citigroup

Carl V. Howard
General Counsel
Bank Regulatory

Citigroup Inc.
425 Park Avenue
2nd Floor/Zone 2
New York, NY 10043

Tel 212 559 2938
Fax 212 793 4403

December 16, 2005

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 Inc., 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") October 17, 2005 second 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 proceed with a second Regulation Z ANPR to address the TILA amendments enacted as Title XIII of the Bankruptcy Abuse Protection and Consumer Protection Act of 2005 (the "Bankruptcy Reform Act"), Pub. L. No. 109-8, 119 Stat. 23, within the context of the Board's overall review of the regulation's open-end credit rules. These TILA amendments, regarding minimum payments, introductory rate disclosures, and other matters, present many of the same issues encompassed by the Board's initial December 8, 2004 ANPR on Regulation Z's open-end credit rules. We agree with the Board that all of these issues are best considered together.

As we stated in our April 15, 2005 letter responding to the initial Regulation Z ANPR, we believe the breadth and complexity of the Regulation Z changes now under consideration by the Board will require consultations between the Board and industry that extend beyond the ANPR notice and comment process. In that spirit, we look forward to a continuing dialogue with the Board on the matters addressed in this letter, just as we do on the matters addressed in our April 15 letter.

B. Minimum Payment Provisions

Before turning to the Board's specific questions, we offer the following general comments on the minimum payment provisions added to TILA by the Bankruptcy Reform Act. These comments: (1) discuss how the statements required by these provisions are more in the nature of general educational notices than account specific TILA disclosures; (2) discuss the distinction between "Board Estimates" and "Creditor Estimates" deliberately established by the statute; and (3) urge the Board to regulate in a way consistent with this general educational purpose and this distinction.

1. Notices Not Disclosures

The minimum payment provisions of the Bankruptcy Reform Act are somewhat incongruous additions to the TILA disclosure regime because their purpose is to educate consumers generally about the effect of making minimum payments rather than disclosing precise information about the consumer's account. These provisions mandate general educational information on periodic statements accompanied by access to minimum payment calculations that are, at best, very rough estimates of the effect of making minimum payments on a given balance. For this reason, we believe the vehicles for this information are best characterized and referred to as "educational notices" rather than "disclosures," and we will refer to them as such throughout this comment letter.

2. "Board Estimates" and "Creditor Estimates" as Distinct Options

The Board's regulations concerning the minimum payment educational notices should honor the two distinct compliance options added to TILA by the Bankruptcy Reform Act. One, which we label the "Board Estimate" option, allows creditors to rely entirely on Board-developed estimates for these notices, but at the cost of flexibility in the content and format of the notices. The other, which we label the "Creditor Estimate" option, allows banks and other creditors not regulated by the Federal Trade Commission to develop their own estimates for these notices and rewards creditors who undertake this burden with simpler and more flexible notices. Congress deliberately gave these creditors the choice between the two options. To fulfill that congressional policy, the Board's regulations must maintain and not blur the distinctions between the options.

Specifically, the "Board Estimate" option consists of the following:

> (i) presentation "on the front of the billing statement" in a "clear and conspicuous" manner of a hypothetical example showing that it would take 88 months to repay a $1,000 balance accruing interest at 17% APR if only minimum monthly payments of 2% of the balance were made each month, TILA §§ 127(b)(11)(A) and (B), 15 U.S.C. §§ 1637(b)(11)(A) and (B) (added by Bankruptcy Reform Act § 1301(a)); plus

(ii) a supplemental "detailed table" of information to be developed by the Board and delivered through toll-free telephone numbers by creditors "illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made." TILA § 127(b)(11)(H)(i), 15 U.S.C. § 1637(b)(11)(H)(i) (added by Bankruptcy Reform Act § 1301(a)).

The "Board Estimate" option therefore absolves creditors of the need to create minimum payment estimates and the burdens attendant to those estimates, such as systems costs. In return, though, creditors must present a lengthy and mandatory hypothetical example on the front of each billing statement supplemented by a toll-free telephone line to provide customers upon request with generic minimum payment estimates developed by the Board.

The "Creditor Estimate" option, on the other hand, consists of the following:

(i) presentation "on each billing statement" of a brief statement that "Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance," TILA § 127(b)(11)(K), 15 U.S.C. § 1637(b)(11)(K) (added by Bankruptcy Reform Act § 1301(a)); plus

(ii) supplemental information to be developed by the creditor and delivered through a toll-free telephone number "providing customers with the actual number of months that it will take to repay an outstanding balance." Id.

The "Creditor Estimate" option therefore allows banks and other eligible creditors to place a simpler, shorter and less jarring notice on each billing statement, and not necessarily on the front of each billing statement, supplemented by "actual" repayment period information for customers who request it. (For the reasons discussed below, however, this information is ultimately an estimate as well rather than a calculation of an "actual" repayment period.)

Congress thus established two distinct options for compliance with the new minimum payment provisions by banks and other eligible creditors, with each option incorporating a different mix of benefits and burdens for these creditors. The balance of benefits and burdens struck by Congress for each option should not be disturbed by the Board's regulations. In particular, the "Board Estimate" option should not be engrafted with requirements that these creditors supply account specific information in lieu of generic information to be developed by the Board.

3. Encouraging the Voluntary Choice of the "Creditor Estimate" Option by Understanding both its Superiority and its Limitations

Although the "Creditor Estimate" option cannot truly produce "actual" repayment period calculations, it will produce information more tailored and therefore relatively more accurate for each customer than the "Board Estimate" option. For that reason, the Board should encourage banks and other eligible creditors to choose the "Creditor Estimate" option voluntarily. To do this, the Board's regulations for the "Creditor Estimate" option should be flexible on the methods and assumptions used for the estimates, allow a reasonable tolerance for error, and provide strong safe harbor protection.

Like the "Board Estimate" option, the "Creditor Estimate" option also cannot provide customers with "actual" repayment periods because those periods will be affected by contingent, future events that cannot be predicted at the time of any repayment period calculation, even if the customer's payment of the same amount each month (itself an artificial construct) is assumed. For example:

> (i) Any amortization calculation for repayments on a credit card account cannot predict the events that might result in changes to the customer's variable or even fixed interest rates during the repayment period.
>
> (ii) Any amortization calculation cannot predict the timing of a customer's credit card payments from month to month throughout the repayment period, but under the average daily balance method (which is the industry standard), finance charge accrual, and thus the customer's actual repayment period, depends on the timing of those payments.
>
> (iii) The "actual" repayment period for an account balance can be affected by future transactions even if it is assumed that the amount of those transactions is not added to the balance. For example, the actual repayment period for an account balance subject to multiple interest rates will be affected by payment allocation rules, and the application of these rules may vary from month to month throughout the repayment period due to changes in the account's mix of interest rates and balances.
>
> (iv) Similarly, the application of minimum payment formulas, which often consist of a menu of alternatives applied variously each month to achieve positive amortization, is influenced by future account activity, which cannot be predicted in advance. How these formulas are applied from month to month will affect the length of any repayment period based on minimum payments.

