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

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

Dear Ms. Johnson:

Citigroup, one of the largest U.S. financial services holding companies, respectfully submits these comments in response to the Federal Reserve Board's (the "Board's") December 8, 2004 advance notice of proposed rulemaking ("ANPR") on the open-end credit rules of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1666 (2000 & Supp. I 2002), as implemented by Regulation Z, 12 C.F.R. § 226 (2005).

A. Introduction

We welcome and support the Board's decision to undertake a comprehensive review of TILA's open-end credit rules. Since the last such review about two decades ago, consumers and creditors alike have experienced extraordinary commercial and technological change in the marketplace for open-end credit. Both have a stake in ensuring that open-end credit rules keep pace with that change.

We therefore look forward to working with the Board on the fifty-eight questions raised in the ANPR. Due to the breadth and complexity of the issues raised by these questions, we believe this work will not be limited to the ANPR itself. Instead, it will require a continuing dialogue with the Board, and we look forward to participating in that dialogue with the Board for some time to come.

We also believe that revisions to the consumer credit disclosure regime created by TILA and Regulation Z are the solution to some but not all of the issues presented by this ANPR. As stated in its preamble, TILA's overarching purpose is to protect both consumers and market competition through the "meaningful" disclosure of credit terms, 15 U.S.C. § 1601(a). Revisions to Regulation Z, therefore, should be reserved for those issues that can be addressed through short, simple, and understandable disclosures. Other issues, particularly those that are not amenable to bright-line tests and unambiguous rules, should be addressed through other means. This will result in appropriate solutions for all issues and protect the integrity and utility of the TILA disclosure regime itself.

We hope, then, that the Board will consider this Regulation Z review as but one tool for improving the regulation of open-end consumer credit. Others include the Board's rulemaking powers against unfair and deceptive acts and practices as well as the Board's role in consumer education efforts. These tools are more flexible and better suited than TILA disclosures to address regulatory goals in many areas and, particularly, the regulation of abusive practices and the promotion of financial literacy.

B. Guiding Principles

We believe that the Board's Regulation Z review should be guided by six basic principles:

1. The optimal level of disclosure standardization falls on a continuum based on the function of the particular disclosure. As discussed below, the role of the Schumer box in supporting comparison shopping can be enhanced through greater standardization. The role of the initial disclosure statement in reinforcing the Schumer box can be enhanced through a standardized summary of rates and fees, but its role in defining the overall relationship between creditor and consumer requires flexibility. The role of the periodic statement in describing specific extensions of credit, which vary by product and by billing period, also requires flexibility.

2. The Schumer box and some aspects of the initial disclosures should be simplified and standardized. As demonstrated by nutrition labels, simple standardized disclosures are most effective for promoting consumer understanding. This experience is also useful for ensuring consumer understanding of the cost of credit and comparison shopping, which are two of TILA's fundamental purposes, 15 U.S.C. § 1601(a). The Schumer box, while currently one of the most useful disclosures, could be made even more effective through better display of key information (such as default pricing information) and greater standardization. The initial disclosures would be improved with the addition of a simple standardized summary disclosure of the key rate and fee information, but other aspects of the initial disclosures, which generally define the contractual relationship between creditor and consumer, require flexibility.

3. The periodic statement should not be standardized because it is an individualized disclosure that is most useful when it is tailored to the specific product and the consumer's use of that product. A second fundamental purpose of TILA is to help consumers understand the cost of credit, 15 U.S.C. § 1601(a), and the periodic statement is the disclosure that helps consumers understand the cost of credit after it is used. The periodic statement addresses innumerable patterns in the use of open-end credit. Its content for any particular billing period may depend on the specific structure of the credit product or the type of transactions undertaken during the period, and to maintain its clarity, the periodic statement's structure must adjust with that content. The periodic statement cannot be standardized without making it more complex and less meaningful to the consumer.

4. Any new or revised TILA disclosure requirements must be unambiguous, subject to bright-line tests, and accompanied by safe harbor compliance protection for creditors. Despite its benefits to consumers and the marketplace, the TILA disclosure regime has too often been a magnet for spurious lawsuits, particularly class actions, against companies in the financial services industry. These lawsuits tend to be based on a creditor's technical non-compliance with TILA requirements, rather than identifying the creditor's distribution of inaccurate or unfair information actually relied on by consumers to their detriment. To preempt such wasteful litigation, any new or revised TILA disclosure requirements should be unambiguous, subject to bright-line tests, and accompanied by safe harbor compliance protection for creditors, including suitable sample compliance language in the staff commentary.

