



BEST IMAGE AVAILABLE

March 28, 2005

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

RE: Docket No. R-1217
Advanced Notice of Proposed Rule-making, Regulation Z Open-end Review
Via e-mail: regs.comments@federalreserve.gov

Dear Ms. Johnson:

Following are comments submitted by the Center for Responsible Lending to the Board's advance notice of proposed rule-making issued in conjunction with its review of Regulation Z's non-mortgage open-end credit rules.

Thank you for this opportunity to comment. If you have any questions, please feel free to contact us

Sincerely,

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ADVANCE NOTICE OF PROPOSED RULE-MAKING
Regulation Z, Subpart B: Open-End Credit

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COMMENTS
of the

CENTER FOR RESPONSIBLE LENDING

The Center for Responsible Lending is a non-profit organization focused on policy research and advocacy to stop predatory lending practices. We are an affiliate of Self-Help, one of the nation's largest nonprofit community development lenders, whose mission is to create and protect ownership opportunities for low-wealth families through home and small business ownership. Self-Help has provided \$3.8 billion in financing to help over 30,000 low-wealth borrowers buy homes, build businesses and strengthen community resources. Additionally, our affiliate Self-Help Credit Union maintains deposit accounts for individuals, nonprofit and religious organizations, and foundations. Our organization was instrumental in helping to pass North Carolina's comprehensive state statute against predatory mortgage lending, the country's first, and has been a leader on legislative and regulatory efforts to address predatory lending issues nationally.

We submit these comments in response to the Board's Advanced Notice of Proposed Rule-Making, Docket No. R-1217 (69 Fed. Reg. 70925, December 8, 2004). We understand that the rules in the marketplace for credit cards in turn affect the goals of asset- and wealth building. For many Americans, it is the entry point into the world of credit, and the experience there can define for years to come how easy or difficult later decisions will be. In addition to affecting long-term debt loads, the credit card experience affects credit scores, which in turn not only affect later financial decisions, but also educational and job opportunities.² For others, unfortunately, it becomes the mechanism by which needed medicines and medical care is obtained, even as health care and insurance costs rise, making access to care and treatment more difficult to afford. The extraordinary credit card debt among older consumers, at least in part, is likely to be a reflection of this emerging economic reality.³ Finally, for millions of homeowners, it is the hook by which debt consolidation mortgage loans are marketed. While some believe that this "equity extraction" can be a positive development, other economists are less

¹ 69 Fed. Reg. 70925 (December 8, 2005)

² For data on the rise in credit card debt among young people, see Tamara Draut and Javier Silva, *Generation Broke: The Growth of Debt Among Young Americans* (Demos, October 2004), www.demos-usa.org. Three in four cardholders between 18 – 24 carried a balance, and the 2001 average credit card balance for that group was \$2,985. The study reports that college seniors graduating in 2001 were carrying an average \$3,262 in credit card debt.

³ See, e.g. Tamara Draut and Javier Silva, *Borrowing to Make Ends Meet: The Growth of Credit Card Debt in the '90s* (Demos, 2003), www.demos-usa.org; David U. Himmelstein, Elizabeth Warren, Deborah Thorne, and Steffie Woolhandler, *Illness and Injury as Contributors to Bankruptcy*, Health Affairs (February 2005). See also Comments of AARP submitted in response to this ANPRM.

sanguine. ⁴We do know that for millions of Americans, credit card debt has played a role in the loss of equity in their homes. In sum, there is a lot riding for American families and the American economy on having fair rules for the credit card marketplace.

The Review Of Open-End Rules Should Begin With A Review Of The Purposes Of Truth In Lending, How Well The Underlying Assumptions Match Current Market Realities, And Whether Each Proposed Change Will Advance The Goals.

This ANRPM identifies 58 questions upon which the Board solicits comments and guidance as it begins a periodic review of Regulation Z's disclosure requirement. Most address specific, discrete issues, with opportunity for a broader contemplation in three late questions, Q 55 – 57. These comments will address a limited number of specific questions. But before doing so, we strongly encourage the Board to take a step back and consider the rule in light of the fundamentals – the goals of the Act and its role in the marketplace. One of the fundamental shifts that has occurred is that the role of consumer credit has become much more central to the macroeconomy, and hence that much greater is the need that the Board carefully assess the underpinnings as well as the rule itself.

There is rightful concern about “information overload” on the one hand, and, conversely, about consumers having inadequate information necessary to make important behavioral decisions. No one is likely to suggest that more information is the answer. But a serious re-evaluation as to a) what information is necessary, and b) how to present it in a fashion most useable by the greatest number of consumers would help reconcile those concerns. In making this fresh evaluation, the following questions may help provide a focus for discussion, as well as a standard against which all proposed changes should be measured.

- * What is the overall purpose of TIL disclosures and what role was it intended to serve in the marketplace?
- * What changes have occurred in the overall legal and economic environment? Do those changes suggest more fundamental changes in the approach we take to meeting the goals?
- * What were the assumptions underlying the rules? Has nearly 40 years of experience taught us anything about the validity of those assumptions?
- * What is the purpose of each individual disclosure requirement? How well are the goals served in today's marketplace? What practices in today's marketplace are not addressed by the old rules?

⁴ See, e.g. William R. Emmons, *Consumer-Finance Myths and Other Obstacles to Financial Literacy*, pp. 18-20 (December 8, 2004), paper presented at the conference “Consequences of the Consumer Lending Revolution,” (St. Louis Univ. School of Law, December 8, 2004).

The Overall Purpose of Truth in Lending: The ANPRM lists only two purposes for TIL: 1) meaningful disclosure to facilitate comparison shopping and avoid the uninformed use of credit, and 2) to protect consumers against inaccurate and unfair credit billing and credit card practices. 69 Fed. Reg. at 70925, *citing* 15 U.S.C. §1601(a). These are critical goals of TIL, but it is an incomplete list. The other roles intended for TIL must be factored into consideration as to the adequacy of current rules or the efficacy of proposed ones, as well.

In addition to establishing consumers' "right to be informed" about the true cost of using credit, there are at least three other major goals:

- * to enhance honest competition and protect "ethical and efficient" credit-extenders, as well as consumers;
- * to protect the integrity of the marketplace from "fraudulent, deceitful, or grossly misleading information,
- * to facilitate general economic stabilization: an informed consumer credit market helps "stabilize the economy by encouraging consumer restraint when interest rates increase, and consumer activity when rates drop."⁵

Throughout our comments, we take into account that these three functions which focus on the providers and the marketplace as much as the individual consumers are even more important now than they were when they were articulated as part of TIL's purpose. That is especially true of the open-end credit market place.

Disclosure in a changed legal context: Though much is written today about disclosure being the federal method of choice to "regulate" consumer financial markets,⁶ it should be stressed that this characterization misstates the origin of the Truth in Lending Act. The TIL open-end rules for initial and periodic disclosures have not been significantly changed since TIL was enacted.⁷ At that time, the federal disclosure scheme was an addition to, not a substitute for, substantive regulation, which was assumed then to be primarily a function of state law. State law interest rate ceilings for consumer credit -- revolving and closed-end -- were the norm at the time.⁸ Other types of

⁵ 15 U.S.C. 1601(a); 109 Cong. Rec. 2029 (1963) (remarks of Sen. Douglas), quoted in National Consumer Law Center, *Truth In Lending*, § 1.1.1 (5th Ed. 2003). See also *Mills v. Home Equity Group*, 871 F.Supp. 1482 (D.D.C. 1994) (citing both the public and private purposes of TIL).

Indeed, at the time of the last major overhaul of Reg. Z, following the 1980 Truth in Lending Simplification Act, the FRB staff listed 39 possible goals, in 9 separate categories, against which the effectiveness of TIL could be measured. See 46 Fed. Reg. 20848, 20945-48 (April 7, 1981).

⁶ See, e.g. Thomas A. Durkin and Gregory Elliehausen, *Disclosure as a Consumer Protection*, in *The Impact of Public Policy on Consumer Credit* 109, 110 (Thomas A. Durkin & Michael E. Staten, eds., 2002)

⁷ In 1988, a third disclosure requirement was added by the Fair Credit and Charge Card Disclosure Act, 15 U.S.C. 1637(c) for credit card solicitations and applications. That year also saw the addition of special rules for home-equity lines of credit, which are not the subject of this review.

⁸ For example, revolving credit caps in California and Nebraska were 18% on the first \$1000, and 12% on the balances above \$1000. See, e.g. Barbara A. Curran, *Trends in Consumer Credit Legislation*, p. 102

charges were often limited, as well. Congress explicitly did not disturb the states' substantive regulation of the "types, amounts or rates of charges, or any element of elements of charges."⁹

One of the first steps on the slippery slope to credit card "deregulation by exportation" – the *Marquette* decision – was still 10 years away when the disclosure paradigm under Reg. Z, Part B was designed.¹⁰ In 1980, as Congress enacted Truth in Lending Simplification, open-end credit was still not a major focus. At the same time, Congress gave state chartered banks parity with national banks (the beneficiaries of the *Marquette* decision.),¹¹ but in 1980, the full implications of *Marquette* for the credit card industry had not yet registered to law-makers or the public. It was not until the mid-1980s that this ripple-effect *sub rosa* substantive deregulation of the credit card industry began to become apparent.¹²

In sum, disclosure today is being asked to carry alone a legal burden that it shared with substantive regulation when much of the current open-end disclosure rules were devised. It is crucial to ask whether this fact alone means that some assumptions need to be re-examined, and to warrant extreme care to assure that TIL can meet this greater challenge. We believe that if disclosure is to stand alone as the primary shield against market failures and market abuses, as it now does in the open-end arena for all practical purposes, then disclosures need to be directed at real market behavior, as well as real consumer behavior.¹³

The changed economic context: Just as the legal context has changed drastically since the current regime was designed, so, too, has the economic context. In 1968, consumer spending was not the driving force in the macroeconomy. Today, household spending is 60% of the American economy. It is unlikely a coincidence that household

(Univ. of Chicago Press 1966); *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978).

⁹ 15 U.S.C. § 1610(b). For example, one congressman noted that the TIL bill "does not give protection similar to that of some State laws which protect the consumer by limiting rates charged on consumer credit." Congressional Daily Edition, Jan. 30, 1968 (Statement of Rep. Eilberg). Indeed, when first introduced, eight years earlier, the proposal was called simply the "Consumer Credit Labeling Bill." S. 2755, 86th Cong., 2d Sess. 1960.) (emphasis added)

¹⁰ *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978).

¹¹ Ralph J. Rohner and Fred H. Miller, *Truth in Lending*, p. 17 (American Bar Association 2000). Both TIL Simplification and the parity provision were part of the Depository Institutions Deregulation and Monetary Control Act of 1980, P.L. 96-221; Title V, Part C (parity), Title VI (TIL Simplification).

¹² See, e.g. Robert A. Burgess and Monica A. Ciolfi, *Exportation or Exploitation? A State Regulators' View of Interstate Credit Card Transactions*, 42 Bus. Law. 929 (1987). See also the court's discussion in *Greenwood Trust Co. v. Commonwealth of Mass.*, 776 F. Supp. 21 (D. Mass. 1991), *rev'd* 971 F.2d 818 (1st Cir.1992).

¹³ The disclosure alone model is predicated on neo-classical economic theories of markets. Increasingly, behavioral economics is challenging some of those assumptions. See, e.g. Matthew A. Edwards, *Empirical and Behavioral Critiques of Mandatory Disclosure: Socio-Economics and the Quest for Truth in Lending*, Cornell J. L. & Pub. Pol'y (forthcoming 2005).

debt as a percentage of disposable income was at a record 108% in 2003¹⁴ Revolving debt was \$1.5 billion in May, 1968, when TIL was passed; it was \$801 billion in January, 2005.¹⁵ In 1977, households charged a little more than \$100 a month on credit cards, or 3.4% of average monthly household income. Twenty years later, the average charges for those who have used cards to pay was \$830, or 20% of average household monthly income.¹⁶ The revolving debt share of total non-mortgage consumer credit grew from 1.4% in May, 1968 to nearly 38% in January, 2005.¹⁷ In 2001, nearly \$1 in \$4 of consumer expenditures was paid by a credit card.¹⁸

Even those astonishing figures understate credit card debt. The phenomenal growth in home equity lending is fed by marketing debt consolidation refinancing, so much credit card debt has disappeared into mortgage statistics. And, as attorney general offices and advocates who've worked with consumers in the predatory mortgage lending context can attest, a lot of that begins with the pitch to consolidate credit cards into "one-easy monthly payment" and a loan that's tax-deductible. In fact, even student loans may now disguise consolidated credit card debt.

The changed market context: Credit card market changes have undergone several generations of evolution since the fundamental open-end structure was established thirty-seven years ago. The only significant amendment to Subpart B to reflect such changes was the 1988 addition of the solicitation / application disclosures, and the 2000 amendments to those provisions.¹⁹

When TIL rules were designed, surveys indicated that consumers underestimated the true cost of borrowing – misconceptions that resulted from varying ways of calculating interest, as well as from loading up credit with so-called "non-interest" charges which "rightfully should be included in the percentage rate statement so that any percentage rate quoted is completely meaningless and deceptive."²⁰

At the time, the focus was primarily on installment credit; the open-end consumer credit market was still young. It consisted primarily of seller-issued revolving credit, where consumers had a direct merchant relationship with the issuer. The issuer, in turn, was offering the credit primarily as a means of selling its merchandise, rather than as an independent source of revenue, and had considerable interest in maintaining the good will

¹⁴ See, e.g. Dean Baker, *Dangerous Trends: The Growth of Debt in the U.S. Economy* (Center for Economic and Policy Research (Sept., 2004), www.cepr.net); Financial Markets Center, *Flow of Funds Brief*: June 10, 2004 (household debt as share of disposable income rose by 15.8% between 2001 and 2004, to "cross the 110% threshold in final quarter of 2003.)

¹⁵ Federal Reserve Statistical Release G.19, http://www.federalreserve.gov/releases/g19/hist/cc_hist_mt.html (visited March 23, 2005).

¹⁶ David S. Evans and Richard Schmalensee, *Paying with Plastic: The Digital Revolution in Buying and Borrowing*, p. 2 (MIT Press 1999).

¹⁷ Federal Reserve Statistical Release G.19, http://www.federalreserve.gov/releases/g19/hist/cc_hist_mt.html (visited March 23, 2005).

¹⁸ David S. Evans, *The Growth and Diffusion of Credit Cards in Society*, 2 *The Payment Card Economics Review*, 59, 63 (Winter, 2004).

¹⁹ 15 U.S.C. § 1637(c), Reg. Z, § 226.5a, as amended 65 Fed. Reg. 58903 (Oct. 3, 2000).

²⁰ See National Consumer Law Center, *Truth in Lending* § 1.1.1 (5th Ed. 2003)

of its shoppers. General-purpose cards were in their infancy. ^{e21} Credit card banks did not take off for nearly two more decades. ²²

As will be discussed throughout these comments, in many respects the subsequent evolution of the open-end consumer credit market has brought this segment to the same stage of dysfunction described of closed-end installment credit by Senator Douglas, the economist-father of Truth In Lending in the 1960s.

* Opaque and complex accounting methods in open-end credit today distort cost information and competition even more than the varying types of interest calculation used in closed-end credit before 1968. ²³ (See Q. 28-30, 34-36, 39. See also Q 31.)

* Non-interest fee income in the industry is now nearly one-third (31.8%) of total revenue. ^{footnote24} To generate revenue while appearing competitive, the industry shifted from the upfront, transparent interest rate to back-end fees, along with the accounting tricks. This resurrects Senator Douglas' criticism of the "camouflaging" of credit costs by the addition of all sorts of fees. (See Q 13,16, 17, 18, 20)

* Individualized pricing and multiple pricing layers have been introduced (e.g. transaction charges for different types of cash advances may vary, the grace period and rates for different types of charges may vary). These changes make pricing information difficult to convey simply and comprehensibly. Flexible pricing, such as penalty rates, also make transaction pricing far more complex and ever-changing. Such industry inventions create higher hurdles for the Board to clear as it develops useable disclosure rules.

* Finally, the creditors' extraordinary freedom to unilaterally change contract terms at will subsequent to consummation means even effective disclosure rules for solicitation and initial stages can be pointless.

²¹ See generally, Thomas A. Durkin, *Credit Cards: Use and Consumer Attitudes, 1970- 2000* Federal Reserve Bulletin 623, 624 (Sept. 2000); David S. Evans and Richard Schmalensee, *Paying with Plastic: The Digital Revolution in Buying and Borrowing*, (MIT Press 1999).

²² The Competitive Equality Banking Act of 1987 (CEBA) triggered that growth, see Elizabeth R. Schiltz, *The Amazing, Elastic, Ever-Expanding Exportation Doctrine and Its Effect on Predatory Lending Regulation*, 88 Minn. L. Rev. 518, 572-575 (2004).

²³ This has been successfully addressed by the standardized APR calculation rules for closed-end credit. To the extent that the closed-end APR remains subject to manipulation, it is primarily because of the laundry list of excludable charges in §226.4, rather than the actuarial accounting component of the APR rules.

On the difficulty that increased complexity presents to the disclosure paradigm, see Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, (Payment Cards Center, The Federal Reserve Bank of Philadelphia, January, 2003); William R. Emmons, *Consumer Finance Myths and Other Obstacles to Financial Literacy*, note 4, supra.

²⁴ In 1999, it was 26.2%. Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, p 32. (Payment Cards Center, The Federal Reserve Bank of Philadelphia, January, 2003). Mr. Furletti updated the information through 2003 at CRL request. (E-mail from Mark Furletti, March 5, 2003, on file with CRL.) See also Patrick McGeehan, "Mountains of Interest Add to Pain of Credit Cards," New York Times, p. 1 (Nov. 21, 2004) (fee revenue rose from \$6.2 billion in 1990 to \$21.5 billion in 2003).

