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By electronic delivery

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

Truth in Lending
Regulation Z
Advance Notice of Proposed Rulemaking
Docket No. R-1217
70 Federal Register 60235 (October 17, 2005)

The American Bankers Association ("ABA") is pleased to submit our comments to the Federal Reserve Board's request for comment on an advance notice of proposed rulemaking ("ANPR") regarding amendments to the Truth in Lending Act ("TILA") contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("Bankruptcy Act"). The Bankruptcy Act amendments relate to open-end credit and to home equity loans.

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

Background.

In December 2004, the Board published an initial ANPR to begin a comprehensive review of the open-end credit rules of Regulation Z, which implements TILA. Subsequently, the Bankruptcy Act was enacted, which included amendments to TILA dealing principally with open-end credit accounts and requiring new disclosures on periodic statements and on credit card applications and solicitations. The Board plans to implement the Bankruptcy Act amendments as part of its review of Regulation Z. Accordingly, it issued this second ANPR. The Bankruptcy Act amendments to TILA are as follows:

Minimum payment warnings. For open-end accounts, creditors must provide on each periodic statement a standardized warning about the effect of making only minimum payments and information about how to obtain information about the time it will take to repay the loan paying only the minimum. The Board must develop a table that can provide an estimate of the number of months needed to repay making only minimum payments. Creditors may choose to either refer customers to the Board to obtain an estimate or provide a number to call to obtain the "actual number of months."

Introductory rate offers. A card issuer offering discounted introductory rates must disclose clearly and conspicuously on the application or solicitation the expiration date of the offer, the rate that will apply after that date, and an explanation of how the introductory rate could be lost (*e.g.,* by making a late payment).

Internet solicitations. Credit card offers on the Internet must include the same disclosure table that is currently required for applications or solicitations sent by direct mail.

Late fees. For open-end accounts, creditors must disclose on each periodic statement the earliest date on which a late payment fee may be charged, as well as the amount of the fee.

High loan-to-value mortgage credit. For home-secured credit that may exceed the dwelling's fair-market value, creditors must provide additional disclosures at the time of application and in advertisements (for both open-end and closed-end credit). The disclosures would warn consumers that interest on the portion of the loan that exceeds the home's fair-market value is not tax deductible.

Account termination. Creditors are prohibited from terminating an open-end account before its expiration date solely because the consumer has not incurred finance charges on the account.

Summary of comments.

The Bankruptcy Act amendments to TILA appear in some cases obsolete or redundant in many cases, and therefore a challenge to implement rationally, particularly when viewed in context of other provisions and disclosures of TILA and Regulation Z as well as other documents such as certain advisory letters from the Comptroller of the Currency. Accordingly, the Board should be flexible and view the Bankruptcy Act amendments to TILA in the context of other Regulation Z disclosures and incorporate them so that consumers receive integrated, rational disclosures that convey all the important information in an easy-to-notice and easy-to-understand manner. Making documents and disclosures too lengthy or complicated will mean consumers, overwhelmed by detail or volume, will simply not use or understand them.

In addition, the Board should balance the need for meaningful, useful disclosures with the costs and compliance burdens of providing them. High initial and continuing compliance costs will mean higher costs to all cardholders, whether directly in the form of fees or interest, or indirectly, in the form of fewer choices or shorter grace periods.

ABA is primarily concerned about the minimum payment disclosures. We strongly urge the Board to provide its “table” or estimate in as simple a manner as possible so that it requires minimal consumer inputs and avoids any new periodic statement disclosures. The Board is tasked with providing an estimate. Congress clearly intended to allow the creditor an option which imposes minimal burdens on the creditor by directing the Board to provide the table. Accordingly, the Board should not require that creditors provide an estimate in lieu of providing information referring to the Board’s table.

In addition, both a Board-generated estimate and the optional creditor-generated figure are intended to highlight to consumers who are unaware that paying only the minimum payments means they will pay more interest and take longer to repay the loan. The disclosures are intended to inform generally, not serve as a budgeting tool. Accordingly, the Board should be flexible in allowing assumptions that simplify calculating the estimate and avoid unnecessary complexities for consumers and costs for creditors.

Further, the Board should recognize that any creditor-generated figure, as a practical nature, will not be “actual,” because it will be affected by factors unknown and contingent on consumer behavior and other factors. Nevertheless, if creditors are permitted to make certain assumptions, a “reasonable” estimate, based on the creditor’s internal information, could be provided. This number will be more accurate than one derived from the Board’s table. To encourage creditors to generate numbers more realistic than the Board’s estimate, the Board should be flexible about allowing assumptions necessary to calculate a figure.

A. Minimum Payment Disclosures

The Bankruptcy Act amends TILA to require creditors that extend open-end credit to provide a disclosure statement describing the effects of making only minimum payments. Creditors must provide have two choices. One choice is to disclose on the front of the periodic statement:

(1) a “warning” statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the consumer’s balance;

(2) a hypothetical example of how long it would take to pay off a specified balance if only minimum payments are made; and

(3) a toll-free telephone number that the consumer may call to obtain an estimate of the time it would take to repay their actual account balance, based on a table developed by the Board that assumes no other advances are made and assumes a significant number of different annual percentage rates (“APRs”), account balance and minimum payment amounts.

Alternatively, a creditor may use a toll-free telephone number to provide the “actual” number of months that it will take consumers to repay the outstanding balance instead of providing an estimate based on the Board-created table. A creditor that does so, must include the general warning and its toll-free number on the periodic statement, but the disclosure need not be located on the front.

ABA offers the following responses to the specific questions raised in the ANPR.

Should certain types of accounts or transactions be exempt from the disclosures?

The Bankruptcy Act requires minimum payment disclosures for all open-end accounts (such as credit card accounts, home-equity lines of credit, and general-purpose credit lines). However, as the

Board notes, it has broad authority to provide exceptions from TILA's requirements. Accordingly, the Board requests comment on whether certain open-end accounts should be exempt from some or all of the minimum payment disclosure requirements.

Q59: Are there certain types of transactions or accounts for which the minimum payment disclosures are not appropriate? For example, should the Board consider a complete exemption from the minimum payment disclosures for open-end accounts or extensions of credit under an open-end plan if there is a fixed repayment period, such as with certain types of HELOCs? Alternatively, for these products, should the Board provide an exemption from disclosing the hypothetical example and the toll-free telephone number on periodic statements, but still require a standardized warning indicating that making only the minimum payment will increase the interest the consumer pays?

A. We strongly urge the Board to exempt HELOCs. In addition, we strongly recommend the exclusion of lines of credit. As the Board observes, the Congressional debate about the minimum payment disclosures focused on credit cards, and it was not Congress' intent to cover HELOCs or overdraft lines of credit.

For HELOCs, it simply makes no sense to provide the disclosures because they are not applicable. Because of the TILA's restriction on changing terms, HELOCs generally are not "evergreen" like credit cards. Typically, there is a set draw period, during which time the borrower may draw down the line of credit and may access repaid amounts and then a set repayment period after the end of the draw period. Making the minimum payments over a period much longer than the contract permits, as the minimum payment disclosure would suggest, is simply not an option for HELOCs. Thus, the disclosures related to how long it will take to repay the loan, in most cases, would be incorrect, grossly misleading and confusing to consumers. It simply makes no sense to provide minimum payment disclosures in this case.

