that may result in a shorter time to repay the balance. However, the creditor cannot know on what dates the consumer will make the required payments. Therefore, because we believe Congress intended for Sections 127(b)(11)(J) and (K) to be operable, it appears as though Congress intended for certain assumptions to be made when providing a cardholder with an "actual" number of months.

MasterCard also reminds the Board of the context in which this provision was adopted. As mentioned above, Congress did not intend for the disclosures provided under Section 127(b)(11) to serve as a component of a cardholder's financial planning calculations. It is not as though the number of months provided by the consumer will serve as a "payoff date" for purposes of the consumer's budgeting analysis. Rather, the disclosures are meant to provide the consumer with information regarding the consequences of making only minimum payments on an open-end account. We do not believe it is reasonable to assume that the congressional objective is any different for purposes of Section 127(b)(11)(J). Indeed, if the goal were to provide information that could be useful to the consumer in something other than an illustrative context, Congress would have chosen a different approach because *virtually no consumers behave in the*

[8] This incentive is provided only to bank creditors, not to creditors subject to the jurisdiction of the FTC.

[9] Despite the mitigations associated with disclosures provided under subparagraphs (J) and (K), the minimum payment disclosures should still be required only in connection with credit card accounts. The arguments made for restricting the disclosures to only certain types of cardholders diminish, however, if the disclosures described in subparagraphs (J) and (K) are a viable option.

manner assumed for purposes of the disclosure provided. Stated differently, it is extremely rare for a consumer to not incur additional debt on a credit card while making only minimum payments until the debt is repaid in its entirety. Therefore, disclosures based on such assumptions are not intended to be applicable to a consumer's specific circumstances and therefore the usefulness of such disclosures is limited to illustrative purposes.

That is not to say that Congress did not intend to provide incentives to creditors to provide examples that are more illustrative than those developed through use of the Board's tables. By design the Board's tables are intended to provide only the most basic examples to consumers of the consequences of making only the minimum payments on an open-end account. However, it may be possible to provide consumers with examples that are more applicable to their specific circumstances. Congress sought to give creditors incentives to provide such examples, and therefore made the compliance obligations less onerous for those creditors who do provide more accurate examples.

Creditors will not provide more accurate examples to consumers under Sections 127(b)(11)(J) and (K), and the congressional intent to encourage more accurate estimates will be foiled, unless the Board provides regulations clearly defining the requirements of these provisions. Although the statutory language states that creditors must provide an "actual" number, such a requirement is impossible to meet without making certain assumptions. Absent regulatory guidance, any creditor attempting to provide information under these sections will be subject to significant litigation risk. Such a result is simply unnecessary in light of the policy objective to provide only a more accurate estimate. We strongly urge the Board to address this matter in its rulemaking process and provide creditors with a safe harbor if they meet basic requirements.

We believe the most appropriate approach to this issue would be to establish the components of a formula to be used when calculating a more accurate repayment period. In addition, the Board should also establish certain assumptions, or allow for creditors to make certain assumptions, for purposes of the calculation. The net result of the Board's regulation should be a formula which provides consumers with a more accurate repayment period than that provided through use of the Board's tables in a manner that than be calculated with relative ease. In order to achieve this objective, the following components are necessary: (i) APR, (ii) balance; (iii) balance calculation method; (iv) minimum payment formula; (v) payment allocation formula; (vi) date on which payment is made; and (vii) the length of the billing cycles.

One approach may be to enable a consumer to obtain a more accurate estimate calculated by the creditor by calling the toll-free number and providing his or her account number through an automated system.[10] Once the consumer provides the account number, the creditor's system can retrieve a limited amount of information from the creditor's records and use other assumptions to provide an estimate pursuant to subparagraphs (J) and (K). In particular, the creditor can retrieve the cardholder's balance as of the end of the

[10] We urge the Board to clarify that the creditor-calculated estimate may be provided through the use of an automated system.

most recent billing period and the APR that applies to each portion of the balance. The use of this information will result in a much more accurate disclosure than that provided through use of the Board's tables.