Thus at the same time that disclosure is being asked to carry a heavier load in the legal context, even some economists have joined consumers in questioning the efficacy of disclosure as a practical matter.²⁵ It is critically important in this rule review to realize that increasing complexity has profound implications for the changes of successful disclosure.

If increasing complexity (some of it arguably purposefully obfuscatory) creates a hurdle on the provider side, many recognize that inadequate financial literacy on the user side is no less a hurdle.²⁶ The mismatch between the complex information that consumers need, and the ease with which the intended audience can comprehend and use that information seems to be getting greater. Disclosure not only is carrying a heavier burden, but it must bridge a greater divide while it does so.

Clearly, the Board is facing a difficult challenge. Disclosure plays a considerably different role in an environment where it alone must carry the burden of curbing excesses and policing the market. Where substantive law defines the outer limits of acceptable creditor behavior, weaknesses in disclosure are more tolerable. Without those boundaries, it is critical that disclosures be widely comprehensible in substance and format, be focused on all critical price points, and be timely.

We believe that the Board must keep focused on the multiple public and private purposes of the Act, apply a “fresh-eye” approach to all that its current requirements and current loopholes, and objectively assess the functionality of suggestions in a practical light. The result can be a benefit to consumers, to “honest and ethical credit providers,” to the integrity of the marketplace, and to the larger economy.

Q1: Scope of Review: What is the feasibility and advisability of reviewing Regulation Z in stages, beginning with non-home secured open-end credit. Are some issues raised by the open-end credit rules so intertwined with other TILA rules that other approaches should be considered? If so, what are those issues, and what other approach might the Board take to address them?

As the prior discussion indicates, it is appropriate to begin with the rules applicable to standard revolving credit, in part because they have yet to be the focus of concerted modernization evaluation in the nearly 40 years that TIL has been effect. We further believe that there are a sufficient number of significant issues that are credit-card

²⁵ See, e.g. Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, (Payment Cards Center, The Federal Reserve Bank of Philadelphia, January, 2003); William R. Emmons, *Consumer Finance Myths and Other Obstacles to Financial Literacy*, note 4, *supra*, at 23-26. (“But would consumers not be better off if financial-services providers reduced fees and loan rates rather than spending on financial-literacy that, by all accounts, have minimal impact? The point is, of course, that profit-maximizing financial-services providers really do not want to ‘give back’ any of their profit margin. Nor do they necessarily desire more financially savvy customers who might shop around more actively or bargain down the terms on the products and services they sell.” p. 25-26.)

²⁶ E.g. Alan M. White and Cathy Lesser Mansfield, *Literacy and Contract* 13.2 *Stanford Law & Policy Review* 233 (2002); *Re-Examining Truth in Lending: Do Borrowers Actually Use Consumer Disclosures?* 52 *Consumer Fin. L. Qtrly Rep.* 3 (1998).

specific to warrant a separate examination. However, there is at least one critical issue that overlaps the credit card and the HELC markets. That is the issue of “spurious open-end credit.” In the past, efforts to address the problem have focused on the definition of open-end credit, which obviously affect all types of open-end products. However, resolution of the problem by refining the definition has proved elusive. See. Q 31(2). Consequently, in comments to Questions 31 – 33, we will propose minimum payment disclosure information in both sale and HELC contexts.

A. FORMAT: WOULD FORMAT CHANGES ENHANCE CONSUMERS’ ABILITY TO NOTICE AND UNDERSTAND DISCLOSURES BY MAKING THEM MORE CLEAR AND CONSPICUOUS?

There is a vast difference in accessibility in the three required disclosures.

* *The solicitation / application rules.* It is no coincidence that the disclosure most recently required (1988) and updated (2000) is also the most user-friendly and informative. While there is room for improvement, the Schumer box should be a model for improving the other two.

* *The initial disclosure:* This disclosure is useless to consumers as currently implemented in the marketplace. In form, in substance, and in timing, it fails to achieve any of the goals of the act.

In form, the initial disclosure fails because it is often conflated into the cardholder agreement. Required disclosures are interspersed throughout a lengthy document of very fine print and lawyerly jargon. Disclosures are often not drafted with an eye toward comprehension, but to satisfy the letter of the disclosure law while also serving as the corollary contract clause. Furthermore, they are contract clauses in what used to be considered a “contract of adhesion.” The result is a document written by lawyers for lawyers, rather than for the meeting of the minds that contract law theorizes or the information sharing that TIL anticipated. With all due respect to lawyers, that is not usually a recipe for comprehensible clarity. A large portion of the “information overload” comes more from these contract provisions than from required disclosures. Attachment A is an example of an integrated agreement/initial disclosure.

It is a four-page fold-out, with seven 8 ½ x 11 inch pages of approximately 6 point typeface. The first discussion of the “DPR” and “APR” comes at the bottom of the third column and following 24 vertical inches of 6 point type (bottom of third column on page 1, top of 1st column on page 2.) The APR for cash advances does not appear until the 26th inch:

“the Daily Periodic Rate (“DPR”) for purchases and the DRP for Cash Advances are each based on an APR, which may vary. The APR for Cash Advances is the Prime Rate plus 14.99%. A DRP is 1/365th of the APR. Your DPRs and APRs for Purchases appear on the accompanying supplement(s). When an APR changes, we apply it to any existing balance subject to that rate.”

The default rate of 23.99% appears after three more inches of mind-numbing prose in type like this. In the twenty-nine inches of type like this that precedes this point in the contract, the card issuer uses the phrase in our sole discretion or variants thereon some six times, including the very interesting sentence that says that you agree that they have the unconditional right to exercise their discretion as to how to allocate payments in a way that is most favorable or convenient to them. See the discussion below at questions twenty-seven and thirty-four through thirty-six on why disclosure does not really seem to be an effective method for addressing the one-sided nature of this contract.

Disclosure of “other fees” -- all nine of them -- come in the fifth column and second page of this document, after nearly 36 inches of dense prose like the above in tiny type.

In substance, it is inadequate. For example, many have long suspected that one of the motivating forces in the use of “spurious open-end credit” is the difference between the more useful disclosure requirements of closed-end credit, and the barely useful disclosure requirements of open-end credit.²⁷ Further, the rules require disclosure of some information which is important, but which currently must be conveyed in a way that is meaningless to consumers. (See Q 28- 30, on balance computation methods.)

Finally, they fail in timing. While in theory initial disclosures are to be made prior to the first charge, in fact consumers often don’t get information they need. Consequently, the consumer who opens a credit card account to finance a big-ticket item will not know until a month later that the payments could be, for example, \$120 (2% of a \$6000 home improvement job. See Q 31(2)). That is a significant budget decision for millions of households, but one unavailable at the right time. Further, under many plans, the consumer’s signature on an application functions as the contractual signature. Consequently, many consumers have “signed” a contract before getting the actual cardholder agreement, which, as noted, often serve as the initial disclosures, as well. 28

Q 2: What formatting rules would enhance consumers’ ability to notice and understand account-opening disclosures. Are rules needed to segregate certain key disclosures from contract terms or other information so the disclosures are more clear and conspicuous? Should the rules require that certain disclosures be grouped together or appear on the same page. Are minimum type-size requirements needed, and if so, what should the requirement be?

A simple look at Attachment A answers the last three above questions in the affirmative. A quiz comparing disclosures in the open-end and closed-end formats has been used as an educational tool by a state attorney general’s office, (reprinted in Attachment B). It shows the dramatic difference in comprehensibility between the closed-end concept of “clear and conspicuous” and the inadequacy – the clear and conspicuous inadequacy – of the open-end disclosure.

²⁷ In the HELC context, the exclusion of HELCs from HOEPA added another incentive. Major subprime lenders in the post-HOEPA era used HELCs to write “piggy-back seconds” at rates well over the HOEPA trigger – from 16% to 24%. These were loans susceptible to challenges as “spurious open-end credit.”

²⁸ It is common at a retail check out counter for a customer to be asked if they want to open a store credit card to put the day’s purchases on, for example.

It has been a quarter of a century since the Board enacted the “federal box” segregation requirement for closed-end credit’s key terms.²⁹ The concept was carried forward in the Schumer box required on the solicitation / application. We recommend that the initial disclosures be segregated from the contract, and that the required information be grouped together in the manner of the Schumer box.

We believe that the FRB was headed in the right direction with its proposal on what constituted “clear and conspicuous” in the December, 2003 request for comment, (68 Fed. Reg. 68793). The ANPRM notes that the Board plans to use focus groups and research on what facilitates comprehension. (Q12). We support any effort to develop disclosures that the end-user can understand and use. In working with focus groups and experts in functional communication, concerning disclosure requirements, we make the following recommendations:

* The Dept of Education adult literacy survey discussed three kinds of literacy: prose, document, and quantitative. Consumer credit contracts and disclosures require literacy of all three kinds. The proposed disclosures should be tested for comprehensibility of all three kinds. That is necessary just to assure that TIL’s information function is to be realized, much less the additional “market policing / market perfecting” functions it must serve.

* Relatively low functional literacy levels and increasingly complex transactions may well result in a widening “understanding” gap. For some information, that may mean substituting functional information for abstract descriptive language. We discuss one possible example of this with respect to the balance computation disclosure. (See Q. 28-30.)

* The Board should move to the forefront of “Plain Language” efforts.

* The focus groups should be composed of the full spectrum of users, including a diverse range of age, education, and financial experience. Traditionally, TIL was interpreted as being geared to the average consumer, rather than the “least sophisticated” consumer. In 1968, the average bank cardholder was “a college-educated, upper middleclass, white male.”³⁰ Today’s cardholders cover a much broader demographic range, and disclosures must be useful to the full spectrum of end-users.

Q 4-6: Format Rules for Periodic Statements

The periodic statement serves not only to notify the borrower of prior transactions and charges, but also to provide the borrower with information necessary to compare the credit card’s rates and charges with other products offered in the market. With open-end

²⁹ 12 C.F.R. § 226.17(a), effective April 1, 1981.

³⁰ David S. Evans, *The Growth and Diffusion of Credit Cards in Society*, 2 *The Payment Card Economics Review* 59, 61 (2004).

credit, that is an on-going process. In consideration of the latter purpose, we believe the harmonization of the periodic statement's disclosure format with the current requirements for solicitation agreements – namely, the “Schumer Box” – could effectively facilitate a more competitive and efficient market. If monthly rates and charges are disclosed in each periodic statement in a format consistent with the “Schumer Box,” periodic statements will act as a more effective tool with which borrowers can shop for possibly better suited products, in keeping with the Congressional intent for TILA.

To date, the Schumer Box has provided one of the more effective forms for disclosing to the borrower the costs and terms of open-end credit. We believe the inclusion of this important disclosure format in period statements would facilitate the improved awareness of borrowers in gauging the costs of their current credit card services with other products in the market.

An easy to read, standard format like the Schumer box is visually more accessible. Standardizing terminology will facilitate understanding and reduce confusion. For example, the proliferation of fees, with varying names, makes it difficult to compare, or sometimes even know what they are for.³¹ Comparing the bottom line cost is difficult when one issuer refers to “actual APRs” and “nominal APRs” on a periodic statement while another refers to “corresponding APR” and “daily (D) / Monthly (M) periodic rate.” Labels as to the bottom line price tag vary, as well: the figure may be disclosed as an “effective APR,” an “actual APR,” or the “historic APR.” How does the consumer know whether to compare one card's “effective APR” to a “corresponding APR,” a “nominal APR,” or an “actual APR,” on others to decide which of his or her cards are easiest on the household's budget? We concur with the National Consumer Law Center in recommending that the Schumer box format be used for disclosures at all stages, including the periodic statement. We further recommend that terminology be standardized.

Q 7-9: Application / Solicitation Disclosures

We strongly concur with NCLC's suggestion that application/solicitation agreements include an additional finance charge category for “typical” APRs for similar products charged to past or current customers. As discussed in the NCLC comments, this category will give borrowers a better sense of what he or she will actually pay for the credit offered as opposed to the more ideal but often unrealistic marketed disclosures. Possibly of even greater importance, this category would also serve as a deterrent to abusive terms and charges for current customers, since credit card companies would be required to disclose these costs to prospective customers. (See, e.g. comments to Q 13-20, 39, below.)

Regarding all other suggestions for solicitation agreements concerning format and substance, we concur with NCLC's comments.

³¹ For an example, see Q 39.

B. HOW CAN THE CONTENT OF DISCLOSURES BE IMPROVED OR SIMPLIFIED TO ENHANCE CONSUMERS' UNDERSTANDING OF THE COST OF CREDIT?

Q. 13, 16, 17, 18, 20: Open-end credit should have an “all-in” finance charge rule.

CRL has consistently advocated an “all-in” APR for all types of credit. The statutory definition of finance charge begins with an “all-in” presumption, 15 U.S.C. § 1605, with certain enumerated exceptions. Few of those exceptions, except credit insurance, relate to the typical non-real estate open-end account.

Experience in both closed- and open-end credit has shown that the Board’s list of exclusions becomes a road map for low-balling the true cost of credit. For many years, the credit card industry was criticized for keeping the front-end rate high even as market rates were declining – the so-called “sticky” pricing problem. But as either competition (or the threat of re-regulation) eventually forced the up-front, transparent pricing down, the back-end and opaque pricing went up. (The Supreme Court’s deference to the OCC’s expansive definition of “interest” for purposes of exportation gave fee inflation a boost, as well. *Smiley v. Citibank (South Dakota, N.A.)*, 517 U.S. 735 (1996).) Fee income as a percentage of total revenue doubled from 1996 to 2003 (16% to nearly 32%). The average late fee doubled (\$13 to \$27) from 1996 to 2001, while annual late fee revenues quadrupled during that period (\$1.7 to \$7.3 billion). Newly unbundled service fees at one issuer doubled the per-account fee revenue in three years (\$4 in 1998 to \$8 in 2001).³²

While some questions postulate a number of different reasons to exclude some charges, (Q 16, 17), evaluating those questions against all the purposes of TIL, none of those goals are served by carving out such a significant component of the cost of open-end credit. Evaluated against the consumer information function, that’s a significant amount of cost “incident to” the extension of credit not to be counted in the credit price tag. Evaluated against the goal of protecting honest, ethical, and efficient lenders, rules which encourage a switch in pricing from the transparent price to non-finance charge items is the reverse of the Act’s goal.

Neither the language or purposes of TIL justify broad exclusions. Such fees as participation fees and annual fees are clearly “incident to” and a “condition of” credit, and the current exclusion of §226.4(c)(4) simply encourages low-balling price tags. (See Appx. D –1). Even late fees, as we note below, are in the category of “sometimes in, sometimes out” finance charge rules. Currently, the default position for TIL purposes is to exclude them. However, that should change. The cost has become much more

³² The “scared straight” explanation for the unsticking of credit card rates is offered in Victor Stango, *Strategic Responses to Regulatory Threat in the Credit Card Market*, Working Paper 2002-02 (Federal Reserve Bank of Chicago).

³³ Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, pp. 11, 13, 32 (Payment Cards Center, Federal Reserve Bank of Philadelphia, January, 2003). See also Mark Furletti, *The Debate Over the National Bank Act and the Preemption of State Efforts to Regulate Credit Cards*, pp. 23-24 (Payment Cards Center, Federal Reserve Bank of Philadelphia, March 2004).

significant, with late fees approaching \$30 currently. They are being assessed against many more accounts, as the quadrupling of revenues indicates. And with the advent of daily compounding and other adverse accounting methods, they generate expense to the consumer beyond their face value. Finally, federal banking policy should be consistent. If federal law treats late fees as interest when it comes to denying consumers the benefit of substantive state law limits on such charges, then at the very least federal law must reflect the cost of those unlimited fees in the credit price tag. ³⁴ (See Q 21-22 below for a discussion of OTL fees.)

The all-in rule is, of course, easy to implement as a retrospective price tag on the periodic statements. But the multiple public and private goals of TIL would be facilitated by NCLC's suggestion of a "typical" effective APR disclosure in the solicitation/application forms, based on its real experience. To take the example of Providian, ³⁵ a company that manipulated its credit card payment posting system to maximize its late fee revenue. Had it been required to disclose its experience-based effective APR, including its late and OTL fees, in solicitations and applications, the disconnect between the periodic rate and the real rate would have been more apparent. Honest competitors may have lost less business to Providian, some customers may have been spared by choosing one of those more honest competitors, and red flags may have been raised for regulators sooner, thus saving millions of dollars for customers. Indeed, it may have deterred such anti-competitive, unfair and deceptive conduct in the first place.

Bounce protection:

The Board should close the loophole in the definition of finance charge created by its expansive use of the "comparable cash transaction" exclusion. In January 2003 and August 2004, CRL submitted comments to the Board addressing the inapplicability of the comparable cash transaction exclusion to overdraft loans (also known as courtesy overdraft protection). Fees charged for the extension of short-term credit are not comparable to NSF fees, which are penalties intended to deter overdrafts. The Board's application of the comparable cash transaction exclusion to overdraft loans obscures the true cost of credit and undermines one of the central purposes of TIL. More recently, CRL and NCLC submitted a joint letter to the Board recommending changes to Regulation Z and its Staff Commentary that would address this problem. CRL supports the recommended changes to Regulation Z and the Staff Commentary made by NCLC in its comment.