In addition, we do not believe that the regulation should require for HELOCs a disclosure that only paying the minimum will increase the amount of interest paid. As already noted, credit cards were the focus of the Congressional debate, and HELOCs are structured and used very differently from credit card accounts. HELOCs tend to be used for major projects such as home improvement rather than smaller purchases and, unlike credit cards, have a limited draw period with a set repayment period. In addition, the extensive early and initial disclosures for HELOCs illustrate with examples the impact of the balance and interest rate on the amount of payments, a meaningful number to consumers. The already-required disclosures also stress that consumers may lose their home if they default, which sensitizes consumers to the importance of keeping the balance, and ultimately the payment amounts, manageable. Thus, consumers tend to use the line more cautiously and are more aware of terms. Adding a disclosure that is not particularly helpful will serve only to clutter the periodic statement.

ABA also recommends that the Board exclude overdraft lines of credit from the minimum payment disclosure requirement. First, as the Board notes, Congressional focus was on credit cards.

Second, the disclosures are not effective or necessary for overdraft lines of credit. Relative to credit cards, overdraft lines of credit tend to be modest lines of credit**,** so the disclosures would present little of the "shock" value the disclosures are intended to convey. Also, overdraft lines of credit are intended to assist consumers in managing checking accounts and avoiding the inconvenience, hassles, and fees associated with overdrafts. They are not intended as a long term credit option.

Moreover, the minimum payment disclosures do not work for overdraft lines of credit. Credit card formulas for determining minimum payment amounts and the timing of payments, while not identical, have a general similarity. In contrast, the features and terms of overdraft lines of credit vary widely from institution to institution. Some banks require that the overdraft amount of a line of credit be paid in full within a short period after receipt of notice. Others permit longer periods of time to repay, but those periods and the percentage of any minimum amount vary significantly from bank to bank. Thus, for example, the hypothetical example of the Bankruptcy Act has little relationship to the terms of many of the overdraft line of credit programs.

Finally, many banks, particularly small institutions, have indicated that given that overdraft lines of credit are often not profitable due to the paucity of their use, and given the cost of providing the disclosures (system requirements and paper and postage) and a toll-free number, they would most likely discontinue overdraft lines of credit. This means all overdrafts would be subject the regular overdraft fee, which typically is higher than the charges imposed under an overdraft line of credit. In addition, unlike overdraft lines of credit, which the bank agrees to pay and gives consumers certainty, general overdraft policies give the bank the discretion to return the transaction. Thus, consumers lose the option of ensuring that an overdraft will be paid rather than returned.

Q60: Should the Board consider an exemption that would permit creditors to omit the minimum payment disclosures from periodic statements for certain accountholders, regardless of the type of account; for example, an exemption for consumers who typically (1) do not revolve balances; or (2) make monthly payments that regularly exceed the minimum?

A. The minimum payment disclosure will be relatively lengthy once the statutory language is combined with any necessary explanation of the assumptions. We recommend that to avoid "statement clutter" that distracts those paying more than the minimum from noticing and reviewing information more relevant and important to them, that the Board follow the approach of California law and allow card issuers the choice of focusing the disclosures on those to whom it is relevant, that is, those who only pay the minimum amount consecutively. We suggest that the Board limit these disclosures to those consumers who pay the minimum at least three times consecutively.

The target of the legislation was the 4% of consumers who consistently only pay the minimum who may not understand that consistently only paying the minimum means they pay more interest and the loan will not be repaid for a long time. The minimum payment disclosure is not relevant to the nearly half of all card holders who *always* pay the balance in full each month. Nor is it particularly useful to the 6% of consumers who on occasion pay only the minimum amount or to those who pay more than the minimum, as the disclosure does not relate to their situation. However, requiring the lengthy disclosures will obscure other information which is more relevant and important to them, such as the transactions made for that period, the APR, and fees. In addition, in these cases where the effect of only paying the minimum is not relevant to the consumer, the disclosure adds recurring lender costs to providing the statements: the disclosures may require additional pages and postage. These costs are in part paid for through higher fees and interest and shorter grace periods for all consumers, for example.

In addition, we recommend an exemption for balances less than $500. In cases of low balances, the repayment period is fairly short so lacks the impact and message this disclosure is intended to have. To avoid unnecessary clutter and costs, accounts with such low balances should be exempt.

Q61: Some credit unions and retailers offer open-end credit plans that also allow extensions of credit that are structured like closed-end loans with fixed repayment periods and payments amounts, *such as loans to finance the purchase of motor vehicles or other "big-ticket items." How should the minimum payment disclosures be implemented for such credit plans?*

A. We have no comment.

Hypothetical examples for periodic statements.

Under the Bankruptcy Act, the hypothetical example that creditors must disclose on periodic statements varies depending on the creditor's minimum payment requirement. Generally, creditors that require minimum payments equal to 4 percent or less of the account balance must disclose on each statement that it takes 88 months to pay off a $1000 balance at an interest rate of 17 percent if the consumer makes a "typical" 2 percent minimum monthly payment. Creditors that require minimum payments exceeding 4 percent of the account balance must disclose that it takes 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a "typical" 5 percent minimum monthly payment (but the creditor may opt instead to disclose the statutory example for making 2 percent minimum payments). The example of a 5 percent minimum payment must be disclosed by creditors that are subject to the Federal Trade Commission's ("FTC") actual minimum payment requirement. Creditors also have the option to substitute an example based on an APR that is greater than 17 percent.

Q62: The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. Currently, the repayment periods for the statutory examples are based on a 17 percent APR. Nonetheless, according to data collected by the Board, the average APR charged by commercial banks on credit card plans in May 2005 was 12.76 percent. If only accounts that were assessed interest are considered, the average APR rises to 14.81 percent. Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

A. To make the hypothetical more realistic and useful, the Board should adjust the 17 percent APR in the statutory example and use the current average for revolvers. It may be necessary to adjust periodically, but the Board should limit adjustments based on the percentage change in the average and in no case more than every two years.

Q63: The hypothetical examples in the Bankruptcy Act may be more appropriate for credit card accounts than other types of open-end credit accounts. Should the Board consider revising the account balance, APR, or "typical" minimum payment percentage used in examples for open-end accounts other than credit cards accounts, such as HELOCs and other types of credit lines? If revisions were made, what account balance, APR, and "typical" minimum payment percentage should be used?

A. We recommend that the Board not apply the disclosures to HELOCs. (See comments to question 59.) As noted in comments to question 59, the structure and terms of HELOCs are unlike credit cards and the minimum payment disclosures, including the statutory hypothetical example, have little if any application to HELOCs. While we do not have broad data on the minimum payment formulas banks use for HELOC, an informal survey of several banks found that practices vary considerably. Some only require interest to be repaid during the draw period while others required interest plus a varying amount of the percentage of the principal.