We note, however, that the balance information and the applicable APRs should be the only information that is required to be retrieved from the creditor's records for purposes of giving a more accurate estimate of the repayment period.[11] When developing a proposed mechanism, we urge the Board to consider the relevant costs and benefits associated with retrieving information from account records. MasterCard believes that establishing a system through which information will be retrieved from account records will be costly. However, given the impact that an accurate APR can have on the estimate provided to the cardholder, it is possible to justify those costs. As we discuss in more detail below, however, the benefits of requiring additional retrieval for other provisions relative to making certain assumptions are much less. Yet, the cost of providing the more accurate estimate could increase with each variable that must be supplied by the creditor. In fact, these costs can be significantly higher if the creditor must somehow access a variety of systems or platforms in order to retrieve additional variables.

With respect to a balance calculation method, we believe a creditor should be able to assume that the average daily balance method is used for purposes of calculating the repayment period.[12] This is the formula that is used most often by card issuers, and the use of varying balance calculation methods will not normally have a noteworthy impact on the repayment period. Therefore, we do not believe it is necessary to require the creditor to provide or use the actual balance calculation method (to the extent it is different from the average daily balance method) for purposes of the disclosure.

Unlike the balance calculation method, we do not believe that a single industry assumption should be made with respect to the minimum payment formula needed for purposes of the calculation. This is because minimum payment formulas can vary between creditors in a manner that does not lend itself to a standardized assumption without unnecessarily sacrificing accuracy. However, we are also concerned that a requirement to use the actual minimum payment formula could be unnecessarily costly without significant benefit to the consumer. MasterCard believes that a creditor should be able to use a minimum repayment formula that is used for a significant number of accounts of similar purpose offered by the creditor.[13] Although minimum payment formulas vary between creditors, we do not believe that they vary to the same degree among similar accounts offered by the same creditor. Therefore, under our proposal, the calculation would use a variable that is widely used by the particular creditor without requiring the additional and

[11] Of course, if the creditor voluntarily chooses to retrieve specific account information pertaining to the other variables, it should be permitted to do so.

[12] It is our understanding that strict use of an average daily balance formula can become computationally complex. However, it is also our understanding that it is possible to use an algebraic formula that reasonably approximates an average daily balance compounding mechanism in a much less complex manner. We urge the Board to allow creditors to use the latter approach.

[13] For example, a creditor could offer a private label card and a general purpose card. The minimum payment formula used for the calculation for a private label card may differ from the formula used for the calculation for a general purpose card.

unnecessary cost associated with retrieving the minimum payment formula associated with the account.[14]

Given that there could be balances subject to differing APRs, it may be necessary to include the payment allocation formula. MasterCard urges the Board to allow creditors to use a payment allocation formula that applies the payment to the lowest APR balances first, then to the highest. We believe this is a reasonable approximation of how payments are generally credited. Furthermore, it is extremely unlikely that such a formula would result in understating the repayment period for the consumer.

We note that the Board will also need to allow creditors to make certain assumptions for purposes of the more accurate repayment calculation. In particular, no grace period would apply to any portion of the balance. Furthermore, no residual interest would apply to the account. These are the same assumptions used by Congress in the generic example, and the same assumptions we urge the Board to adopt for purposes of devising its table. We believe it would be reasonable to assume that the payment is made on the last day of the billing cycle. We also believe it is reasonable to assume that billing cycles are 30 days long.[15]

MasterCard also urges the Board to provide for a safe harbor deeming creditors to be in compliance with the requirements of subparagraphs (J) and (K) so long as they have reasonable policies and procedures in place to comply with the regulations implementing those subparagraphs.[16] This is necessary in order to avoid challenges to certain assumptions made by creditors and would allow for tolerances of minor errors. We also believe that the nature of the information provided is not meant to be an exact number provided to the consumer, so litigation challenging reasonable policies or procedures chosen by a creditor in developing that number could be costly with no measurable benefit to consumers. Without such protection, many creditors may feel that the litigation risk presents them with little choice but to provide only the hypothetical example with access only to the estimate calculated using the Board's tables. We do not believe that such a result is in the consumer's best interest.