Contingencies such as these make it impossible for banks and other eligible creditors to provide customers with "actual" repayment periods. In the final analysis, creditors can provide customers only with reasonable estimates of repayment periods through the use of various assumptions. These include, for example, the absence of interest rate changes and new transactions on an account, uniform customer payments over time at exactly the same point in a uniform billing period, and the application of a uniform payment allocation rule.

Nevertheless, the "Creditor Estimate" option would provide relatively more accurate estimates than the "Board Estimate" option because banks and other eligible creditors would be in a position to incorporate the consumer's actual balances and other specific account information into their estimates and therefore produce estimates better tailored to each customer's own account. The Board, on the other hand, will find it virtually impossible to develop a "typical" amortization table for the "Board Estimates" given the complexity and variety of creditors' minimum payment formulas and practices. At best, the Board's table would represent generic examples of the effect of making relatively small payments on a balance that accrues compound interest.

The Board is therefore faced with a situation where regulatory flexibility on the "Creditor Estimate" option would not dilute "actual" repayment period calculations, because such calculations are impossible to achieve, but would have the salutary affect of encouraging banks and other eligible creditors to choose that option voluntarily instead of relying on the less accurate "Board Estimate" option. Accordingly, the Board should encourage these creditors to choose the "Creditor Estimate" option voluntarily through a set of regulations that would make it attractive for them to do so. The regulations should provide these creditors with flexibility to adopt simplifying assumptions and computation methodologies. The regulations should also contain a reasonable tolerance for error and strong safe harbor protections to protect creditors electing the "Creditor Estimate" option against undue compliance and litigation risks. These recommendations are discussed below in more detail in our answers to Questions 77-79.

C. <u>Questions and Answers</u>

We present below further comments on the minimum payment educational notices and selected other issues raised by the second Regulation Z ANPR. These comments are presented in the form of answers to each of the 49 questions asked by the Board in the second ANPR. For the Board's convenience, we have also reproduced the questions and used the headings and numeration of the second ANPR.

A. Minimum Payment Disclosures

<u>Should certain types of accounts or transactions be exempt from the disclosures</u>?

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

A59: We support the following exemptions from the minimum payment educational notice requirements:

Fixed Repayment Period Products and Features

We believe that any home equity line of credit ("HELOC"), unsecured line of credit, or other open-end credit product with a fixed repayment period, including those with a draw period followed by a fixed repayment period, should be exempt from the minimum payment educational notice requirements.

The minimum payment notice requirements are inapposite to these fixed repayment products because the repayment period is an integral term of the agreement between consumer and creditor and is clearly and conspicuously disclosed to the consumer. *See, e.g.*, Regulation Z, 12 C.F.R. § 226.5b(d)(5)(i) (initial disclosures for open-end HELOCs include draw period and repayment term). Any estimate of that repayment term by either the Board or the creditor is not only unnecessary but would be misleading to the extent it varies from the actual and disclosed repayment term.

We do not believe that a standardized warning regarding minimum payments should be required for such fixed repayment products. The fixed repayment period requires a pre-calculation of the total interest the consumer will pay by making the required payment (which in this context is also the minimum payment) each month to repay the balance. A warning that making these required payments will increase the total amount required to repay the balance would be untrue.

Similarly, we believe any fixed repayment feature of a credit card or other product that otherwise has an indeterminate repayment period should be exempt from the minimum payment notice requirements. For example, many credit cards, particularly those offered by retailers, have major purchase plans with fixed repayment periods. As with fixed repayment products, the fixed repayment term of these plans is an integral term of the agreement between consumer and creditor and is clearly and conspicuously disclosed to the consumer.

In addition, subjecting "hybrid" products with both indeterminate and fixed repayment features to the minimum payment notice requirements for either the "Board Estimates" or the "Creditor Estimates" would be quite complex, impose significant administrative and compliance burdens on both the Board and creditors, and may well confuse consumers. For example, major purchase plan balances with fixed repayment periods often have minimum payment formulas different from the ones that apply to regular purchase balances on the account. For some major purchase plans, moreover, a separate minimum payment formula is applied discretely to each individual major purchase, and the results are then added to arrive at the total minimum payment. Each formula would need to be accommodated in an estimate unless one formula, presumably the formula for regular purchase balances, is applied to that account. In the latter case, the estimated repayment period for the major purchase plan would likely be significantly overstated. Indeed, in many cases, the estimate would be more accurate if the plan were excluded in its entirety.

Products and Features That Do Not Use Declining Balance Amortization

We believe that any product that bases its minimum payment formula on the original purchase price or similar amount, rather than on the declining balance, should be exempt from the minimum payment notice requirements as well. Amortization schedules for these products result in far shorter repayment periods for than the amortization schedules based on declining balances used for most regular credit card account balances. The minimum payment educational notices would be of little relevance to consumers who use such products and may in fact confuse them. Accordingly, an exemption for these accounts and features is both justified and appropriate.

Similarly, we believe that any feature with a minimum payment formula based on the original purchase price or similar amount associated with a credit card or other declining balance product should be exempt from the minimum payment notice requirements. Again, the major purchase plan features of retail credit cards often fit this description. The shorter minimum payment amortization schedules for such plans and, as discussed above, the difficulties and confusion associated with using the different minimum payment formulas of "hybrid" products to produce a repayment period estimate warrant the exemption of such plans from the minimum payment notice requirements. The same is true of any other feature that uses an original balance or similar minimum payment formula.

Promotional Balances

We also believe that balances associated with promotional transactions should be exempt from the minimum payment educational notice requirements during the promotional period.

Promotional transactions, particularly those used by retailers, come in many varieties. They can involve the reduction, waiver, or deferral of interest, separate minimum payment formulas, or no minimum payments at all. One common theme to these transactions, however, is that their special terms apply for a finite period or are otherwise circumscribed.

Exempting promotional balances from the minimum payment educational notice requirements during the promotional period would do no harm to the statutory scheme. Inherent in that scheme is a concern about the repayment of "typical" open-end credit balances, which are theoretically of unlimited duration and subject to lengthy amortization periods for minimum payments. Promotional balances are not such typical balances. They are by definition special balances subject to a finite duration or other limitations and are therefore not the type of balances targeted by the statute. (After the promotional period, of course, any remaining portion of a promotional balance pooled with a regular balance subject to the minimum payment notice requirements would also become subject to those requirements.)

Exempting promotional balances from the minimum payment educational notice requirements during the promotional period also would greatly simplify both the "Board Estimates" and "Creditor Estimates." The varied and unique aspects of promotional transactions would make application of the minimum payment educational notice requirements to these transactions burdensome for the Board and creditors alike. In addition, these burdens could chill creditor use and development of promotional transactions to the detriment of consumers, who benefit from the favorable interest rates and payment terms characteristic of these transactions.