Q64: The statutory examples refer to the stated minimum payment percentages of 2 percent or 5 percent, as being "typical." The term "typical" could convey to some consumers that the percentage used is merely an example, and is not based on the consumer's actual account terms. But the term "typical" might be perceived by other consumers as indicating that the stated percentage is an industry norm that they should use to compare the terms of their account to other accounts. Should the hypothetical example refer to the minimum payment percentage as "typical," and if not, how should the disclosure convey to consumers that the example does not represent their actual account terms?

A. We agree with the Board that use of the term "typical" could be misleading. We suggest that the Board determine from consumer focus groups what label and information would be most useful and easily conveyed without overwhelming the consumer with clutter.

What assumptions should be used in calculating the estimated repayment period?

Under the Bankruptcy Act, open-end creditors not providing a toll-free number to obtain the actual time needed to repay the outstanding balance paying only the minimum amount, must provide a toll-free telephone number on periodic statements that consumers can use to obtain an estimate of the time it will take to repay the consumer's outstanding balance. The estimate assumes that the consumer only makes the minimum payments and does not make any more draws on the line. In establishing formulas and tables that estimate repayment periods, the Act directs the Board to assume a significant number of different APRs, account balances, and minimum payment amounts. However, other assumptions are necessary in order to make the calculation.

Q65: In developing the formulas used to estimate repayment periods, should the Board use the three assumptions . . . [as described] concerning the balance calculation method, grace period, and residual interest? If not, what assumptions should be used, and why?

Balance calculation method. The Board asks whether it should use the previous balance method, as used in the statutory examples, or the average daily balance method, which is more common. We suggest that the Board use the average daily balance method, as it is in fact far more commonly used that the previous balance method and will therefore be more realistic.

Grace period. We agree that the Board should assume that there is no grace period. If the consumer is paying only the minimum each month, as the estimate assumes, in the vast majority of cases, there is no grace period except perhaps for the first billing period before the customer pays only the minimum.

Residual interest. We agree with the Board that it should assume that no additional finance charges will be applied to the account between the date of statement issuance and date of final payment. As the Board notes, otherwise the repayment period could be infinite.

How should the minimum payment requirement and APR information be used in estimating the repayment period?

The Bankruptcy Act directs the Board, in providing a table estimating repayment periods, to allow for a significant number of different outstanding balances, minimum payment amounts, and interest rates, variables, among others, which can have a significant impact on the repayment period. However, in obtaining an estimate from the Board's or FTC's toll-free number, consumers must provide certain information related the account such as the APR, as this is not available to the Board or FTC. In addition, some information about some variables, such as the card issuer's formula to calculate the minimum payment, is not readily available to consumers or could be overly complicated for them to use with ease.

The Board seeks commenters' views regarding three basic approaches for developing a system to calculate estimated repayment periods for consumers who call the toll-free telephone number. The three approaches discussed are:

(1) Prompting consumers to provide an account balance, a minimum payment amount, and APRs in order to obtain an estimated repayment period. For information about minimum payments and APRs that is not currently disclosed on periodic statements, the Board could require additional disclosures on those statements. But the Board also could develop a formula that makes assumptions about these variables for a "typical" account.

(2) Prompting consumers to input information, or using assumptions based on a "typical" account to calculate an estimated repayment period—but also giving creditors the option to input information from their own systems regarding consumers' account terms, to provide more accurate estimates. Estimates provided by creditors that elect this option would differ somewhat from the estimates provided by other creditors, the Board, and the FTC.

(3) Prompting consumers to provide their account balance, but requiring creditors to input information from their own systems regarding the account's minimum payment requirement and the portion of the balance subject to each APR. These estimates would be more accurate, but would impose additional compliance burdens, and would not necessarily reflect consumers' actual repayment periods because of the use of several other assumptions.

General comments. The Board appears to contemplate that in addition to the Board's table, creditors would either have the option or obligation to provide an "estimate" based on the creditor's information. This would be independent of the statute's option allowing creditors to provide an "actual" number of months. We disagree with either of these approaches. The Board is tasked with providing an estimate. Congress clearly intended to allow the creditor an option which imposes minimal burdens on the creditor by directing the Board to provide the table. Accordingly, *requiring* that creditors provide an estimate would be contrary to the statute and Congressional intent. In addition, any creditor-generated figure should be addressed in the statutory option for the creditor to provide the "actual" number of months, not in the estimate that the Board is responsible for providing. It makes no sense – and a great deal of burden -- to create a third tier that Congress clearly did not intend.

Generally, in developing the Board's process for providing an estimate, the Board should carefully balance 1) the general purpose of the disclosure, which is to startle the consumer rather than provide an exact time period for repaying the loan; 2) the burdens and costs of requiring additional disclosures in periodic statements or elsewhere; and 3) the ease of consumer use and understanding. The Board should make assumptions based on typical industry practices, minimize the need for consumer inputs, only explain assumptions to consumers where useful and meaningful, and avoid adding new disclosures on periodic statements. We believe that the Board can provide a useful number that will achieve its purpose relying on current disclosures and practices.

Minimum payment amount.

Q66: Comment is specifically solicited on whether the Board should select "typical" minimum payment formulas for various types of accounts. If so, how should the Board determine the formula for each type of account? Are there other approaches the Board should consider?

A. We do not believe that the Board will be able to identify a "typical" minimum payment formula. Credit card issuers use different minimum payment formulas that may vary even from account to account of the same issuer. However, we do not believe that the outcomes vary significantly. The Board should review examples and test for significant variations in the results, choosing a method that most closely reflects general industry practices and that is simplest to incorporate. If necessary, disclosures could note to consumers instances where there could be significant differences.

Q67: If the Board selects a "typical" minimum payment formula for general-purpose credit cards, would it be appropriate to assume the minimum payment is based on one percent of the outstanding balance plus finance charges? What are typical minimum payment formulas for open-end products other than general-purpose credit *cards (such as retail credit cards, HELOCs, and other lines of credit)?*

A. As noted in the comments to question 66, creditors use a variety of formulas that vary in specifics, but generally result in similar outcomes. Assuming a minimum payment based on one percent of the outstanding balance plus finance charges is a potential candidate. At this time, we do not have any information about typical formulas for HELOCs, though an informal survey of several banks found that formulas for overdraft lines of credit vary more widely than those for credit cards.

Q68: Should creditors have the option of programming their systems to calculate the estimated repayment period using the creditor's actual payment formula in lieu of a "typical" minimum payment formula assumed by the Board? Should creditors be required to do so? What would be the additional cost of compliance for creditors if they must use their actual minimum payment formula? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

A. As noted earlier, the Board appears to contemplate that in addition to the Board's table, creditors would either have the option or obligation to provide an "estimate" based on the creditor's information. This would be independent of the statute's option allowing creditors to provide an "actual" number of months. We disagree with these approaches. The Board is tasked with providing an estimate. Congress clearly intended to allow the creditor an option which imposes minimal burdens on the creditor by directing the Board to provide the table. Accordingly, *requiring* that creditors provide an estimate would be contrary to the statute and Congressional intent. Moreover, for small institutions particularly, the costs or systems changes, etc. would be significant. In addition, any creditor-generated figure should be addressed in the statutory option for the creditor to provide the "actual" number of months, not in the estimate that the Board is responsible for providing. It makes no sense to create a third tier that Congress clearly did not intend.