³⁴ Iowa law, for example, limits late fees and OTL fees on open-end credit to \$15, Iowa Code §§537.2501(f), 537.2502(4). However, Iowans pay as much as \$35 for such fees as a result of the extremely broad federal definition of "interest" for purposes of federal preemption. See, e.g. 12 C.F.R. 7.4001

³⁵ California officials, the OCC, and private litigants all challenged this and other Providian practices. See, e.g. California v. Providian Financial Corp., (Sup. Ct. for County of San Francisco,), <http://caag.state.ca.us/publications/providian.pdf>; <http://www.occ.treas.gov/ftp/release/2000-49.doc> See also "Secret History of the Credit Card" *Frontline* (PBS), <http://www.pbs.org/wgbh/pages/frontline/shows/credit/etc/script.html>

Q. 21-22: Over-the-Limit Fees

These fees present an excellent case study as to how the industry has used a non-price tag fee for revenue enhancement. In theory, it is classified as a behavior-deterrent fee, like late charges. ³⁶The Board's long-standing rule for late charges is that they are finance charges unless they are for "unanticipated late payment." §226.4(c)(2). The Board explains that the practices of the creditor in handling the account are relevant to determine whether late payment is unanticipated. OSC § 226.4(c)(2).

Professor James Brown discusses the technology and typical OTL practice of the industry in the Comments of the National Consumer Law Center. It is clear that applying the current Reg. Z late charge test to OTL fees, they would – and should -- be considered finance charges.

As we discuss in connection with Q 39, these fees can cost the consumer far more than their face value. Accounting manipulations can result in a self-feeding effect that defies the notion that disclosure is an effective response. An "all-in" price tag rule may discourage unbundling, which, in turn can discourage accounting manipulations on such unbundled charges.

Q 23-25: Historic APRs

CRL concurs with the comments of the National Consumer Law Center that the periodic statements should continue to disclose the effective rate. This is consistent with the policy of an "all-in" rate, and of TIL's goals of an accurate and complete price tag. Piece-meal exclusions encourage unbundling, and disguise the overall cost. Experience demonstrates that this, in turn, has led to a dramatic rise in those costs. (See discussion on non-interest income, note 24, above.)

With open-end credit, each periodic statement brings a new decision opportunity for the consumer, for instance: "Is this debt so expensive I should try to shed it as quickly as possible? Should I keep this card in my wallet for a while and pay it down before adding to it?" For that reason, periodic statements should continue to present a complete and accurate picture.

The ANPRM notes that industry has argued that the historic APR confuses customers, who do not understand how it differs from the periodic rate. If consumers are confused, that is a reason to improve the disclosure, but it is not a reason to tear the price tag off the product. As the NCLC comments note, it is a simple matter to explain the difference between the periodic rate and effective rate. For example, a simple disclosure might read as follows:

³⁶ Under some common law, however, late fees may be considered liquidated damage clauses, which become unenforceable when they cross a line from reasonable compensation to being punitive. *See, e.g. Beasley v. Wells Fargo Bank, N.A.* 1 Cal. Rptr. 2d 446 (Ct. App. 1991).

“Actual APR: **36%**. This includes the interest plus all other fees.”

The industry’s argument is similar to one used formerly about the closed-end APR – that it confused people when their mortgage note had a 8% rate (plus 10 financed points for a much higher APR), or when the car loan cited a lower “add-on” rate. If a creditor explains it to the customer as “just something the government makes us tell you,”³⁷ then the problem is not the consumer’s confusion, the problem is the explanation given.

Q 26 Change in Terms

The ability of one party to a contract to unilaterally change terms – including re-pricing – after consummation is a rare gift in the law. What is a “change in terms” in the card issuer’s eye may be a “bait and switch” in another’s eye.³⁸ The current 15-day notice of § 226.9(c) is inadequate.

In theory, a consumer who wishes to reject that change in terms can cancel the account and move to a different card issuer. In practice, that may not be as easy for many reasons. For revolvers, the ubiquity of balance transfer fees means there’s an exit fee. For a one-card holding consumer about to leave on vacation, 15 days may well insufficient time to obtain an alternative. We recommend changing the current 15-day notice to a mandatory 60-day notice of change in terms.³⁹ That gives consumers a more reasonable time to decide to pay off the account and close it, or shop for the best balance transfer deal.

Q 27: Penalty Rates / Other changes “agreed to” by the consumer

Universal default / penalty rates have become a grave concern for many consumers and consumer groups. Default rates can be unfair and deceptive, particularly when triggered by factors unrelated to the borrower’s applicable credit card account. Currently, the universal default penalty rate hike, for example, can operate in the manner of Lewis Carroll’s Red Queen – sentence first, verdict afterwards. It is not only a presumption of guilt; it’s a sentence that can even be handed down before any offense is committed. A change in credit score may occur for reasons unrelated to the consumer’s performance on any debt obligation, for example. Even actual non-payment on another account may be related to a dispute the consumer has with another creditor, not a default.

³⁷ A variant of this is unfortunately common in face-to-face credit situations. One mortgage lender, even knowing the customer in front of him headed the Consumer Protection Division of an attorney general’s office made a similar explanation.

³⁸ See, e.g. *Rossmann v. Fleet Bank (R.I.) N.A.*, 280 F.3d 384 (3d Cir. 2002); *Minnesota v. Capitol One Bank & Capitol One, FSB*, (Dis.Ct. for Ramsey Cty, filed Dec. 30, 2004), available at www.ag.state.mn.us

³⁹ Iowa law requires a 60 – day notice of change in terms on open-end accounts. Iowa Code § 537.3205. Increased rates or fees cannot apply to existing balances unless the consumer signifies acceptance by continued use of the account after the effective date of the change.

Abuses in the use of clauses which permitted creditors to accelerate loans when they deemed themselves “insecure” led some states to limit or prohibit such clauses. Under the UCCC, for example, vague “insecurity” clauses were essentially prohibited by the requirement that acceleration is permitted only upon default, and default is specifically defined.⁴⁰ Penalty rates present even greater potential for what contract law used to call the “moral hazard” problem. Insecurity clauses at least required the creditor to call the loan. Penalty rates mean the creditor can increase revenue by quick and easy triggers, which in turn may encourage the use of vague and broad trigger clauses.

In order to protect borrowers from this unfair and deceptive practice, we urge the Board to encourage legislation that would prohibit any credit card contract provision that provides for a) any increase in the credit card’s interest rate by any amount that is not directly related to a change in an index rate or b) any other material change in the terms of the credit card contract, after the contract has been executed, for reasons other than actions or omissions of the card holder that are directly related to an account established under the contract.

Further, if penalty rates triggered by conduct of the cardholder affecting materially affects the cardholder’s price, the Board should encourage legislation that would limit the application of any penalty rate to future balances and not previous or current balances. The tiered pricing on various types of transactions currently used by issuers demonstrates that the technology is available. As a corollary, we believe that the imposition of a penalty rate hike – even if pursuant to the initial contract – should be the subject of at least one-month’s advance notice⁴¹ This provides consumers with an opportunity to avoid adding new charges to the account subject to a higher rate before they become aware that the higher rate is in place. It also provides borrowers with a full payment cycle to shop for a product with more favorable terms. Further, it will deter credit card companies from aggressively applying arbitrary and unfair default rates, since buyers will be given more adequate time to shop for better products. This will in turn improve the competition and efficiency of the market.

We also recommend that advance disclosure be given prior to the effective implementation date for any other significant change which the card issuer reserves the right to make in the initial agreement, as well. Many borrowers do not fully comprehend or foresee the actual application and costs of the terms set forth in their initial agreements. When these changes are instituted, even though disclosed in the initial agreement, they are often so arbitrary – triggered by unilateral, vague, and unrelated factors – that the borrower can rarely foresee the changes without adequate notice. Therefore, we strongly suggest that *any* change in the costs or terms of credit be required

⁴⁰ See, e.g. Iowa Code § 537.5109, defining default as a failure to make a payment within 10 days of the required time or “failure to observe any other covenant of the transaction, breach of which material impairs the condition, value or protection of the creditor’s right in any collateral securing the transaction, or materially impairs the consumer’s prospect to pay amounts due under the transaction. The burden of establishing material impairment is on the creditor.”

⁴¹ Compare Iowa Code § 537.3205, which requires a 60-day change in terms notice for open-end accounts “whether or not a change is authorized by prior agreement.”

to be disclosed to the borrower regardless of whether they have been previously set forth in the initial agreement. (See also Q26, on change in terms.)

These recommendations for statutory amendments to substantively address abuses regarding penalty rates are summarized in Q56, below.

Q. 28 – 30: Balance Calculation methods:

Balance computation methods present one of the conundrums in disclosure. Clearly, the complexity of balance computation methods presents serious hurdles to meaningful disclosure. But now, more than ever, it is equally as clear that balance computation methods have significant price-tag implications for consumers. First, what is given with a lower transparent rate can be made up with a more profitable, less transparent balance computation method. The cost of credit is driven by the basic formula $p \times r \times t = \$\$$. If the creditor lowers the r but uses a computation rule which raises the value of p , the consumer loses at least some of the value of the rate decline when the bottom line finance charge in dollars is figured. Second, as revolving balances have grown, the size of that “ p ” factor in the calculation takes on greater significance in terms of the real dollar drain on a household budget. (See text accompanying note 53, below.)

With respect to the disclosure of “the method of determining the balance on which a finance charge will be imposed,” the statutory constraints on the board are very loose. Current rules require only a method name on the solicitation/application disclosure. (§ 226.5a(b)(6)). The Board has developed model clauses for the initial disclosures and periodic statements, (§§226.6, 226.7, Reg. Z, Appx.G-1).

The Board should use its discretion and imagination to make disclosure actually work. Disclosure rules can be developed within the statutory framework that have much greater potential to convey meaningful and useable information to consumers, and enhance competition at the same time. We offer a suggestion in Q 29. (See also Q. 57)

Q 28: How significantly does the balance calculation method affect the cost of credit given typical account use patterns?

Certainly calculation rules regarding any of the elements of the finance charge calculation formula will affect the finance charge for all card holders except those who always pay in full each month. In the early 1970s, two studies were done of then common balance calculation methods, both finding the same rank order of expense to the consumer. These studies indicate not only that the balance calculation method affects the cost (and that it can do so significantly), but also that it is possible to determine as a general rule which methods are the most expensive to consumers.

A comparison chart illustrating the methods evaluated in those studies in the National Consumer Law Center’s *Cost of Credit* shows that the same account activity -- two \$100 charges and \$200 payments over a 3 month period -- resulted in finance

charges ranging from 75 cents to \$4.37, depending on which balance calculation method was used.⁴² Since those studies were done, the “two-cycle” average daily balance method has come into use. This is a very costly method for consumers, which can deprive consumers of the benefits of having paid off a balance completely if they do not do so routinely. (As one study indicates, the use of the two-cycle method has effectively eliminated the grace period for many people⁴³) Another explanation of balance computation methods does a comparison of the average daily balance method used by Citibank with the two-cycle method used by Discover. In the sample given, the consumer would pay \$28.50 to Citibank, but \$44.90 to Discover for the same charge and payment activity.⁴⁴

Card issuers have further compounded the expense to consumers on the “p” side of the equation literally, by moving to daily compounding of interest. “By adding finance charges to the balance each day, issuers increased finance charge revenue without increasing stated annual percentage rates.”⁴⁵

Q29: Do consumers understand that different balance calculation methods affect the cost of credit, and do they understand which balance calculation methods are more or less favorable for consumers? Would additional disclosures at account opening assist consumers and, if so, what type of disclosures would be helpful?

The FRB’s consumer survey on consumer awareness appears from published studies to focus on awareness primarily the card’s rate.⁴⁶ While sophisticated consumers might surf the web and find caveats against the “two-cycle” method,⁴⁷ there is little indication that there is general understanding of what methods are more or less favorable for consumers.

The current disclosures offer little functional information to consumers. The problem is reminiscent of an early debate in Truth in Lending over whether reference to “the Rule of 78” was an adequate disclosure of the method of computing rebates of unearned finance charges. That debate missed the fundamental point. Consumers do not need to know (or want to know) the formula for the rule of 78 so they can calculate a refund. The important fact for them to know is that the Rule of 78 is more expensive for them than the alternative actuarial method. That is the case here, as well. For that reason, we do not propose additional disclosures, or precise descriptions. Instead a

⁴² National Consumer Law Center, *The Cost of Credit: Regulation and Legal Challenges*, § 4.3.5.2 (2d ed. 2000))

⁴³ Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, *supra* note 23 at p. 16.

⁴⁴ David S. Evans and Richard Schmalensee, *Paying with Plastic: The Digital Revolution in Buying and Borrowing*, p. 141 – 144. (MIT Press 2000)

⁴⁵ Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, p. 15 (Federal Reserve Bank of Philadelphia, Payment Cards Center, January 2003)

⁴⁶ E.g. Thomas A. Durkin, *Credit Cards: Use and Consumer Attitudes, 1970 – 2000*, Federal Reserve Bulletin 624, 630-633 (September, 2000)

⁴⁷ See, e.g. www.bankrate.com (providing credit card term comparisons). See, also Lucy Lazarony, *Two-Cycle Billing Squeezes Credit-Card Holders*, Bankrate.com, updated Sept. 2003 (discussing implications of two-cycle billing methods), available at <http://www.bankrate.com/brm/news/cc/19980518.asp>.

functional disclosure on both the solicitation/application disclosures, and in (or near) Schumer-box initial disclosures should be given.

On solicitation/application forms (“average daily balance method, including current purchases”), the current disclosure tells consumers no more about relative cost than does the fabled reference to “the rule of 78 rebate,” and therefore fails the test of facilitating the informed use of credit. On the initial disclosure, Attachment C speaks volumes about the usefulness and comprehensibility of the current standard for initial disclosures. Attachment C, from one of the country’s largest issuers, has six paragraphs on a par with these first two paragraphs:

We calculate separate Balances Subject to Finance Charge for Category A and Category B balances. We calculate the Balance Subject to Finance Charge for each of these categories by: (1) calculating a daily balance for each day in the current billing cycle; (2) calculating a daily balance for each day prior to the current billing cycle that had a “Pre-Cycle Cash Advance” balance, which is a Cash advance with a transaction date prior to the current billing cycle but with a posting date within the current billing cycle; (3) adding all the daily balances together; and (4) dividing the sum of the daily balances by the number of days in the current billing cycle.

To calculate the daily balance for each day in the current billing cycle, we take the beginning balance, add an amount equal to the applicable Daily Period Rate multiplied by the previous day’s daily balance previous day’s daily balance, add new Cash Advances and Transaction Fees, and subtract applicable payments and credits. If any daily balance is less than zero we treat it as zero. Unless subject to a Grace Period, the beginning balance on the first day of the current billing cycle includes finance charges remaining from previous billing cycles. [Congratulations if you’ve gotten this far. There’s one more paragraph of this for the Category A and B balance calculation, and then three more such paragraphs for the Category C and D balances.]

The statute allows the Board to think creatively about how to make such information available and useable to consumers, while encouraging transparency and competition in both application/solicitation and initial disclosures. We urge the Board do so.

The studies from the 1970s suggest that the most frequently used computation methods can be ranked in order of expense to borrowers. More functional disclosure could be made by use of such rankings.⁴⁸ Thus the consumer gets transparent, useable information, not meaningless jargon. One conceptual model might be, for example, the “energy star” label which makes it easy for consumers interested in conservation to know where a particular appliance rates on scale relative to its competitors, and whether it meets the minimum standards necessary to qualify for the “energy star” label⁴⁹

Here are two alternative suggestions for the type of disclosure that could be used for both solicitation/applications and initial disclosure statements. Assuming, for example, that objective research updating the 1970s ranking studies finds that generally

⁴⁸ Obviously for people who always pay in full, rates, fees, and balance calculation methods are unimportant. Perhaps analysis would show some variation in ranking for “the regular revolvers” from the “occasional revolvers,” or other variations. If so, a simple qualifier such as adding the word “typically” would signify that it is not a universal truth.

⁴⁹ For a sample, see http://www.eere.energy.gov/consumerinfo/energy_savers/label.htm “How to Read the EnergyGuide Label.”

the most expensive end of the current spectrum is the “two-cycle average daily balance method, including new purchases,”⁵⁰ then disclosures from creditors using that method might read:

Sample # 1:

Balance Computation:

“Card issuers use one of six common ways to calculate the balance to which we apply the periodic rate. The “balance computation” method affects how much you will pay in finance charges if you do not pay off your account each month. **We use the most expensive method** for you if you do not pay off each month. It is called the “two-cycle average daily balance method (including new purchases).”

Sample # 2: (more closely parallel to the energy star disclosure)

Balance Computation:

There are six common methods to calculate the balance to which a credit card’s interest rate is applied. Some will cost more than others if you do not payoff your balances each month.

Least expensive

1. Adjusted Balance

2. Previous balance

3. Et cetera

4.

Most expensive

5. Two -cycle average daily balance (with new purchases)

6.

We use Number 6: the “two-cycle average daily balance (with new purchases).”⁵¹

This card issuer’s customers would know that there are better choices out there. If the card issuer used method # 3, the consumer would know there are better and worse choices, and they would know how to find which is which. Such disclosures comply with the statute and reduce considerably the “information overload” problem that the current contract/initial disclosures present under current practice. More to the point, they make this cost factor transparent, which is not the case currently. The disclosure is easier to understand, conveys at least a modicum of useable information to the consumer, and should encourage more genuine cost competition among providers.

⁵⁰ The Board could commission such studies, or conduct them itself. The studies should evaluate the various methods as they are actually used, including adding the impact of daily compounding.

⁵¹ The 1970s method lists the adjusted balance and the previous balance methods in this rank order, among the six methods listed in current § 226.5a(g) and the five in Appx. G-1. The two-cycle methods were not ranked in those studies, but the author of one reports that the two-cycle average daily balance method, (with new purchases) is “considerably above average in cost to the consumer.” National Consumer Law Center, *The Cost of Credit*, § 4.3.5.2, p. 135.