5. TILA disclosures should address discrete consumer information needs and should not be used to combat unfair and deceptive acts and practices generally. TILA is an appropriate means to address problems and practices amenable to solution through discrete information disclosures. It is not and should not be reshaped into a generalized weapon against unfair and deceptive acts and practices. TILA's focus is on comparison shopping and cost of credit understanding, and that focus is best served through a set of precise, simple, and certain disclosures. The Board's concerns about unfair and abusive acts and practices, by contrast, encompass a broad and constantly evolving array of practices. Although Citigroup and other responsible creditors share the Board's concerns about unfair and deceptive trade practices, such concerns are best addressed through a different and more flexible set of tools, such as enforcement actions and, perhaps, a rulemaking under the Board's Federal Trade Commission Act ("FTCA") authority to combat unfair and deceptive acts and practices, 15 U.S.C. § 57a(f) (2000). An FTCA rulemaking, in particular, would allow the Board to consult with other federal agencies and provide a consistent governmental approach to unfair and deceptive acts and practices.

6. Consumer education is best done by government and industry outside the context of TILA disclosures. Promoting financial literacy through consumer education is a goal shared equally by the Board and responsible creditors. It is, however, a goal best served through general information designed to educate conceptually. TILA disclosures, consisting of precise information intended to comply with precise regulations in the context of specific credit products, are ill-suited to that goal. We therefore believe that consumer education should be pursued by government and industry through outreach programs rather than TILA disclosures. Web sites, including frequently asked questions pages, and customer service call-in centers that we and other creditors operate are examples of such programs. We join those who believe that the Board's creation of its own interactive web site for consumers of credit cards and other open-end credit products, coupled with appropriate creditor referrals to that web site, would be a powerful consumer education tool. We would not, however, support any mandatory distribution of general education booklets or like materials by creditors in connection with credit offers or even existing account relationships. Consumers might confuse the content of general education materials with a creditor's specific TILA disclosures. Mandatory distribution of such materials by creditors also would be extremely inefficient. General education materials allow consumers to evaluate different creditors' offers. However, only a small percentage of consumers at a given time are shopping for credit. Because creditors cannot identify which consumers are currently shopping for credit, the vast majority of credit offers are unopened, which would be the fate of any general educational materials accompanying those offers. Even consumers who *are* shopping for credit need only one copy of such materials.

C. The Primary Issues

We think the three most important issues in this ANPR are (1) improving the Schumer box, (2) improving the initial disclosure statement, and (3) improving fee disclosure by deemphasizing the finance charge/other charge distinction, excluding one-time fees from the inflated APR, and classifying fees more clearly. These issues are discussed below in light of the guiding principles described above. The numbers of the ANPR questions addressed by each section of the discussion are presented in brackets.

1. The Schumer Box Can Be Improved and Standardized. [Questions 2, 7- 8, 27]

The Schumer box will be most useful as a comparison shopping device if the content is standardized. Currently, creditors are not required to include balance transfer, cash advance, late, and over-limit fees in the Schumer box. They may disclose these fees elsewhere on the application or solicitation. These are core fees, and flexibility in disclosure is neither necessary for creditors nor desirable for consumers. Although we do not support the other formatting mandates discussed in this ANPR, we think standardized fee disclosure to consumers who are comparison shopping is vital. The promotion of a level playing field for creditors as consumers decide among competing products mandates inclusion of these core fees in the Schumer box.

Schumer box requirements should be revised to disclose default pricing more clearly. Schumer box requirements should be revised to require that the triggers for the default rate are included in the Schumer box itself, in either the "Other APRs" section or a new "Default Rate and Triggers" section, rather than, as currently required, in the footnote text located below the Schumer box. This will enhance comparison shopping and consumer understanding by highlighting default pricing triggers and their effect on the other rates for the account.