Q69: Negative amortization can occur if the required minimum payment is less than the total finance charges and other fees imposed during the billing cycle. As discussed above, several major credit card issuers have moved toward minimum payment requirements that prevent prolonged negative amortization. But some creditors may use a minimum payment formula that allows negative amortization (such as by requiring a payment of 2% of the outstanding balance, regardless of the finance charges or fees *incurred). Should the Board use a formula for calculating repayment periods that assumes a "typical" minimum payment that does not result in negative amortization? If so, should the Board permit or require creditors to use a different formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization? What guidance should the Board provide on how creditors disclose the repayment period in instances where negative amortization occurs?*

A. As noted in comments to question 68, we do not believe that the Board should permit or require that creditors provide an "estimate" in lieu of the Board's estimate. Any creditor-generated number should be addressed in the statutory option for the creditor to provide the "actual" number of months required to repay the loan only paying the minimum. However, if the Board pursues this approach, it should keep it simple, using a typical formula that does not result in negative amortization.

APR information. While the statute's hypothetical repayment examples assume that a single APR applies to a single account balance, in practice, multiple APRs may apply to a single account: different APRs will apply to purchases, cash advances, balance transfers, and promotional rates, such as introductory rates or balance transfer rates. While the applicable APRs and the total balance are disclosed on the periodic statement, the specific balance associated with a particular rate is not usually provided. Thus, at this time, it would not be feasible for the Board's table to provide repayment times if different APRs apply to different balances as the necessary information is not available.

Q70: What proportion of credit card accounts accrues finance charges at more than one periodic rate? Are account balances typically distributed in a particular manner, for example, with the greater proportion of the balance accruing finance charges at the higher rate or the lower rate?

A. While we do not have specific data, the non-promotional purchase APR is generally applied to the largest proportion of balances. The cash advance APR is applied to the smallest proportion of the balance.

Q71: The statute's hypothetical examples assume that a single APR applies to a single balance. For accounts that have multiple APRs, would it be appropriate to calculate an estimated repayment period *using a single APR? If so, which APR for the account should be used in calculating the estimate?*

A. We suggest that the Board use the non-promotional purchase APR for the Board's estimate. The purpose of providing the estimated repayment period is to educate people who are unaware that it will take them a long time to repay the balance if only the minimum payments are made. It is intended to inform generally, not serve as a budgeting tool, so need not be precise. Indeed, because of unavoidable assumptions, including the assumption that no more purchases will be made, it can only ever be a ballpark figure. Accordingly, we suggest that the Board simplify the process for both consumers and creditors and also avoid unnecessary costs and regulatory burdens by relying on the most commonly applied APR, the non-promotional purchase APR.

Promotional APRs, such as introductory and balance transfer APRs, typically expire after a fairly short period when compared to the repayment period, so will have a modest effect on the outcome. In addition, promotional APRs are usually lower than purchase transfers, so will not understate the repayment period.

Cash advance APRs tend to be higher, but represent a fairly low portion of the balances.

Thus, we believe that the non-promotional purchase APR will be sufficiently representative to produce a meaningful number that achieves the purpose of the disclosures. In addition, it would simplify the process for consumers by minimizing the figures they need to locate and enter.

We do not recommend using an average, even if it is weighted to reflect general experiences. It adds unnecessary steps for consumers with little benefit.

Q72: Instead of using a single APR, should the Board adopt a formula that uses multiple APRs but incorporates assumptions about how those APRs should be weighted? Should consumers receive an estimated repayment period using the assumption that the lowest APR applies to the entire balance and a second estimate based on application of the highest APR; this would provide consumers with a range for the estimated repayment period instead of a single answer. Are there other ways to account for multiple APRs in estimating the repayment period?

A. See comments to question 71.

Q73: One approach to considering multiple APRs could be to require creditors to disclose on periodic statements the portion of the ending balance that is subject to each APR for the account. Consumers could provide this information when using the toll-free telephone number to request an estimated repayment period that incorporates all the APRs that apply. What would be the additional compliance cost for creditors if, in connection with implementing the minimum payment disclosures, creditors were required to disclose on periodic statements the portion of the ending balance subject to each APR for the account?

A. We strongly recommend against adding these new disclosures. First, it will complicate the process for the Board, as the system will have to assume some kind of payment allocation method. Second, we do not think it is necessary to achieve the purposes of the statute as discussed in comments to question 71. Third, it will be very expensive, particularly for small institutions. Credit card periodic statement programs are not "off-the-shelf" products, but are often tailored to individual card issuers. Any change in formatting or addition of information will be costly. Unlike other disclosures, which are static, these would be dynamic, changing each month. Thus, the software systems, often proprietary, are necessarily more sophisticated and expensive. Formatting requirements may require expensive new systems and new forms. Fourth, using each APR and the specific balance to which it applies will unnecessarily complicate the process for consumers. Consumers will have to locate and enter several balances and several APRs. Overall, we do not believe that the costs and complications justify any marginal benefit.

Q74: As an alternative to disclosing more complete APR information on periodic statements, creditors could program their systems to calculate a consumer's repayment period based on the APRs applicable to the consumer's account balance. Should this be an option or should creditors be required to do so? What would be the additional cost of compliance for creditors if this was required? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

A. As noted in comments to question 68, the Board appears to contemplate that in addition to the Board's table, creditors would either have the option or obligation to provide an "estimate" based on the creditor's information. This would be independent of the statute's option allowing creditors to provide an "actual" number of months. We strongly disagree with this approach. The Board is tasked with providing an estimate. Congress clearly intended to allow the creditor an option which imposes minimal burdens on the creditor by directing the Board to provide the table. Accordingly, *requiring* that creditors provide an estimate would be contrary to the statute and Congressional intent. Moreover, for small institutions particularly, the costs or systems changes, etc. would be significant In addition, any creditor-generated figure should be addressed in the statutory option for the creditor to provide the number of months, not in the estimate that the Board is responsible for providing. It makes no sense to create a third tier that Congress clearly did not intend.

Q75: If multiple APRs are used, assumptions must be made about how consumers' payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments always are allocated first to the balance carrying the lowest APR?

A. Credit card companies use different payment allocation methods, but "high to low" is not uncommon. Given its simplicity and that using it will not result in an understated repayment period, we believe that this is appropriate for purposes of the Board's estimate.

What disclosures do consumers need about the assumptions made in estimating their repayment period?

Q76: What key assumptions, if any, should be disclosed to consumers in connection with the estimated repayment period? When and how should these key assumptions be disclosed? Should some or all of these assumptions be disclosed on the periodic statement or should they be provided orally when the consumer uses the toll-free telephone number? Should the Board issue model clauses for these disclosures?

