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SECURIAN™

October 11, 2007

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

Re: Regulation Z; Docket No. R-1286

Dear Ms. Johnson:

This letter is submitted in response to the Board of Governors' request for comment on open-end credit rules set forth in Regulation Z. Securian Financial Group is a provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements to our clients. We are also a loan forms provider to our credit union clients, and as such, provide closed-end and open-end consumer and home equity loan forms to approximately 300 credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

Purpose of Reg Z

We agree that the ability to shop for credit is crucial in safeguarding consumers' best interests. At the heart of this goal is having clear, effective, and uniform disclosures so that the consumer may identify and understand the key terms of open-end accounts. It is with this understanding that these comments are made.

CLOSED-END SUBACCOUNTS UNDER MULTI-FEATURED OPEN-END PLANS

The Board proposes to eliminate the current Commentary sections that support closed-end subaccounts under multi-featured plans. This has been a standard, prevalent way of doing business in the credit union market for many years, and one which gained widespread prominence when Reg Z was changed in 1998 to support such multi-featured plans. We oppose the elimination of closed-end subaccounts under open-end plans for the following reasons.

This is not "spurious" open-end credit. Multi-featured open-end credit that is being practiced in the credit union market today is not the "spurious credit" that was the subject of the *Benion v. Bank One* case that sparked the 1998 clarifications in Reg Z. Credit unions are not trying to bypass the disclosure requirements. When the member establishes the plan, he is provided with all open-end disclosures, including all risk-based APRs for all subaccounts. When he takes an advance, he is provided additional disclosures, both verbally and in writing via an Advance Receipt. To illustrate: when a member takes a vehicle advance, he receives the APR, corresponding dpr, monthly payment amount, approximate repayment term (which may vary due to the nature of the open-end plan if payments are late, or if additional products are purchased or additional monies advanced), frequency of the payments, and date of first payment. Fees are also disclosed such as title fees and cost of optional GAP, if elected.

<u>Disclosure & Convenience</u>. The current way of doing business is a perfect blend of convenience and disclosure for the members. Once the plan is established, the member may apply for any advance over the phone. He need not come in to the branch, complete a lengthy loan application, wait for approval, and come in again to sign closing documents and get his proceeds check. The transaction is applied for and closed over the phone, with loan proceeds either being mailed to the member, or he may come in to quickly pick up the check (a 5-minute process in which the check may be waiting for the member at the reception desk, rather than having to make an appointment for a lengthy closing). The consumer receives and understands the key credit terms, with minimal inconvenience. We are aware of no complaints, either via Attorney General actions, lawsuits, or industry experience, that credit union members are confused or mislead regarding the terms of their loan advances.

<u>Impact on Credit Union Operations and Member Service</u>. The impact on credit unions will be enormous. They have invested much time, money, and effort in moving to multi-featured open-end lending, and it is a service that their members have grown to expect. Requiring them to go back to closed-end lending would be a step backwards, and would cost them much more time, money, and effort to re-program their systems and calculators, obtain new loan documents and map and load them into their systems, and re-train their existing staff and, in some circumstances, hire additional staff. And the convenience to the member will be lost forever.

<u>Rates will necessarily increase</u>. With the quicker turn-around time, less paperwork, and more convenience to the member under multi-featured open-end plans, credit unions across the country have been able to offer lower rates and fees, which is their primary mission. This sparks competition in the local communities, which in turn is a benefit to the local citizens. With the added costs of both converting back to closed-end credit, and maintaining closed-end processes and procedures, rates will have to increase.

<u>Consumers will also find it harder to obtain credit</u>. Multi-featured open-end lending facilitates the remote lending processes that are required in the high-tech, fast-paced world we live in today. Consumers have grown accustomed to immediate results with minimal effort, which cannot be accomplished with closed-end lending. Remote lending also helps reach rural areas that are often times under-banked. The multi-featured open-end lending process reaches rural members who have a hard time traveling to brick-and-mortar financial institutions. Requiring them to do so would make it difficult for them to fulfill their financial needs.

Reverting back to old-fashioned closed-end lending would be detrimental to both the consumer and the financial institution. We urge the Board to refrain from eliminating a process that has been working for financial institutions and consumers alike for more than a decade.

Revisions to help clarify lending if closed-end features are eliminated. If the Board decides to eliminate creditors' ability to offer closed-end subaccounts under an open-end plan, we ask the Board to issue some additional guidance regarding the new rules. We feel that the Board can revise some sections of Reg Z to provide the enhanced disclosures that the Board is seeking, while mitigating the impact on creditor operations. We respectfully request that the Board make the following changes.

1. Revision to Comment 2, Section 226.2(a)(20).

The Board proposes to delete the end of Comment 2 to Section 226.2(a)(20), that refers to multiple features and subaccounts. We ask the Board to clarify that creditors are still permitted to create a master loan agreement, in which the consumer signs once agreeing to the contractual terms of the loan and security agreements, if and when loans are disbursed, and that, under such a plan, the consumer may request both open-end and closed-end subaccounts. Under this system, the consumer signs the master plan (usually the first time he requests credit). He is agreeing to be bound by the contractual terms, such as repaying all amounts owing, or agreeing that collateral may be repossessed if default occurs. This is how multi-featured open-end plans work today. The difference under the new rules would be that, at the time the loan advance is requested, the consumer will receive open-end disclosures for open-end subaccounts such as signature lines of credit, and he will receive the closed-end disclosures for closed-end subaccounts such as vehicle loans or closed-end personal loans. As such, we request that the Comment not be deleted, but revised as follows:

> 2. *Existence of a plan.* The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer. < Some creditors offer programs containing a number of different credit features. > The consumer has a single account with the creditor, although there may be separate sub-accounts maintained under that single account. Advances and payments may be allocated to different sub-accounts for the purpose of prescribing different terms (such as different periodic rates or other payment options) for those advances. <Subaccounts may be open-end or closed-end.> Repayments of an advance for any <open-end> subaccount must generally replenish the credit line for that sub-account so that a consumer may continue to borrow and take advances under ~~the plan~~ <that subaccount> to the extent that he or she repays outstanding balances without having to obtain separate approval for each subsequent advance <under that sub-account.> For example, a credit card account may permit cash advances and purchase transactions with different periodic rates and payment terms. Repayments allocated to the cash advance sub-accounts must generally replenish the consumer's cash advance credit line and repayment allocated to the purchase transaction sub-account must generally replenish the consumer's purchase transaction credit line, so that the consumer may continue to take advances under each sub-account to the extent that its outstanding balance is repaid. <Each subaccount must be evaluated separately. If a feature or subaccount does not meet all three criteria of the definition of open-end credit, closed-end disclosures must be provided for that subaccount. Under such multi-featured plans, open-end subaccounts would be subject to the open-end disclosure requirements, and closed-end subaccounts would be subject to the closed-end disclosure requirements.> [~~Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multi-featured plan.~~

We believe that, with these changes, credit unions may continue their fundamental way of doing business with lesser impact on their operations, while providing the enhanced disclosures to the consumer that the Board is seeking. We ask the Board to adopt the Comments as drafted above.