The Schumer box will be more useful if the format is consistent among creditors. As in the case of nutrition labels, visually identical Schumer boxes will be of great benefit to consumers. The current regulation permits creditors to use a table in either row or column format. We suggest that the row format be adopted as the required format. One reason is that if all fees are included in the Schumer box, it may be difficult to include enough columns on a standard size piece of paper. A second is that most disclosures include descriptions, and it is difficult to read words in narrow columns.

2. The Initial Disclosure Statement Can Be Improved Through a Rate and Fee Summary, But Does Not Require Other Changes. [Questions 2-3, 29]

We support in principle a new requirement for a summary of the rates and fees to be included at the beginning of the initial disclosures. We believe such a requirement would promote comparison shopping on the basis of cost and would be beneficial to consumers and responsible creditors. We are prepared to work closely with the Board on the precise contours and content of such a requirement, and we recommend that the Board not commit to any particular type of summary without extensive dialogue with the industry and consumers. Empirical data, consumer testing, focus groups, and industry discussions, rather than academic literature and other *a priori* arguments, will be critical because academic assumptions often fail to predict actual consumer wants and needs or the actual costs or feasibility of requirements.

We oppose in principle any new mandatory disclosures concerning the mechanics of the finance charge calculation. We do not believe these mechanics are susceptible to standardization or simplification, and we think any effort along these lines will result in increased complexity without countervailing benefits to the consumer. Current disclosure requirements for these mechanics are adequate, appropriate and should remain unchanged.

We believe that Board directives on the format of the initial disclosure statement should be in the nature of guidance rather than regulatory mandates. The different distribution methods, document sizes, and other variables that characterize initial disclosure statements would make mandatory formatting for these statements burdensome and unwieldy. Agency guidance, on the other hand, could shape compliance effectively, while accommodating the inevitable need for adjustments and exceptions due to circumstances.

3. <u>Fee Disclosure Can Be Improved By Deemphasizing the Finance Charge/Other Charge Distinction, Excluding One-Time Fees from the APR, and Classifying Fees More Clearly.</u> [Questions 13-18, 21-22, 24]

TILA's comparison shopping and consumer understanding purposes would be better served by requiring clear and conspicuous disclosure of all core fees, rather than focusing on the artificial categories of "finance charge" and "other charge." The Schumer box is effective because it clearly and simply presents in one place all core fees, including one-time transaction fees such as balance transfer, foreign exchange, and cash advance fees, as well as other fees such as late fees and over-limit fees. This approach should be carried over to the proposed rate and fee summary for the initial disclosure statement, as discussed above in more detail. Not only will this promote consistency in disclosure, but it will present core fees in an understandable and highly effective way.

Today's distinction between "finance charge" fees that must be incorporated into an annual percentage rate ("APR") calculation and "other charge" fees that are not incorporated into an APR calculation is not helpful. This distinction creates what Regulation Z now calls an "historic" or "effective" APR, but which is more accurately described as an artificial and "inflated" APR. This inflated APR may provide a certain shock value to the consumer, but as discussed in the sections that follow, it is based on an illogical division of fees and often distracts the consumer from more important information. In addition, it usually results in a mathematically misleading disclosure that tends to undermine the honesty and integrity of the entire TILA disclosure regime. The Board itself acknowledges that including one-time fees in the APR is misleading, as evidenced by its APR exclusion rule for fees, points, and similar account opening charges, due to the "significant distortions" and "possibly misleading" effect of their inclusion in the APR. Regulation Z Commentary § 226.14(c)-7. We therefore urge the Board to exclude all one-time, transaction-specific fees from the effective APR, which is permitted by the Board's rule writing authority under TILA, 15 U.S.C. §§ 1604(a), 1606(a).