A. In disclosing assumptions, the Board should balance the necessity and usefulness of any disclosure with the danger of making the disclosure too long and incomprehensible so as to overwhelm and discourage consumers. Clearly, some assumptions, such as the assumption that there will be no further purchases, should be disclosed and described. However, other assumptions which have less impact on the outcome should be referred to only generally or omitted and perhaps made available elsewhere. For example, the Board could provide a general statement that the repayment period provided is only an estimate and the actual repayment period will differ based on a number of factors related to the consumers' behavior and the particular terms of their account. The Board could then 1) describe those that have a material affect,

2) list or describe very generally and briefly those factors or terms which have less impact but may still be important, and 3) omit those which do not usually materially affect the outcome.

The Board should test the assumptions for their impact on the outcomes and use focus groups to determine how to most effectively disclose them.

Option to provide the actual number of months to repay the outstanding balance.

The Bankruptcy Act allows creditors to forego using the toll-free number to provide an estimated repayment period if the creditor instead provides through the toll-free number the "actual number of months" to repay the consumer's account.

Q77: What standards should be used in determining whether a creditor has accurately provided the "actual number of months" to repay the outstanding balance? Should the Board consider any safe harbors? For example, should the Board deem that a creditor has provided an "actual" repayment period if the creditor's calculation is based on certain account terms identified by the Board (such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula)? With respect to other terms that affect the repayment calculation, should creditors be permitted to use the assumptions specified by the Board, even if those assumptions do not match the terms on the consumer's account?

A. While the Board-generated repayment period is sufficient to achieve the goal of the statute, a creditor-generated number utilizing the factors and weightings actually assigned to customer accounts could potentially be more realistic and potentially more useful to the consumer. Even then, though, providing the "actual" repayment period is simply not feasible as a practical matter. Nevertheless, if creditors are permitted to make reasonable assumptions, a reasonable estimate of a repayment period, based on the creditor's own data and the customer's account set-up could be provided. In order to encourage creditors to calculate a reasonable estimate, the Board should be flexible in allowing them to make certain assumptions about account activity. Two important assumptions are no new purchase activity and on-time payments.

As noted, an actual number cannot be provided. First, the actual time will depend on factors not yet known, such as the timing of the consumers' payment and future due dates, which are only projected perhaps 18 months or 2 years in advance. Second, labeling this figure as "actual" could be misleading to consumers because of the many qualifying – and sometimes unlikely-- assumptions, such as no new purchases, no annual or penalty fees, no term changes, which can have a significant impact on the outcome. Nevertheless, we believe that it is feasible for creditors to provide a decent estimate that is fairly accurate if they are permitted to make appropriate assumptions.

Minimum payment calculation. The minimum payment formula can vary, not only from account to account, but from balance to balance within a single account, particularly for accounts that offer various promotions. We suggest that creditors be permitted to use one of the formulas applicable to the account. This simplifies the calculation program without materially altering the outcome.

Uniform billing period. The Board should permit creditors to assume a 30-day billing period. The length of billing periods varies because most creditors base billing periods on calendar months, which is easier for consumers. However, actual billing periods and due dates can change, for example, based on whether or not they fall on a business day. Allowing creditors to assume a 30-day billing period will allow creditors to generate a repayment period without materially altering the outcome.

Ending balance. Creditors should be able to base the estimate on the ending balance of the relevant billing cycle.

Uniform receipt date. It is impossible to predict when a consumer will make the payment, but the Board could assume a uniform receipt date, based on the 30-day billing period. Most consumers pay leaving some margin between actual payment and the due date to avoid potential late payment penalties. The 25^{th} day of a 30-day billing cycle is an appropriate assumption.

No changes to balance or terms. Creditors should be permitted to assume that there will be no changes to the APR. It is not possible to predict all possible changes to the APR over the life of the repayment period, particularly when the APR is a variable one. Even promotional rates can change under certain circumstances. Equally, creditors cannot predict consumer behavior which might trigger penalty fees.

The Board should also be generous in developing tolerances and safe harbors to avoid unnecessary potential litigation. This will encourage creditors to opt to generate a more meaningful, reasonable estimate, utilizing a customer's actual balance and account feature.

Q78: Should the Board adopt a tolerance for error in disclosing the actual repayment periods? If so, what should the tolerance be?

A. The Board should adopt tolerances. Factors, such as whether an amount was rounded up or truncated can change the outcome. Tolerances should also be provided for creditor representations of a customer's "current balance" and "current APR" to acknowledge payment and posting lags, and APR changes that may have been triggered by prior cycle behavior, but not yet updated to a customer's account. Most APR changes to an account occur at cycle. More investigation and testing are necessary to determine what additional tolerances should be considered.

Q79: Is information about the "actual number of months" to repay readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of developing new systems to provide the "actual number of months" to repay?

A. Many of the large credit card issuers may be able to develop them, though they will be costly, if they are permitted to make certain assumptions. Actual feasibility and costs may vary depending on the institution and its existing system and programs. Small institutions could potentially face greater challenges.

Are there alternative approaches the Board should consider?

Q80: Are there alternative frameworks to the three approaches discussed above that the Board should consider in developing the repayment calculation formula? If suggesting alternative frameworks, please be specific. Given the variety of account structures, what calculation formula should the Board use in implementing the toll-free telephone system?

A. See comments to questions 66-77.

Q81: Are any creditors currently offering web-based calculation tools that permit consumers to obtain estimates of repayment periods? If so, how are these calculation tools typically structured; what information is typically requested from consumers, and what assumptions are made in estimating the repayment period?

A. A number of calculation tools are available on the Internet from a variety of sources. However, they often produce different results based on the same APR, minimum payment, and balance.

Q82: Are there alternative ways the Board should consider for creditors to provide repayment periods other than through toll-free telephone numbers? For example, the Board could encourage creditors to disclose the repayment estimate or actual number of months to repay on the periodic statement; these creditors could be exempted from the requirement to maintain a toll-free telephone number. This would simplify the process for consumers and possibly for creditors as well. What difficulties would creditors have in disclosing the repayment estimate or actual repayment period on the periodic statement?

A. At this time, we are not aware of any creditors considering this alternative, though we would expect that automatically adding the repayment period to the periodic statement would be far more costly than providing it using a toll-free number. Adding a dynamic, personalized figure to periodic statements is much more complicated and costly than adding standard language. However, it should be considered as an option.

What guidance should the Board provide on making the minimum payment disclosures "clear and conspicuous?"

The Bankruptcy Act provides that the minimum payment disclosures must be in a prominent location and must be clear and conspicuous. The Board is directed to ensure that the required standard "can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice."

Q83: What guidance should the Board provide on the location or format of the minimum payment disclosures? Is a minimum type size requirement appropriate?

A. The Board should consider how the minimum payment information should be disclosed in the context of how other important information contained in the periodic statement must also be clear and conspicuous. The minimum payment information should not obscure other important information. As suggested in our March 29, 2005 comment letter to the Board's December 2004 ANPR on potential amendments to Regulation Z, disclosures should avoid information overload and focus on the disclosures most important to most people. At this time, we do not believe a type size requirement is appropriate, especially if the statements of nonrevolvers and others are covered as the minimum payment disclosures could obscure more important information.

Q84: What model forms or clauses should the Board consider?