2. Change the Closed-end Telephone Procedures under 226.17(g).

We also ask the Board to improve the current closed-end telephone lending procedures contained in Reg Z today. The major difference between multi-featured plans and closed-end lending is the ability to facilitate the remote lending that is now demanded by consumers. The closed-end telephone lending rules are an outdated throw-back to the bygone era of catalog ordering, when the internet didn't exist, credit cards were not used, and only one APR was available (rather than the array of risk-based APRs available today). The rules must be updated to allow creditors to serve their customers in the timely, convenient manner that they have grown accustomed to. We ask the Board to change the telephone lending procedures to allow the disclosures to be given <u>verbally</u>. This will be consistent with the ability to provide credit card disclosures verbally and to delay open-end disclosures until the first due date.

While we understand that the Board has not yet undertaken its review of the closed-end lending rules, we believe that changing 226.17(g) now is both appropriate and necessary. By allowing the closed-end disclosures to be given verbally when requested by telephone, the consumer will receive all major disclosures while maintaining the convenience of requesting, and receiving, credit over the phone. This is a reasonable compromise to allow creditors to maintain their operations and their way of serving the consumers, while providing the closed-end disclosures for closed-end subaccounts. We would propose that 226.17(g) be changed as follows:

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information ~~for representative amounts or ranges of credit~~ is ~~made available in written form~~ provided verbally to the consumer ~~or to the public~~ before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price if applicable.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(5) The terms of repayment.

Providing these disclosures verbally when the member requests the vehicle advance, and then providing the full Fed Box when funds are disbursed, will protect the consumer's interests at the same time it provides a convenient loan process. For example, it may work as follows:

The consumer submits a request for the loan either by written application, over the phone, or via the internet. The creditor underwrites the loan and approves it for $27,000. The creditor calls the member with the approval and provides the 226.17(g) disclosures. The creditor then mails the check along with the full Fed Box. The loan is consummated when the consumer cashes the check. If the consumer receives the full Fed Box and does not understand or agree with the terms disclosed, he may refrain from cashing the check and as such, no loan will have occurred. The objectives of Reg Z have been achieved via strictly remote means. We urge the Board to allow for such a process by revising 226.17(g) when it issues the final open-end rules. Alternatively, the Board might consider it to be two separate rule-makings, with the proper request for comment on the narrow issue of 226.17(g). We ask, however , that the change be made prior to, or at the same time as, the open-end rules become final, so that creditor operations are disrupted as little as possible and they can continue serving the remote needs of their customers.

<u>Impact of the Revisions on HELOCs</u>. The Board has asked whether its revisions would have unintended impact on HELOCs. We believe that the changes to 226.2(a)(20) will have no impact on HELOCs. Creditors do not use or rely on Comment 2 with regard to HELOCs. Additionally, HELOCs do not have multiple subaccounts within the same plan as consumer open-end credit does.

OTHER MAJOR PROVISIONS OF THE BOARD'S PROPOSAL

1. <u>CREDIT CARD APPLICATIONS AND SOLICITATIONS</u>

<u>Format Concerns</u>. The proposed changes do not appear to be overly burdensome. Most credit unions already disclose the information noted in the proposal either in or directly below the Table. There is, however, some concern with information overload and redundancy, and the Board's Commentary regarding format. For example, the Commentary notes that the Model Forms were designed to be printed on 8 x 14 or "legal sized" paper. This tells us that, by design, there is probably too much information on the page. Additionally, legal-sized paper is almost obsolete in the loan documentation industry. It is cumbersome, expensive, and doesn't print well with other letter-sized documents. It is also hard to file and retain for both financial institutions and consumers. Creditors moved away from legal-sized paper long ago, and have no desire to go back to it. We would suggest that less words on smaller paper would contribute to more clear, conspicuous, and meaningful disclosures to consumers, with more manageable costs to creditors. For these reasons, we ask the Board to delete the comment regarding legal-sized paper, and to consider the following changes to the Application & Solicitation (and Account Opening) forms.

<u>Reduce the number of cross-references</u>. The number of cross-references seems overly redundant. For example, on Model Form G-10(B), in the "APR for Cash Advances" box, there is a statement that cash advance fees will also apply. However, this is apparent by scanning the Fees section and locating the Cash Advance disclosure. The cross-reference to the fee in the APR box is unnecessary, more words to read, and takes away from the purpose of the box, which is to disclose the APR. We would also

suggest that the subject headings in the Fees section take away from the disclosures. For example, the headings, "Transaction Fees" and "Penalty Fees" are not necessary. The important information is that there are cash advance and balance transfer fees, not that they are "transaction fees"; and that there are late fees, over-the-limit fees, and returned payment fees, not that they may be referred to as "penalty fees". In designing this form, we would remove the subject headings and put the actual types of fees in bold. This emphasizes the fees themselves and at the same time reduces the number of words on the page.

Similarly, the cross-references in the Penalty Fees section stating that APRs may increase is also not necessary and only adds to the number of disclosures that a card issuer must remember to comply with, and adds to the number of words the consumer must read. The "Penalty APR and When It Applies" disclosure is quite complete, conspicuous, and easy to read. Cross-references in the fees section are simply not necessary.

Simplify the Payment Allocation Disclosure. The Board's proposed Payment Allocation disclosure under 226.5a(b)(16) seems a bit convoluted and complicated. As currently drafted, the disclosure is required under only certain circumstances when a series of conditions are met. We would suggest broadening the applicability of these requirements, while at the same time simplifying this disclosure, as follows:

First, rather than calling this "Payment Allocation", which implies that it is a free-standing, separate requirement, call it, "Special Disclosure Requirements for Balance Transfers and Cash Advances". This more accurately reflects the various requirements set forth.

Next, list the required disclosures, "as applicable". For example:

> (15) *Special Disclosure Requirements for Balance Transfers and Cash Advances*. If a card issuer offers a discounted initial rate on a balance transfer or cash advance that is lower than the rate on purchases, the card issuer must disclose the following statements, as applicable:
>
> 1. The initial discounted rate applies to balance transfers or cash advances (as applicable) and not to purchases;
> 2. During the introductory period, payments will be allocated to balance transfers or cash advances (as applicable) before being allocated to any purchase balance;
> 3. If a balance transfer or cash advance is obtained, there will be no grace period and the consumer will be charged interest on all balances, including purchases, until the entire balance is paid off completely.

Next, we suggest changing the last sentence in the "Notice Regarding Interest Charges" in Model Sample G-10(B) to read:

> If you obtain a balance transfer, there will be no grace period and you will be charged interest on all balances, including purchases, until all balances have been paid off completely.

Finally, it would be helpful if 226.5a(15) cross-referenced the language in the Model Sample G-10(B), or provide the language as a Model Clause e.g., "Creditors may use language substantially similar to the 'Notice Regarding Interest Charges' contained in Model Sample G-10(B) to comply with this section."

These changes provide better uniformity across all circumstances, and more succinctly warns the consumer that the grace period will not apply.

<u>Eliminate the Minimum Finance Charge disclosure</u>. Additionally, to minimize the number of words in the Table, we suggest removing the "Minimum Finance Charge" disclosure from the Table. This disclosure doesn't seem to mean much to consumers, tends to be a negligible dollar amount, and does not seem to be as important as the rest of the Tabular disclosures.