If and to the extent the Board decides against an exemption for all promotional balances, we urge the Board to treat promotional balances as regular purchase balances for purposes of the "Board Estimates," as discussed in more detail in our answer to Question 71, and to permit creditors to treat promotional balances as regular purchase balances for purposes of the "Creditor Estimates," as discussed in more detail in our answer to Question 77. In both cases, treating promotional balances as regular purchase balances would, at worst, overestimate a consumer's repayment period due to the higher APR that usually applies to regular purchase balances. Treating promotional balances in this way, however, would have the countervailing and significant benefit of saving the Board and creditors from significant administrative and compliance burdens.

Partial Exemption for Sold Accounts and Accounts for Discontinued Products

Finally, we urge the Board to exempt sold accounts and accounts for discontinued products from the requirement that minimum payment notices be placed on periodic statements and, instead, allow notices for these accounts to be delivered in the form of freestanding statement inserts. By sold accounts, we mean those sold from one creditor to another. In this situation, the purchasing creditor may require some time to convert the new accounts to its statement system and should be granted the flexibility to provide insert notices during a transitional period. We recommend that up to 18 months be allowed for this transitional period to accommodate large and unusual account portfolio purchases as well as routine ones.

By accounts for discontinued products, we mean accounts for products for which no new accounts are being opened and for which existing accounts are closed to new transactions. In these situations, the number of accounts is usually very small, and the systems used to produce the statements for the closed accounts are usually moribund. Accordingly, the systems effort required to revise the periodic statement for such products would be extraordinarily costly and burdensome, particularly when evaluated on a per-account basis.

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

A60: We believe that the Board should exempt creditors from providing the minimum payment educational notices to consumers who: (1) use credit cards as a convenient payment vehicle rather than a source of more than incidental credit, (2) use credit cards to manage fluctuations in short term cash flow, or (3) frequently transfer balances or otherwise accept low APR promotional offers to take advantage of the arbitrage in interest rates. These exemptions would reduce the compliance burden on creditors for the minimum payment educational notices, while ensuring that the notices are provided to customers for whom the notices are most relevant.

Accordingly, we recommend that the Board exempt creditors from providing minimum payment educational notices to any customer who (1) has paid his or her account in full during the past twelve months, (2) has paid more than the minimum payment during any of the past three months, or (3) has promotional balances that equal 50 percent or more of his or her total account balance. We believe the first two criteria would capture most convenience users and those who use credit cards to manage cash flow. We believe the third criterion would capture the special sub-set of customers who intentionally (and rationally) make the minimum payment to maximize their benefit from promotional interest rates and terms.

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

A61: For the reasons discussed in our answer to Question 59, we believe major purchase plans, such as those offered by retailers for major appliance purchases, should be exempt from the minimum payment educational notice requirements if the plans have either a fixed repayment period or a minimum payment formula based on the original purchase amount rather than declining balance. In short, the fixed repayment periods or original purchase balance amortization formulas that apply to these plans distinguish them from the typical open-end credit balances of unlimited duration and lengthy minimum payment amortization periods primarily targeted by the statute. In addition, the different minimum payment formulas and payment allocation rules that often apply to major purchase plans would make the preparation of repayment estimates for major purchase plan balances complex and burdensome for both the Board and creditors. Together, the distinctions between major purchase plan balances and the typical open-end credit balances targeted by the statute and the difficulties that major purchase plan balances would pose for repayment estimates weigh in favor of their complete exemption from the minimum payment educational notice requirements.

If the Board decides against a complete exemption of major purchase plan balances from the minimum payment educational notice requirements, these balances should at least be treated as regular purchase plan balances for purposes of the requirements. This is not an optimal solution, and it would likely lead to overstatement of the amortization periods for major purchase plan balances by overlooking their fixed repayment periods or their shorter amortization schedules based on original purchase amounts rather than declining balances. Nevertheless, this solution is preferable to the complexities and burdens that would be associated with addressing major purchase plan balances according to their terms in either the "Board Estimates" or "Creditor Estimates."

Hypothetical examples for periodic statements.

Q62: The Bankruptcy Act authorizes the Board to periodically adjust the APR used in the hypothetical example and to recalculate the repayment period accordingly. Currently, the repayment periods for the statutory examples are based on a 17 percent APR. Nonetheless, according to data collected by the Board, the average APR charged by commercial banks on credit card plans in May 2005 was 12.76 percent. If only accounts that were assessed interest are considered, the average APR rises to 14.81 percent. See Board of Governors of the Federal Reserve Board, Statistical Release G. 19, (July 2005). Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

A62: We recommend that the Board adopt the 17 percent APR used in the statutory example without change or an adjustment mechanism. The 17 percent APR used in the statute is a reasonable APR and, given the frequent fluctuations in interest rates, any attempt to use a different figure on the basis that it is more in line with "current" interest rates would likely itself become quickly out-of-date. Moreover, the benefits of having a "current APR" either initially or as adjusted from time-to-time are minimal, because the relevance of the statutory example to any particular consumer is not dependent on its specific APR. Rather, the relevance is simply the general message that paying off a given credit card or other open-end credit balance using only minimum payments can take quite a long time. For these reasons, we believe that the costs and burdens to the Board and creditors alike of adjusting the APR used in the statutory example from time to time far outweigh the benefits of such adjustments and we would not support any rule requiring periodic adjustment in the APR used in the statutory example.

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

A63: HELOCs should be exempt from the minimum payment educational notice requirements, as discussed above in the answer to Question 59. Virtually all HELOCs have fixed repayment terms from the date of origination or following an initial draw period. As such, HELOCs do not represent the typical open-end credit balance of theoretically unlimited duration targeted by the notice requirements.

If the Board decides not to exempt HELOCs from the notice requirements, the Board does not need account balance, APR, or minimum payment formula information to estimate a HELOC repayment period because the repayment period is established by contract between the creditor and consumer, without regard to those factors.

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

A64: We share the Board's concern that the statutory example's use of the word "typical" to describe a two percent minimum payment does little to communicate the hypothetical nature of that payment percentage and the example as a whole. We also agree that use of the word may induce some consumers into misperceiving the percentage as an industry norm. In an effort to solve these problems, the word "typical" could be dropped from the example, changing the reference to the percentage from "the typical 2% monthly payment" to "a 2% monthly payment." This change would not affect the essential meaning of the notice.

We also would support an effort by the Board to clarify the hypothetical nature of the example, so long as it did not materially lengthen the notice. One such approach might be to add the word "someone" so that the example would read as follows: "For example, someone making only a 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full."

<u>What assumptions should be used in calculating the estimated repayment period?</u>

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

A65: As the Board recognizes in its discussion, the industry standard is to use the average daily balance method, rather than the previous balance method, to calculate finance charge accruals. The Board's use of the average daily balance method would therefore result in more realistic estimates, as the average daily balance method, which accounts for payments prior to the end of the billing period, generally produces a materially different (and shorter) amortization period than the previous balance method, which accounts for payments only as of the last day of the billing period. It should be relatively straightforward for the Board to use an average daily balance method in making its estimates, particularly if the Board uses the simplifying assumptions of a uniform billing period and a uniform receipt date near the end of that billing period. These latter assumptions are discussed in more detail in the answer to Question 77.