A. The Board should provide model language for both the disclosure related to the Board-generated number and the creditor-generated number. In addition, it should offer model language about assumptions when the creditor provides the repayment period.

B. Introductory Rate Disclosures

The Bankruptcy Act requires additional disclosures for credit card applications and solicitations sent by direct mail or provided over the Internet that offer a "temporary" APR.

Currently, under Regulation Z, creditors offering a temporary APR may promote the introductory rate in their marketing materials, as long as the permanent rate is provided in the required disclosure table included on or with the solicitation. Although creditors are not required to include temporary introductory rates in the disclosure table, when a temporary rate is included, the expiration date must also appear in the box.

In addition, the Comptroller of the Currency addressed disclosures relating to promotional rates in its 14 September 2004 advisory letter (AL 2004 -10), which advised that the national banks should not:

> Fail to disclose fully and prominently in promotional materials and credit agreements any material limitations on the applicability of the promotional rate, such as the time period

for which the rate will be in effect, any circumstances that could shorten the promotional rate period or cause the promotional rate to increase, the categories of balances or charges.

Make representations that create the impression that material limitations regarding the applicability of the promotional rate do not exist.

Fail to disclose fully and prominently in promotional materials and credit agreements any fees that may apply (*e.g.* balance transfer fees) in connection with promotional terms.

The Bankruptcy Act requires credit card issuers to use the term "introductory" clearly and conspicuously in immediate proximity to *each* mention of the temporary APR in applications, solicitations, and all accompanying promotional materials. Credit card issuers also must disclose, in a prominent location closely proximate to the *first* mention of the introductory APR, the time period when the introductory APR expires and the APR that will apply after the introductory rate expires (popularly known as the "go-to" APR).

The Bankruptcy Act also requires credit card issuers to disclose clearly and conspicuously in offers with temporary APRs, a general description of the circumstances that may result in revocation of the introductory rate (other than expiration of the introductory period), and the APR that will apply if the introductory APR is revoked.

Q85: The Bankruptcy Act requires the Board to issue model disclosures and rules that provide guidance on satisfying the clear and conspicuous requirement for introductory rate disclosures. The Board is directed to adopt standards that can be implemented in a manner that results in disclosures that are "reasonably understandable and designed to call attention to the nature and significance of the information." What guidance should the Board provide on satisfying the clear and conspicuous requirement? Should the Board impose format requirements, such as a minimum font size? Are there other requirements the Board should consider? What model disclosures should the Board issue?

A. We believe that the current requirements delineated under Regulation Z and the OCC's Advisory letter AL 2004-10 of 14

September 2004 for introductory rates in applications and solicitations are effective and sufficient. We do not believe that the introductory rate disclosures are of greater or lesser importance than other information that also must be disclosed clearly and conspicuously. Accordingly, they should not garner greater attention. We recommend that the Board consider the introductory rate disclosures comprehensively with all the other disclosures required to be contained in the application and solicitation that must also be clear and conspicuous.

Q86: Credit card issuers must use the term "introductory" in immediate proximity to each *mention of the introductory APR. What guidance, if any, should the Board provide in interpreting the "immediate proximity" requirement? Is it sufficient for the term "introductory" to immediately precede or follow the APR (such as "Introductory APR 3.9%" or "3.9% APR introductory rate")?*

A. We suggest that rather than mandate a single standard that may be inappropriate in the myriad of examples, the Board be flexible and provide general direction. There may be circumstances, when other important modifiers might separate "introductory" and "APR," when the term should not necessarily immediately precede or follow the APR. For example, "introductory balance transfer APR."

Q87: The expiration date and go-to APR must be closely proximate to the "first mention" of the temporary introductory APR. The introductory APR might, however, appear several times on the first page of a solicitation letter. What standards should the Board use to identify one APR in particular as the "first mention" (such as the APR using the largest font size, or the one located highest on the page)?

A. Again, we suggest that the Board refrain from specifically defining "first mention" and instead provide examples which are not exclusive. There are numerous placement and formatting options, and a single rule may not be appropriate to accommodate each of them or effective. More importantly, any hard-fast rule could conflict with the OCC's advisory letter. "First mention in the text of the page" could be one option.

Q88: Direct-mail offers often include several documents sent in a single envelope. Should the Board seek to identify one document as the "first mention" of the temporary APR? Or should each document be considered a separate solicitation, so that all documents mentioning the introductory APR contain the required disclosures?

A. To simplify compliance, we suggest that the Board identify one document as the “first mention” and that it be consistent with the FTC’s rule regarding the placement of the opt-out notice required under 615(d)(2) of the Fair Credit Reporting Act. The FTC in that rule defines the “principal promotional document” of a solicitation as “the document designed to be seen first by the consumer, such as the cover letter.” (16. D.F.R. Section 642.2(b)). This is sufficient to accomplish the purpose. Requiring it for all documents mentioning the introductory APR is not helpful to consumers and will create unnecessary regulatory burden.

Q89: The expiration date for the temporary APR and the go-to APR also must be in a “prominent location” that is “closely proximate” to the temporary APR. What guidance, if any, should the Board provide on this requirement?

A. We support general guidance with examples rather than a specific, single standard. See comments to questions 86 and 87.

Q90: Some credit card issuers’ offers list several possible permanent APRs, and consumer qualifications for any particular rate is subsequently determined by information gathered as part of the application process. What guidance should the Board provide on how to disclose the “go-to” APR in the solicitation when the permanent APR is set using risk-based pricing? Should all the possible rates be listed, or should a range of rates be permissible, indicating the rate will be determined based on creditworthiness?

A. It should be sufficient to state a range of rates. Listing all possible rates is overwhelming to consumers and takes up space unnecessarily. The Board should avoid information overload.

Q91: Regulation Z currently provides that if the initial APR may increase upon the occurrence of one or more specific events, such as a late payment, the issuer must disclose in the disclosure box both the initial rate and the increased penalty rate. The specific event or events that may trigger the penalty rate must be disclosed outside of the disclosure box, with an asterisk or other means used to direct the consumer to this additional information. The Bankruptcy Act requires that a general description of the circumstances that may result in revocation of the temporary rate must be disclosed “in a prominent manner” on the application or solicitation. What additional rules should be considered by the Board to ensure that creditors’ disclosures comply with the

Bankruptcy Act amendments? Is additional guidance needed on what constitutes a "general description" of the circumstances that may result in revocation of the temporary APR? If so, what should that guidance say?

A. We believe that additional guidance or regulation is unnecessary. Already, Regulation Z coupled with the OCC's advisory letter ensures that the "triggers" are appropriately disclosed. Adding additional requirements will simply complicate the disclosures further.

Q92: The introductory rate disclosures required by the Bankruptcy Act apply to applications and solicitations whether sent by direct mail or provided electronically. To what extent should the guidance for applications and solicitations provided by direct mail differ from the guidance for those provided electronically?

A. We do not believe that they should differ.

C. Internet Based Credit Card Solicitations

The Bankruptcy Act requires that the same disclosures made for applications or solicitations sent by direct mail also be made for solicitations to open a credit card account using the Internet or other interactive computer service. The Act specifies that disclosures provided using the Internet must be "readily accessible to consumers in close proximity to the solicitation," and also must be "updated regularly to reflect the current policies, terms, and fee amounts."