<u>Eliminate the Balance Calculation Method Disclosure</u>. Finally, we suggest elimination of the balance calculation method disclosure altogether. The Board's own research suggests that consumers do not use this disclosure. While moving the disclosure outside the Table helps marginally, removing it altogether would increase the effectiveness of the disclosures in the Table and will shorten the form.

2. <u>ACCOUNT OPENING DISCLOSURES</u>

There are no objections to the substantive requirements of Section 226.6 and 226.5. However, as a compliance practitioner, these sections are difficult to follow due to the proposed organization of the sections. For the following reasons, we respectfully suggest that it may be helpful to clarify these sections to make them easier to read.

<u>Disjointed flow</u>. The organization of 226.6 appears to be disjointed, which causes there to be a confusing number of cross-references between 226.5 and 226.6(b). This makes it difficult to determine the disclosure and timing requirements. We will illustrate our concerns and propose revised language, as follows.

If we break the section down by using a simple "outline" approach, it reads as follows:

226.6. Account Opening Disclosures. Creditors shall disclose the items in this section, to the extent applicable.

(a) Rules Affecting Home Equity Plans

> [this section sets out the current 226.6 disclosures, *except for* the security interest and billing rights requirements]

(b) Rules Affecting Open-end (not home-secured) plans.

> (1) Charges imposed as part of open-end (not home secured) plans.
>
> > [includes when the finance charge begins to accrue, grace period, and circumstances under which a "charge imposed as part of the plan" may be incurred, including amount]
> >
> > (i) Charges imposed as part of the plan are . . .
> >
> > > a. Finance charges

b. Charges for the consumer's failure to use plan as agreed

c. Taxes

d. Charges for which payment affects the consumer's access to the other plan

e. Charges for terminating the plan

f. Charges for voluntary credit insurance

(ii) Charges that are not imposed as part of the plan include:

a. ATM fees charged by another financial institution

b. Charge for package of services that includes open-end credit features

c. Charges under 226.4(e) disclosed as specified [certain security interest charges]

(2) Rules relating to rates for open-end (not home-secured) plans.

[this section sets out the periodic rate rules regarding finance charges]

(3) Voluntary credit insurance, debt cancellation or debt suspension

(4) Tabular format requirements for open-end (not home-secured) plans.

(i) Tabular Format. [sets out general formatting requirements for the Table]

(ii) APR

(iii) Fees

(iv) Grace Period

(v) Required Insurance . . .

(vi) Payment Allocation

(vii) Available Credit

(viii) Web site reference

(ix) Balance Computation Method [but this *cannot* be in the Table]

(x) Billing error rights reference [but this *cannot* be in the Table]

(c) Rules of General Applicability

[this section presumably applies to both HELOCs and consumer open-end plans, but this is not stated]

(1) Security Interests

(2) Statement of Billing Rights [2 separate rules for HELOCs and consumer open-end]

This arrangement appears to be disjointed. Instead of simply listing the disclosures that must be made one-by-one, it intersperses "rules" between the disclosures. There are also several different references to periodic rates and finance charges interspersed between 226.6(b)(1), (b)(2), and (b)(4). It also breaks up the home equity rules and requires the reader to jump back and forth to determine which items must be disclosed for which loan type, and which rules to follow, and when. It also leaves the reader wondering, after discovering that some disclosures must be disclosed in a Table format, how the other disclosures must be disclosed.

Timing and Format of the Disclosures. Trying to read 226.6 along with 226.5 is also confusing. 226.5(a) sets out the form of the disclosures. Section 5(a)(1)(ii) attempts to explain which disclosures do not need to be disclosed in writing. But it does so by referencing timing requirements ("charges that are imposed as part of the plan and may be provided at any time before the consumer agrees to the charge"), which requires the reader to locate the timing requirements at 226.5(b). It is not until another cross-reference in 226.5(b)(1)(ii) until we determine that charges "that are imposed as part of the plan", that are not required to be in the Table, do not need to be provided in writing.

While we understand that the Board is trying to organize an entirely new section with a new fee structure and a lot of information, we might suggest a more straight-forward approach. We would draft it this way:

226.6. Account Opening Disclosures. Creditors shall disclose the items in this section, to the extent applicable.

(a) Home Equity Plans subject to 226.5b. Creditors shall disclose the following for home equity plan subject to 226.5b:

> [state the current 226.6 requirements verbatim, *including security interests and billing rights.* This will place all HELOC requirements in the same place, with no need for the reader to flip between subsections (a) and (c).]

(b) Open-end (not home secured) plans. Creditors shall disclose the following for open-end (not home secured) plans:

1. Account-Opening Disclosures
   A. Tabular Disclosures. The following disclosures shall be in the form of a table with the headings, content, and format substantially similar to any of the applicable tables found in G-17 in Appendix G. This table shall be provided prior to the first transaction under the plan and shall contain only the information required or permitted by this section. Other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the table. The following information shall be provided inside the Table:
      i. APR . . .
      ii. Fees . . .
      iii. Grace Period . . .
      iv. Required Insurance . . .
      v. Payment Allocation . . .
      vi. Available Credit . . .

vii. Web site reference . . .

The following disclosures shall appear directly below the Table:

viii. Balance Computation Method . . .

ix. Billing error rights reference . . .

B. Other Written Disclosures. The following disclosures shall be disclosed in writing at the same time the Table is provided:

i. Security Interest . . .

ii. Statement of Billing Rights . . .

2. Other Cost Disclosures. The following disclosures may be furnished either in writing or verbally before the consumer becomes obligated or agrees to pay the charge:

A. Finance Charges identified under 226.4(a) and 226.4(b). If the finance charge is computed by using a periodic rate, the following must also be disclosed:

i. [insert amount of charge or explanation of how it is determined; when finance charges begin to accrue; grace period; and "rules relating to rates for open-end (not home secured) plans"]

B. Charges resulting from the consumer's failure to use the plan as agreed . . .

C. Taxes . . .

D. Charges for which the payment, or nonpayment, affect the consumer's access to the plan . . .

E. Charges imposed for terminating a plan

3. Charges for voluntary credit insurance, debt cancellation, or debt suspension. Charges for voluntary credit insurance, debt cancellation, or debt suspension shall be disclosed in accordance with 226.4(d) at the time the product is offered.

We believe this format and organization more clearly explains what needs to be disclosed, when, and in what format.

We would also suggest a similar straight-forward approach under the format and timing requirement sections of 226.5. For example:

226.5 General Disclosure Requirements.

(a) Form of disclosures.

(1) Clear and Conspicuous. The creditor shall make the disclosures required under this subpart clearly and conspicuously.

(2) Written Disclosures. The creditor shall disclose the credit card application and solicitation disclosures under 226.5a; home equity disclosures under 226.5b and 226.6(a); the account-opening disclosures required under 226.6(b)(1) in writing in a form that the consumer can keep.

(3) Verbal Disclosures. The creditor, at its option, may provide the disclosures under 226.6(2) either verbally or in writing.