---

[14] We note that use of a general minimum payment formula may result in negative amortization if applied to a consumer's specific account. For example, if a creditor generally requires a minimum payment of 2% of the account balance, a calculation using that assumption would result in negative amortization if the cardholder's APR were more than 24%. If negative amortization would result through use of such formula, the creditor should use an alternate minimum payment formula that is also used by the creditor that would not result in negative amortization.

[15] The specific date on which payment is made and the specific length of the billing cycle are less important than the Board establishing reasonable assumptions for creditors to use with respect to these two variables. For example, it may also be reasonable to assume the payment is made five days before the end of the billing cycle, or that billing cycles are 31 days long.

[16] This recommendation is predicated on the assumption that the Board will specify which data points must be used to calculate the number and the acceptable sources of such data points (*e.g.*, Board assumptions, creditor's files, etc.).

Disclosure of Key Assumptions to Consumers

The Board asks in the ANPR what key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period and when should they be disclosed. MasterCard believes that creditors should be permitted (but not necessarily required) to provide consumers with a brief, concise disclosure that the estimates provided in all circumstances are only estimates and that the actual number of months it may take for a consumer to repay a balance will vary based on a variety of factors, including consumer behavior. Creditors should have the option of providing such a disclosure in writing on the periodic statement or orally as part of the information provided through the toll-free telephone number, or both. We do not believe that consumers would benefit from being told the specific assumptions that are used in connection with the calculation of their repayment period. Such information would not clarify the estimate nor would it provide information that the consumer could use to refine the estimate. Creditors and consumers would benefit if the Board provided a short model disclosure that could be used.

Disclosure of Repayment Periods Through the Internet

We believe the Board should allow creditors to provide the repayment period information required under Section 127(b)(11) through the Internet if the consumer chooses to obtain the information in that manner. Therefore, we request that the Board allow creditors to incorporate an Internet web site in addition to the toll-free telephone number as part of the periodic statement disclosures if the creditor chooses. For example, the disclosure made pursuant to subparagraph (K) could read: "Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call [XXX-XXX-XXXX] toll-free or visit [creditor name].com." If the Board does not allow for such incorporation, a creditor could still reference a web site in a sentence printed in addition to the disclosure provided in the statute. However, the resulting disclosure may be unnecessarily awkward or long.

Introductory Rate Disclosures

Use of Term "Introductory"

Section 127(c)(6) requires that an application or solicitation that is mailed to consumers, and all promotional material accompanying such application or solicitation, that offers a temporary APR use the term "introductory" in immediate proximity to each listing of the temporary APR. Such term must appear "clearly and conspicuously." The Board asks for comment on what guidance, if any, it should provide in interpreting the "immediate proximity" requirement. The Board also asks whether it is sufficient for the term "introductory" to precede or follow immediately the APR, such as "Introductory APR 3.9%" or "3.9% APR introductory rate".

MasterCard believes that use of the term "introductory" to precede or follow immediately the APR should comply with the statutory requirement. However, we believe that a creditor could use the term "introductory" in other manners which would also meet the requirement that the term appear in "immediate proximity" to the temporary APR. For example, if the term "introductory" is used in the immediately preceding or following sentence, we believe that would automatically qualify as "immediate proximity" to the temporary APR. We also believe that a creditor should be able to use the term "intro" or other similar term when making the disclosures, such as referring to the "intro 3.9% APR". After a creditor uses the term "introductory" or "intro" a sufficient number of times in a solicitation (*e.g.*, six times), the Board should also permit the creditor to use an asterisk or other marker in connection with the rate, instead of using the term "introductory", which directs the consumer to a brief explanation that the rate is introductory. We ask the Board to provide sufficient guidance as to what will meet the statutory requirement so creditors may understand with reasonable certainty their compliance obligations.

Expiration Date and Go-To APR

The Bankruptcy Act amends TILA to require creditors to disclose the expiration and "go-to" APR in a manner "closely proximate" to the "first mention" of the temporary APR. This requirement presents two issues for the Board to resolve. First, we request that the Board provide flexible guidance as to what "closely proximate" means. In this regard, the standard is obviously somewhat less demanding than the "immediate proximity" requirement for use of the term "introductory" Therefore, using the standards articulated immediately above, a creditor could disclose the expiration date and go-to rate in the same sentence, or in the sentence immediately preceding or following the sentence, advertising the temporary rate. As is discussed in more detail below, we also believe that the expiration date and go-to rate could appear within several inches of the introductory rate (or the functional equivalent for an electronic disclosure, the distance necessarily varying depending on the manner in which it is viewed by the consumer).