The current approach of dividing fees into "finance charges" and "other charges" clutters disclosures and emphasizes unimportant information. The importance of particular fees varies with a consumer's individual credit needs and behavior. Regulation Z should not attempt to predict those patterns in advance. Today a creditor cannot present all fees with equal prominence, but must label some finance charges, avoid that label for others, and disclose the finance charge group more conspicuously than the other group. But these distinctions are not based on the frequency with which these fees are typically imposed or on their financial significance. For example, minimum finance charges tend to be small ($1.50 or less) and relatively infrequent, while late fees are far greater and imposed far more frequently. Minimum finance charges, though, must be disclosed more conspicuously than late fees, focusing the consumer's attention on a smaller and less frequent cost. We realize that Section 122(a) of TILA compels the differential presentation of these fees in many instances, but the Board should use its regulatory authority to move toward uniform presentation where it can. *Compare* 15 U.S.C. § 1632(a) (compelling more conspicuous disclosure of finance charges) *with* 15 U.S.C. § 1604(a) (Board authority under TILA to differentiate and adjust). For example, the Board should ensure that, as in the case of the Schumer Box, fees disclosed in the proposed rate and fee summary for the initial disclosure statement, whether classified as "finance charges" or "other charges," are disclosed uniformly and without a distracting emphasis on "finance charge" fees.

The current approach of dividing fees into "finance charges" and "other charges" also varies illogically due to the nature of the creditor. For example, if Creditor A offers only credit accounts and imposes a fee on transactions from the credit account, the fee is a "finance charge" and must be disclosed as such in the inflated APR and with emphasized labeling in the initial disclosure statement. If Creditor B offers both credit and deposit accounts and imposes a fee on transactions from either type of account, however, the very same fee will be an "other charge" and will not be subject to such disclosure. Regulation Z's different treatment of these transaction fees under these circumstances is both illogical and misleading. *See* Regulation Z Commentary, § 226.4(a)-1, 4, and § 226. 4(b)(2)-1.

The current approach of inflating the APR by fee "finance charges" usually results in a misleading disclosure. The inflated APR potentially misleads because it suggests that fees that will be imposed only once will be imposed at least twelve times or that fees that will be paid off over time will be repaid in a single billing period. Consider, for example, the distorted mathematics of a balance transfer offer of 0% interest for twelve months with a one-time balance transfer fee of 3%. The current inflated APR calculation method would require the creditor to disclose (more conspicuously than other required disclosures) that the APR on that offer is 36%. However, the consumer will in fact NEVER pay 36% on the balance transfer. If the transferred balance is $1,000 the consumer will pay 3%—or $30—for that credit whether the consumer repays the balance transfer in twelve months or two months. However, the consumer will never, under any circumstances, pay 36%—or $360—for that credit. The disclosure is misleading because it makes the 0% offer with a 3% fee look much more expensive than a balance transfer offer at 19.99% interest. Presumably, the rationale for the inflated APR formula is that the consumer *might* repay the balance transfer after a single month. This, though, is inconsistent with the consumer's motivation for transferring a balance, which is to carry that balance and *not* repay it immediately.

The misleading nature of the inflated APR is a problem for consumers and creditors alike. For consumers, the inflated APR is a frequent source of confusion. It generates questions to our customer service centers from consumers who do not understand the figure and assume it is a mistake. This confusion further undermines consumer faith in TILA disclosures as a useful and understandable source of information.

Whatever the Board's decision on the exclusion of one-time fees from the inflated APR, the Board should provide clearer guidance on the classification of all fees. Fee classification under the TILA disclosure regime has been the source of considerable and needless TILA litigation during the past few years. The Board should use this Regulation Z review to foreclose further litigation in this area. It can do this by rejecting entreaties to classify over-limit fees as finance charges under some circumstances, an issue which is discussed in more detail below, and by otherwise maintaining bright-line rules for fee classification. The Board should also provide more comprehensive and definitive guidance on fee classification. Not only will this prevent needless litigation, but it will remove the chilling effect of fee classification uncertainty on the development of new and beneficial products. For example, unless all aspects of voluntary debt-cancellation coverage sold at account-opening fit neatly within a precise regulatory definition, creditors cannot be certain that premiums for the coverage will not be classified as finance charges. This uncertainty has stunted the growth and development of optional debt-cancellation products. This uncertainty should be eliminated by a bright line rule that premiums for all kinds of voluntary, properly disclosed debt-cancellation coverage are not finance charges.

D. Other Issues

The ANPR raises a variety of other issues. Presented below are responses to issues of particular importance to us, although we look forward to working with the Board on all of the issues raised by the ANPR. The responses are presented roughly in the order of the questions they address. As in the previous section, the numbers of the ANPR questions addressed by our responses are presented in brackets.