(4) No retainable form. The following disclosures need not be in retainable form . . .

(5) Terminology . . .

(6) Specific formats . . . etc.

(b) Time of disclosures.

1. Open-end (not home secured) plans.
   a. Account-opening disclosures. The creditor shall furnish the account-opening disclosures required by 226.6(b)(1) before the first transaction is made under the plan.
   b. Other Cost Disclosures. The creditor shall furnish the other cost disclosures required by 226.6(b)(2) at any relevant time before the consumer agrees or becomes obligated to pay for the charge.
2. Home Equity Plans under 226.5b. The disclosures required under 226.6(a) shall be furnished before the first transaction is made under the home equity plan. All other timing requirements for home equity plans shall be governed by 226.5b.

We believe that this way of organizing and drafting 226.5 and 226.6 will make the various disclosure, format, and timing requirements much clearer and easier to comply with for all creditors. We respectfully request the Board to consider organizing these sections in this, or a similar, manner.

3. PERIODIC STATEMENT DISCLOSURES

We submit the following comments with regard to the proposed Periodic Statement disclosures.

EFFECTIVE APR

While the Board's attempt at providing for the Effective APR in the regulation and Model Forms is a valiant one, it ultimately misses the mark. If we are interpreting 226.7 correctly, the Board is proposing 2 alternatives: (1) that creditors have the option of providing the Effective APR or not; and (2) eliminate the Effective APR altogether. We support the second option wholeheartedly, and cannot emphasize enough that the Effective APR should be eliminated. We strongly urge the Board to eliminate the Effective APR for the following reasons.

Consumers Don't Understand. The Board's own research and attempts at providing for the Effective APR in the regulations demonstrates the difficulty in understanding the Effective APR, and underscores that the Effective APR is really not "effective" at all. While the Board's consumer research showed a slight improvement in the understanding of the Effective APR, this was not accomplished until several revisions of the periodic statement were provided to a group of consumers that had already become familiar with periodic statements by participating in the research. It was a case of very small results for much effort, and in the end, did not provide the consumer with any discernible benefit.

Creditor's Option Not to Provide. We are confident that, if given the option, creditors will almost unanimously elect to *not* provide the Effective APR if given a choice. Not only is this because of the long-standing confusion and lack of value that it adds, but also because of the additional requirements imposed under the proposed regs. Requiring an entirely new section on the periodic statement for "Fee-Inclusive APR" increases the programming and calculations exponentially. It also provides more words or "noise" to an already crowded periodic statement. It is also redundant because the interest charges and fees are each separately repeated in this section, even though they have already been disclosed to the consumer in their own separate, "Fees" and "Interest Charged" sections.

Not a Meaningful Disclosure. Changing the name of the Effective APR to "Fee-Inclusive APR" and adding its own section on the Periodic Statement will not make it a meaningful disclosure, even if the consumer understands it. This is because it provides no additional, useful information and does not provide a valid tool to compare costs amongst various credit cards. The consumer still needs to break down the Effective APR into its components to truly understand the numbers and to compare it to other cards. For example, in Model Form G-18(G), the Fee-Inclusive APR for Cash Advances is 58.42%. On that sample, interest charges are $4.58 and "transaction or fixed fees" are $10.90. What the Fee-Inclusive box does not tell us is how those numbers were arrived at. We do not know the APR for cash advances, what the balance was on the card, or how many cash advances were taken during that period. Without that information, we can't compare another card which, for example, had a 78.63% Fee-Inclusive APR, even if we knew, for example, that "interest charges" were $12.42 and "transaction or fixed fees" were $7.42. Perhaps the balance on the second card was bigger. Or was the APR for cash advances higher? Was the cash advance fee larger, or did the consumer simply take more cash advances that month? Or perhaps the fee was a handling or transaction fee, rather than a cash advance fee at all? All of this information, in its component parts, can already be found elsewhere on the periodic statement, without the added "noise" and redundancy of the Fee-Inclusive APR section. The Fee-Inclusive APR is simply not necessary or helpful in understanding and comparing the costs of a consumer's various credit cards, and adding the Fee-Inclusive section to the periodic statement does not change this.

Calculating the Effective APR under 226.14. As the Board notes in its proposal, creditors' attempts at determining which fees must be included in the Effective APR has always been cloaked in mystery. Some fees must be included; others do not; some fees fall neatly into the delineated categories; others do not. While the Board can revise 226.14 to include a "specific and exclusive list" of fees, this will never be absolute. The very nature of the industry dictates that there will always be some fee or charge, or some way of imposing that fee, that will pose questions as to whether it should or should not be included in the Effective APR. Industry veterans continue to struggle with the correct determination, and the chances of this changing are slim. Skip payment fees are a good example because they do not fall into any of the categories listed, either in the current or proposed 226.14(e). (While the Board notes in its introductory comments to the proposal that skip payment fees would not need to be included in the Effective APR, that is not noted in the actual reg or its Commentary.) There is always an inherent flaw in trying to list categories that may or may not be subject to some requirement. While we appreciate the Board's efforts to clarify these questions, we submit that this is a problem that simply can't be fixed by listing inclusions and exclusions. This is why the requirement to include any fees in the Effective APR should be eliminated entirely.

Nor do we believe that the problem can be eliminated by including all fees in the APR. If this were to be done, the consumers would have no meaningful way to compare the components of the APR that they receive. They would have no way of knowing how many and which fees are included in the APR, what the interest rate is, and what the amounts of the fees are. They would still need to see a listing of the types and amounts of fees, which again makes the Effective APR worthless and obsolete.

NOTE: Our comments regarding the Effective APR apply equally to the Board's request for comment under the Finance Charge section, 226.4. The Board proposes to state in new Comment 4(a)-4 that all "transaction fees" imposed for using a credit card account would be a finance charge. The examples given include cash advance fees and foreign transaction fees. While this may be a more uniform rule to determine the "finance charge" than in years past, we once again must state that the solution is not to lump the fee into the finance charge and, necessarily, into the Effective APR. Again, cash advance fees are already itemized in the Application & Solicitation Table, the Account Opening Table, and the periodic statement. A foreign transaction fee tends to be a fee that an average consumer does not incur very often, and when he does, an artificially inflated Effective APR will only be misleading and alarming to the consumer. And if he does incur the foreign transaction fee on a regular basis, he will not understand why now, under the new rules, his APR skyrockets when it had not in the past. The solution is not to lump any fee that we can't figure out what to do with into the Finance Charge; rather, we should eliminate the Effective APR altogether and simply call the fees what they are – fees.

In sum, the Effective APR provides no meaningful benefit or protection to consumers. The Effective APR is like the Edsel – perhaps a good idea at the time, but one that ultimately flopped. Better to discontinue it altogether, than to keep throwing time, effort, and money into a dying breed that consumers do not want. We strongly urge and respectfully request that the Board eliminate the Effective APR requirement altogether.

MINIMUM PAYMENT WARNING

We submit the following comments with regard to the Minimum Payment disclosure requirements.