Q30: Explanations of balance calculation methods are complex and may include contractual terms such as rounding rules. Precise explanations are required on account opening disclosures and on periodic statements. Should the Board permit more abbreviated descriptions on periodic statements, along with a reference to where consumers can obtain further information about the calculation method, such as the credit agreement or a toll-free telephone number?

As we discussed in Q30, the solicitation/application and initial disclosures should convey information concerning whether carrying a balance will be more or less expensive with the card. The complex, precise explanations generally do not facilitate understanding for most people, as the quoted sample demonstrates.

The role of the balance computation method on the periodic statement, on the other hand, may be two-fold. It may serve as a real-time reminder of the expense of revolving, which may in turn affect behavior. To serve that purpose, a generic reference to the relative expense of the method used similar to that recommended in our comments to Q29 is adequate.

The second possible purpose of the balance computation disclosure on the periodic statement is to permit the consumer to check the accuracy of the creditors' computation of finance charges in any given month. As the complexity of the disclosure sample cited above (Appendix C) suggests, it is doubtful that this is something commonly done by consumers.

We believe that it is important to continue to provide useable information on cost when it can affect behavior. Consequently, a simple disclosure identifying the method by reference to relative expense should continue to be the primary disclosure on the periodic statement as well, (see Q 29).

For those who wish to go into more detail, such as to double-check the creditor's math, there could then be a disclosure: "For a more detailed description, see your [cardholder agreement] / [the back of this statement] or refer to our website." As an adjunct, the Board could also develop, with the help of focus groups and experienced consumer education specialists, glossaries and examples to which they could be referred for more detail. (For example, the Practical Money Skills website includes curricula with some charts showing examples of finance charges imposed under various balance computation methods.) We do not believe that the periodic statement disclosure should be solely an external referral. The bottom line about the relative cost of the system the card issuer uses should be there as a reminder with other key cost factor information. But for those with access to a computer, the time to explore further, and the inclination to replicate the calculation, such information may be useful.

Disclosing The Effects Of Minimum Payments / Spurious Open-End Credit

Q. 31(1): Is it appropriate for the Board to consider whether Regulation Z should be amended to require: (1) periodic statement disclosures about the effects of making only the minimum payment (such as, disclosing the amortization period for their actual account balance assuming that the consumer makes only the minimum monthly payment, or disclosure when making the minimum payment will result in a penalty fee for exceeding the credit limit). Would such disclosures benefit consumers?

It is appropriate for the Board to consider whether the requirements should be amended. First, in its role as the central bank, the Board has an undisputed interest in economic factors that affect the economy as a whole. When consumer spending is a major driving force in the economy, the factors that affect whether that spending contains seeds of a longer-term problem for the economy is a legitimate concern of the Board. Revolving credit is now \$801 billion of household debt.⁵² Second, the Board has the statutory duty to implement the goal of Truth in Lending, and is given discretion to doing so. Information regarding the potential term of revolving debt obligation may have been both less important and more difficult when the last major revision of TIL occurred in 1980. At that time, revolvers were fewer, balances carried were smaller, and technology was much less advanced. The portion of cardholders revolving grew from 37% in 1970 to 55% in 1998, and the average of reported balances grew from \$630 in 1970 to over \$4000 in 2001, and \$7519 in 2003.⁵³

With this amount of debt, it is important for families to know whether they need to curb card use in order to retire debt in a realistic time horizon. That basic information – the time horizon of debt -- is an important part of the TIL function of “avoid[ing] the uninformed use of credit.” 15 U.S.C. § 1601(a). Higher debt loads, combined with historic highs in income volatility, makes the question of whether to deal with fluctuating income through borrowing even more critical for families today than it was in 1968.⁵⁴ Understanding what it takes to pay down existing debt is a lesson best learned prior to taking on more.

Disclosures should meet two needs: what consumers should know, and what consumers want to know. Information about the amount of time necessary to pay-off revolving balances meets both criteria. In consumer education programs conducted by the Iowa Attorney General’s office, for example, even college-educated consumers consistently underestimated how long it would take to pay off credit card balances. Many consumers today juggle to meet routine recurring expenses and their debts, so the

⁵² See note 15, *supra*.

⁵³ Figures vary somewhat, and self-reported balance data may result in understated balances. See generally David S. Evans, *The Growth and Diffusion of Credit Cards in Society*, 2 *Payment Card Economics Review* 59, 64 – 66 (2004); Tamara Draut & Javier Silva, *Borrowing to Make Ends Meet: The Growth of Credit Card Debt in the ‘90s*, pp. 9 – 11 (Demos. Sept. 2003); Thomas A. Durkin, *Credit Cards: Use and Consumer Attitudes, 1970-2000*, Fed. Res. Bull. 623, 626 (Sept. 2000); Patrick McGeehan, *Mountains of Interest Add to Pain of Credit Card Debt*, New York Times, p. 1 (Nov. 21, 2004).

⁵⁴ Income volatility for middle-class Americans in the 1970s was around 16%, in the 1980s and 1990s, the fluctuation averaged 30%. For the lower quintile, it rose from 25% to 50%. See Daniel Gross, *Social Security as Dramamine*, B6 (New York Times, March 20, 2005).

temptation may be to make the lowest possible payment on flexible payment debts. But that cannot be an informed decision if they do not have the information necessary to weigh the cost of making that decision.

It is also information consumers want to know: 89% of consumers surveyed strongly agreed or agreed that “information on the statement about how long it would take to pay off the balance if I make only the minimum payment would be very helpful to me.”⁵⁵ The state of California enacted a partial response to the need and desire for this information, but the preemption decision in *American Bankers Association v. Lockyer*, 239 F. Supp. 2d 1000 (E.D. Cal. 2002), effectively rolled-back that legislation.

Some critics have argued that the information may not be helpful, because it will change if new charges are added, or an interest rate is increased.⁵⁶ Such objections are not well founded: It is a simple matter to add in plain language the limits of the information, while still providing sufficiently accurate information to put consumers closer to a realistic idea of the long term impact of minimum only payments.

A disclosure on the periodic statement such as below is not misleading, warns consumers of the variables, and still conveys information sufficient for them to make far more informed judgments than they currently have. It is also far less technical than other information currently required for the balance computation method. (See Q.29, above.)

Sample # 1 is the “account summary” as it actually appears on a current statement. Sample # 2 is that same account summary with a simple addition that would give the customer much better information necessary to make an informed judgment that current rules give him. (If the periodic statement looks too crowded with such crucial information, it may be appropriate for the Board to have a segregation requirement that precludes advertising on the periodic statements. Card issuers who wish to advertise with their billing may use stuffers, without conflating marketing materials with legally required, critical disclosures that affect the cost of their obligation.)

⁵⁵ Thomas Durkin, *Credit Cards: Use and Consumer Attitudes, 1970 – 2000*, Federal Reserve Bulletin, p. 629 (September, 2000).

⁵⁶ A spokesman for the American Bankers Association said it would be a “hyper-technical, expensive disclosure that nobody would understand.” Ed Yingling, “*Secret History of the Credit Card*” Frontline (transcript available at <http://www.pbs.org/wgbh/pages/frontline/shows/credit/etc/script.html>). On the other hand, it is very expensive for the consumer if this disclosure is not made. See, e.g. Tamara Draut & Javier Silva, *Borrowing to Make Ends Meet: The Growth of Credit Card Debt in the ‘90s*, p. 13 (Sept. 2003) (at 15% rate and 2% minimum payment, 32 years and \$7665 in finance charges to pay \$5000 credit card balance.)

Sample # 1 – Current example -- Actual statement

Your Bank Credit Card Account

New Balance \$3,310.57

Total Credit Line	\$8,000.00	Available Credit	\$4,689.43	[Adver-
Cash Limit	\$8,000.00	Available Cash	\$4,689.	tise-
Amount overlimit	\$ 0.00	Billing Date	01/15/05	ment
Minimum Payment Due	\$ 38.03	Payment Due Date	02/09/05	here]

Sample # 2 – With suggested minimum payment information

Your Bank Credit Card Account

New Balance \$3,310.57

Total Credit Line	\$8,000.00	Available Credit	\$4,689.43
Cash Limit	\$8,000.00	Available Cash	\$4,689.00
Overlimit Amount	\$ 0.00	Billing Date	01/15/05
Minimum Payment Due	\$ 38.03 **	Payment Due Date	02/09/05

** It would take **176** months to pay off this balance with this minimum monthly payment if you did not make any new charges, did not incur late fees or over-the-limit fees, and the rate did not change. [⁵⁷]

This information is specific, informative, and comes at a time when it has the capacity to affect behavior in a meaningful way. It also explains the limitations of the prediction in plain English. By saying what the variables are, including those within the customer's control, customers are likely to be better able to understand what they can do to make that time shorter or longer. While some critics say that it is "unrealistic" to assume that consumers would stop charging, that misses the educational point. Having the information that their debt will be with them for 14 ½ years without new charges will better help them make decisions about how much future use of the card is manageable.

At the outset, we urged the Board to use representative focus groups with age, educational and income diversity, to determine with greater certainty the most useful method of conveying the information. For example, upon consultation with consumers, the Board might find that one more sentence directing consumers to a site such as www.bankrate.com where they can determine how much they'd need to pay to retire the debt in a shorter specific time frame would be "used and useful," an appropriate test for disclosures.

Q 31(2) [Spurious open-end credit]: Is it appropriate for the Board to consider whether Regulation Z should be amended to require account-opening disclosures

⁵⁷ We did not have access to the cardholder agreement which explained how the issuer calculated the minimum payment. We used bankrate.com's calculator. <http://bankrate.com/brm/calc/creditcardpay.asp>

This is similar to a minimum payment information disclosure on HELCs which Household is required to give its customers under the terms of its 2002 consent judgments with state regulators and attorneys general.

showing the total of payments when the credit plan is specifically established to finance purchases that are equal or nearly equal to the credit limit (assuming only minimum payments are made)? Would such disclosures benefit consumers?

The Board's question concerns the long-standing problem of "spurious open-end credit." Credit more appropriately treated as closed-end is structured as open-end to avoid giving consumers meaningful information about high-cost obligations they are about to undertake. Congress attempted to close this loophole with definitional changes in 1980 amendments,⁵⁸ but that loophole has gotten larger. In 1980, Congress specifically mentioned "home improvements" as an example of transactions unsuitable for open-end credit. Now the market has seen home improvement and even auto sales financed with so-called open-end credit.

This is one open-end issue which affects both traditional revolving credit and home-secured lines of credit, and therefore the Board should consider possible solutions with respect to HELCs as well. We believe that changes to both pre-consummation disclosures and periodic statements regarding the "worst-case" payment and term information can help alleviate the problem. This approach may be simpler than trying to amend the definition of "open-end" credit, which inevitably creates friction and uncertainty as to where along a continuum a line should be drawn.

Question 31(2) revisits an issue upon which the Board was asked to act in 1997 – 1998. There were widespread abuses in the context especially of door-to-door sales of overpriced, big-ticket items like satellite dishes, water conditioning systems, and even home improvements. The Board was informed by the attorneys general of several states in 1997 of the way in which TIL rules were being misused to facilitate fraud and deception about the cost of these products. Details of how TIL rules encouraged and facilitated the deception were spelled out in the letter and supporting documentation.⁵⁹

Litigation of the issue of whether something was truly open-end or disguised closed-end not only was trying to close the proverbial barn door after many consumers had been harmed, but the decision in *Benion v. Bank One*, 144 F.3d 1056 (7th Cir. 1998) made that avenue more difficult. Indeed, in ruling against the consumer, the district court in *Benion* noted how contrary the result was to the goal of Truth in Lending, but specifically stated he felt it was up to the legislature to correct the problem, not the courts.⁶⁰ At least one court, too, believes it is appropriate for the Board or Congress to consider necessary amendment.

⁵⁸ Sen. Rpt. No. 96-368, reprinted in 1980 U.S.C.A.N. 236, 259-260 (96th Cong. 2d Sess); See also Sheldon Feldman, *The Specious Open-End Credit Plan – A Discussion of the Law Leading Up to FTC v. Traditional Industries*, 45 Business Lawyer 1989, 1991 (June 1990). See generally National Consumer Law Center, *Truth in Lending* § 5.2.3.2 (5th Ed. 2003)

⁵⁹ Letter to Griff Garwood, Director, Division of Community and Consumer Affairs, Board of Governors of the Federal Reserve System, from the Attorneys General of Arkansas, Illinois, Iowa, Pennsylvania, Vermont, Virginia, West Virginia and Wisconsin (October 24, 1997). (Should the Board staff not have a copy of the letter and supporting documentation available, CRL can furnish it upon request. The problems described therein remain.)

⁶⁰ 967 F.Supp. 1031, 1032 (N.D. Ill. 1997).

In sum, the scam worked like this: A door-to-door salesman pitches a \$3000 satellite dish, or a \$15,000 home improvement pitches to the consumer in an in-home sale. Consumers ask how much it costs, and the salesman throws out a payment amount. When the consumer asks how long it would take to pay it off, the salesman would answer, understating the term by several years, typically. The retailer / distributor had an agreement with a credit card issuer to open a so-called credit card account to finance these purchases. Under the open-end rules, no useful information is given to the consumer which would enable them to see what the real financed cost would be, or to check the accuracy of the representations before they make a purchase decision.

The TIL disclosure, if given at all, conveyed no useable information whatsoever. Even the APR was in small print amidst 59.5 square inches of 6-point type on a commonly used contract. (See Attachment B. ⁶¹) Typically, the initial purchase price came close to (or exceeded) the initial credit limit. Minimum payments were set high enough that they could be a drain on the budgets of the targeted populations, but no document given in compliance with Truth in Lending would put in writing what the true price of the obligation was – either monthly payments or the total cost. Because it was a “credit card” with typical combined disclosures/cardholder agreement, no documentation given the consumer contained any information useable for the consumer about the obligation they were undertaking.

By structuring it as open-end, the retailer/financer team could not only withhold critical cost information, but the first the consumer would see even the real payment information was when the first periodic statement came a month later. That enabled the team to also avoid both state laws giving people three days to cancel door-to-door sales, and, for the home-secured home improvement contracts – the three-day TIL rescission right as well.

In response, the staff issued a proposed Commentary amendment to the definition of open-end credit, § 226.2(a)(20), which would have elaborated on factors to be taken into account in determining whether a plan met the three-pronged test. 62 Fed. Reg. 64769 (Dec. 7, 1997). Ultimately the Board failed to approve the proposed Commentary, apparently concerned that trying to refine the definition might capture other merchants issuing credit cards to finance big-ticket items, such as the computer superstore. 63 Fed. Reg. 16669 (Apr. 6, 1998).

The problem has not gone away since 1998. At least one of the same card issuers worked with merchants using the same business plan to sell over-priced air conditioners in door-to-door sales targeted at Latinos in the southwest. ⁶² The “open-end” home

⁶¹ Attachment B was developed by the office of the Iowa Attorney General. It extracts the relevant portions of the agreement/disclosure used by one of the major financers of these door-to-door sales, and compared it to a closed-end translation of the obligation, using a home improvement sale.

⁶² The attorneys general of Texas and Arizona took actions against Hispanic Air Conditioning and Heating and the card issuers who financed them. During the Arizona litigation, the OCC asserted exclusive

improvement sale by contractors financed through “cards” (which may or may not be given) issued by partnering lenders continues to be a problem. These sales may be either unsecured, or secured by the home.

Spurious open-end credit also has appeared in HELC loans. Though these are not sales-financing transactions, the disclosure failures are the same. States alleged in their action against Household, for example, that the second “HELC” mortgages were really disguised closed –end mortgages. In addition to providing inadequate information about the obligation on these mortgages, structuring these as open-end also avoided application of HOEPA to these home equity mortgages, which carried rates up to 24%.

The experience of the 1980 statutory amendments and the 1998 proposed commentary amendments suggest that the solution does not lie in changing amendments to the definition of open-end credit. We recommend that the Board instead narrow the “disclosure gap” between open and closed-end. This should reduce the incentives to mischaracterize the structure of the credit, and further all the goals of TIL – both public and private.

The ANPRM requests specifically whether the disclosures should be given where “credit plan is specifically established to finance purchase that are equal or nearly equal to the credit limit, assuming only minimum payments are made.” It notes that opposition to this straightforward recommendation is that it would “unfairly disadvantage merchants’ credit plans because issuers of general purpose credit cards would not provide such disclosures at the point of sale for an identical transaction.” This criticism misses the boat.

* First, the goals of Truth in Lending are enhanced by information regarding the use of credit irrespective of whether the consumer is in a computer store opening up a private label card to finance the purchase of a \$2000 computer, or in the home listening to the sales pitch on a \$2000 water treatment system. Unless the price of the financed goods or the credit is too high to be competitive, the merchant should not be harmed by disclosure.

* Second, the comparison to general purpose card purchases is inapt and incomplete. Spurious open-end credit itself is anti-competitive. It disadvantages honest, ethical merchants and related financiers who give informative and accurate closed-end disclosures. Thus the existing system rewards those who try to mislead consumers about the cost of the undertaking they are considering, and disadvantages those who do not. The appropriate action for the Board is to further the goal of informed use of credit. We do not believe that honest, ethical competitors will be hurt by doing so, but they will continue to be hurt by failure to do so.

* Third, if the Board adopts term information at minimum payment levels for periodic statement, the information gap between new merchant-plan accounts and

visitation authority and entered into an agreement with the national bank card issuer. Formal Agreement By and Between Household Bank, NA and the OCC (OCC #2003-17).

existing general purpose accounts will have been narrowed in any event. Consumers who pull their VISA cards out of their wallets at the computer store would have gotten a statement within the prior month explaining what their payment horizons are “assuming no new additional purchases or charges.” They will know from their last statement, for example, that they have a 79-month time horizon on their \$4000 balance at \$80/month absent any new charges. That would let them know that adding a \$2000 computer purchase was going to take either much bigger payments than \$80 or a much longer time horizon than six and one-half years to pay off that card. While not equal information to the quasi-closed-end type disclosures for special account openings, the gap between merchant and third party accounts at this purchase is still much narrower than the existing gap between legitimate closed-end and spurious open-end.