1. The Board's Proposed Approach of Separately Reviewing the Rules Applicable to Home-Equity Lines of Credit is Appropriate. [Question 1]

We support the Board's approach of conducting this ANPR in stages, and we believe that home-equity lines of credit should be excluded from this stage of the review, as well as any new or revised disclosure requirements resulting from it. Home-equity lines of credit receive special treatment under TILA, 15 U.S.C. § 1637a, because the consumer's home is such a vital asset, just as credit cards receive special treatment under TILA, 15 U.S.C. § 1637(c)-(g), because of their role in a consumer's daily economic life. Although there is also commonality in TILA's treatment of the two products, the different sets of policy issues implicated by them warrant separate and intense focus. For example, the summary of rates and fees proposed in this letter for the initial disclosures may work for both home-equity lines of credit and other open-end credit products, but the optimal format and content is likely to be different for each. We look forward to working with the Board on a subsequent Regulation Z review dedicated to home-equity lines of credit.

2. <u>Formatting Mandates Are Costly and Should Be Avoided.</u> [Questions 2-6, 38]

Board directives on formatting should be in the form of guidance not regulatory mandates. If the Board wishes to enhance the look of particular disclosures, it should keep in mind that a variety of formatting approaches can achieve the desired result. For example, any concerns the Board might have about navigational aids in credit card agreements or other initial disclosure statements can be addressed through a variety of techniques. In some documents, these concerns might be addressed through headings and subheadings, which generally would take up less space than a table of contents. In other documents, a table of contents might address these concerns. Whatever the case, creditors should be free to address the Board's concerns in ways that work best for particular documents and particular circumstances.

Creditors need formatting flexibility due to their commitments to particular printing technologies. Creditors frequently print their own documents. This requires a considerable investment in a particular type of printing technology. This technology, in turn, often limits the types of formats and even types of paper than can be used by a creditor. Even a seemingly small formatting mandate can make a creditor's technology obsolete and impose inordinate costs. This is also true for creditors using outside vendors for their printing needs. For these creditors, changes in font, color, paper size, and the like can result in substantial contract price increases.

Formatting mandates can impose enormous costs on creditors. In our February 13, 2004 letter to the Board on Docket Nos. R-1167 through R-1171 regarding the issue of extending Regulation P's "clear and conspicuous" disclosure standards to the other regulations administered by the Board, we calculated that extending Schumer box type-size, margin, and spacing requirements to our periodic credit card statements (which we send monthly to over 60 million accounts) and initial disclosure statements would cost us more than $185 million per year. This does not include the inevitable and substantial costs of class action and other legal challenges on hypertechnical grounds that would accompany such a major formatting change.

A formatting mandate that expands the "clear and conspicuous" disclosure standard of current law to require communication of the "significance" of the matters being disclosed is equally problematic. First, such a mandate would require costly wholesale revisions and a likely lengthening of our disclosure documents. Second, a "significance" standard is inherently malleable. No matter how diligently circumscribed by regulation or comment, the standard is an invitation to legal challenge. Third, a "significance" standard would likely interfere with a creditor's ability to assemble coherent and useful disclosure documents. Often such documents mix legally mandated disclosures together with optional but vital customer service information. "Significance labeling" would deter such mixing. The result is likely to be disclosure documents that are less understandable and user-friendly for consumers than at present.

3. Periodic Statements Should Not Be Standardized. [Questions 2, 4-6]

We oppose standardized transaction groupings on periodic statements. Creditors approach transaction groupings in different ways, with some grouping chronologically, others by category, and others through a mixture of the two. This is an important part of product differentiation, and consumers should be free to choose the approach they like best. In fact, consumer choice in the presentation of electronic communications is already a component of some online banking products and is likely to grow in importance as a product feature. Moreover, consumers benefit from a creditor's freedom to group transactions in a way that makes most sense for the particular credit product. For example, some products have balances subject to different terms, and some have subaccounts for family members or other authorized users. In addition, seemingly similar products can have significant differences. Balance transfers, for example, are sometimes treated as a type of cash advance, a type of purchase, or a separate category of transaction. These differences can have major implications for periodic statement groupings and, as in the case of the balance transfer example, may involve the application of different periodic rate finance charge calculations. Any mandated grouping of transactions could not anticipate all of these differences and would likely result in more cluttered periodic statements accompanied by confusing totals and subtotals and complicated sets of accompanying explanations. Finally, a grouping mandate may result in severe and unfair disruptions to the products and processing systems of creditors whose grouping methods are not selected, and it may interfere with the commercial structuring of credit products.