Limitation to Credit Cards Only. We agree with the Board's proposal to limit the minimum payment disclosure requirements to credit cards only. It is apparent from the Congressional Record that Congress' intent was to require these disclosures only on credit cards. Additionally, other forms of open-end credit such as overdraft LOCs, personal LOCs, and HELOCs are not used in the same manner or with the same frequency as credit cards. And HELOCs already have myriad minimum payment disclosure requirements.

We do note, however, that one of the exemptions discussed by the Board in the Supplementary Information does not appear in the Exemption section of 226.7(b)(12)(iii): general purpose lines of credit. It is unclear whether these were meant to be included under (iii)(C), or whether they were inadvertently omitted. We suggest either that a new subsection be added for general purpose lines of credit, or that (iii)(C) is expanded beyond, "access by check-guarantee cards or debit cards at ATMs" only. General purpose lines can be accessed by check or credit union share draft; by personal request at a branch, or via telephone or internet.

<u>Clarity of Section 226.7(b)(12)</u>. While we realize that the Board has little leeway regarding the requirements of the substance of 226.7(b)(12) because they are dictated by the TILA Amendments under the Bankruptcy Act, we respectfully request that the Board do all it can to make this section easier to read and understand. We respectfully request that the Board clarify the creditor's choices in complying with this section. If we are understanding this section correctly, the creditor has 3 choices:

1. disclose specifically mandated "generic" repayment schedules on the periodic statement and provide a toll-free number to provide further disclosures based on the card issuer's most common repayment requirement (the actual language of the generic disclosure depends on whether the creditor's minimum payment is under or over 4% (226.7(b)(12)(i)(A) and (B)); or
2. establish a toll-free number to provide the consumer's actual repayment schedule and provide a specifically-mandated reference to the toll-free number on the periodic statement (226.7(b)(12)(ii)(A)); or
3. provide the actual repayment schedule for the particular consumer in writing directly on the periodic statement. If the card issuer does this, it does not need to maintain the toll-free number (226.7(b)(12)(ii)(B) or provide any other disclosures.

Assuming this is the correct understanding, this was extremely difficult to decipher because of the way the section is organized, as follows:

- 226.7(b)(12)(i) is called, "General Disclosure Requirements". However, this is where the generic repayment disclosures are located.
- Then, 226.7(b)(12)(ii) is called, "Estimate of Actual Repayment Period". But this section contains both the actual toll-free option with the reference to the toll-free number, AND the option to provide the actual disclosure directly on the statement with no toll-free number option.
- Next, 226.7(b)(12)(iii) are the exemptions;
- 226.7(b)(12)(iv) references the requirement to establish the toll-free number; and
- References to the small depository exemption are interspersed throughout the various subsections.
- It is also unclear under (12)(i)(A), (B), and (2) whether a creditor MUST use either (A) or (B) depending on whether the minimum payment requirement is under or over 4%. Subparagraph (2) implies that A can be used. This in effect states that if the minimum payment is over 4%, the "under 4%" disclosure may be used. We presume that this was not the Board's intent, and this provision should be clarified.

We respectfully suggest for clarity that the Board consider the following changes, or similar:

1. In 226.7(b)(12)(i), General Disclosure Requirements, state that card issuers shall disclose the minimum payment information as required by this paragraph;

2. Call section 226.7(b)(12)(ii), "Minimum Payment Examples". Within this paragraph, state that "the card issuer has 3 options in disclosing the minimum payment example":
    A. Generic Repayment Example and establishment of a toll-free number. Card issuer shall establish a toll-free number . . . and shall make the following disclosure on the periodic statement:
        i. *Minimum Payment not exceeding 4%* . . .
        ii. *Minimum Payment exceeding 4%* . . . –OR-
    B. Actual Repayment Estimate via toll-free number. Card issuer shall establish a toll-free number for the purpose of providing consumers with the actual repayment disclosure described in Appendix M2 . . . Card issuer shall also provide the following disclosure on the periodic statement . . . –OR-
    C. Actual Repayment Estimate on Periodic Statement. Card issuer shall provide on the periodic statement a disclosure of the actual repayment information as described in Appendix M2. If the card issuer uses this option, it need not provide a toll-free number.
3. Delete the provisions of 226.7(b)(12)(iv) and incorporate them into the above (b)(12)(ii).
4. Re-number and re-name 226.7(b)(12)(iii) as, "Special Rules for Small Depository Institutions" and incorporate all provisions pertaining to small depositories into this section.
5. Re-number and re-name (b)(12)(iv) as the Exemptions.

If this section were organized in this way, or in a similar manner, we believe that the requirements will be better understood by card issuers and consumers alike, which will better ensure compliance.

SUBSTANCE AND FORMAT OF THE PERIODIC STATEMENT

While we agree with the Board's goal of making periodic statements easy to read for the consumer, we are not convinced that current versions of the periodic statement are confusing to the consumer. The Board's proposal is a massive overhaul of current requirements, and will be very expensive and time-consuming to implement. We make the following comments regarding the substance and format of the periodic statement:

Elimination of Corresponding Periodic Rates. We agree with the proposal to eliminate periodic rates from the periodic statement. Consumers do not use the rates to verify Annual Percentage Rates, and the periodic rate only contributes to "information overload".

Changes to the Explanation of Balance Computation Method. We agree with the Board's conclusion that consumers do not find the explanation of the balance computation method useful, nor do they check the balance calculation against the method explained. As noted in the credit card Application & Solicitation section, we favor eliminating this disclosure altogether. If the Board insists on keeping the disclosure, we would take the Board's proposal one step further and eliminate the name of the balance computation method altogether. We would also suggest that whether the method the card issuer uses is one that is set forth in 226.5a(g) or not is irrelevant, and as such, there is no reason to create a separate set of rules. A reference for the consumer to call the card issuer for more information on how the balance was computed should suffice. We would propose that, no matter what balance computation method is used, that a short statement such as, "for more information on how your balance is computed, please call us at 1-800-xxx-xxxx" is all that is needed.

Labeling of "Transaction Fees" and "Fixed Fees". We are opposed to the Board's proposal that fees be labeled as "transaction" or "fixed" fees. This is the same "information overload" trap that we fall into with the Effective APR. The terms, "transaction fee" and "fixed fee" have no meaning to the average consumer, and provides no additional value. The important information is what type of fee it is, and the amount. Stating, "Cash Advance Fee: $5.00" provides all the consumer needs to know. However, disclosing, "Cash Advance Fee – transaction fee - $5.00" only provides more "noise" rather than useful information, and contributes to information overload. Moreover, with the elimination of the Effective APR, the "transaction" and "fixed" labels would simply become irrelevant. We would request that this proposed requirement be withdrawn.

Elimination of Statement Stuffers to deliver Change-in-Terms Notices. Eliminating a creditor's ability to deliver change-in-terms notices via statement stuffers signifies a significant increase in cost and operational burden. Requiring the change-in-terms notice on the periodic statement, and in a specific format, will require the creditor to go to its data processor each and every time it wishes to change the terms of the credit extended. The creditor will be at the mercy of the data processor in terms of cost, timing, and scheduling. This is an undue burden and restriction on creditors' rights. Rather than requiring the change-in-terms notice to be directly on the periodic statement, we suggest formatting requirements for statement stuffers. For example, the Table format may be required, as could be "clear and conspicuous" standards, font-size requirements, and the requirement that no other information appear on the statement stuffer.