We recommend the following rules to close the information gap, and thus discourage spurious open-end credit:

A. Pre-consummation disclosure at initial purchase on plan opened to finance initial purchase: We believe that the disclosure of “worse case” or “most likely case” information concerning payments, repayment term at the minimum payment, and total cost is necessary when a credit account is opened to finance a major purchase. For example, when the sales rep at a computer superstore asks a customer if they wish to open a private label account to finance the intended purchase, in addition to generic application/solicitation information, the consumer could be given a pre-charge print-out with information along these lines. (Assume: \$2400 goods price, 18% rate, minimum payment at 2% of outstanding balance.)

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Sample

Our current APR is 18%.

- IF** you do *not* make additional purchases
- IF** you *pay on time*,
- IF** the APR does not change, and
- IF** you make only the minimum monthly payment:

Then this purchase on our credit card will cost you:

Cash Price (including tax)	Minimum monthly payment (\$ / %)	Number of months to pay off (rounded)	Finance charge	Total of Payments
\$2,400.00	<u>\$48</u> to start (2% of account balance)	407	\$6,130.98	\$8,530.98

Such information can be easily and quickly generated. If given at the point when the consumer is deciding on payment options, this makes the informed use of credit possible. If the merchant card is not competitively priced, then the consumer knows that the 9% APR VISA card already in his or her wallet is a much better deal. In that case, it should be noted that it is not the information that puts this merchant card plan at a disadvantage over the general-purpose card, it is the plan's terms. Since one of the goals of TIL is to foster competition and efficiency among providers of credit, this kind of stark difference provides more reason, not less, for such pre-decision disclosures. The consumer may even decide that the soundest decision is to take \$2400 out of the 1.5% savings account to pay cash. If this card plan is chosen, then the consumer at least understands that he or she will have to budget for more than \$50 a month to pay this off in a realistic time. (At \$50 a month, it is still seven years to pay off – as long as it takes to pay off a car.)

B. HELCS: While the Board will be considering HELCS at a later time, as noted above, the problem of spurious open-end credit arises in the HELC context as well. Here, too, we believe that closing the information gap is simple solution. There is also a model currently in use. The states' injunction in the Household case required that it use a disclosure substantially similar in form to the following for its HELCS.

Sample

PAYMENT INFORMATION FOR YOUR HELC

You will be getting a line of credit in the amount of: \$35,000

Your initial loan balance will be: \$15,000

IF you do not make any other withdrawals on this account, and

IF the interest rate does not change, and

IF you make only the minimum monthly payments of \$_____ / or _____% of your balance (which would start at \$_____),** and

IF you make all your payments on time,

THEN (fill in applicable line)

D It will take you _____ [months / years] to pay off your initial balance of \$ _____

or

D You will have a balloon payment of approximately \$ _____ due on _____. (If you want to avoid the balloon, you would have to pay \$ _____ each month.)

** Instructions: If the monthly payments are a percentage of the outstanding balance each month, the beginning monthly payment (which should be the highest) will be disclosed in the parenthetical. If the monthly payments are a percentage of the beginning monthly balance, which does not change unless there are additional draws, the standard monthly payment should be used.

We believe that such information is not only possible, but is necessary in order to assure that consumers are adequately informed about the cost of such major financial undertakings.

C. At a minimum, apply such disclosure requirement door-to-door sales structured as open-end: We believe that it is both feasible and desirable to provide transaction specific disclosures about the total cost and time necessary to repay a major debt at the minimum payment at the point of sale when a new account is opened to finance a big-ticket item, as discussed above. However, if the Board remains unconvinced about the wisdom or feasibility, then at a minimum, such disclosures should be mandated in the

door-to-door sale context – the context that led the state attorneys general to seek action from the Board. We stress, however, that this is the least desirable approach to close the disclosure gap, for the simple reason that it targets a 20th century problem, while the 21st century loopholes it creates are both obvious and already upon us: internet marketing, telemarketing, even in-store dodges, such as the “open-end” auto sale.

The Board has the authority to make classifications, differentiations, exceptions or adjustments as are necessary to prevent circumvention or evasion of the act. 15 U.S.C. 1604(a). The door-to-door sales context is the one in which the abuses are well documented, and an initial disclosure such as that described above should, at a minimum, be required in that context. Such a special rule might read ⁶³

226.6(f) (1) In the case of any open-end account established incident to an initial purchase to be charged to the account as part of a door-to-door sales in excess of \$500, the following disclosures shall be made on a separate document from all other initial disclosures and contract terms, using a required form prescribed by the Board. Such disclosures shall be given prior to consummation.

- (i) the minimum monthly payment, represented both as a dollar figure and as a percentage of that balance;
- (ii) the number of months, rounded to the nearest month, that it would take to pay the entire amount of that balance if the consumer pays only the required minimum monthly payments and if no advances are made other than the initial purchase;
- (iii) the total finance charge which the consumer would pay if no other charges are made and if the minimum monthly payments are made;
- (iv) the total cost to the consumer, including interest and principal payments of paying that assumed balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made;
- (v) the minimum monthly payment which would be necessary to pay the principal balance in full in 36 months, if no further advances are made.

(2) Rules for calculating the disclosures: In making the calculations required by (1),

- (i) the amount financed used shall be the purchase price of the product or services for which financing through the open-end plan is being offered;
- (ii) the interest rate shall be the rate in effect on the date in which the disclosure is made until the date on which the balance would be paid in full. If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent rate adjustment, the disclosure calculation shall utilize the temporary rate for as long as it will

⁶³ Following the Board’s failure to Act in 1998, the possibility of suggesting a statutory amendment similar to this was considered.

apply under the contractual provision, and then apply the interest rate based on the index or formula as of the date the solicitation or advertisement was printed.

The Federal Trade Commission and all states have mandatory 3-day cancellation rights for door-to-door sales. ⁶⁴ Requiring this information will not only facilitate the goals of Truth in Lending, it will close the loophole which has perversely resulted in TIL being misused to circumvent these other laws, as well.

Q 32. Is information about the amortization period for an account readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of implementing such a rule?

We do not believe that generic information is as helpful to consumers, and recommend that the information be account-specific. For genuinely revolving credit accounts, it should be provided on the periodic statement. At that point, it is relevant to the consumer's decision-making about whether and how much to continue to use the card. (See Q 31(2) for our recommendations as to payment disclosures at account opening.) In recent years, card issuers have made pricing decisions that require far greater technological advances and complex programs than simply amortizing the actual balance at the actual rate once a month. Individualized term disclosures for minimum payments should present no greater technological challenge than the continuous individualized monitoring and re-pricing that the industry has chosen to undertake.

It is not a difficult computer task for the card issuers: all the information necessary to make the calculation is already on the statement. The computer already has to calculate the "minimum monthly balance," the "new balance," and apply at least one periodic rate(s) to the balance to derive the finance charge. Some card issuers already have developed accounting systems which apply as many as four different rates to individual transactions in that billing period, and compound the interest daily. ⁶⁵ Furthermore, with the use of universal default penalty rates, some have already chosen to regularly monitor their customers' behavior with other lenders to determine whether to switch that customer to a penalty rate irrespective of the customers' record with the card issuer itself. Given this recent history of very complex pricing and individualized pricing – both by transaction type and customer behavior in the external world – it is difficult to believe that the one extra step of calculating the amortization term from information already in the system is insurmountable. Relative to the costs of implementing these changes that are frequently adverse to the consumer, it is doubtful this is prohibitively expensive

⁶⁴ 16 C.F.R. 429 (FTC). See National Consumer Law Center, *Unfair and Deceptive Acts and Practices*, § 5.8.2.5. (6th Ed. 2004) for a discussion of state law.

⁶⁵ A periodic statement from January, 2004, from Discover, a two-cycle balance plan, lists the following rates as applicable: "current billing period purchases 16.49% (variable); promotional purchases (2.9% fixed), cash advances (22.99% fixed), and purchases from previous billing period (16.24% variable).

Q 34-36: Payment allocation methods

The Board's questions regarding payment allocation methods arise from practices that have raised concerns about accounting manipulations that "protect" the portion of revolving balances carrying higher rates where balances are subject to multiple rates ⁶⁶ One card issuer discloses it this way:

Subject to applicable law, we will apply and allocate payments and credits among balances and Charges on your Account in any order an manner determined by us in our sole discretion. In most cases, we will apply and allocate payments first to balances at lower Annual Percentage Rates ("APRs") and then to higher APR balances, and apply Purchase credits first to the balances from which the corresponding debit originated. However, for servicing, administrative, systems or other business reasons, we may apply and allocate payments and credits among balances and to Charges on your Account in some other order or manner that we may determine in our sole discretion. You agree that we have the unconditional right to exercise this discretion as to how to allocate payments in a way that is most favorable or convenient to us.

The last sentence is worth repeating in 12-point type: "You agree that we have the unconditional right to exercise this discretion as to how to allocate payments in a way that is most favorable or convenient to us."

It is with respect to such conduct that it is crucial that the Board evaluate TIL in light of all its purposes – including protecting honest, ethical creditors and the integrity of the marketplace. It is also worth reminding ourselves that it was in just such one-sided contracts and accounting tricks at issue in the unconscionability case that served as the beginning of the end of *caveat emptor* as the official legal doctrine of the modern consumer credit marketplace. ⁶⁷

We believe there is no legitimate justification for one-sided accounting rules, and disclosure cannot suffice. The Board should not condone such conduct by addressing this as a disclosure matter. We concur with the National Consumer Law Center that it is an unfair and deceptive practice, and should be treated as such. Neutral accounting principles should be required. For example, the first-in, first-out ("FIFO") is a computational method in use in a variety of settings, ⁶⁸ and could be as easily used as this biased system.

Q 39: Are there particular types of open-end credit accounts, such as subprime accounts, that warrant special disclosure rules to ensure that consumers have adequate information about these practices?

To determine where the most significant weaknesses in current disclosure law is, a study of the subprime market is instructive: cracks in the foundation show up here.

⁶⁶ Mark Furletti, *Credit Card Pricing Developments and Their Disclosure*, note 23, *supra* at p. 15.
footnote ⁶⁷ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C.Cir. 1965).

⁶⁸ The UCCC, for example, requires its use in conjunction with cross-collateral clauses. See, e.g. Iowa Code § 537.3303. It has also been used in determining what funds on deposit in a bank account are from sources exempt from garnishment. See generally National Consumer Law Center, *Fair Debt Collection*, § 12.6.4 (5th Ed. 2004).

Subprime Plan # 1: Attachment D includes the cover letter that came with a subprime card at account opening, the initial disclosure and cardholder agreement, and first periodic statement. The cover letter is instructive. To paraphrase: “Congratulations: Here is your card. It has a \$250 credit limit. We’ve already added \$178 in fees to it, and you have \$72 available.” On the reverse are the “important disclosures” in tiny typeface, densely printed. The rate for purchases on this card is 9.9% ; 23.9% for cash advances and the penalty rate for purchases. The penalty rate can be triggered if the consumer goes over the limit ⁶⁹ or the issuer “reasonably deem[s]” the prospect of repayment of the account to be in jeopardy, among others. (See Q 27, above.)

Listed Fees: \$29.00 “account set-up fee, \$25.00 credit limit increase fee (on this \$250 credit limit card which has \$178 in fee charges when the consumer first gets it), \$3.95 internet access fee (one-time), \$48 annual fee, \$ 6 monthly participation fee.

The periodic statement shows the charges that are placed on this \$250 account before the consumer even receives the card:

\$29 set up fee (finance charge)
\$95 program fee (finance charge)[⁷⁰]
\$ 6 participation fee
\$48 annual fee
\$178

The cardholder agreement also lists the venue for any court action to be in the Second Judicial Circuit of South Dakota. (Such distant venue practices have long been held to be unfair and deceptive. ⁷¹)

Clearly there is an information problem here; but more clearly, there is a substantive problem here, and substantive regulation is called for. Some examples of possible approaches to such abuses are:

* The “Typical” APR solicitation/application disclosure recommended by NCLC may be some improvement: at a minimum, it should prevent this card issuer from describing this as a 9.9% card.

⁶⁹ See discussion below concerning another subprime lenders’ accounting manipulation to pyramid OTL fees and make it impossible for the consumer to know what to pay to avoid them. That helps the OTL income, and if penalty rates are linked to OTL activity, all the more expense to the consumer. And all the more insidious.

⁷⁰ It may be fading eyesight, but we found no reference in the disclosure or contract to the “program fee.” If it’s there, we assume it would be at least as difficult for the average consumer to find as it is for us.

⁷¹ See cases collected in National Consumer Law Center, *Unfair and Deceptive Acts and Practices* § 5.1.1.4 (6th Ed. 2004).

* Creditor fees should not count toward credit limits. While it makes sense to have low-limit credit cards for those who wish them, or who are learning how to manage card use, there is no justification for plans where the creditors' fees fill up 70% of the credit limit.

* A right to cancel within 60 days of receipt of the first periodic statement in a plan in which the creditor's charges comprise more than 1% of the credit limit. Exceptions could be made for charges relating to the consumers' actual use of the account.⁷²

Subprime Plan #2: The abuses in this plan involved accounting manipulations. No disclosure is adequate to deal with this problem. This issuer imposed a \$35 Over-the-limit fee. That is properly disclosed. The problem, however, is that by the time the consumer received the statement instructing her to "please remit overlimit amount immediately," the creditor had already imposed the next OTL fee of \$35. The billing cycle closed on the 27th of the month, and next month's OTL fee was imposed on the 28th of the month – undoubtedly before the statement was even mailed. Consequently, not only was the payment information listed on the statement obsolete by the time she got it, but the new OTL fee would be earning interest at this plan's 22.9% for a full month before the consumer is aware it is over the limit. (It is more costly yet if the creditor does daily compounding.) The new interest and new OTL fee takes the balance over the limit again, and the cycle starts anew.

Over a period of 10 months, this consumer charged a total of \$386.68, made \$293.61 in payments, and still had a balance of \$323.19. She never made a late payment. The credit limit was \$300, and she never made charges in excess of \$190 in one month. (That was only once. All other months, her charges ranged from \$0 to \$53.)

The federal banking agencies have singled out the "pitfalls of negative amortization [which are] magnified when subprime accounts are involved, and even more so when the condition is prolonged by programmatic, recurring over-limit fees and other charges that are primarily intended to increase recorded income for the lender rather than enhance the borrowers' performance or their access to credit."⁷³ The agencies say that such practices "raise safety and soundness concerns and are subject to examiner criticism." We believe the preferable response is to simply prohibit such manipulation. This is not a disclosure issue.

⁷² Buried in the documents in Appendix D is a clause which says the contract is effective upon the earlier of the consumers' use of the card or the expiration of the 30 days from the date of issuance without "your returning the Card to us cut in half with a written notice requesting that we cancel your Credit Account." It is not a prominently featured right.

⁷³ OCC, FRB, FDIC, OTS, "Account Management and Loss Allowance Guidance," p. 3. <http://www.federalreserve.gov/boarddocs/press/bcreg/2003/20030108/attachment.pdf>

- * OTL fees should be imposed at the end of the cycle, not the beginning.
- * Fees should be excluded from the calculation of the balance in determining whether the limit has been exceeded;
- * Payments listed on the periodic statement should be both sufficient to avoid negative amortization and additional fees.

These recommendations relate to abuses of the type we have seen in subprime products. We are not under the illusion that we are aware of all the abuses in this market. Broader, structural approaches such as those contained in the comments submitted by NCLC should be considered.

Q 43: Billing Errors and Preservations of Claims and Defenses. Are the existing rules adequate? Are creditors' responsibilities clear?

We believe this is an aspect of the law in which the need for creditor education is more important than consumer education. The NCLC comments note the experience of private individuals in trying to assert § 226.12(c) preservation of claims and defenses rights. The experience of state officials trying to address consumer complaints exposes the same weakness of compliance.⁷⁴ Simply put, § 226.12(c) is off the radar screen of most credit card customer service operations. As telemarketing fraud has become a greater problem, the § 226.12(c) right takes on greater importance, for consumer protection and for market integrity purposes. Card issuers are in a better position to monitor complaints and charge-backs concerning a particular merchant, than any isolated consumer. But neither the public nor the private functions of 226.12(c) can be met if card issuers refuse to even acknowledge the right in its front-line communication with affected consumers. They also cannot be met if the creditor's investigation involves merely adopting the merchant's statement, as all too frequently happens. (Cf. OSC § 226.12(c)(2)-2 (investigation and independent assessment required.)) The Board should consider how card issuers can better educate consumer service departments as to the company's own obligations, and how regulators can improve creditor compliance in this regard.

Q 57: Recommendations for legislative changes

The Board has broad discretion under the Act and under Supreme Court interpretations. We believe that most of the suggestions made in these comments can be implemented without statutory changes. However, as discussed, some of the weaknesses in disclosure as a substitute for substantive regulation have been revealed by substantive abuses that cost consumers hundreds of millions. These should be addressed substantively. As an example of a modest approach, the Board might seek rule-making authority to prohibit certain practices as unfair or

⁷⁴ One of the authors of these comments for CRL was an Assistant Attorney General in Iowa from 1996 to 2004.

deceptive under TIL generally, *cf.* 15 U.S.C. § 1639(l)((2)(b), (UDAP authority under HOEPA.) The recommendations are discussed in more detail in connection with the questions to which they relate. The following summarizes some of these recommendations.