The Board also asks how it should determine which APR as the "first mention" of the promotional APR. The examples provided in the ANPR as options are the APR using the largest font size or the one located highest on the page. We also note that the first mention could conceivably come on a document other than the solicitation letter depending on the design of the solicitation or application. MasterCard suggests that the Board adopt flexible guidance which allows for some variation depending on the solicitation, but also indicating that a creditor may deem the "first mention" of the temporary APR to be that which is the highest on the page which has the initial text of the solicitation letter (*i.e.*, the text generally following the salutation to the consumer). Because the expiration date and the go-to APR need only be "closely proximate" to the temporary APR, as opposed to "immediately proximate", the required disclosure may still be provided in the text of the solicitation letter and meet the statutory requirement. For example, a solicitation could have the words "Introductory 3.9% APR!!!" as a heading on the page containing the solicitation letter with the expiration date and go-to APR explained in one of the early sentences of the solicitation letter itself. We believe that such a construct will result in the disclosures being made in a prominent location, as well. In circumstances involving a range of potential go-to APRs, the creditor should have the option of listing each potential APR or the range of potential APRs.

The ANPR requests comment on whether the expiration date and the go-to rate should be disclosed on each document used in the solicitation. MasterCard urges the

Board to require the expiration date and go-to rate to be disclosed pursuant to Section 127(c)(6) of TILA only on one document in the solicitation. We believe that consumers who are interested in responding to a credit card offer read the text of the solicitation letter.[17] If the Board requires the expiration date and the go-to rate to appear in close proximity to the temporary APR printed highest on the page with the text of the solicitation, consumers will receive the required disclosure and understand the expiration date and go-to rate. We do not believe there are additional benefits to requiring additional expiration date and go-to rate disclosures. Furthermore, it may be difficult for the Board to devise a standard approach toward evaluating "close proximity" with respect to other documents included in a solicitation. Without such a standard approach, creditors could be subject to unnecessary liability.

Section 127(c)(6)(C) of TILA specifically requires that mailed solicitations or applications which offer a temporary APR that may be revoked under any circumstance or any event clearly and conspicuously disclose certain information in a prominent manner. The required information is: (i) a general description of the circumstances that may result in the revocation of a temporary APR, (ii) if the APR that will apply upon revocation is fixed, the APR that will apply upon revocation; and (iii) if the APR that will apply upon revocation varies, the rate that will apply upon revocation based on an APR that was in effect within 60 days before the date of mailing. The Board requests comment on what additional rules should be considered to implement this provision.

MasterCard suggests that Regulation Z as currently drafted would generally satisfy the statutory requirements of Section 127(c)(6)(C). Specifically, Regulation Z currently requires that increased penalty rates be disclosed as part of the tabular disclosure required under Section 127(c)(1) of TILA, including those that would apply as a result of a revocation of a temporary rate. Furthermore, the specific event or events that may result in the application of a default rate must be included outside the table but with an asterisk or other means used to direct the consumer to the additional information. If the default APR is fixed, the default APR must be included in the table. If the default APR is variable, the index and the margin must appear in the table. The table itself must be disclosed "clearly and conspicuously" and be "conspicuous and prominent" and we believe that the information outside the table, but referenced by asterisk inside the table, is also conspicuous and prominent. Given these existing requirements, we do not believe that additional amendments are necessary to Regulation Z to implement Section 127(c)(6)(C).

Guidance on "Clear and Conspicuous"

Section 1309 of the Bankruptcy Act requires the Board to issue regulations to provide guidance regarding the term "clear and conspicuous" with respect to the hypothetical minimum payment disclosures under Sections 127(b)(11)(A), (B), and (C), and the expiration date/go-to rate disclosures under Sections 127(c)(6)(A)(ii) and (iii) (collectively, the "Specified Disclosures"). The regulations must include examples of clear and conspicuous model disclosures for the Specified Disclosures. The Board must also

[17] Consumers also read the tabular disclosure required under Section 127(c)(1). If this disclosure includes the temporary rate, the expiration date must also appear as must the go-to rate.

ensure that the standard required for the Specified Disclosures results in disclosures that are reasonably understandable and designed to call attention to the nature and significance of the information in the Specified Disclosures. The Board has asked for comment on this requirement.