IMPLEMENTING CHANGES TO THE PERIODIC STATEMENT – COST & TIME

If the Board's proposal is finalized in its current form, the changes will mark a wide-sweeping and massive change to the format, programming, and calculation requirements of creditors' periodic statements. It will be very expensive and take 12-24 months to implement. Calculations, programming, mapping, testing, and implementing must be coordinated between the creditor and its data processor at the same time that the data processor is working with multiple financial institutions to implement the same deadlines. As such, we ask for a compliance date of 24 months after the final regulations are published in the Federal Register.

4. CHANGE-IN-TERMS NOTICES

We submit the following comments with regard to change-in-terms notices.

Increasing rates due to delinquency or default. The Board is proposing to require 45 days notice prior to increasing a consumer's APR due to a late or missed payment. We wholeheartedly disagree with this proposal for the following reasons.

No precedent for restricting creditors' contractual rights. The Board believes that it is appropriate to mandate the 45-day notice prior to increasing a consumer's rates. The Board cites 226.20(c) as precedent for using such a de facto delay, in that this provision requires 25 days' advance notice prior to certain increases in the payment for a closed-end, adjustable rate mortgage. The Board's reliance on this provision is unfounded. Section 226.20(c) refers to scheduled payment increases, i.e., when a "payment at a new level" is scheduled to begin under the terms of the contract. This is presumably because, under a closed-end ARM, the consumer receives no other notices during the life of the loan, and it may, by definition, be several years before the payment increases. The notice helps remind the consumer, when the time comes, that the payment is about to increase. This helps the consumer budget accordingly, helps him ensure that enough money is in his checking account to write a check or debit the new amount. This notice requirement is merely a "courtesy" or "reminder" notice and does not delay or otherwise interfere with the creditor's ability to exercise what it has a right to do under the credit contract. By contrast, however, requiring a 45-day notice prior to increasing the consumer's APR because of delinquency would indeed, by definition, be preventing or delaying the creditor's ability to exercise a contractual right to which the consumer has already agreed. This type of interference with a creditor's ability to enforce its contract is unprecedented under Reg Z and is simply not the purpose of Reg Z. The Board has always been rightfully hesitant to cross this line, and we respectfully urge the Board to refrain from doing so now.

Consumers will be aware of Penalty Rates. The Board states that consumers are not always aware that paying late will trigger higher rates. However, this perceived shortcoming will be corrected with the new Account Opening Tabular disclosures for penalty APRs. The Board also argues that the account-opening disclosures may be provided too far in advance for the consumer to recall the circumstances that may cause the rate to increase, or the consumer may not have retained a copy of the disclosures. However, with the new periodic statement disclosures, the consumer will be reminded *every month*. In fact, the consumer will receive penalty pricing information twice during the account opening process, and then once a month thereafter. To illustrate:

On the credit card application/solicitation, the Table will disclose:

Penalty APR and When it Applies	**28.99%** This APR may be applied to the entire balance on your account if you: (1) Make a late payment twice in a six-month period; (2) Go over your credit limit twice in a six-month period; (3) Make a payment that is returned; or (4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.

Once the consumer is approved for and receives the card, the consumer receives the Account Opening Disclosures. This means that, at the same time the consumer activates the card, he receives the same disclosure again:

Penalty APR and When	**28.99%**

it Applies	This APR may be applied to the entire balance on your account if you: (1) Make a late payment twice in a six-month period; (2) Go over your credit limit twice in a six-month period; (3) Make a payment that is returned; or (4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due and do not exceed your credit limit during that time period.

After the consumer begins using the card, he receives his periodic statement. He is reminded of the penalty each month, when he is told his due date and amount due:

Payment Information

New Balance:	$1,784.53
Minimum Payment Due:	$ 48.00
Due Date:	4/20/07 (before 2:00 pm)

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

Notice about Minimum Payments: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you had a balance of $1,000 at an interest rate of 17% and always paid only the minimum required, it would take over 7 years to repay this balance. For an estimate of the time it would take to repay your actual balance making only minimum payments, call 1-800-XXX-XXXX.

The Board's own consumer research shows that these disclosures are effective –that the consumer will read and understand them. The Board states that, "the way to address penalty pricing is through improved disclosures regarding the conditions under which penalty pricing may be imposed". We believe that the above disclosures are indeed "improved", and effectively remind and warn the consumer of the consequences of late payments (or exceeding the credit limit), each and every month. With this, the consumer should not be surprised if the APR is immediately increased, and as such, there is no need to interfere with the creditor's contractual right to increase the rates. We respectfully request that the Board withdraw its proposal to require a 45-day delay in imposing penalty rates due to default or delinquency.

Changing the "advanced notice" time period from 15 to 45 days. We are opposed to increasing the notice period to 45 days. We believe that the current 15-day notice is adequate. If, however, the Board insists on increasing the timeframe, we assert that 30 days, or roughly one billing cycle, is appropriate. The Board states that a 45-day notice is necessary to allow consumers an opportunity to shop for alternative financing prior to the rate increasing. The Board submits that the time frame must be sufficient for a consumer to complete the process, including the transfer of existing balances; we respectfully disagree. We are aware of no such requirement under the Truth in Lending Act or Reg Z. While it is true that a consumer may incur some increased costs for a short period of time, this is not unreasonable and is simply the nature of doing business. Thirty days' worth of increased interest is usually nominal; any charges increased or added would only be incurred once in that 30-day period. And often times the consumer controls when, or if, the fee is incurred, such as in the case of late fees and over-limit fees; if the consumer thinks that the fee is too high, they simply need to make the payment on time in order to avoid the fee. A 30-day advanced notice is plenty of time for consumers to become aware of the changes and to act on it, if indeed they choose to. Even in the case where a consumer chooses to transfer a balance when existing terms did *not* change, there is no guarantee that that will happen prior to the consumer's next due date. In such a case, the consumer is required to make that one last payment to the existing card. A 30-day notice requirement is more than sufficient.

Tabular Disclosures on Periodic Statements. Please see the Periodic Statement section above for our comments on disclosing change-in-terms.

5. ADVERTISEMENTS

We are generally unopposed to the Board's proposals regarding advertisements. The Board's proposals aimed at providing consistency between the Bankruptcy Act and existing rules and terminology under Reg Z are reasonable and appreciated. We do offer the following comments:

226.16(g) – Misleading Terms. We do not believe using the term, "fixed" rate when referring to non-indexed rates is "misleading". While the Board's consumer research showed that consumers do not understand the term in relation to "variable rates" that vary based on an index, we believe that this misunderstanding will be alleviated by the proposed new "penalty rate" disclosures. As noted above, under the new rules, consumers will have ample opportunity, prior to becoming obligated under an open-end credit plan, to read and understand that terms may change based on default or delinquency. We believe that, when advertising available credit programs, it is useful to consumers to know that an APR is "fixed" (i.e., will not as a matter of course vary or fluctuate based on an index) as opposed to "variable". This is especially so in today's atmosphere of "payment shock" in the mortgage and subprime markets. In other words, consumers want to know whether the rate advertised is fixed or variable, so they know what to expect. We believe that once consumers become familiar with the penalty rate disclosures, this knowledge will increase the understanding of the term, "fixed APR" and alleviate the confusion. Additionally, we do not believe that a term such as "non-indexed" will have any meaning to the consumer and will only confuse the consumer more. Without the use of the term, "fixed", we believe it would be difficult to distinguish the rate from a variable rate. We believe that creditors should still be allowed to use the term, "fixed".