* Q. 27 – Penalty/Default Rates

Summary of Recommendation: 1) at a minimum, any penalty rate or fee increase must be linked to a material default directly related to that specific account, 2) there should be at least 30-day's advance notice that the card issuer is invoking the penalty pricing clause; and 3) any increases so imposed should not apply to any balance incurred prior to receipt of the advance notice that the penalty rates or fees will be imposed.

Q. 28-30 -- Balance Computation Methods

We suggested a functional disclosure of balance computation methods after a Board-sponsored review of the methods currently in use, including variants such as daily compounding. Accounting methods should be neutral. Some accounting methods may have no purpose other than to maximize revenue, and to do so in a way that defies disclosure solutions. The Board should seek authority to declare certain types of accounting manipulations unfair and deceptive.

Q. 34-36 -- Payment Allocation Methods

Neutral payment allocation principles should be required.

Q. 39: Subprime products

1) Overlapping with Q. 28-30, we recommend that unfair accounting methods be prohibited, including those we describe in question 39. There should be no pyramiding of fees. 2) Creditor fees should be excluded in determining whether a credit limit has been exceeded, 3) Payments listed on a periodic statement should be sufficient to avoid negative amortization and additional fees if paid by the stated due date, and the stated due date should give ample time for payment to be made, received and posted.

Conclusion

We recognize that the Board has an enormous task ahead of it. As we noted at the outset, we are struck by the fact that this review of disclosure rules is coming at a time when increasing complexity makes explanation and understanding more difficult than ever. We are confident that if the Board consistently keeps in mind all the goals of TIL, not just the two cited in the ANPRM, the result will be a significantly improved credit card market.

ATTACHMENT A

A-1 through A-2

Agreement Between Delta Skymiles options credit card member

AND AMERICAN EXPRESS CENTURION BANK

Welcome to American Express Cardmembership

This document and the accompanying supplement(s) constitute your Agreement. Please read and keep this Agreement. Abide by its terms. When you keep, sign or use the Card issued to you (including any renewal or replacement Cards), or you use the account associated with this Agreement (your "Account"), you agree to the terms of this Agreement. The words "you," "your" and "yours" mean the person who applied for the Account and the person to whom we address billing statements, as well as any person who agrees to be liable on the Account. The "Basic Cardmember" is the person who opened the Account. At your request, we may also issue a Card on your Account to another person (an "Additional Cardmember"). The term "Card" refers to the American Express® Card issued to you, all other Cards issued on your Account, and any other device (such as Account numbers and convenience checks) with which you may access your Account. "We," "our" and "us" refer to American Express Centurion Bank, the issuer of your Account.

Using the Card

You may use the Card to obtain goods and services from any person who accepts the Card ("Purchase"). You may also use the Card to obtain loans ("Cash Advance(s)") through various means we may make available (e.g., ATM machines) up to the applicable limits on your Account. At our discretion, we may permit you to transfer balances from other accounts to your Account ("Balance Transfer(s)"). At our discretion, we may issue convenience checks that you can use to access your Account. Each convenience check may be used only by you. You may not use convenience checks to pay any amount you owe under this Agreement or to pay any other account you have with us or our affiliates. Transactions you make in response to promotional offers from us will be subject to the terms of the promotion and this Agreement. All amounts charged to your Account, including Purchases, Cash Advances, Balance Transfers, convenience checks, annual fee(s), if any, any amounts guaranteed by use of the Card, other fees, and any

Finance Charges, are "Charges." A convenience check that we identify as being made payable to cash, to you, or to a bank, brokerage or similar asset account will be treated as a Cash Advance. Any other convenience check and/or a Balance Transfer will be treated as a Purchase, except as otherwise noted. If you make a Purchase or a Balance Transfer, or use a convenience check, that is governed by a promotional offer from us, the Charge will be included in a Promotional Balance, unless we notify you otherwise.

You agree not to let any person use a Card except a Cardmember whose name is on it. You agree to notify us if the Card is lost or stolen, or you suspect that it is being used without your permission. You agree to use the Account only for Purchases, Cash Advances, or Balance Transfers that are lawful and are permitted under this Agreement. We may issue you renewal or replacement Cards before a previously issued Card expires. If you or an Additional Cardmember authorize a third party to bill Charges on a recurring basis to your Account ("Recurring Charge(s)"), we may (but are not required to) provide such third party with your current Account status, Card number and/or expiration date to permit that third party to continue billing your Account. We may take such steps even if your account number changes or if we issue a renewal or replacement Card to you or an Additional Cardmember. To withdraw authorization for a Recurring Charge, you must notify the third party.

Annual Fee

There is no annual fee for this Account.

Credit Line

A portion of your credit line may be available to you for Cash Advances up to your Cash Advance limit. We may, at any time, increase and/or decrease your credit line and/or Cash Advance limit Charges at an automated teller machine ("ATM") to the lesser of (i) a total of \$1,000 in any seven-day period, or (ii) the remaining amount of the Cash Advance limit on your Account; and we may impose additional limits at our sole discretion (in addition to any limits imposed by the ATM's owner). Your billing statements will show

your credit line and Cash Advance limit and the unused portions of your credit line and limit as of the statement date. You agree to manage your credit line so that your balance for Cash Advances (including fees and Finance Charges) will not exceed the Cash Advance limit and your overall balance (including fees and Finance Charges) will not exceed your credit line. You agree to pay us, immediately upon request, the amount of any balance on your Account in excess of any applicable credit line or limit. We reserve the right to decline any attempted

Charge, even if the Charge would not cause you to exceed your credit line or limit.

We are not responsible for any losses or other consequences if a transaction on your Account is not approved for any reason, even if you have sufficient credit available. Except as otherwise required by applicable law, we will not be responsible if any merchant refuses to honor the Card or for any other problem you may have with a merchant.

Promise to Pay

You promise to pay all Charges, including Charges incurred by Additional Cardmembers, on your Account. This promise includes any Charge for which you or an Additional Cardmember indicated an intent to incur the Charge, even if you or the Additional Cardmember have not signed a charge form or presented the Card. You also promise to pay any Charge incurred by anyone that you or an Additional Cardmember let use the Card, even though you have agreed not to let anyone else use the Card.

Status of and Responsibility for Additional Cardmembers

Additional Cardmembers do not have accounts with us. Instead, they are authorized users on your Account and the Cards issued to them may be canceled by you or us at any time. You must notify us to revoke an Additional Cardmember's permission to use your Account. You are responsible under this Agreement for all use of your Account by the Additional Cardmembers, and by anyone else you or an Additional Cardmember lets use the Card, and the Charges they incur will be billed to you. You have this responsibility even if you did not intend for an Additional Cardmember, or other person, to use the Card for any transactions.

An Additional Cardmember is not liable for Charges incurred by the Basic Cardmember or by other Additional Cardmembers. However, by each use of the Additional Card to incur Charges, the Additional Cardmember indicates his or her agreement to pay us for the charge if you fail to or refuse to pay it, and <redact information> Additional Cardmembers for payment of charge they incur or authorize. You authorize us to provide Account information to Additional Cardmembers and to discuss the Account with them. You agree to notify each Additional Cardmember, at the time he or she becomes an Additional Cardmember, that we may receive, record, exchange and use information about him or her in the same manner we do with information about you, as described below in the CONSUMER REPORTS, TELEPHONE MONITORING/RECORDING, and SUSPENSION/CANCELLATION sections of this Agreement.

Billing Statements/Minimum Amount Due

You must notify us immediately of any change in the mailing or e-mail address to which we send billing statements or notices that a billing statement has been posted ("Billing Address"). If you wish a Billing Address change to apply to more than one account you maintain with us, you must tell us. You agree that we may also update your Billing Address if we receive information that your Billing Address has changed or is incorrect.

The "New Balance" appears on your billing statement. To determine the New Balance, we begin with the outstanding balance on your Account at the beginning of each billing period, called the "Previous Balance" on the billing statement. We add any Charges, subtract any credits or payments credited as of that billing period, and make other applicable adjustments.

Each billing statement will reflect <redact information> due by the time and date shown and in the manner prescribable on the statement. To calculate the Minimum Amount Due (which will be rounded to the nearest whole dollar if greater than \$15), we will add together the following:

- (1) any amount past due;
- (2) the greater of
 - 1/50th of the New Balance on your billing statement (for purposes of this calculation we exclude from the New Balance any over-limit fee added to your Account during the billing period),
 - the current billed Finance Charges, or
 - \$15 (or the New Balance if it is less than \$15); and
- (3) any over-limit fee added to your Account during the billing period.
- (4) <redact information> we may also include in the Minimum Amount Due <redact information> fees incurred during the billing period and any part of the New Balance in excess of your credit line.

The Minimum Amount Due will not exceed the New Balance. You may pay more than the Minimum Amount Due, up to the entire outstanding balance, at any time. Any increase or decrease in any Daily Periodic Rate may increase or decrease the amount of your Minimum Amount Due.

Payments

All payments must be sent to the payment address shown on your billing statement and must include the remittance coupon from your billing statement. You must pay us in U.S. currency, with a single draft or check drawn on a U.S. bank and payable in U.S. dollars, or with a negotiable instrument payable in U.S. dollars and clearable through the U.S. banking system, or through an electronic payment method clearable through the U.S. banking system. Your Account number must be included on or with all Payment <redact information> made in a foreign currency; you authorize us to choose a conversion rate that is acceptable to us to convert your remittance into U.S. currency, unless a particular rate is required by law. Payments conforming to the above requirements that we receive no later

<redact information> requirements that we receive after the hour specified on your statement will be credited to your Account as of the following day.

If payment does not conform to the requirements stated above, crediting may be delayed. If this happens, additional Charges may be imposed. We may accept late payments, partial payments or any payments marked as being payment in full or as being settlement of any dispute without losing any of our rights under this Agreement or under the law. Our acceptance of any such payments does not mean we agree to <redact information> this Agreement in any way. You agree that an acceptance of <redact information> will not operate as an accord and satisfaction without our <redact information> approval.

Subject to applicable law, we will apply and allocate payments and credits among balances and Charges on your Account in any order and manner determined by us in our sole discretion. In most cases, we <redact information> Per <redact information> app <redact information> and administrative systems and credits among balances and other <redact information> You agree <redact information> that is most favorable to convenience <redact information>

Authorization for Electronic Debit to Your Checking Account

We reserve the right to process checks electronically by transmitting the amount of the check, the routing number, account number and check serial number to your financial institution. By submitting a check for payment, you authorize us to initiate an electronic debit from your bank or asset account. If we process your check electronically, your payment may be debited to your bank or asset account the same day we receive your check. Also, if we process your check electronically, you will not receive that canceled check with your bank or asset account statement. If we cannot collect the funds electronically, we may issue a draft against your bank or asset account for the amount of the check.

Finance Charges

- A. Finance Charges begin to accrue for each Charge as of the date it is added to the daily balance, as described below. For Purchases (excluding Balance Transfers or convenience checks), however, no Finance Charges will accrue in any billing period in which the Previous Balance on the statement covering that billing period is zero or a credit balance.
- B. The Daily Periodic Rate ("DPR") for Purchases and the DPR for Cash Advances are each based on an APR, which may vary. The APR for Cash Advances is the Prime Rate plus 14.99% - A DPR is 1/365th of the APR. Your DPRs and APRs for Purchases appear on the accompanying supplement(s). When an APR changes, we apply it to any existing balance subject to that rate.
- C. The "Prime Rate" is determined once with respect to each billing period, and applies to the entire billing period. The Prime Rate for billing periods ending in any calendar month is the highest Prime Rate published in the Money Rates section (or successor section) of *The Wall Street Journal* on the 1st or 20th day (or, in each case, if such date is not a business day, the next business day) of the prior calendar month. If *The Wall Street Journal* ceases publication or does not publish the Prime Rate on either of those dates, we may

The prime Rate published in any other newspaper of general circulation in New York, New York, or we may substitute a similar reference rate at our sole discretion.

The DPR (and corresponding APR) on all balances may increase to the Default Rate if during the Review Period (i) payment of your Minimum Amount Due is not credited by the Payment Due Date in any two billing periods; or (ii) on two or more occasions a payment submitted on your Account is not honored on first presentment; or (iii) you exceed any designated credit limit on your Account three or more times. The "Review Period" is the period, constituting approximately one year, of twelve consecutive billing periods ending with the Closing Date of the current billing period, whether or not you received a statement for each such billing period. If the Default Rate is applied, it will apply to your Account for twelve consecutive billing periods, beginning with the current billing period. The Default Rate will not apply to any balance unless it is higher than the rate that would otherwise apply to that balance. The Default Rate is a DPR of .0657% which corresponds to an APR of 23.99%.

Average Daily Balance Method for Calculation of Finance Charges

We use the Average Daily Balance method to calculate Finance Charges on your Account. Under this method, we calculate the Finance Charges on your Account by applying the DPR to the Average Daily Balance (as described below) separately for each balance subject to Finance Charges. Different periodic rates may be used for different balances. For example, different DPRs may be applied to separate balances, such as Purchase, Cash Advance, and Promotional Balances. To get the Average Daily Balance for each balance, we (1) take the beginning balance for each day (including unpaid Finance Charges from previous billing periods), (2) add any new transactions, debits, or fees, (3) subtract any payments or credits credited as of that day, and (4) make any appropriate adjustments. For each day after the first day of the billing period, we also add an amount of interest equal to the previous day's daily balance multiplied by the DPR for the balance. This gives us the daily balance for the particular balance for that day and the beginning balance for that balance for the next day. If this balance is negative, it is considered to be zero. Then, we add up all the daily balances for each balance for the billing period and divide the total by the number of days in the billing period. This gives us the Average Daily Balance for that balance.

For balances except Cash Advances, the Average Daily Balance for a billing period will be considered to be zero if you paid the New Balance, if any, shown on your previous billing period's statement by the Payment Due Date shown on that statement. If you multiply the Average Daily Balance for each balance by the number of days in the billing period and the DPR for that balance, the result will be the Finance Charge assessed on that balance, except for variations caused by rounding. The total Finance Charge for the billing period is calculated by adding the Finance Charges assessed on all balances of the Account. This method of calculating the Average Daily Balance and Finance Charge results in daily compounding of Finance Charges. We may use mathematical formulas which produce equivalent results to calculate the Average Daily Balance, Finance Charge, and related amounts. For example, we may utilize computer programs or other computational methods that are designed to produce mathematically equivalent results while using fewer and/or simpler computational steps than are described in this Agreement. At our discretion, we may exclude certain categories of debit transactions or fees from the calculation of the daily balances. Unless we elect to use a later date, we add a Charge to the daily balance as follows: We add a Cash Advance or Purchase to the appropriate daily balance as of the date of request or the transaction date on the billing statement. We add a convenience check to the appropriate daily balance as of the date of first deposit. We add a Balance Transfer other than through a convenience check to the appropriate daily balance as of the date of the request. We add periodic Finance Charges to the daily balance as described above. We add any other Charge to the appropriate daily balance as of the date of the transaction. Periodic Finance Charges are added to the outstanding balance at the end of the billing period for which Finance Charges are calculated. In any such billing period, we will impose a minimum Finance Charge of \$0.50, which will be added to the balance with the highest APR. Unless, for our convenience and in our sole discretion, we choose to add "to a balance with a lower APR.

Late Fees

We may assess a Late Fee if a payment of at least the Minimum Amount Due is not credited to your Account by the Payment Due Date. The amount of the Late Fee depends on the amount of the Previous Balance On the statement on which the Late Fee appears, as follows:

<u>Previous Balance</u>	<u>Late Fee</u>
Less than \$100	\$15
\$100 to \$1000	\$29
Greater than \$1000	\$35

Other Fees

We may charge the following fees to your Account, subject to applicable law. Except as otherwise noted, these fees will be added to the Purchase Balance.

- 1. Dishonored Payments-W** may charge a fee of \$29 whenever any check, similar instrument, or electronic payment order that we receive as payment on your Account is not honored upon first presentment. If a Card is presented in connection with cashing a check at an American Express Travel Service Office or other authorized location and the check is not honored, we may charge a fee of \$29. (We will also add a Charge to the Cash Advance balance of your Account in the amount of the check that was not honored.)
- 2. Copies of Statements and Convenience Checks-W** may charge a fee of \$3 for each billing period for which a copy of a billing statement is requested, and for each request for a copy of a convenience check drawn on your Account. We will not charge this fee for any request for a copy of any of the billing statements for the three billing periods immediately prior to the request.
- 3. Account Re-opening Fee-W** may charge a re-opening fee of \$25 if your Account is canceled for any reason and you request reinstatement and such request is honored.
- 4. Wire Transfers-Vie** may charge a fee of \$15 each time a wire transfer from your Account is initiated and authorized.
- 5. Stop Payment Orders-Vie** may charge a fee of \$29 each time we receive a request to stop payment on a convenience check drawn on your Account.
- 6. Over-limit Fee-Vie** may charge a fee of \$29 in each billing period the New Balance on your statement exceeds your credit line.
- 7. Convenience Check Usage/Balance Transfer Transaction Fee-Vie** may charge a transaction fee for each Balance Transfer and each convenience check drawn on your Account. This fee, a FINANCE CHARGE, will be 3% of the amount transferred, with a minimum of \$5 and a maximum of \$50. This fee will be added to the same Purchase or Cash Advance balance as the convenience check transaction or Balance Transfer.
- 8. ATM Fee-Vie** will impose a fee each time a Card is used to obtain cash or any other services from an ATM. This fee will be 3% of the amount of the cash withdrawn or other services obtained (including any additional fee imposed for use of the ATM by its operator), with a minimum of \$5. This fee will be added to the Cash Advance balance.