MasterCard believes that the Board can meet its statutory obligations by adopting regulations pertaining to the Specified Disclosures as described above. In particular, the Specified Disclosures must already be "reasonably understandable" pursuant to Comment 5(a)(1)-1 and Comment 5a(a)(2)-1. We believe that the hypothetical minimum payment disclosures made clearly and conspicuously *on the front of the periodic statement* will, by definition, call attention to the nature and significance of the information. We also believe that the expiration/go-to rate disclosures made clearly and conspicuously in close proximity to the first mention of the temporary APR will by nature of their placement in such proximity be designed to call appropriate attention to them.

Internet-Based Solicitations

Section 127(c)(7) of TILA, as amended by the Bankruptcy Act, requires certain disclosures to be provided in connection with Internet-based solicitations. We note that this provision would explicitly govern TILA electronic disclosures relating to Internet-based solicitations, and that such disclosures need to be "readily accessible to consumers" as opposed to being made available in writing. Therefore, we urge the Board to make the appropriate revisions to Section 226.5(a)(1) of Regulation Z.

Although the statute refers only to "any solicitation" in Section 127(c)(7), the Board asks whether it should interpret the requirement to include applications as well. We do not believe that there is any reason for treating Internet applications differently from solicitations for purposes of Section 127(c)(7), and therefore would not object to the Board's application of the requirements of Section 127(c)(7) to Internet-based applications.

MasterCard notes that the Internet-based disclosures must be "readily accessible" to the consumer "in close proximity to the solicitation." We believe that this requirement is best implemented by requiring either a clear and conspicuous link to the Internet-based disclosures, or providing the Internet-based disclosures themselves, on the same web page as the solicitation. We note that the statute does not require the creditor to force the consumer to access the disclosures, nor should the implementing regulations. Indeed, the statute clearly implies that access is at the consumer's option. If the information is accessed by the consumer, the information must be clear and conspicuous. We believe that creditors should be permitted to disclose the required information in the same manner as it is disclosed in solicitations that are mailed. However, a tabular disclosure is not the only method by which clear and conspicuous disclosures can be made.[18] We believe the general clear and conspicuous requirements pertaining to Regulation Z, such as those applying to "take one" solicitations, would be sufficient.

---

[18] We note that Congress required a disclosure of only the *information described* in Sections 127(C)(1)(A) and (B) without reference to the format used to disclose such information. Furthermore, Congress specifically addressed the form in which the disclosures were to be made and did not require a tabular disclosure.

Section 127(c)(7)(B)(ii) requires the disclosures to be "updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account." The ANPR requests what guidance the Board should provide regarding what it means for disclosures to be updated regularly. We believe that it is appropriate to require creditors to update the information every 60 days. We also urge the Board to provide sufficient lead time before compliance is required because many banks rely on service providers to "power" their Internet capabilities. These relationships are governed by contracts, many of which specify the frequency with which certain information is updated. We ask that the Board consider this situation if it is going to mandate a specific time frame in which information must be updated.

Late Payment Deadlines and Penalties

Section 127(b)(12) of TILA, as added by the Bankruptcy Act, requires a certain disclosure pertaining to payment dates on the periodic statement. In particular, if a late payment fee is to be imposed, the periodic statement must disclose clearly and conspicuously the date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged, and the amount of the late payment fee.

At the outset we strongly urge the Board to implement this requirement in a manner that would not have an adverse impact on the use of "silent" grace periods. For example, although a card issuer may reserve the right to impose a late fee if payment is received after a certain date (*e.g.*, the payment due date), many card issuers do not impose the late fee on that date. Rather, they may provide a grace period as a matter of accommodation and customer service of one or several days. This grace period is may not be disclosed to the consumer. We believe there is sound reason not to disclose this grace period to the consumer. If consumers are aware of the grace period, they may alter the timing of their payments, believing that they have additional time in which to make the payment. However, due to delays with the postal service, or even a day's forgetfulness by the consumer, the payment may not arrive by the required time. Therefore, we believe it is reasonable to conclude that the required disclosure of this grace period would result in more, not less, late fees being assessed to consumers. Furthermore, to require a disclosure of any grace period may limit the ability of a card issuer to grant such a grace period on a case-by-case basis.