We support the Board's adoption of the no grace period and no residual interest assumptions as used in the statutory examples. These assumptions are appropriate because they are simple, a grace period typically does not apply to revolvers, and residual finance charges typically do not apply in a payoff situation.

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

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

A66: As a general proposition, we do not believe that "typical" minimum payment formulas apply to any particular type of account. Formulas used for various products vary from creditor to creditor in seemingly small but often quite material ways. In our view, the best the Board can do is use a simple and easily explainable formula that will show the lengthy periods required to pay off balances with small monthly payments. One possibility for such a formula is 1% of the balance plus the accrued finance charges for the billing period, with a minimum payment of $20.

We also believe that the Board should not attempt to extrapolate the minimum payment formula applied to an account from the minimum payment amount for a given month. Because most minimum payment formulas attempt to ensure positive amortization each month, they usually absorb past due amounts, accrued finance charges, and certain fees in addition to some principal. An account's minimum payment will therefore vary from month to month and often quite dramatically based on account activity. Any attempt to extrapolate a minimum payment formula from the minimum payment amount for a particular month would require detailed knowledge of that activity and, even then, could be fraught with problems due to the complexity of many formulas.

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

A67: As discussed above in the answer to Question 66, we do not believe there are "typical" minimum payment formulas for any of these products, and we do not believe that the attempted development of such "typical" formulas by the Board would significantly improve the accuracy of the "Board Estimates" as applied to any particular consumer. That said, we believe that 1% of the outstanding balance plus finance charges, with a minimum payment of $20, is as good a generic formula as any for credit cards and most open-end credit products other than HELOCs.

We believe that the Board's best solution to a minimum payment formula for HELOCs, as with the other special issues raised by HELOCs, is to exempt these products entirely from the minimum payment notice requirements. As we discuss in our answers to Questions 59 and 63, we believe this exemption is appropriate because HELOCs have fixed repayment periods that are clearly and conspicuously disclosed and, therefore, already known to the consumer.

If and to the extent the Board decides not to exempt HELOCs from the notice requirements, the Board should develop a different notice regarding HELOC repayment periods. The Board need not develop a separate minimum payment formula to estimate the repayment period for such notices, however, because each consumer's repayment period is already a contractual term that has been disclosed to the consumer. Arguably, the Board could choose a "typical" HELOC repayment period, perhaps 15 years, for the "Board Estimate" of HELOC repayment periods, but this would be extremely confusing to most consumers to the extent it conflicted with the time remaining on their actual repayment periods.

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

A68: No, creditors should neither be required nor given the option to program their systems with their own minimum payment formulas for purposes of the "Board Estimates." Any mandate in this regard would be antithetical to the statute and the right it grants banks and other eligible creditors to choose between the use of "Board Estimates" based on Board-supplied data or "Creditor Estimates" based on their own data.

In addition, to the extent the other Board assumptions used in developing the estimates differ from the creditor's actual practice, the use of the creditor's own minimum payment formula may do little to improve the accuracy of the estimate and might even further confuse consumers by lulling them into viewing the "Board Estimates" as more tailored to the consumer's own situation than is in fact the case. For this reason, and because "voluntary" requirements tend to become "mandatory" over time, even a voluntary creditor modification would be problematic.

Finally, different balances on a creditor account are sometimes subject to different minimum payment formulas. Requiring creditors to program each of these formulas into their systems would be burdensome in the extreme, and requiring creditors to choose the proper formula to apply to a particular inquiry from a consumer would subject them to undue compliance and litigation risk.

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

A69: Yes, the Board should assume the absence of negative amortization in the basic minimum payment formula used for its estimates because this is consistent with both prevailing and best practice in the industry. Consistent with our view that creditors not be required to provide tailored information for the "Board Estimates," we believe that the Board should not address negative amortization situations in this context. Concerns about negative amortization are best addressed in the supervisory context.

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

A70: According to *The Nilson Report*, approximately 82.3 percent of credit card balances are purchase balances while approximately 17.7 percent of credit card balances are cash advance balances. *The Nilson Report*, No. 828, p.6 (Feb. 2005). Purchase balances are usually subject to a lower interest rate than cash advance balances, but neither all purchase balances nor all cash advance balances are at the same rate. Creditors typically extend a wide variety of promotional offers. As a result of those offers, a cardmember may be eligible for and receive several different promotional rates at any one time. The extent to which individual cardmembers take advantage of promotional rate offers varies widely.

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

A71: Yes, it would be appropriate for the Board to use a single APR in the "Board Estimates" and that single APR should be the regular purchase APR.

It is impractical for the Board to use multiple APRs for the "Board Estimates." To do so, the Board would need to rely on consumers to understand and input multiple APRs and balances that apply to their accounts (as well as any expiration dates and go-to APRs associated with promotional APRs should the Board not accept our recommendation, discussed in our answer to Question 59, to exclude promotional transactions from the minimum payment notice requirements). The time and complexities associated with doing this would make accurate inputs difficult for most consumers and would likely deter many from even pursuing "Board Estimates." Even on those occasions where these inputs were done correctly, they would be based on average daily balance and not ending balance amounts due to current Regulation Z requirements (and, as we state in our answer to Question 73, changing the Regulation Z requirements for purposes of the minimum payment education notices is not required by the statue and would be unduly burdensome). In short, the complexity and effort required to accommodate multiple APRs for the "Board Estimates" would be prohibitive.

The regular purchase APR is the obvious and most appropriate candidate for the single APR to be used in calculating the "Board Estimates." As discussed in our answer to Question 70, more than 80 percent of credit card balances are purchase balances. Regular purchase balances, for which the use of the regular purchase APR is accurate per se, are a large portion of these purchase balances. Most of the remaining purchase balances are subject to promotional APRs, which are typically lower than the regular purchase APR and typically revert to the regular purchase APR after the promotional period. Applying the higher regular purchase APR to these balances during the promotional period would at worst overestimate the repayment period for the consumer's aggregate account balance.

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

A72: We believe all of these variations for addressing multiple APRs on a single account would complicate "Board Estimates" without, as a general proposition and as we discuss in our answer to Question 71, providing more realistic results than use of the regular purchase APR. We believe the Board's best strategy for handling the issue of multiple APRs is to make it attractive for banks and other eligible creditors to choose the "Creditor Estimate" option under the statute, because only a creditor can reasonably address the actual mix of APRs on a customer's account.

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

A73: We strongly oppose any requirement that creditors disclose on periodic statements the portion of the ending balance subject to each APR for an account. First, such a new periodic statement disclosure is contrary to the statutory scheme of absolving creditors of the burden of calculating repayment periods using minimum payments unless a bank or other eligible creditor chooses the "Creditor Estimate" option under the statute.