Suspension/Cancellation

In addition to any other actions we may take under this Agreement, we may suspend or cancel your Account or any feature offered in connection with your Account, we may reduce your credit line or cash advance limit (including to a level below your outstanding balance), and/or we may suspend or cancel the authorization of any Additional Cardmember to make Charges to your Account, at our sole discretion at any time, with or without cause, whether or not your Account is in default, and without giving you notice, subject to applicable law. Any such action on our part will not cancel your obligation to pay all Charges due on your Account under the terms of this Agreement in effect at the time of such action or as subsequently amended, and you agree to pay us all such Charges despite any such action. We may advise third parties who accept the Card that the Card(s) issued to you and/or Additional Cardmembers have been canceled. If we cancel the Card or it expires, you may no longer use it and you must destroy it or return it to us or, if we request, to a third party. If you want to cancel the Account or any Additional Cards, you must notify us and destroy the Card(s). If we agree to reinstate your Account after a cancellation, the new Agreement we send you (or, if we do not send you a new Agreement, this Agreement as it may be amended) will govern your reinstated Account. When we reinstate your Account, we may reinstate any Additional Cards issued in connection with your Account, and bill you the applicable annual fee(s).

Default

We may consider your Account to be in default at any time if you fail to pay us any amount when it is due, or if you breach any other promise or obligation under this Agreement.

Subject to applicable law, we may also consider your Account to be in default at any time if any statement made by you to us in connection with this Account or any other credit program was false or misleading; if you breach any promise or obligation under any other agreement that you may have with us or with any of our affiliates; if we receive information indicating that you are bankrupt, intend to file bankruptcy, or are unable to pay your debts as they become due; or we receive information leading us to conclude that you are otherwise not

creditworthy. In evaluating your creditworthiness, you agree that we may rely on information contained in consumer reports, and in our discretion we may consider the amount of debt you are carrying compared to your resources or any other of your credit characteristics, regardless of your performance on this Account. We may also consider your Account in default in the event of your death.

In the event of your default, and subject to any limitations or requirement of applicable law, we may require payment of a portion of your outstanding balance greater than the Minimum Amount Due declare the entire amount of your obligations to us immediately due and payable, and/or suspend or cancel your Account and/or any feature that may be offered in connection with the Account and/or agree to pay all reasonable costs, including reasonable attorneys' fees, incurred by us (1) in connection with the collection of any amount due on your Account, whether or not any arbitration, litigation, or similar proceedings are initiated; and (2) in reasonably protecting ourselves from any loss, harm, or risk relating to any default on your Account.

Transactions Made in Foreign Currencies

If you incur a Charge in a foreign currency, it will be converted into U.S. dollars on the date it is processed by us or our agents. Unless a particular rate is required by applicable law, you authorize us to choose a conversion rate that is acceptable to us for that date. Currently, the conversion rate we use for a Charge in a foreign currency is no greater than (a) the highest official conversion rate published by a government agency, or (b) the highest interbank conversion rate identified by us from customary banking sources, on the conversion date or the prior business day, in each instance increased by 2%. This conversion rate may differ from rates in effect on the date of your Charge. Charges converted by establishments (such as airlines) will be billed at the rates such establishments use.

Benefits and Services

Subject to applicable law, we have the right to add, modify or delete any benefit, service, or feature that may accompany your Account at any time and without notice to you.

Arbitration

Purpose: This Arbitration Provision sets forth the circumstances and procedures under which Claims (as defined below) may be arbitrated instead of litigated in court.

Definitions: As used in this Arbitration Provision, the term "Claim" means any claim, dispute or controversy between you and us (including from or relating to your Account, this Agreement, the Electronic Funds Transfer Services Agreement, and any other related or prior agreement that you may have had with us, or the relationships resulting from any of the above agreements ("Agreements"), including the validity, enforceability or scope of this Arbitration Provision or the Agreements. For purposes of this Arbitration Provision, "you" and "us" also includes any corporate parent, or wholly or majority owned subsidiaries, affiliates, any licensees, predecessors, successors, assigns, any purchaser of any accounts, all agents, employees, directors and representatives of any of the foregoing, and other persons referred to below in the definition of "Claims." "Claim" includes claims of every kind and nature, including but not limited to, initial claims, counterclaims, cross-claims and third-party claims and claims based upon contract, tort, fraud and other intentional torts, statutes, regulations, common law and equity. "Claim" also includes claims by or against any third party using or providing any product, service or benefit in connection with any account (including, but not limited to, credit bureaus, third parties who accept the Card, third parties who use, provide or participate in fee-based or free benefit programs, enrollment services and rewards programs, credit insurance companies, debt collectors and all of their agents, employees, directors and representatives) if and only if, such third party is named as a co-party with you or us (or files a Claim with or against you or us) in connection with a Claim asserted by you or us against the other. The term "Claim" is to be given the broadest possible meaning that will be enforced and includes, by way of example and without limitation, any claim, dispute or controversy that arises from or relates to (a) any of the accounts created under any of the Agreements, or any balances on any such accounts, (b) advertisements, promotions or oral or written statements related to any such accounts, goods or services financed under any of the accounts or the terms of financing, (c) the benefits and services related to Cardmembership (including fee-based or free benefit programs, enrollment services and rewards programs), and (d) your application for any account. We shall not elect to use arbitration under the Arbitration Provision for any Claim that you properly file and pursue a small claims court of your state or municipality so long as the Claim is individual and pending only in that court.

Initiation arbitration Proceeding/Selection of Administrator: Any Claim shall be resolved, upon the election by you or us, by arbitration pursuant to this Arbitration Provision and the code of procedures of the national arbitration organization to which the Claim is referred in

ATTACHMENT B

B-1 through B-2

Spurious Open-End Credit: Quiz

Adapted from

"Spurious Open-End Credit or How You, Too, Might Sign Up For A
\$30,000 Loan Without Knowing It,"

Office of the Iowa Attorney General

*NAAG Consumer Protection Report (March 1998)

[*National Association of Attorneys General]

HOW YOU CAN SIGN UP FOR A \$30,000 LOAN WITHOUT KNOWING IT

The door-to-door salesman is selling \$3000 water treatment systems, or \$4000 satellite dishes, or even home improvements of \$10,000 - \$15,000. He says he can arrange financing. On the home improvement job, for example, he says he can arrange payments of around \$250.

This is an excerpt — just the relevant portion — of the only paper the consumer sees with the financing terms for this sale.

6. MINIMUM MONTHLY PAYMENT: All payments, except disputed payments, must be mailed or delivered to us at the Payment Processing Center address shown on your monthly billing statement. Disputed payments including those which indicate that the payment constituting "payment in full" of the amount owed must be mailed or delivered to the Customer Services address shown on your monthly statement. Payments received after 10:00 a.m. Central Time on any banking day or at any time on a non-banking day will be considered as received on the following banking day. You agree to pay us at least the Minimum Monthly Payment reflected on your statement. If you wish, you may pay more than the Minimum Monthly Payment and at any time you may pay the entire amount due. The Minimum Monthly Payment is the greater of \$25 or 1/55 of the "New Balance:" (less any Delayed Payment/Waived Finance Charge, Same as Cash and Same as Cash/Delayed Payment Purchase Balances) as shown on your billing statement rounded to the next higher dollar. The Minimum Monthly Payment will be calculated at the end of the first month in which you make a purchase and will be recalculated each month in which you make an additional purchase. You agree that any payment may be returned to you if your check is (i) not drawn on U.S. dollars on funds on deposit in the U.S.; (ii) missing a signature; (iii) drawn with different numeric and written amounts; (iv) contains a restrictive endorsement; (v) postdated; (vi) drawn on a credit account issued by our bank or our affiliates; (vii) not paid on presentment....

8. FINANCE CHARGES: The Finance Charge is part of the interest on your Account. The Finance Charge for each billing cycle is equal to the Average Daily Balance times the monthly periodic rate of 1.325% (corresponding **16.99% Annual Percentage Rate**). The Average Daily Balance is the sum of all daily unpaid balances in the billing cycle divided by the number of days in that cycle. The daily unpaid balance is the amount owed each day, and including new purchases, and any unpaid Finance Charges, late payment fees, over-limit fees, returned check fees, and credit insurance charges less Waived Finance Charge, Delayed Payment/Waived Finance Charge, Same as Cash, Same as Cash/Delayed Payment and Reduced Rate Purchases. ...

ANNUAL PERCENTAGE RATE	GRACE PERIOD	METHOD OF COMPUTING THE BALANCE OF PURCHASES	MINIMUM FINANCE CHARGE
16.99%	You have 25 Days to repay your balance before a finance charge is imposed.	Average Daily Balance (including new purchases)	0 cents
LATE PAYMENT FEE: \$15		OVER-LIMIT FEE: \$15 (charged only once per billing cycle)	

Here's a test on the comprehensibility of this disclosure, but first, think about this: you're already better off than the average consumer, because these critical paragraphs have been extracted for you from the 59.5 square inches of densely printed, 6-point type blanketing this combination disclosure/cardholder agreement that consumers would be trying to interpret — assuming, of course, that it had been given to them.

1. If you are buying a \$3000 satellite dish, how much will your monthly payments be? If the ads featured "payments as low as \$55/mo, do you know how long you would be making them? If the salesman told you it would take about 3 years to pay it off, would you know any different? If you thought it would be longer, how much longer?
2. If you are buying a \$15,000 siding job, how much will your monthly payments be? Will you still be stuck with these payments at the age you were planning to retire? If you're told you are free to make more than the minimum monthly payments, do you know whether there's room in your budget to make higher payments?
3. If this were a door-to-door sale, would you decide you couldn't afford this, and exercise your three-day cancellation right after studying this agreement? (Again, assuming it was given to you.)
4. If you were considering the \$15,000 siding job, which would make it easier for you to understand the financing terms: a) the disclosure above, or b) the disclosure below?

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount your credit will cost you	AMOUNT FINANCED The amount of credit provided to you or on your behalf	TOTAL OF PAYMENTS The amount you will have paid after you have made all payments as scheduled
16.99%	\$14,258.38	\$15,000.00	\$29,258.38
Payment Schedule: 107 @ \$272.73, monthly, beginning _____ + 1 final @ \$ ti.27			

ATTACHMENT C

C-1 through C-6



CREDIT CARD ACCOUNT # [REDACTED]



Page 1 of 1

ACCOUNT ACTIVITY

Statement Closing Date	11/06/02
Days in Billing Cycle	30
Previous Balance	3
Payments	
Credits	
Purchases & Other Charges	\$130.00
Debits	\$48.00
Cash Advances	\$0.00
Total FINANCE CHARGE	\$0.00
New Balance:	\$178.00

ACCOUNT SUMMARY

Account Number	[REDACTED]
Credit limit	\$250.00
Available Credit as of 11/06/02	\$72.
Payment Due Date	12/01/02
Minimum Payment Due	\$20.00
Past Due Amount	\$0.00
Amount Overlimit	\$0.00

QUESTIONS?

Call Customer Service 1-800-987-5521
 Lost or Stolen Credit Card 1-800-987-5521
 PREMIER Online www.firstpremier.com
 Please send billing inquiries and correspondence to:
 PO BOX 5524, SIOUX FALLS, SD 57117-5524
 (Include account number with all correspondence.)

For prompt credit mail payment to:
 P O BOX 5147
 SIOUX FALLS SD 57117-5147
 Payment in any other way may delay crediting your account up to 5 days.

IMPORTANT INFORMATION

NOTICE: EACH PAYMENT RECEIVED IN THE FORM OF A CHECK IS AUTHORIZATION FOR FIRST PREMIER BANK TO ELECTRONICALLY PRESENT THE PAYMENT TO THE FINANCIAL INSTITUTION ON WHICH THE CHECK IS DRAWN. PLEASE SEE BACK OF STATEMENT FOR EXPLANATION OF ELECTRONIC CHECK PRESENTMENT.

TO OBTAIN A SYSTEM GENERATED PERSONAL IDENTIFICATION NUMBER (PIN) FOR CASH ADVANCES, CALL 1-800-987-5521. SELECT LANGUAGE TYPE, CHOOSE CREDIT CARD INFORMATION OPTION #1 THEN PIN OPTION #3, AND FOLLOW THE INSTRUCTIONS.

TO AUTHORIZE A PAYMENT USING THE VOICE RESPONSE UNIT (VRU), CALL 1-800-987-5521. FOLLOW THE INSTRUCTIONS TO KEY YOUR PAYMENT. YOU NEED YOUR CREDIT CARD NUMBER, THE AMOUNT OF THE PAYMENT, YOUR CHECKING ACCOUNT NUMBER, THE ROUTING NUMBER OF THE FINANCIAL INSTITUTION AND ACCESS CODE. THE VRU PROMPTS WILL EXPLAIN THE NUMBER TO ENTER FOR YOUR PERSONAL ACCESS CODE

TRANSACTIONS

Tran Date	Post Date	Reference Number	Description of Transaction or Credit	Amount
10/31	10/31	F418600N00C0a3002	ACCOUNT SET-UP FEE FINANCE CHARGE	\$29.00
10/31	10/31	F418600N0000Q3002	PROGRAM FEE FINANCE CHARGE	\$95.00
10/31	10/31	F418600N0000Q6031	PARTICIPATION FEE	\$6.00
11/06	11/06	F185300N6000CYLAC	ANNUAL FEE 12/02 THROUGH 11/03	\$48.00

FINANCE CHARGES

Type of Balance	% Periodic Rate	Corresponding Annual Percentage Rate	Balance Subject to Finance Charge	ANNUAL PERCENTAGE RATE
Purchases	0.82514	9.90%	\$0.00	9.90%
Cash Advances	1.992%	23.90%	\$0.00	23.90%

BANK NEWS

NOW, AS A VALUED CARDHOLDER, GET A DIRECTV SATELLITE SYSTEM FREE. FOR ONLY \$39.95 SHIPPING AND HANDLING YOU'LL RECEIVE FREE THE DISH, RECEIVER, REMOTE...EVEN FREE INSTALLATION. FOR MORE DETAILS, CALL SATELLITE CONCEPTS 1-888-847-4243 TODAY

YOUR ACCOUNT INFORMATION IS NOW AVAILABLE ONLINE! ACCESS YOUR ACCOUNT 24 HOURS A DAY, 7 DAYS A WEEK AT WWW.FIRSTPREMIER.COM. YOU CAN MAKE PAYMENTS, REVIEW CHARGES, CHECK ON YOUR CURRENT STATUS AND MORE, ALL FROM THE CONVENIENCE OF YOUR HOME! LOG ON NOW AT WWW.FIRSTPREMIER.COM.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Please detach this portion and return with your payment to insure proper credit. Retain upper portion for your records.

FIRST PREMIER BANK
PO BOX 5519
SIOUX FALLS SD 57117-5519

Please indicate address change and additional cardholder requests on the reverse side.

PAYMENT INFORMATION

Account Number:	[REDACTED]
New Balance:	\$178.00
Past Due Amount:	\$0.00
Amount Overlimit:	\$0.00
Minimum Payment:	\$20.00
Payment Due Date:	12/01/02

AMOUNT ENCLOSED: \$ [REDACTED]

Cancelled

Send card

Information About Your First PREMIER Bank Account

- Annual Fee charge:** Refer to the front of your statement in the month in which the fee is billed.
- Additional Card Fee (if applicable):** Refer to the front of your statement in the month which the fee is billed.
- Participation Fee (billed monthly):** Refer to the front of your statement.
- Renewing Your Account:** You may have the current billing of the Annual Fee and monthly Participation fee and Additional Card Fee (if applicable) credited to your account if you close your account within 30 days from the mailing or delivery of the statement containing the fee, even if you use your card during that period. You may call the Customer Service number or write to the Customer Service address on the front of your statement during this 30 day period and your account will be terminated; we will credit your account for the amount of the Annual, monthly Participation, and Additional Card Fees.
- Annual Percentage Rate:** Refer to the front of your statement.
- Balance Subject to Finance Charge - Average Daily Balance**
We figure the finance charge on your account by applying the monthly periodic rate to the average daily balance of your account (including current transactions). To get the "average daily balance" we take the beginning balance of your account each day and add any new purchases, other adjustments, and any unpaid finance charges, and subtract any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "average daily balance".
- Grace Period for Repayment of Balance:**
For Purchases:
You have until the payment due date shown on the front of your statement, which is not less than 25 days, to pay your new balance to avoid imposition of additional finance charges on purchases.
For Advances:
You have no grace period in which to repay your balance for cash advances before a finance charge will be imposed.
- Minimum Finance Charge:** There will be a minimum finance charge of \$50 for each billing period in which a finance charge, based upon a periodic rate, is payable.

Billing Rights Summary

- In Case of Error or Questions About Your bill:** If you think your bill is wrong, or if you need more information about a transaction on your bill, write us

at the Customer Service address specified on the front of this statement as soon as possible (you may use, but are not required to use, the "Notification of Disputed Item" form provided below or a copy of it). We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. If you choose to use the form below, please call Customer Service for assistance. If you send us a letter, please include the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.
- Please be sure all correspondence is signed by the primary cardholder.
- You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent on the disputed item or take any action to collect the amount you question.
- Special Rule for Credit Card Purchases:** If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property of services, all purchases are covered regardless of amount or location of purchase.)
- Electronic Check Presentation:** First PREMIER Bank processes payments using the Automated Clearing House (ACH). Each payment received by personal check is authorization for First PREMIER Bank to electronically present the payment to the financial institution on which the check is drawn. First PREMIER Bank will store each original check securely for 14 days and a copy of the check will be maintained for seven years. First PREMIER Bank agrees to accept your checking account statement as proof of payment. The description on your checking account statement will read: PREMIER CR CARD CHECKPAYMT, Serial Number of the Check, Amount of the Payment, and Date of the Transaction.
- Payment Verification:**

First PREMIER Bank would like to inform you that payments posted to your credit card account may be held up to 15 days to allow for verification of cleared funds. Therefore, your payment credit may not be available for immediate use.