In general, standardization and formatting mandates would make periodic statements less useful to consumers and would unnecessarily interfere with account relationships. Periodic statements are not amenable to standardization because their content varies month to month with the type of transactions undertaken by the consumer. Items included one month are omitted the next month. Statements also vary from product to product based on the product configuration. The periodic statement cannot be standardized, therefore, without making it a complicated and wooden document that obscures rather than illuminates transaction history and credit costs. The periodic statement is also a creditor's primary means of communicating with its customer about the account relationship, and it is the essential means of communicating account history. The periodic statement content requirements of current Regulation Z ensure that statements include the relevant account information, and creditors should be free to present that content in a way that best suits their particular customer base, product offerings, and branding.

4. Over-Limit Fee Disclosures Should Not Be Changed. [Questions 21-22]

Over-limit fees are discrete and easily understood fees that should not be considered "finance charges" and should be kept out of the APR. By requiring simple, uniform, and conspicuous disclosure of the amount of any over-limit fees, the current regulatory regime supports TILA's goals of promoting comparison shopping and consumer understanding of credit costs. Any change in the regime to include some over-limit fees in the finance charge while excluding others is contrary to these goals.

Additional disclosures about the mechanics of over-limit fees are not needed by consumers and could be harmful to creditors. For consumers, additional disclosures about transaction authorization procedures, for example, would pale in comparison to knowledge of a single number, the credit limit, as an account management tool. For creditors, by contrast, disclosures about transaction authorizations would venture into the realm of sensitive risk management and merchant relations information. Any concerns the Board may have about excessive over-limit fees on accounts with very low credit limits should be handled on a case-by-case basis or with guidance directed toward predatory lenders.

5. <u>Change in Terms Disclosures Should Not Be Changed.</u> [Question 26]

Detailed formatting mandates for change in terms notices are not needed or appropriate. A wide range of factors give rise to and shape change in terms notices. Their formats, including the use of headings, white space, and text size, do and should vary with the circumstances and content of the notice. For example, some change in terms notices substitute or restate an entire agreement, while others make smaller contract amendments; some notices have a fixed effective date for a single change for an entire portfolio, while others have rolling effective dates based on billing periods or different effective dates by provision; some notices are mailed with periodic statements, while others are distributed as solo mail pieces; and some notices incorporate adverse action notices, while others do not. In all instances, the interests of clear and efficient communication are served by formats that suit the circumstances, rather than rigidly prescribed formats. In addition, change in terms notices are contract amendments. Irrespective of TILA requirements, it is in a creditor's interest as a matter of contract law to ensure that the wording, presentation, and delivery of a change in terms are sufficient to make the change a binding one. TILA formatting mandates in this area would add little to this incentive or dynamic.

Under the current notice requirement consumers typically receive change in terms notices at the optimum time. Because creditors generally include any change in terms notice with the billing statement that immediately precedes the effective date of the change, consumers receive the notice at the time they need to make a decision about the change in terms. This helps draw consumer attention to the change. (It also gives the consumer ample time to react, as notices are typically received twenty-five days or more before the effective date of a change.) An increase in Regulation Z's advance notice requirement, to thirty days for example, would preclude such timing. Instead, consumers would generally receive the change in terms notice with a billing statement that is two billing periods before the effective date of the change. This would increase the likelihood that the notice will be misplaced or forgotten and, in turn, the likelihood of surprise to the consumer.

6. <u>Balance Computation Method Disclosures Should Not Be Changed, Except Through Expanded Use of Abbreviations on Periodic Statements.</u> [Questions 28-30]

We do not believe that additional disclosures about the impact of balance computation methods on the cost of credit would be useful. First, we believe that additional disclosures by a creditor on its own balance computation methods would detract from the more important APR and fee disclosures. APRs, fees, and the borrowing and repayment patterns of each consumer generally affect the cost of credit far more than balance computation methods. Second, additional disclosures about the impact of any balance computation method on the cost of credit would be confusing because the impact depends on the consumer's borrowing and repayment patterns and the disclosure would therefore need to accommodate multiple variables. Third, because each creditor generally uses only one method of balance computation, any requirement that a creditor contrast its balance computation method with other methods so that a consumer may understand which method is the most favorable would force the creditor to be speculative and expose the creditor to a material risk of misstatement.