Second, disclosing such balances on the periodic statement would be burdensome to creditors in and of itself and, to be at all useful for minimum payment calculation purposes, would also require an extremely burdensome disclosure of how long each balance would be subject to each APR. For example, any calculation of the time it would take to repay a particular balance subject to a temporary promotional APR that will later expire in favor of a regular purchase APR requires knowledge of the expiration date for the promotional APR in addition to the balance and both APRs themselves. Imposing such a disclosure requirement on creditors might well chill the use of promotional APRs due to the problems creditors may have in programming and coordinating the required disclosures on the large number and wide variety of promotional APR offers that can be outstanding at any one time. This, in turn, would have a detrimental impact on competition in the consumer credit marketplace.

Finally, such a new periodic statement disclosure would impose significant upfront and recurring systems and document redesign and printing costs on creditors.

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

A74: We strongly oppose any requirement that creditors program their systems to calculate a customer's repayment period based on the particular mix of APRs applicable to the customer's account for purposes of the "Board Estimates." As discussed previously, such a mandate is contrary to the statutory scheme, would impose significant costs on creditors, and would still not transform the "Board Estimates" from anything but very rough estimates of the effect of making only minimum payments on a particular balance.

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

A75: We disagree with the premises of this question given our view that the "Board Estimates" should be based on a single APR and, preferably, the regular purchase APR. As discussed in our answer to Question 71, a realistic repayment period based on multiple APRs is virtually impossible to approximate given the many different ways consumers can use their accounts. Use of a single APR balance, therefore, would promote simplicity without sacrificing accuracy.

That said, we agree that, in most multiple APR scenarios, the most reasonable payment allocation assumption is to allocate payments first to the balance carrying the lowest APR. Although payment allocation rules in practice are varied and complex, this assumption roughly approximates the approach of many, if not most, creditors. It also would have the virtue of never underestimating the overall repayment period.

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

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

A76: We oppose any requirement that the assumptions used by the Board to develop its estimates be disclosed on periodic statements. Such a disclosure is beyond the scope and contemplation of the statute. In addition, if such a disclosure addressed the nature of the Board's assumptions in any detail at all, it would be unduly burdensome, impractical, and confusing given the complexity of those assumptions.

To prevent the "Board Estimates" from being misperceived as actual account information, we believe a brief explanation of the estimate can and should be given to consumers who call for a "Board Estimate." The Board should prepare model language for this explanation not only to aid in consumer understanding but also as a safe harbor for creditors against nuisance litigation. The Board's model language should emphasize that each "Board Estimate" is a generic example of the repayment period using minimum payments, does not provide account specific information, and does not reflect the actual amortization of balances on the account. Any more detailed explanation of the "Board Estimate" or the assumptions underlying it would be extraordinarily complicated, confusing to the consumer, and ultimately not worthwhile given the very rough nature of the estimate.

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

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

A77: The Board should develop reasonable and flexible standards for "Creditor Estimates" of the "actual number of months" to repay an outstanding balance. Such standards would encourage banks and other eligible creditors to choose this statutory option voluntarily rather than relying on the "Board Estimate" option. That is a desirable goal, because "Creditor Estimates" would be more tailored to the consumer's own account and, therefore, more realistic and relevant to consumers.

As discussed in the introduction to this letter, however, it is a fallacy to view such estimates as mathematically precise calculations of "actual" repayment periods. Actual repayment periods cannot be captured by these estimates because those periods are subject to future, contingent events, such as interest rate changes and the timing of customer payments, which cannot be reliably predicted in advance. For this reason, the Board should not hesitate to grant creditors the right and flexibility to use simplifying assumptions and computation methodologies that work best for them and would reduce the burden of undertaking the "Creditor Estimate" option. Such an approach by the Board would not sully the integrity of the "Creditor Estimates," which cannot capture "actual" experience in the first place, and would provide the overriding benefit of inducing more creditors to undertake these estimates.

Consistent with our view that the Board's regulations should be flexible in this area to reduce the cost and burden on banks and other eligible creditors who undertake these "Creditor Estimates," we believe the Board regulations should allow creditors to track their actual practices or adopt, in whole or part, the simplifying assumptions and methodologies discussed below. These simplifying assumptions and methodologies should be augmented by a reasonable tolerance for error and strong safe harbor protections, also as discussed below. Not only are the latter necessary to encourage creditors to undertake these estimates voluntarily, but they are also consistent with the very purpose of the minimum payment educational notices. That purpose is to educate consumers on the effect of making minimum payments and to get them to pay more. It is not to impose strict liability on creditors and entrap them into a compliance and litigation morass for attempting to provide their customers with more tailored information than that which can be provided by the Board.

The following is our recommended protocol for the "Creditor Estimates," which consists of a set of simplifying assumptions and methodologies, a flexible error tolerance, and strong safe harbor protections. The protocol assumes that "Creditor Estimates" will be made at the account level. The protocol is also presented with particular reference to credit card accounts. If and to the extent HELOCs and other products with characteristics different from credit cards are not exempted from the minimum payment educational notice requirements, the protocol should be adjusted to address the circumstances presented by those products, and we stand ready to work with the Board to do so.

<u>Protocol for "Creditor Estimates"</u>

<u>First</u>, the credit card account balance should in all cases be examined as of the end of a particular billing period.

In all cases, this approach would avoid the complex and burdensome task of capturing unbilled transactions for purposes of the estimate.

In the case of two-cycle billing, this approach should involve treatment of all balances at the end of a billing period as revolving balances subject to finance charges on a going forward basis only. Requiring a creditor to distinguish between revolving balances and new purchases would impose tracking and methodological complexity and burdens on a creditor that would far outweigh the relatively small effect such a simplifying assumption would have on a repayment period estimate for a two-cycle billing product.

Second, the absence of changes to the credit card balance following the end of the relevant billing period should be assumed.

Specifically, it should be assumed that there will be:

1) no grace period, new purchases, transactions, fees, rebates, charges, or other activity, such as changes in the status of any disputed amounts, that could affect the account balance or the application of the minimum payment formula to it; and

2) no changes in the interest rate or rates that apply through either the operation of a variable rate or the lawful change to a fixed rate.

Third, timely payment by the customer of exactly the minimum amount due throughout the repayment period should be assumed.

Any variations in assumptions regarding the amount or timing of payments would add immense complexity but still could not predict a customer's actual future payment patterns.

Fourth, a uniform billing period should be assumed.

Credit card processes typically run on billing periods rather than calendar months for purposes of operational efficiency. Billing periods average roughly 30 days. For credit card customers, the difference between billing periods, which are effectively "billing months," and calendar months is immaterial.

Any estimate should be based on an assumed uniform billing period rather than actual billing periods which vary in length by a few days from period to period. An assumption of uniform billing periods would simplify the calculation process without a material impact on the estimate. Requiring use of actual billing periods would force credit card issuers to undertake a considerable and complex programming effort, since they typically do not project billing periods further than a year into the future. Moreover, projecting actual billing periods far into the future would be an exercise in false certainty because credit card issuers frequently adjust the starting and ending dates and precise lengths of billing periods for some or all of their billing groups to meet various business needs.