Regardless of the policy justification for permitting the use of silent grace periods with respect to late payment fees, MasterCard does not believe that TILA requires the disclosure of the silent grace period. Specifically, the statute requires that the issuer disclose the due date for the payment, or, *if the date is different*, the earliest date on which a late payment fee may be assessed. Generally speaking, the payment due date is the earliest date on which a late payment fee *may* be assessed. Despite the fact that a card issuer may choose not to impose the late fee on the stated due date, the issuer generally *may* impose the fee on that date under the terms of the account. Therefore, the due date and the earliest date on which the late fee may be assessed would not be different in these circumstances. By terms of the statute, a creditor who uses a silent grace period as described here would be required to disclose only the due date, not the date on which the late fee is likely to be assessed.

The Board asks whether it should consider particular format requirements, such as requiring the late payment fee to be disclosed in close proximity to the payment due date (or the earliest date on which a late payment fee may be charged, if different). We request that the Board not propose particular format requirements. Had Congress specifically intended certain proximity requirements, it would have so stated (*see, e.g.,* Section 127(c)(6) as added by Section 1303 of the Bankruptcy Act). Furthermore, there are not similar formatting requirements with respect to most other periodic statement disclosure requirements, and we do not believe that the late payment disclosure is any more important than other such disclosures as to necessitate a specific format requirement.

The Board also asks whether it should consider requiring that any increased rate that would apply to outstanding balances as a result of a late payment accompany the late payment fee disclosure. MasterCard cautions the Board against such a disclosure requirement. Had Congress intended for such a disclosure, it would have required it as part of Section 1305 of the Bankruptcy Act. Furthermore, we do not believe it prudent to disclose on the periodic statement each of the relevant factors that may result in a default rate being imposed. These disclosures provided adequately elsewhere, and to require them as part of the periodic statement would detract from the disclosures Congress determined were appropriate for periodic delivery.[19]

Prohibition on Certain Actions for Failure to Incur Finance Charges

Section 127(h) of TILA, as amended by Section 1306 of the Bankruptcy Act, prohibits a creditor from terminating an open-end credit account "prior to its expiration date solely because the consumer has not incurred finance charges on the account." However, Section 127(h) expressly does not prohibit a creditor from terminating an account for "inactivity in 3 or more consecutive months."

The ANPR requests comment on when an account "expires" under an open-end credit plan. We believe that a card issuer should be permitted to determine the expiration date on an account, which could include the date printed on the credit card itself. However, we also believe it is appropriate to consider the expiration date to be the date on which the creditor's internal policies and procedures would deem the card to be inactive (*e.g.*, closing the account), so long as such policies and procedures do not solely depend on the cardholder's failure to incur finance charges on the account.

The Board also requests comment on whether it should define "inactivity" for purposes of the statute. We believe that "inactivity" means a failure to incur new charges on an account or make payments on the account. This is an appropriate definition because without incurring charges or making payments on the account, the consumer would have

[19] We also believe that if the Board were to require such a behavioral "warning" disclosure to the consumer, it would have a difficult time defending against its decision not to require a variety of other such disclosures on periodic statements. For example, some may query why the Board does not also require disclosures pertaining to default rates for exceeding credit limits, the effect of late payments on credit histories, or the effect of carrying too high of a balance on widely used credit scores. The simple answer is that, absent specific statutory direction, this is not the type of information Congress intended to require as part of a periodic statement.

taken no action with respect to the account, *i.e.*, the consumer was inactive with respect to the account.

* * * * *

Once again, we appreciate the opportunity to comment on the ANPR. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin Brown & Wood LLP, at (202) 736-8368, our counsel in connection with this matter.

Sincerely,

Joshua L. Peirez
Senior Vice President &
Associate General Counsel