To the extent the Board wishes to promote consumer understanding of balance computation methods, the Board itself can and should do this through a web site and other educational outreach programs. Balance computation method disclosures are already quite difficult for creditors due to the complexity of the subject and the precision needed to match the disclosures to actual business practices. Creditors should not be asked to shoulder a greater burden in this tricky area. We believe, however, that this is an area ripe for generic consumer educational materials from the Board. These would be more understandable and useful to consumers than complex methodological disclosures by creditors.

We support the Board's proposal to permit creditors to use on periodic statements the same abbreviated balance computation disclosure used on the Schumer box. We also support the ancillary requirement that the abbreviated disclosure be accompanied by a statement on how the consumer may obtain a complete description of the balance computation methodology. Together, the abbreviation and reference to the complete description represent an understandable and comprehensive disclosure.

7. <u>The Board Should Defer to Recently Passed Federal Legislation on Disclosures Regarding the Effects of Making Only Minimum Payments.</u> [Question 31]

We join those urging the Board to defer action on minimum payment disclosures due to the bankruptcy reform legislation passed recently by the Senate and House of Representatives as S. 256. The minimum payment disclosure provisions in this legislation are the result of several years of work and compromise by members of Congress and affected parties. Any consideration of minimum payment disclosures by the Board should await implementation of this legislation.

8. <u>Payment Allocation Methodologies Are Too Complex and Varied for Standardized Disclosures in a Summary Form That Would Be Useful to Consumers.</u> [Questions 34-36]

The Board should not require disclosure of payment allocation methodologies because, in some circumstances, even a summary disclosure would be lengthy and extremely complex, making it of little practical use to consumers. For our bank card products, we summarize our payment methodology underneath the Schumer box as follows: "We apply your payments to low APR balances before higher APR balances. That means your savings will be reduced if you make transactions that are subject to higher APRs." We also summarize these two sentences on the front page of our direct mail solicitations that include promotional rate offers.

However, for some of our retail private label products, it is difficult for us to use this same summary disclosure because these products frequently involve promotional offers that trigger more complex methodologies, such as deferred interest offers made in the retail store as the consumer is shopping. When a consumer takes advantage of a deferred interest promotion, which is often associated with a big-ticket retail purchase, for example, the payment allocation methodology may vary depending on whether the promotion is expiring in the current billing period. To add to the complexity, the expiration of a deferred interest period can overlap with the terms of other promotional offers from that retailer accepted by the consumer, and late payment can trigger early termination of a promotion. This often makes an advance summary disclosure about the allocation to be employed during the last payment period contingent on variables unknown at the time of disclosure. Moreover, the most favorable allocation for a consumer with multiple promotions, including deferred interest promotions, is often not apparent and can depend on the consumer's payment patterns and preferences.

If the Board adopts a payment allocation disclosure requirement, the Board should provide sample language that is flexible enough to accommodate current market practices. Payment allocation methodologies are very complex (for example, the methodology may treat a minimum payment amount differently from amounts received in excess of the minimum payment, and may apply payments to different balances according to a formula that varies depending on the type of balances on the account). To avoid needless private litigation, we urge the Board to include model language with any disclosure requirement and provide a safe harbor for use of a summary disclosure. This model language should encompass situations like those described above for deferred interest promotions. If the Board thinks a major consumer education effort is required in this area, we again submit that the Board is in the best position to undertake this through a web site and other generic consumer education materials.