In March 2001, the Board issued interim final rules authorizing the use of electronic disclosures under Regulation Z, consistent with the requirements of the E-Sign Act. The interim rules, which are not mandatory, also contained standards for the electronic delivery of disclosures, including the need to update periodically the disclosures made available on a creditor's Internet web site. For example, the interim rules stated that variable-rate disclosures made available at a credit card issuer's Internet web site should be based on an APR that was in effect within the last 30 days.

Q93: Although the Bankruptcy Act provisions concerning Internet offers refer to credit card solicitations, this may be interpreted to also include applications. Is there any reason for treating Internet applications differently than Internet solicitations?

A. We see no reason to treat Internet applications differently than Internet solicitation

Q94: What guidance should the Board provide on how solicitation (and application) disclosures may be made clearly and conspicuously using the Internet? What model disclosures, if any, should the Board provide?

A. We suggest that the regulation provide that disclosures are "readily accessible" if they are disclosed on the webpage or if a link to the disclosures is displayed on the webpage, even if the consumer can bypass the link and avoid reading the disclosures. Requiring that consumers not be allowed to bypass the disclosures is unnecessary and not consistent with today's web environment where consumers are now accustomed to clicking on a link for important information. It is sufficient that the link and the importance of the information are clear and conspicuous.

At this time, we do not believe any model disclosures are necessary.

Q95: What guidance should the Board provide regarding when disclosures are "readily accessible to consumers in close proximity" to a solicitation that is made on the Internet? The 2001 interim final rules stated that a consumer must be able to access the disclosures at the time the application or solicitation reply form is made available electronically. The interim rules provided flexibility in satisfying this requirement. For example, a card issuer could provide on the application (or reply form) a link to disclosures provided elsewhere, as long as consumers cannot bypass the disclosures before submitting the application or reply form. Alternatively, if a link to the disclosures was not used, the electronic application or reply form could clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the electronic application or reply form. Or the disclosures could automatically appear on the screen when the application or reply form appears. Is additional or different guidance needed from the guidance in the 2001 interim final rules?

A. We do not believe that guidance or special rules for Internet solicitations or applications are necessary. Indeed, specific rules could quickly become obsolete or hinder innovation.

Q96: What guidance should the Board provide regarding what it means for the disclosures to be "updated regularly to reflect the current policies, terms, and fee amounts?" Is the guidance in the 2001 interim rules, suggesting a 30-day standard, appropriate?

A. The 30-day standard is acceptable and appropriate.

D. Disclosures Related to Payment Deadlines and Late Payment Penalties

The Bankruptcy Act requires creditors offering open-end plans to provide additional disclosures on periodic statements if a late payment fee will be imposed for failure to make a payment on or before the required due date. The periodic statement must disclose clearly and conspicuously the date on which the payment is due or, if different, the earliest date on which a late payment fee may be charged, as well as the amount of the late payment fee that may be imposed if payment is made after that date.

Q97: Under what circumstances, if any, would the "date on which the payment is due" be different from the "earliest date on which a late payment fee may be charged?"

A. For example, creditors may allow borrowers to "skip" a due date without incurring a late penalty fee, though interest will accrue. In addition, state laws may mandate when a late payment fee may be charged, which may be after the due date.

Q98: Is additional guidance needed on how these disclosures may be made in a clear and conspicuous manner on periodic statements? Should the Board 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)? What model disclosures, if any, should the Board provide with respect to these disclosures?

A. As noted in responses to previous questions, we believe that the Board should avoid specific instructions for making disclosures clear and conspicuous on periodic statements. Other disclosures in addition to the late payment information but of equal or greater importance compete for the same attention. In addition, because credit card periodic statement formats are highly tailored for competitive reasons, imposing specific formats is expensive and challenging. The Board could provide *as an example* that the late payment fee disclosure is clear and conspicuous if it is placed in close proximity to the payment due date. However, it should also explicitly recognize that there are other means of making the disclosure as, if not more, clear and conspicuous, that should remain an option. The Board should allow creditors flexibility.

Q99: The December 2004 ANPR requested comment on whether the Board should issue a rule requiring creditors to credit payments as of the date they are received, regardless of what time during the day they are received. Currently, under Regulation Z, creditors may establish reasonable cut-off hours; if the creditor receives a payment after that time (such as 2:00 pm), then the creditor is not required to credit the payment as of that date. If the Board continues to allow creditors to establish reasonable cut-off hours, should the cut-off hour be disclosed on each periodic statement in close proximity to the payment due date?

A. As noted in our comments to the December 2004 ANPR, the cut-off times for creditors to credit a payment on the date of receipt vary from institution to institution and by type of payment. Cut-off times are established to take into account varying account volume, staffing adjustments etc., to ensure that all transactions are in fact processed by the published cut-off time: payments received but not processed on the same day require the creditor to recalibrate, an expensive task. In addition, some creditors maintain an unpublished grace period: they do not consider the payment late until days after the due date in order to avoid customer complaints about borderline late payments. For these reasons, we would oppose any rule requiring creditors to credit payments as of the date they are received as inappropriately rigid and unfair.

Equally, we would strongly oppose any requirement to disclose on the periodic statement the cut-off times for payments. First, it may not be practical to do so because the cut-off time may vary depending on the type of payment, though creditor practices are not consistent. For example, for some banks, the cut-off hour is earlier for "nonconforming payments," such as electronic and phone payments submitted because they may take longer to process if they are submitted without the payment stub. Others apply a later cut-off time for electronic and telephone payments.

Second, required "clear and conspicuous" disclosures should be limited to those items most important to most people. Piling on every conceivable item that might interest a few consumers simply makes the periodic statement more difficult to read and thus less likely to be read. The cut-off time is not relevant to the vast majority of cardholders. The vast majority of cardholders pay on time. For those who do pay late, a few additional hours will often not make a difference for a number of reasons: in many cases it is more than a day late; many banks have unpublished grace periods; and many banks will waive the late payment fee for the occasional late payor. Some credit card issuers disclose cut-off hours on their periodic statements, but they should have flexibility in placement as it is not a critical disclosure.

Third, it is not necessary to require disclosure of the cut-off periods as it is easier and easier for consumers to pay on time. Consumers can avoid any unexpected delays associated with the U.S. Postal Service by paying online or by phone. They can *schedule* payments online, conveniently ensuring they do not overlook or forget to make or send payment. They can pay online or by phone from anywhere around the world where telephones and the Internet are available to avoid missing payments for bills that arrive when they are away from home. We should be encouraging consumers not to wait until the last minute to make payment and not to take the risks associated with relying on the hour of payment.

Q100: Failure to make a payment on or before the required due date commonly triggers an increased APR in addition to a late payment fee. As a part of the Regulation Z review, should the Board consider requiring that any increased rate that would apply to outstanding balances accompany the late payment fee disclosure?