Use of a Range of Rates. We agree with the Board's proposal to use a range of rate in advertisements. This reflects today's usage of risk-based pricing. Often times a creditor may offer as many as five different rates for the same product, based on a consumer's credit history. Since the creditor has no way of knowing which rate the consumer will qualify for until she applies and is approved, a range of rates is appropriate.

6. OTHER PROPOSED REVISIONS TO REG Z

CREDIT INSURANCE, DEBT CANCELLATION AND DEBT SUSPENSION

We submit the following comments with regard to the credit insurance and debt protection proposals.

Telephone Purchases – Open-end Credit. We welcome the Board's proposal to allow for telephone purchase of credit insurance and debt protection. However, the Board's revisions only encompass open-end credit. The ability to purchase these products via telephone must also extend to closed-end credit and HELOCs. The OCC regulation for debt protection at 12 CFR Part 37 currently allows for telephone sales on all forms of credit, not just consumer open-end credit. The same safeguards in place for open-end credit apply to these other forms – extensive disclosures are provided both orally and in writing, with forms delivered within 3 business days after the telephone call; positive verbal consent must be given; documentation of the transaction must be maintained; and financial institutions must maintain written policies and procedures. Debt protection is now a part of both the OCC's and NCUA's exam procedures. As such, there is ample protection for the consumer both during and after the sale. To allow telephone sales only for open-end consumer credit would be inconsistent with current law, and unfair to financial institutions and consumers alike. We ask the Board to delete the reference to open-end loans in its proposed 226.4(b)(4), so that it applies to all loan types.

Inclusion of additional protected events for debt protection. We appreciate the Board's attempts at inclusion of additional protected events (beyond life, accident, health, or loss of income) that allow premium and fees to be excluded from the Finance Charge. However, we believe the Board's comments in the Supplementary Information and its revisions to the regs are slightly inconsistent. In the Board's section-by-section analysis of 226.4(d)(3), the Board notes that the restriction to the events for credit insurance is based on TILA section 1605(b). That section reflects the regulation of credit insurance by the states, which may limit the types of insurance that can be sold. The Board recognizes that debt protection has no such state-regulated restrictions; however, the Board then goes on to allow additional protected events to be excluded from the finance charge only if they are bundled with at least one protected event of life, accident, health, or loss of income. This is inconsistent. To illustrate: if a financial institution sells to a consumer a debt protection plan that cancels the loan payment in the event of death, disability or divorce as a bundled package, then the fee for divorce could be excluded from the finance charge. However, if the financial institution sells the protected event of "divorce" to the consumer separately, that fee must be included in the finance charge. This is neither consistent nor fair to the consumer, and would be operationally burdensome and confusing to administer. Financial institutions have great flexibility under Gramm-Leach-Bliley and the OCC debt protection rules to provide for *any* protected event that may have demand in the marketplace. To restrict some, but not other, protected events makes administration of the financial institutions' debt protection program unnecessarily burdensome and confusing. Separate calculations and programming would have to be done, together with proper tracking of the protected events to ensure that fees that must be included are included, and fees that may be excluded are excluded. This unnecessary burden provides no benefit or protection to the consumer. We ask the Board to allow all protected events for debt cancellation and debt suspension to be excluded from the Finance Charge when the proper disclosures are provided.

This would still be consistent with TILA section 1605(b), because, as the Board points out, only credit insurance has such state-mandated restrictions on the type of product that can be sold.

<u>Guidance on Debt Suspension Coverage</u>. The Board has asked whether additional guidance needs to be provided for debt suspension programs. No additional guidance other than that provided by the Board's proposal is needed. The OCC regulations at 12 CFR Part 37 already provide for extensive disclosures regarding debt suspension and debt cancellation. The NCUA has adopted the OCC regs as "best practices" for federal credit unions, and most states have adopted similar regulations for state-regulated financial institutions, or specifically mandate that their institutions follow the OCC regs.

With that said, however, we do have the following comments regarding the proposed Model Clauses at G-16 and H-17:

(i) <u>Cost Disclosure</u>. Both Model Clauses are identical. However, the language regarding cost is most appropriate for open-end lending, rather than closed-end lending, which requires the Total Fee to be disclosed in most circumstances (even if debt protection is sold over the phone on a closed-end loan, when the written disclosures are mailed to the consumer, financial institutions disclose Total Fee on the forms rather than unit-cost).

(ii) <u>Suspension of Interest</u>. The Model Clause also assumes that interest will *always* continue to accrue, which is not necessarily the case, and will depend on the financial institution's particular program.

With these two comments, we would suggest the following revisions, with the first revision to Clause H-17 only, and the second revision to both Clauses:

> Please enroll me in the optional [insert name of program], at the total cost of $_____.
> I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. [if applicable:] I understand that my balance will actually grow during the suspension period as interest continues to accumulate.
> [To Enroll, Sign Here]/[To Enroll, Initial Here]. X ______________________________

<u>"Written in connection with".</u> We find the proposal to extend the definition of "written in connection with" beyond the time an open-end account is established to be unnecessary. Financial institutions must follow current state credit insurance disclosure laws and the OCC debt protection rules and similar state law when selling debt protection after an open-end plan has been established. These laws include all the criteria required to exclude the charges from the Finance Charge under Reg Z.

We also fail to understand the reason why this would apply only to open-end consumer plans and credit cards and not HELOCs. Providing disparate rules for one type of open-end credit and not others simply makes it more difficult to comply with the rules. We ask the Board to withdraw this proposal altogether.

<u>BILLING RIGHTS NOTICE & UNAUTHORIZED USE – 226.12(b) & 226.13</u>

The Board proposes a number of revisions to the Unauthorized Use provisions of 226.12(b). The majority of these changes appear to be clarifications and updates to the Commentary section to better reflect today's way of doing business, namely via the internet and through checks that access credit cards. Virtually no substantive changes are proposed for the Billing Error Resolution of section 226.13. We are not opposed to the clarifications contained in these sections.

We are, however, wholly opposed to the changes to the Model Clauses, namely, the long-form and short-form Notice of Billing Error forms. The Board makes wholesale revisions to the text of the existing G-3 and G-4, and adds two additional forms, G-3(B) and G-4(B), for use with HELOCs. The Board also adds a new G-2(A) for new Unauthorized Use language for use with HELOCs. In making these changes, the Board states only that these changes were made "to improve readability". We are opposed to these changes for the following reasons.

First, to our knowledge, the Board did not conduct consumer research on the readability or any other aspect of the billing rights notices. We are aware of no circumstance under which consumers have been confused by the billing rights notice or could not take full advantage of the error resolution safeguards because of the text of the notices.