9. <u>All Open-End Credit Issuers and Accounts, With the Exception of Home-Equity Lines of Credit, Should Be Regulated Under the Same Set of Rules.</u> [Question 39]

We believe that Regulation Z should continue to have a single and uniform set of rules for all open-end credit issuers and all open-end credit products, with the exception of home-equity lines of credit. Special rules for subprime or other credit issuers or accounts will only spread confusion in the marketplace. This would be particularly true, for example, for consumers holding both regular and subprime or deposit-secured accounts, whether from the same or several creditors. Special rules would also generate private litigation relating to the characterization of creditors and accounts as subject to one set of rules or the other. If the Board is concerned about particular open-end credit issuers or particular product offerings, it should address those concerns through enforcement actions.

As discussed in Section D.1., above we believe that home equity lines of credit should be excluded from this stage of the review, as well as any new or revised disclosure requirements resulting from it.

10. <u>Unsolicited Additional Credit Cards Are and Should Be Allowed on Existing Accounts.</u> [Question 46]

We believe it is permissible under current law for a credit card issuer to provide an unsolicited additional card on an existing cardholder's account even when there is no renewal of or substitution for the cardholder's existing card. As we stated in our January 27, 2003 letter to the Board in response to an earlier request for comment on this issue in Docket No. R-1136, our view is that, as a technical matter, providing an additional card on an existing credit card account should ordinarily be regarded as a "substitution for the cardholder's existing card" even if the existing card is being supplemented and not superseded (that is, even if the existing card is not "voided"). This understanding is consistent with TILA's substitution and renewal card provision, 15 U.S.C. § 1642, and with the term "accepted credit card" as set forth in Regulation Z, 12 C.F.R. § 226.12(a)(2) n.21.

We believe it is appropriate for the Board to expressly adopt this view and allow credit card issuers to provide unsolicited additional cards without having to void the existing card. At present, there is no question that a credit card issuer is free to provide an unsolicited additional card at any time, so long as the additional card accompanies a renewed or substituted primary card and both are otherwise distributed in accordance with Regulation Z. Regulation Z Commentary, § 226.12(a)(2)-6.ii. If the primary aim of an issuer is to provide an additional card to the customer, and the existing primary card is still functional, there is no significant policy reason for requiring replacement of the primary card as a prerequisite for distributing an additional card. The lost card risk for creditors and consumers alike is no greater than (and, because only one card is involved, is in fact less than) in the replacement card situation. Moreover, the liability limitations of TILA and Regulation Z protect a consumer against unauthorized use of the additional card. *See, e.g.,* 15 U.S.C. § 1643; 12 C.F.R. § 226.12(b). Accordingly, no incremental risks would be associated with the distribution of unsolicited additional cards outside of the replacement card context.

11. <u>The Board Should Use Non-Regulatory Approaches to Supplement and Protect the TILA Disclosure Regime.</u> [Question 57]

The Board should undertake consumer education initiatives to promote financial literacy. These initiatives, rather than an expanded set of complex TILA disclosures, should be the focus of the Board's educational efforts. The Board's stature provides it with a "bully-pulpit" to educate consumers about the operation and use of open-end credit. The Board should act on this capability by establishing an interactive consumer web site. This web site would not only serve as an invaluable resource for the general population, but it would also serve as an authoritative and neutral source to which creditors might refer customers for background information. In conjunction with such a web site, the Board should consider significant consumer education campaigns in the mass media on various open-end credit topics. Together, these efforts could have as profound an impact on consumer understanding of credit cards and other open-end credit products as, for example, government education campaigns have had in the area of health and nutrition. These efforts should also spread and encourage best practices throughout the open-end credit industry by highlighting the differences between creditors on various matters.

The Board should use its unfair and deceptive acts and practices rulemaking and enforcement authority to address abusive practices. As we stated in the first section of this letter, the purpose of the TILA disclosure regime for open-end credit is to provide clear and usable information to consumers to help them comparison shop for credit cards and like products and understand the cost of credit. TILA disclosures are not and must not become an all-purpose tool against unfair and deceptive acts and practices in the open-end credit industry, because doing so will decrease their clarity and therefore run counter to their fundamental purposes. Accordingly, we reiterate our belief that the Board should address abusive practices through enforcement actions and separate rulemakings.

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Thank you for this opportunity to comment on the Board's open-end credit ANPR. If you have questions on any aspects of this letter, please feel free to call me at (212) 559-2938, Jeffrey Watiker at (212) 559-1864, or Karla Bergeson at (718) 248-5712.

Sincerely,

/S/

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