A. We oppose any requirement to add this disclosure. Important information about default rates and triggers is already clearly and conspicuously disclosed in the disclosure box required for applications and solicitations. As noted in our comment letter to the December 2004 ANPR, the Board should focus on improving the disclosure box so that consumers observe and understand the terms before applying for the card. In addition, disclosing the default rate with the late payment fee could mislead consumers into believing that a late payment with this card issuer is the only trigger, when in fact, there may be other triggers. Finally, TILA contains no such requirement to make this disclosure. Congress had ample opportunity to do so, but declined.

Q101: The late payment disclosure is required for all open-end credit products. Are there any special issues applicable to open-end accounts other than credit cards that the Board should consider?

A. We are not aware of any.

E. Disclosures for Home-Secured Loans that May Exceed the Dwelling's Fair-Market Value.

Under the Bankruptcy Act, creditors extending home-secured credit (both open-end and closed-end) must provide additional disclosures for home-secured loans that exceed or may exceed the fair-market value of the dwelling. TILA is amended to require that each advertisement relating to an extension of credit that may exceed the fair-market value of the dwelling must include a clear and conspicuous statement that: (1) the interest on the portion of the credit extension that is greater than the fair-market value of the dwelling is not tax deductible for Federal income tax purposes; and (2) the consumer should consult a tax adviser for further information about the deductibility of interest and charges. This requirement only applies to advertisements that are disseminated in paper form to the public or through the Internet, as opposed to radio or television.

In addition, TILA is amended to require creditors extending home-secured credit to make the above disclosures at the time of application in cases where the extension of credit exceeds or may exceed the fair-market value of the dwelling. Currently, open-end creditors extending home-secured credit already are required to disclose at the time of application that the consumer should consult a tax adviser for further information about the deductibility of interest and charges.

Q102: What guidance should the Board provide in interpreting when an "extension of credit may exceed the fair-market value of the dwelling?" For example, should the disclosures be required only when the new credit extension may exceed the dwelling's fair-market value, or should disclosures also be required if the new extension of credit combined with existing mortgages may exceed the dwelling's fair-market value?

A. We recommend that for advertisements, the Board only require the disclosure for advertisements that are marketing home equity loans that exceed the fair market value of the home. Otherwise, the requirement will apply to virtually all mortgage advertisements. Many banks have policies against making loans that exceed the fair market value of the home. However, they may make exceptions on a case-by-case basis. For example, if other collateral, such as a car, is also used for collateral, the loan value might exceed the fair market value of the home.

For similar reasons, we recommend that creditors be permitted to provide the disclosure at the time of application or at closing. The creditor may not know until closing whether the loan will or may exceed the fair market value of the home. At the time of application, for example, the creditor will not know the fair market value of the home or whether there are other loans secured by the home.

Q103: In determining whether the debt "may exceed" a dwelling's fair-market value, should only the initial amount of the loan or credit line and the current property value be considered? Or should other circumstances be considered, such as the potential for a future increase in the total amount of the indebtedness when negative amortization is *possible?*

A. If creditors are permitted to make the disclosure at the time of application, to simplify compliance, we strongly recommend that in determining whether the debt "may exceed" a dwelling's fair-market value, the creditor only consider the initial amount of the loan and the current property value. In addition, the creditor should be able to rely on the statements of the applicant with regard to the fair market value.

In addition, if the disclosure is made at time of closing, we recommend that the Commentary make clear that creditors may rely on whatever source they use to determine the fair market value and that they may use a variety of sources in determining the fair market value, including state and local government property tax appraisals.

With regard to potential increases in the debt due to negative amortization, we recommend that the Board consult the Internal Revenue Service ("IRS") about tax rules on mortgage interest tax-deductibility.

Q104: What guidance should the Board provide on how to make these disclosures clear and conspicuous? Should the Board provide model clauses or forms with respect to these disclosures?

We do not believe that specific guidance on how to make the disclosures clear and conspicuous is necessary. The Board should provide model clauses to give creditors a compliance safe harbor. Disclosures should be designed so that creditors have a choice about whether to provide it on all applications, for example, or only those occasions when the loan will exceed the fair market value.

In developing model language, we strongly recommend that the Board consult the IRS to make the language as accurate and simple as possible so as not to mislead or confuse taxpayers. For example, the disclosure should make clear that the fair market value of the home is based on the value at the time of the loan. Otherwise, consumers could interpret the language to mean that, for example, if real estate values were to fall, the interest may no longer be deductible. However, Part II of the IRS's Publication 96 indicates under the "Home equity debt limit" heading that for "home equity debt," the fair market value is based on the value "on the date that the last debt was secured by the home." Further, a quick peruse of Publication 96 demonstrates that there are further complexities, limits, and conditions related to mortgage interest deductibility. Yet, while contained in Publication 96, the limitations the Bankruptcy Act requires to be disclosed are not even mentioned in Publication 17, "Directions for personal tax filings for individuals."

Q105: With the exception of certain variable-rate disclosures for closed-

end mortgage transactions, disclosures generally are provided within three days of application for home-purchase loans and before consummation for all other home-secured loans. Is additional compliance guidance needed for the Bankruptcy Act disclosures that must be provided at the time of application in connection with closed-end loans?

A. As noted in comments to question 102, we suggest that the disclosures be permitted to provide either at time of application or at closing as the creditor will not know at the time of application whether the loan may or will exceed the fair market value and will not know the fair market value, unless it may rely on the applicant's claim. In addition, some creditors, for ease of compliance, may choose to provide the disclosure with each application.

F. Prohibition on Terminating Accounts for Failure to Incur Finance Charges.

The Bankruptcy Act amends Section 127 of TILA to prohibit an open-end creditor from terminating an account under an open-end consumer credit plan before its expiration date solely because the consumer has not incurred finance charges on the account. Under the Bankruptcy Act, this prohibition would not prevent a creditor from terminating an account for inactivity in three or more consecutive months.

Q106: What issues should the Board consider in providing guidance on when an account "expires?" For example, card issuers typically place an expiration date on the credit card. Should this date be considered the expiration date for the account?

A. The credit card expiration date is the expiration date of the card, not the account. Currently, credit card accounts generally may be terminated by either the card issuer or the cardholder.

Q107: The prohibition on terminating accounts for failure to incur finance charges applies to all open-end credit products. Are there any issues applicable to open-end accounts other than credit card accounts that the Board should consider?

A. At this time, no.

Q108: The prohibition on terminating accounts does not prevent creditors from terminating an account for inactivity in three or more consecutive months. Should the Board provide guidance on this aspect of the statute, and what constitutes "inactivity?"

A. We do not believe that guidance is necessary.

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ABA appreciates the opportunity to comment on this important matter. We reiterate that the Board should proceed in incorporating the TILA amendments of the Bankruptcy Act in a comprehensive and cohesive manner to ensure that disclosures are limited to those most important to most people in order to avoid clutter, to encourage consumers to review them, and to ensure they are understandable. The Board should also be sensitive to minimizing compliance burdens and costs, which ultimately, in part, are absorbed by the consumer in the form of higher costs, fewer choices, and shorter grace periods.

If we can provide additional information, please contact us.

Sincerely,

Nessa E. Feddis

Nessa Eileen Feddis