Next, we are opposed to distinguishing HELOCs from open-end consumer plans. The rules are the same for both, and providing two separate, additional forms which state substantially the same rules, but in different language, is both unnecessary and confusing. It will automatically force financial institutions to ask, "which form should we use?" From both the compliance and the operational aspects, this will only make the rules harder to implement.

Finally, changing the Model forms will force financial institutions to at least consider revising their existing forms for credit cards, open-end consumer plans, and HELOCs. As a forms provider, we provide the Model text. This protects us and our clients by taking full advantage of the "safe harbor" intended by the Model forms. Erring on the side of caution, we, and most compliance practitioners, would advise our financial institution clients to move to the new Model form when the Final Rule is implemented. If we don't, financial institutions will forever wonder if their language is "good enough" under the new reg. This puts us, and our financial institution clients, between the proverbial rock and a hard place, between compliance and operational concerns. Such a whole-scale change to a fairly lengthy disclosure that is contained on multiple loan documents used in a variety of circumstances would result in significant expense and operational burden to revise the forms, load them into the financial institution's systems, and re-train staff to become familiar with the new forms. This is an enormous cost to creditors, with no benefit or protection to consumers whatsoever. In fact, the consumer may even be harmed, in that some creditors will move to the new Model form, and others will not. The uniformity of the current Model form will no longer exist, and consumers will need to become familiar with a second version of the form. They may become confused as to their rights when one credit card statement has the old language, and another of their statements has the new language. This cannot be the Board's intent.

For these reasons, we wholeheartedly urge the Board to withdraw all proposed changes to all Model Forms and Clauses for the Billing-Error Rights and Unauthorized Use rules. This is a classic case of, "if it ain't broke, don't fix it". We urge the Board to allow the use of the existing forms and clauses to remain the norm and to be used, uninterrupted, in creditors' operations.

INCLUSION OF HELOCs IN THE PROPOSAL

As discussed throughout this letter, the Board attempts to include in, or perhaps more accurately, carve-out, HELOCs from the various proposed provisions. The Board states that this is to make Reg Z easier to use. However, we find the opposite to be true. We ask the Board to reconsider this treatment of HELOCs in the consumer rules for the following reasons.

First, as noted earlier, compliance practitioners look to the current 226.5b as the main source of the rules for HELOCs, and often times financial institutions will have their consumer and HELOC operations completely separate, with different staff responsible for compliance of each. As such, there is no need to intersperse the requirements except when absolutely necessary.

Second, the proposed organization of the various provisions when HELOCs are included makes reading the reg, and understanding the rules, confusing and difficult. Often times in the Board's proposed revisions, much of the information pertaining to HELOCs is redundant to the consumer rules that follow, but then at the same time imposes requirements that are similar, but not identical, for HELOCs. This only accomplishes a longer reg that is harder to read, follow, and understand, and we are not clear as to why the Board is choosing to do this. For example, the current 226.7 Periodic Statement rules make no distinction between HELOCs and consumer open-end credit. Yet the new proposal sets out the requirement for HELOCs that the "Amount Financed and Other Charges" be disclosed, while it requires "Charges Imposed", "Fees" and "Interest" to be disclosed for consumer plans. (All other requirements are the same, yet they are set out a second time in a separate "HELOC" section). The reg goes on to state that creditors may choose which set of rules to follow for HELOCs. We find this wholly unnecessary and very confusing. We found no explanation in the proposal as to why the Board is setting it out this way. While it is true that HELOCs do not work the same as credit cards and other forms of open-end credit, this has not caused compliance or operational concerns in the past. Especially with the relatively recent advent of being able to access a HELOC via credit card, the similarities are probably more prevalent than the differences. Creditors strive to keep the periodic statement requirements the same for all open-end loan products whenever possible, in order to ensure compliance, maintain efficiencies, and keep costs manageable. Differentiating HELOCs and consumer plans in the proposal will not help facilitate these goals, and will provide no additional benefit or protection to the consumer.

Next, as noted previously, this proposal is not the ideal time or place to make HELOC revisions. It is difficult to fully comment on, or even comprehend, the impact the current proposal will have on HELOCs since the Board has not yet conducted its home equity review. If the Board's current revisions regarding HELOCs are substantive, we believe they should be kept for the home equity review. If they are not meant to be substantive, then we suggest a different way of organizing the current proposed rules. For example, instead of repeating the requirements that *do* apply to HELOCs, we would suggest that the Board note directly in the consumer rules whenever the rule does *not* apply to HELOCs. For example, the Board could note in the appropriate consumer text that "this provision does not apply to HELOCs subject to 226.5b", or "compliance with 226.5b will satisfy this requirement" when that is indeed the case. And, when it is necessary to carve-out HELOCs in the requirements, such as in the Account Opening disclosures, we ask that the Board include *all* the HELOC requirements in the same section, i.e., to group them altogether, rather than interspersing them with the open-end consumer provisions, so that the reader is not flipping between subsections to discover all the HELOC requirements. This will help ensure uniformity in the rules when required, and provide the differences for HELOCs when appropriate, without an inadvertent or unintended substantive change to the requirements. In other words, we caution the Board that, because of the way various proposed rules are currently written and organized, it may be inadvertently setting out different rules for HELOCs, or making the HELOC rules more difficult to follow, when that is not the Board's intent.

We ask that the Board keep these concerns in mind when crafting the Final Rule. We ask the Board to review the various provisions pertaining to HELOCs to make sure that unintended consequences do not result. We ask that the Board include references to HELOCs only when absolutely necessary; to eliminate redundancies when references are necessary (or to include *all* HELOC requirements in the same spot); and to refrain from, or delay, the proposed revisions when they are not necessary.

9. EFFECTIVE DATE

We strongly urge the Board to adopt an Effective Date of two years from the date that the Final Rule is published in the Federal Register. As the Board is obviously aware, the changes to Reg Z are comprehensive, complicated, and wide-sweeping. The changes to the Periodic Disclosure requirements alone are extremely concerning. The need to design, re-program, test and load new calcs and forms requires reliance on teams of third-party data processors, financial institution staff, and compliance personnel. It is not unusual for wide-scale technology projects to take a year or more to implement. At the same time, creditors must analyze all aspects of the Final Rule, develop compliance programs, and re-draft their written policies and procedures, all while providing the day-to-day service to their borrowers that daily operations require. Vendors will also need time to revise their loan forms and other products to serve their financial institution clients and consumers. We believe a 2-year timeframe is both reasonable and necessary to implement compliant, useful loan programs so that consumers will receive optimum benefit from the proposed Reg Z changes.

CONCLUSION

On behalf of Securian and its credit union and bank clients, I appreciate the opportunity to comment on the Proposed Rule. Securian and its clients are dedicated to providing consumers with compliant and beneficial loan programs and products that provide useful, meaningful disclosures regarding the cost of their credit. We would like to be a resource for the Board, as needed, when drafting the Final Rule. If you have any questions regarding these comments or we can otherwise provide assistance, please do not hesitate to contact me at 651-665-3285.

Sincerely,

Catherine Klimek
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