Fifth, a uniform payment receipt date within each billing period should be assumed. Actual data cannot be used for this purpose, of course, because no one can predict when a customer will choose to pay a credit card bill in future billing periods. The use of a variable payment date, such as an approximated payment due date, is also inappropriate, because it would add significant complexity with little or no benefit in anticipating the timing of the customer's actual payments. Credit card issuers adjust payment due dates frequently for customer service and other business reasons, such as avoiding weekend due dates. Any tendency of customers to pay credit card bills in the run up to payment due dates can be approximated by a uniform payment receipt date toward the end of the billing period (e.g. the 25th day of a 30-day billing period).

Sixth, a uniform rule for applying the minimum payment to the various balances subject to different interest rates, such as purchase, promotional, and cash advance balances, should be assumed.

An obvious choice is allocation of 100 percent of the minimum payment to lower rate balances before higher rate balances, because this would never underestimate the overall repayment period.

An assumed payment allocation rule is necessary because actual payment allocation rules tend to be complex and, even more important, subject to various contingencies. For example, actual payment allocation can vary from month to month on a particular account based on the particular mix of transaction balances on the account, distinctions between transaction balances of the same type due to contractual grandfathering requirements, the timing of promotional balances and their termination, and like factors. Accommodating such complexity would not only be burdensome but fruitless due to such contingencies.

Seventh, flexibility should be allowed in computational methodology.

For example, amortization calculations using daily compounding can be substantially mimicked through the use of a substitute formula. The use of such a formula may reduce development and implementation costs for issuers that use daily compounding. Although the use of this formula would result in a variation in resulting interest accruals, the variation would be modest and can be accommodated by a reasonable tolerance for error.

Similarly, as in the case of the "Board Estimates," residual interest should be excluded from "Creditor Estimates" to simplify the estimates. The very small amounts involved would have a negligible impact on amortization periods, but the complexity and contingent nature of residual interest amounts would make them quite burdensome to replicate in an amortization formula.

Eighth, creditors should not be required to develop different estimating methodologies for minimum payment formulas that apply to atypical customers or for promotional or other non-standard transactions.

Minimum payment formulas different from a creditor's standard minimum formulas may apply to small groups of atypical customers. These might include, for example, customers who opted out of a newer version of a creditor's minimum payment formula and maintain accounts under older versions, customers who receive test versions of newer minimum payments formulas, and customers of relatively unique products with relatively unique versions of the creditor's basic minimum payment formula. Requiring creditors to develop special estimating methodologies for such small groups of customers would impose significant systems development costs, operational complexities, and similar burdens on creditors well in excess of the benefits to these customers. Despite their different account terms, "Creditor Estimates" based on a standard minimum payment formula can still provide these customers with useful information.

Similarly, creditors should be given the latitude to use their standard estimating methodology for promotional or other non-standard transactions. For example, in our Answers to Questions 59 and 61, we recommend that the minimum payment educational notices should not apply to either promotional or major purchase plan transactions, among others, given the special interest rate terms, repayment periods, and amortization schedules that may apply to them. To the extent the Board chooses not to exempt these transactions, creditors should not be required to undertake the unduly burdensome task of developing special and, quite likely, extremely complex estimating methodologies just for these transactions. Instead, creditors should be granted the flexibility to conform the transactions for purposes of employing their standard estimating methodologies. In particular, creditors should be given the flexibility to treat the balances subject to these transactions as regular purchase balances for purposes of minimum payment estimates so that the complexities raised by the special terms of these transactions can be bypassed.

Ninth, a reasonable tolerance for error should be allowed for "Creditor Estimates," particularly with respect to minimum payment formulas, because even small variations in calculations can lead to different estimates.

For example, variations in arithmetic methodology, such as the choice between rounding or truncating and the particular places in an algorithm where rounding or truncation is used, can result in reasonable but noticeable variances over the lengthy periods of time involved in the repayment estimates using minimum payments. Other factors, such as the forgiveness of a very small balance extended as a courtesy to a customer, can also vary an estimate.

A specific recommendation for an error tolerance is presented below in the answer to Question 78.

Tenth, a strong and flexible safe harbor provision should apply to "Creditor Estimates."

Strong safe harbor protection is necessary to protect "Creditor Estimates" from the vexatious litigation they could attract due to their complexity, imprecision, and novelty. Without such protection, banks and other eligible creditors may be reluctant to choose the "Creditor Estimate" option, which would benefit no one.

An example of such safe harbor protection would be a procedure under which a creditor's assumptions and methodologies for providing "Creditor Estimates" could be submitted to the Board for approval. Upon receiving such approval, creditors could be assured that their estimates would receive the full benefit of the liability protections afforded by Section 130(f) of TILA for acts or omissions taken in good faith in conformity with an approval by an authorized Board employee.

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

A78: Yes, the Board should adopt a reasonable tolerance for error for these "Creditor Estimates." A reasonable tolerance will mitigate the litigation and compliance risks, as well as other burdens attendant to the "Creditor Estimate," and thus serve as an incentive for creditors to choose the "Creditor Estimate" option. Moreover, given the lengthy repayment periods involved in estimates using minimum payments, a reasonable tolerance will not materially affect the message that using small payments to pay off a balance takes a long time.

The error tolerance adopted by the Board should be flexible, pegged to the length of the estimate, and subject to Board guidance rather than a precise limit. The ultimate nature and range of the tolerance needs to be developed in tandem with the assumptions for the "Creditor Estimates." With simple, clear, and comprehensive assumptions, the resulting estimates will be more standardized, and the tolerance can be narrower.

We also believe that the error tolerance for "Creditor Estimates" should be asymmetrical in favor of any overestimation of the repayment period. Inevitably, the complexity of various credit card products and individual account histories will require banks and other eligible creditors electing the "Creditor Estimate" option to make choices on the correct inputs for particular estimates. Creditors who choose to overestimate the repayment period when in doubt would be doing no harm to the consumer and should receive extra protection against claims to the contrary.

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

A79: We believe most banks and other large creditors eligible for the "Creditor Estimate" option should be able to provide consumers with reasonable repayment period estimates if they are permitted to use the simplifying assumptions and methodological flexibility discussed above. Absent these, however, the system development costs could be substantial and would deter these creditors from choosing the "Creditor Estimate" option. Of course, no matter how sophisticated the creditor's accounting and computer systems, the repayment period estimates they would produce would be just that and would not be "actual" repayment periods due to the previously discussed future, contingent events that affect "actual" repayment periods.

<u>Are there alternative approaches the Board should consider</u>?

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

A80: We have no comments on alternative frameworks for the repayment calculation formula at this time other than to underscore that no alternate framework will change the two fundamental issues before the Board regarding the minimum payment educational notices.

First, the complexity and variety of creditor minimum payment formulas and practices make it impossible for the Board to develop a "typical" amortization table for "Board Estimates." No matter what the calculation formula used to produce it, the Board's table will still represent generic examples of the effect of making relatively small payments on a balance that accrues compound interest and very rough estimates of the minimum payment pay off times that will be experienced by most consumers. For this reason, the Board should develop its table with clarity and simplicity in mind, because those will be its primary virtues.

Second, banks and other creditors eligible for the "Creditor Estimate" option are in the best position to provide more tailored repayment estimates to their customers, but the statute gives them the option rather than the obligation to do so. Making it attractive for these creditors to pursue this option voluntarily through reasonable and flexible regulation may be a more important regulatory goal than marginal improvements in the generic repayment calculation formula.

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

A81: Some creditors and other organizations offer interactive payment calculation tools on their websites. (An example of such a calculator is the one provided by Visa at www.practicalmoneyskills.com.) Generally, the calculators require the consumer to input a balance, an interest rate, and a minimum payment percentage or fixed payment amount and, based on those inputs, estimate the repayment period and repayment cost. We are not in a position to comment on the assumptions used for any of these calculators.

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

A82: Providing "Creditor Estimates" on periodic statements would be costly and burdensome to most banks and other creditors. Although we would not object if the Board rewarded creditors who provided estimates on their statements with relief from the toll-free telephone number requirement, we would strongly object to any Board regulation that required these creditors to do so or penalized them in any way for failing to do so.

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

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

A83: We believe the Board's guidance on the "clear and conspicuous" disclosure on a periodic statement of the minimum payment disclosures mandated by the statute should be flexible given the wide variety of statement styles used by creditors. Any mandate on type size, location, or other aspects of the disclosures would be needlessly burdensome, given the many different paper sizes, type sizes, formats, and other variations that characterize periodic statements. In particular, the cost burden imposed on creditors by formatting mandates can be enormous. See, for example, our February 13, 2004 letter to the Board on Docket Nos. R-1167 through R-1171. In that letter, we discuss our estimate 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.

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

A84: We believe the Board should develop model language for a brief explanation of the "Board Estimate" and "Creditor Estimate." These explanations should be given to consumers receiving the estimates. Both explanations should include frank discussions of the limitations of the estimates. We look forward to working with the Board on this model language as the regulatory process unfolds.

B. Introductory Rate Disclosures

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

A85: We believe the Board's guidance on the introductory rate disclosures needs to be general and flexible due to the innumerable approaches, in terms of both substance and format, to the marketing of introductory rate offers. If the guidance includes examples, the examples should be characterized as illustrative rather than exhaustive. We oppose any type size or other formatting mandates for these disclosures. Such mandates would make it difficult for creditors to adjust the disclosures as warranted by the circumstances of a particular offer.

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

A86: We believe the Board's guidance on the "immediate proximity" issue, like its overall guidance on the introductory rate disclosures, needs to be general and flexible. Any examples should not carry an inference that they are the sole means of compliance. Linking the word "introductory" to the temporary APR by formatting devices such as lines, arrows, or fonts, or placing it above, below, before, or after the temporary APR are but some of the ways the "immediate proximity" standard could be met. Given the innumerable variations in the style and content of introductory rate marketing materials, the Board should leave the particular means of compliance to the reasonable and good faith judgment of creditors on a case-by-case basis.

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

A87: We believe the Board's standards for references to the expiration date and go-to APR "closely proximate" to the "first mention" of the introductory rate should be general and flexible to accommodate the immense variations in introductory rate offers. The Board should not impose formatting mandates or dictate the sole means of compliance for either the "closely proximate" or "first mention" prong.

We believe the Board should leave the "closely proximate" determination to the reasonable and good faith judgment of creditors on a case-by-case basis. As discussed in our answer to Question 86 regarding "immediate proximity," we believe proximity can be created through placement, formatting, or some combination of the two. Without suggesting that the "immediate proximity" standard involved in the previous question is amenable to precise circumscription by the Board, the "closely proximate" standard at issue here is wider still and all the more reason the Board's guidance should preserve creditor flexibility to comply in any manner suitable to the circumstances presented by particular marketing materials.

Similarly, the "first mention" prong requires flexibility. Although we agree that associating expiration date or go-to APR references with the introductory APR listed in either the largest font size or located highest on the page should be sufficient for "first mention" compliance, they should not be characterized as the exclusive means of compliance. For example, many of our introductory rate marketing letters present the introductory rate offer in both the body of the letter and in a prominent, bulleted summary in the margin of the letter. The "first mention" of the introductory rate in either place is an appropriate hook for the disclosure of the expiration date and go-to APR. The Board's standards should grant us the flexibility to choose either one, rather than dictating a choice that may be inappropriate in some circumstances and would serve no purpose other than rigidity.

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

A88: Yes, the Board should identify one document as the "first mention" of the temporary APR, and that document should be the "principal promotional document" recently identified by the Federal Trade Commission ("FTC") for purposes of short form pre-screen opt out notices under the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"). In its FACTA regulations, the FTC defines the "principal promotional document" of a credit or insurance solicitation as "the document designed to be seen first by the consumer, such as the cover letter." 16 C.F.R. § 642.2(b). This definition provides the Board with a considered and ready-made standard on the question of first mention disclosure in a multi-page credit solicitation.

In no event should the Board consider each document in a direct-mail offer to be a separate solicitation. Such a rule would go beyond the requirements of the statute and impose repetitive and burdensome disclosure requirements on creditors.

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

A89: Please see our answers to Questions 86 and 87, which apply here. In short, we support relatively general guidance accompanied as appropriate by illustrative examples. Any examples illustrating the meaning of "prominent location" and "closely proximate" for purposes of placing the expiration date and go-to APR references with the introductory APR should clearly indicate that they do not represent the exclusive means of compliance.

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

A90: We believe issuers should be permitted to disclose of the range of go-to APRs (e.g., "from X% to Y %") or the highest go-to APR (e.g., "up to Y %"). Requiring the listing of each go-to APR would promote clutter without enhancing consumer understanding.

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

A91: We do not believe that additional rules or guidance are required to supplement the statutory standard of "a general description of the circumstances that may result in the revocation of the temporary annual percentage rate." This standard is consistent with our support for flexible standards for these introductory disclosures. This standard also recognizes that triggering event descriptions in the text of cover letters and other components of solicitation packages will supplement Schumer box disclosures in this regard and, therefore, need not be replicas of those Schumer box disclosures.

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

A92: We do not believe different guidance is required for direct mail and electronic applications and solicitations, except for clarification that an Internet banner ad, "pop-up," or similar promotional message is not the "principal promotional document" discussed in the answer to Question 88. Like direct mail envelopes, such banner ads, pop-ups, and similar messages should not be subject to these new introductory rate disclosures.

The FTC took exactly this approach in its FACTA regulations. Agreeing with those "who equated a pop-up promotional screen with an envelope," the FTC chose to consider the "principal promotional document" in the Internet context to be "the page designed to be seen first by the consumer who clicks on the pop-up promotional screen." 70 Fed. Reg. 5024 (Jan. 31, 2005). The FTC's FACTA regulations therefore equate an Internet disclosure "on the same page and in close proximity to the principal marketing message" with the "front side of the first page of the principal promotional document" in a direct mail solicitation. 16 C.F.R. §642.3(a)(2)(ii).

The Board should adopt the FTC's approach regarding Internet pop up screens. The Board can do so by incorporating that approach into a "principal promotional document" definition adopted for purposes of these introductory rate disclosures.

C. Internet Based Credit Card Solicitations

Q93: Although the Bankruptcy Act provisions concerning Internet offers refer to credit card solicitations (where no application is required), this may be interpreted to also include applications. Is there any reason for treating Internet applications differently than Internet solicitations?

A93: We do not believe there is any reason for the different treatment of Internet credit card applications and Internet credit card solicitations without applications under the Internet credit card solicitation provisions added to TILA by the Bankruptcy Reform Act.

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

A94: We do not believe additional guidance or model disclosures are required on the clear and conspicuous standard for Internet credit card solicitations and applications.

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

A95: We believe the Board was wise to suspend the 2001 interim final rules on Internet disclosures. The general disclosure requirements of Regulation Z apply equally well to both Internet and hard copy solicitations and applications, and any effort to forge special rules for Internet disclosures are particularly problematic given the pace of technological change. In fact, we respectfully suggest that the passage of time since the promulgation of the 2001 interim final rules has made the rules and the concerns animating them already out of date in many respects.

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

A96: We believe a 30-day standard is a reasonable and appropriate updating standard under the new Internet disclosure provisions added to TILA by the Bankruptcy Reform Act.

D. Disclosures Related to Payment Deadlines and Late Payment Penalties

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

A97: A late payment fee might not be imposed until after a payment due date as a result of a creditor's undisclosed grace period for the imposition of the late payment fee. Creditors employ such undisclosed grace periods from time to time for various customer service and business reasons.

Q98: Is additional guidance needed on how these disclosures may be made in a clear and conspicuous manner on periodic statements? Should the Board consider particular format requirements, such as requiring the late payment fee to be disclosed in close proximity to the payment due date (or the earliest date on which a late payment fee may be charged, if different)? What model disclosures, if any, should the Board provide with respect to these disclosures?

A98: We oppose any formatting mandates on the disclosure of late payment fees and payment dues dates on periodic billing statements. As we discussed in our April 15, 2005 letter responding to the initial Regulation Z ANPR, formatting mandates are particularly problematic for periodic statements, which are the most individualized of TILA disclosures and require formatting flexibility--from product to product, consumer to consumer, and billing period to billing period--to achieve their purposes. In addition, a formatting mandate regarding the placement of fee and payment due date information on a billing statement would be unduly burdensome on creditors due to associated systems and reprinting costs. As noted in our answer to Question 83, we determined that formatting changes to accommodate a portion of the Board's proposal in Docket Nos. R-1167 through R-1171 would have cost us more than $185 million per year.

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

A99: We oppose any change in Regulation Z's accommodation of reasonable cut-off hours for the receipt of payments. Creditors require this tool for the efficient and orderly processing of remittances, and its removal could impose significant operational costs and disruptions on creditors.

We also oppose any requirement that the creditor's cut-off hour be disclosed on each periodic statement in close proximity to the due date. Many creditors already disclose these cut-off hours on their periodic statements in places where they fit best. Imposing a mandate on creditors in this regard will not benefit consumers in any material way and could impose substantial systems, printing, and other costs and burdens on creditors.

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

A100: We oppose any requirement linking disclosure of the default APR with the late payment fee on the periodic statement. Such a requirement is not mandated by the statute and would impose printing and other costs on creditors that would outweigh any marginal consumer benefit in reminding consumers of the default APR. Consumers are aware, irrespective of reminders, that they must meet their payment obligations in a timely manner to avoid adverse consequences. Moreover, the default APR has already been prominently and often repetitively disclosed to the consumer usually starting with a Schumer box disclosure.

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

A101: To the best of our knowledge, the new late payment disclosure does not raise special issues for open-end accounts other than credit card accounts.

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

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

A102: We believe the new fair-market value disclosure should apply both when the new credit extension may exceed the dwelling's fair-market value on its own and when the new credit extension combined with existing mortgages may exceed the dwelling's fair-market value. This should ensure widespread use of the disclosure in any case where lending above the fair-market value of the dwelling is possible. It would also even the playing field for those lenders who, for customer service or compliance reasons, would choose to incorporate the new disclosure widely if not universally in their marketing materials even in the absence of such an expansive definition.

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

A103: We believe the determination of whether a borrower's debt may exceed a dwelling's fair-market value should be based only on the initial amount of the loan or credit line and the current property value. Making such determinations on the potential for future increases in the amount of indebtedness or the value of the property would be speculative and, as such, pose significant compliance problems for creditors.

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

A104: We believe the Board should provide short and clear model clauses for the new fair-market value disclosures. These clauses should be similar to the clauses now provided by the Board for the required application disclosure regarding the importance of consulting with a tax advisor on the deductibility of interest and charges for open-end home equity lines of credit. *See* Regulation Z, 12 C.F.R. § 226, Apps. G-14A, G-14B, G-15(i). We look forward to working with the Board on the development of this clause as the regulatory process unfolds.

We do not believe additional guidance is required on the "clear and conspicuous" disclosure of these new fair-market value disclosures. We believe the current "clear and conspicuous" guidance for home equity loan advertising and application disclosures is sufficient for these new disclosures.

Q105: With the exception of certain variable-rate disclosures (12 CFR §§ 226.17(b) and 226.19(a)), disclosures for closed-end mortgage transactions generally are provided within three days of application for home-purchase loans and before consummation for all other home-secured loans. 15 USC 1638(b). Is additional compliance guidance needed for the Bankruptcy Act disclosures that must be provided at the time of application in connection with closed-end loans?

A105: We do not believe additional guidance is required for the new application disclosures as they apply to closed-end mortgage loans.

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

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

A106: We do not believe any guidance on account expiration is required. Typically, either party can cancel open-end credit agreements at any time. In addition, the expiration date on a credit card is not the expiration date of the credit card account. Adoption of the credit card expiration date as the expiration date of the credit card account for the limited purposes of this new TILA account termination prohibition would cause more problems than it would solve due to the consumer confusion that would likely ensue.

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

A107: To the best of our knowledge, the new prohibition on terminating accounts for the failure to incur finance charges does not raise special issues for open-end accounts other than credit card accounts.

Q108: The prohibition on terminating accounts does not prevent creditors from terminating an account for inactivity in three or more consecutive months (assuming the termination complies with other applicable laws and regulations, such as the rules in Regulation Z governing the termination of HELOCS, 12 CFR 226.5b(f)(2)). Should the Board provide guidance on this aspect of the statute, and what constitutes "inactivity?"

A108: We believe that the determination of account "inactivity" should be left to the policies of each creditor, which is where the determination currently resides. We do not believe Board guidance on this question is required.

* * * * *

On behalf of Citigroup, I thank you for this opportunity to comment on the Board's second ANPR on Regulation Z's open-end credit rules. 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,

Carl V Howard

Carl V. Howard
General Counsel-Bank Regulatory

Cc: Jeffrey Watiker
Karla Bergeson
Viola Spain