Notification of Disputed Item — Please call Customer Service prior to completing this form (1-800-987-5521).

Please sign this form and return it to the billing inquiry address on the front of your statement. Do not email this form with your payment. If your card has been lost, stolen or you have not received it, do not use this form, call (1-800-987-5521) immediately. Do not use this form. Please print in blue or black ink

NAME (PLEASE PRINT) _____
 SIGNATURE _____ DATE _____
 ACCOUNT? _____ AMOUNT OF DISPUTES \$ _____
 Preference # _____

MERCHANT _____

I have examined the charges made to my account and am disputing an item for the following reason:

Neither I nor any person authorized by me to use my card made the charge listed above. In addition, neither I nor anyone authorized by me received the goods or services represented by this transaction. (If you do not recognize a safe, choose this option and call Customer Service immediately).

Although I did participate in a transaction with the merchant, I was billed for transaction(e) totaling \$ _____ that I did not engage in. nor did anyone else authorized to use my card. I do have all my cards in my possession. Enclosed is a copy of the Authorized Sales slip.

- I have not received the merchandise which was to have been shipped to me. Expected date of delivery (mm-dd-yy) I have asked the merchant to credit my account (circle Yes/No).
- I have (circle one) returned/cancelled merchandise on (mm-dd-yy) because _____ <redact information> _____, please provide a copy of the returned receipt, postal receipt or proof of refund.
- The attached credit slip was listed as a charge on my statement.
- I was issued a credit slip for \$ _____ on (mm-dd-yy) which was not shown on my statement. A copy of my credit slip is enclosed.
- Merchandise which was shipped to me arrived damaged and/or defective on (mm-dd-yy). I returned on (mm-dd-yy). Merchant response was _____ Please provide postal receipt and/or credit slip.
- The sales receipt amount was increased from \$ _____ to \$ _____. My sales slip was added incorrectly. Enclosed is my copy of the sales receipt which shows the correct amount.
- Other - attach a letter describing the dispute.

Note: You may write us or use this form (or a copy). However, if you use this form you may want to record the information on the reverse side for your records. 01AC5525 13 3/2002

PLEASE INDICATE ADDRESS AND TELEPHONE NUMBER CHANGES BELOW

HOME PHONE NUMBER _____
 WORK PHONE NUMBER _____
 STREET ADDRESS _____ APT#/LOT# _____
 CITY/STATE/ZIP CODE _____

do you desire an Additional Card? Yes: ___ No: ___ understand there will be a \$20.00 Additional Card Fee billed annually to my credit card account for each Additional Card.

Initial Disclosure Statement*

larges and Fees: Your Credit Account subject to the following charges and fees, each of which will be added to your Credit Account as a Purchase:

periodic FINANCE CHARGES FINANCE CHARGES are imposed when you obtain a Cash Advance and a Purchase is posted to your Credit Account. FINANCE CHARGES are imposed from the time a purchase is posted until it is paid in full. However if you pay your previous balance in full on or before the paymentDue Date shown on your previous Statement, you will have a grace period on Purchases of 25 days (from the Statement Closing Date to the Payment Due Date) and can avoid FINANCE CHARGES on current Purchases by paying the current Statement in full on or before the Payment Due date. FINANCE CHARGES are imposed on Cash Advances from the date the advance is made until it is repaid in full. A "pre-existing condition" is one for which you saw or were under treatment by a physician or chiropractor both within the 6 months before and the 6 months after the effective date of coverage Disability commencing 6 months after the effective date of coverage is covered.

to qualify for Unemployment benefits you must register with a recognized employment agency or your state unemployment office within 30 days after the date you become unemployed. Family Leave Insurance covers unpaid absences from full-time employment while you or your Co-Cardholder are: caring for an immediate family member with a serious medical condition caring for a newborn or adopted child for up to 3 months, on active military duty due to mandatory recall on jury duty or residing in a federally declared disaster area. Family Leave Insurance does not cover losses caused by a pre-existing medical condition. A "pre-existing condition" is one for which you or your family member saw or was under treatment by a physician or chiropractor both within the 6 months before and the 5 months after the effective date of coverage. Coverage is not available to residents of NY and those residing outside the US.

Penalty Pricing information: If your account goes past the due date twice in a six month period or two executive months in a row, the monthly "Periodic Rate" for Purchases will increase to 1.9917% or an ANNUAL PERCENTAGE RATE of 23.9%. If your account is kept current for three consecutive months or is paid in full, the APR for Purchases will be reduced to a monthly "Periodic Rate" of 0.825% or an ANNUAL PERCENTAGE RATE of 9.9%.

"Average Daily Balance" is computed by taking the beginning balance of your Credit Account on each day, calculated separately for Purchases and Cash Advances, adding new Purchases and/or Cash Advances and subtracting any payments or credits to get each day's daily balance. The daily balances are added together and divided by the number of days in the Billing Cycle to get the "Average Daily Balance".

Additional Card Fee: In addition to the periodic FINANCE CHARGE on Cash Advances, there is an additional FINANCE CHARGE of 3% (minimum \$50.00/maximum \$1000) for each Cash Advance obtained at month end.

Account Set-Up Fee: We impose a one-time Account Set-Up Fee of \$29.00 to your Credit Account as an addition of extending credit to you. This fee is a FINANCE CHARGE.

Draft Charge: We impose a \$9.00 charge for each payment you request through an autodial service to provide automatic payments requested through our automated systems (i.e. Voice Response) are assessed \$5.00 per transaction. This is a FINANCE CHARGE.

Credit Limit Increase Fee: The first time we review your account for an unsecured credit limit increase, a credit limit increase fee of \$25.00 is imposed. This is a one-time fee, which is automatically assessed with the first approval of your credit limit increase, which could be as soon as six months. This fee is applied to your credit limit.

Express Delivery Fee: We impose a \$25.00 fee for the express delivery of your Card sent priority day mail. The service only available for lost, stolen, or replacement cards. This fee is a FINANCE CHARGE.

Internet Access Fee: We impose a fee of \$3.95 for Internet Access to your account. This is a one-time fee, which will only be assessed after you have agreed to this service. This fee is a FINANCE CHARGE.

Program Fee: We impose a one-time Program Fee of \$95.00 to your Credit Account as a condition of extending credit to you. This fee is a FINANCE CHARGE.

OTHER FEES: Additional Card Fee: If you authorize us to issue an additional Card on the Credit Account to you or other authorized Users, there is an Additional Card Fee of \$20.00 imposed annually for each additional Card.

Annual Fee: We impose an Annual Fee on your Credit Account of \$48.00 for the first year, and \$48.00 for subsequent years. The Annual Fee will be charged on the first billing Cycle after you have accepted the Card as provided in the Contract, and in about the same Billing Cycle of each following year.

Paying Fees: If you request a duplicate of any sales draft Statement, or other document, we will charge \$3.00 for each copy we provide.

Late Fees: In every billing Cycle in which your payment is overdue, you will be charged a Late Fee of 25%.

Participation Fee: By participating in this credit plan, your Credit Account will be assessed a 56.00 monthly Participation Fee each month your account is active with us (\$72 Annually).

Over Limit Fees: You will be charged a \$25.00 Over Limit Fee in every Billing Cycle in which your Credit account goes over the Credit Limit.

Returned Item Charge: If any check or other payment instrument is not honored, for any reason by the institution on which it was drawn, there will be a Returned Item Charge imposed on your Credit Account in the amount of \$25.00.

Credit Insurance: Disability and loss of income insurance is not required. Minimum Payment Each month that a New Balance is due, you must pay us at least the Minimum Payment, which we must receive on or before the Payment Due Date shown on the Statement. Payment will be credited as of date of receipt at the address on the payment stub of your Statement if received by 04:00 PM Central Time, Monday through Friday (Federal Holidays excluded). The Payment Due date will be days from the Closing Date. If your new balance exceeds \$20.00, the Minimum Payment in any monthly billing Cycle will be the sum of 3% of your New Balance at the end of the billing Cycle rounded up to the next dollar, or \$20.00, whichever is more (or the entire New Balance if the new Balance is less than \$20.00, plus all past due Minimum Payments, plus any amount by which you have exceeded your credit limit. You may pay your entire balance at any time.

Additional disclosures and credit card contract enclosed for further information regarding this account. Retain these important documents.

After your enrollment form has been processed you will receive a personalized certificate of insurance explaining all benefits and provisions of the Group Master Policy. The effective date of coverage will be shown on your certificate. Enrollment is optional and you are free to cancel at any time. Life Insurance does not cover suicide during the first 6 months of coverage (this does not apply to residents of Maryland, Massachusetts, Missouri and Vermont).

Disability Insurance does not cover losses caused by: normal pregnancy or childbirth; any intentionally self-inflicted injury or a pre-existing medical condition.

FINANCE CHARGES are imposed on Cash Advances from the date the advance is made until it is repaid in full. A "pre-existing condition" is one for which you saw or were under treatment by a physician or chiropractor both within the 6 months before and the 6 months after the effective date of coverage Disability commencing 6 months after the effective date of coverage is covered.

To qualify for Unemployment benefits you must register with a recognized employment agency or your state unemployment office within 30 days after the date you become unemployed.

Family Leave Insurance covers unpaid absences from full-time employment while you or your Co-Cardholder are: caring for an immediate family member with a serious medical condition caring for a newborn or adopted child for up to 3 months, on active military duty due to mandatory recall on jury duty or residing in a federally declared disaster area. Family Leave Insurance does not cover losses caused by a pre-existing medical condition. A "pre-existing condition" is one for which you or your family member saw or was under treatment by a physician or chiropractor both within the 6 months before and the 5 months after the effective date of coverage. Coverage is not available to residents of NY and those residing outside the US.

Plan Modifications - In AZ the insurance does not terminate, instead Life insurance Changes to Accidental Death Insurance at age 70. In CO, OR, PA, SC and TX your plan includes only if it Disability and Unemployment Insurance at a cost of 59c per \$100 of your ending monthly balance -57 2c in OR; 48.0 c in PA; 57 4c in SC, 44.9c in TX). In VT, your plan includes- only Life, Disability and Family Leave insurance at a cost at 40.9c per \$100 of your ending monthly balance. In AL, CA, ME, NC, SO and VA, Family Leave benefits are limited to 6 monthly benefit payments 3 months in AK, CT, HI, MA and NH) for each payable claim, in MA, Disability benefits begin on the 31st day of your Disability in MD, the insured Co-Cardholder must be your spouse in PA, only you are eligible for Life Insurance and if you wish to purchase coverages separately, call 1-800-445-8500 in TX, only you are covered or Life Insurance benefits and your coverage will not terminate. To be eligible for Unemployment coverage you must be employed at least 30 hours per week a non-seasonal occupation for at least 90 consecutive days prior to the effective date of coverage. Self-employed Cardholders and independent contractors are not eligible for coverage! Unemployment coverage excludes retirement resignation loss due to willful or criminal misconduct and disability. The 9 month limit on Unemployment benefits does not apply. If you wish to limit your coverage to Life and Disability only at a cost of 23.0c per \$100 of your ending monthly call 1-800-445-8500 Your coverage will terminate at age 7 in AL and CO be eligible for this insurance, you must be employed at least 30 hours per week on the date you enroll in CA, your signature on the enrollment form means that you have read and understand the Application of Cardholder information below

Application of Cardholder California Residents Only)

You are applying for the credit insurance described on this envelope and, authorizing the charge for insurance to your account each month, you authorize Your signature to enroll for the reverse side means you agree that

You are eligible for involuntary unemployment and family leave insurance only if you are working for profit 30 hours per week or more, if you are not, you will not be insured until you return to work

You are insured only for your actual credit card balance. You are not insured for any credit that may be available to you.

Each month on your statement date, the insurance charge is calculated by multiplying the ending monthly balance on your credit card account to a maximum of \$5,000 by \$0.25 This insurance on your credit card account statement and in your new balance. We can claim the rate later in we do, we will let you know in advance. The new rate will apply only to charges for insurance made of the rate charge

Your Co-Cardholder is not eligible for <redact information> involuntary unemployment insurance. Neither you nor your Co-Cardholder are <redact information> for after you have reached your birthday insurance for the Co-Cardholder in stops on his, or her birthday he or she reaches me. Otherwise the insurance stops on the first billing date after you

Disability Insurance or COVER conditions FOR WHICH you have seen DOCTOR or chiropractor IN the LAST SIX MONTHS. (Refer to "Total Disabilities Not Covered" in your Certificate for details.)

This program is being made available through First Premier Bank. The program is offered administered and underwritten by Central States Co- of Omaha and also underwritten by Central States Health & Life Co of Omaha, both Omaha

OPTIONAL PAYMENT PROTECTION PLAN CONSUMER NOTICE
The Payment Protection Plan is not a deposit or other obligation of, or guaranteed by First Premier Bank or PREMIER Bankcard agency of the United States, or the Bank. That the purchase of the Payment Protection Plan is not a condition of granting the credit and you are not prohibited from purchasing insurance claim here.

More Information About The Payment Protection Plan

The Payment Protection Plan provides you, the Primary Insured Cardholder with the following benefits:

Unemployment Protection
Unemployment Insurance pays a monthly insurance benefit to your account if you become involuntarily unemployed (loss of job, strike or for more than 30 days).

Disability Protection
Disability Insurance pays a monthly insurance benefit to your account if you become totally disabled for more than 30 days.

Family Leave Protection
Family Leave Insurance pays a monthly insurance benefit to your account if you or your Co-cardholder take an unpaid leave from work due to special circumstances for more than 30 days.

Life Protection
Life insurance pays your unpaid account balance up to a maximum of \$5.00 if you or your insured Co-Cardholder should die.

During months when you have a credit card balance, the monthly cost is 75c per \$100 of your ending monthly balance. This charge is automatically included on your billing statement each month. Of course, during months when you have no balance, there is no charge.

All coverage terminates at age 71.

Life and Disability Insurance benefits are payable up to the sum of your unpaid account balance at the time of loss or 55,000, whichever is less. Unemployment and Family Leave benefits are limited to 9 monthly benefit payments for each payable claim. benefits are based on the amount of your account balance at the



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FIRST CLASS MAIL PERMIT NO. 294 OMAHA NE

POSTAGE WILL BE PAID BY ADDRESSES

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

CREDIT CARD DIVISION
PO BOX 34888
OMAHA NE 68134-9724

C-4

**CREDIT CARD CONTRACT AND
INITIAL DISCLOSURE (cont'd)***

*For important information on fees and FINANCE CHARGES regarding your Credit Card, please refer to the Card carrier document. Retain these Important documents

The use of your MasterCard®, MasterCard® Gold, Visa® Classic or Visa® Gold credit card account ("Credit Account") is governed by this Credit Card Contract and Initial Disclosure statement ("Contract").

"We", "us", and "our" Bank each refer to First PREMIER Bank (the "Bank") and all of its affiliates, licensees, predecessors, successors, assigns, any purchaser or your Credit Account, and all of the Bank's agents, employees, officers, directors, attorneys and other representatives. In addition, "we", "us" and "our" mean any third party providing any product, service or benefit in connection with your Credit Account (including but not limited to credit bureaus, merchants who honor your credit card issued for your Credit Account, credit insurance companies, debt collectors and all of the agents, employees, directors, and representatives) if, and only if, such third party is named as a defendant with us in a Claim asserted by you.

"You" and "your" applicant mean all persons or entities authorized by us to use the Credit Account, including but not limited to all persons or entities contractually obligated under the Contract or prior agreement you and all authorize users of the Credit Account may have had with us.

We have approved your application and have opened Credit Account(s) for you. The Contract becomes effective immediately upon the earlier of your use of the Card or the expiration of thirty days from the date of issuance. The use of the Card by you or any Authorized User or the expiration of the Card (30 days from the date of issuance without your returning the Card to us cut in half with a written notice requesting that we cancel your Credit Account will be deemed an acceptance of the Card by you and will create a binding Contract between you and us with reference to the Credit Account and in accordance with the terms and conditions set forth in this Contract

1. Controlling Law: The Contract is entered into in the State of South Dakota where the decision to grant credit was made and in which payments will be received. Therefore, the Contract will be interpreted by the laws of the State of South Dakota applicable to contracts performed entirely within the State, or by applicable Federal law as well as all rules, regulations, orders and interpretations promulgated under such laws to the extent applicable to your Credit Account. You consent to be subject to the jurisdiction and venue of the Circuit Court for the Second Judicial Circuit, State of South Dakota and agree that such court shall be the sole and exclusive venue of all court actions of disputes or claims arising from or relating to the Contract or Credit Account relationship.

2. Defined Terms Used In This Contract Include:

A) "Authorized User" means anyone you authorize to use the Card or your Credit Account to obtain credit. At your request, we may in our discretion issue an additional Card in the name of an Authorized User with your Credit Account number. You agree to be obligated for all charges, Cash Advances, FINANCE CHARGES, Purchases and Fees incurred by any Authorized User. An Authorized User will also be responsible for all charges, Cash Advances, FINANCE CHARGES, Purchases and fees resulting from their use of the Credit Account, but we are not required to recover from the Authorized User before requiring payment by you. If you decide to terminate an Authorized User's use of your Credit Account, we must receive written notice from you with the return of all Cards issued to the Authorized User, cut in half. You remain responsible for payment of all Purchases, Cash Advances, FINANCE CHARGES, and fees incurred or obtained by the Authorized User up to the time we receive your notice and the Cards. In addition, we are not required to close your existing Credit Account and issue you a new Card and account number. Also you and each Authorized User agree that we may report account information to reporting agencies in the names of both you and the Authorized User.

B) "Billing Cycle" means a billing period of approximately one month which begins on or about the same day of each month. We reserve the right to change the timing of the Billing Cycle at any time.

C) "Card" means the plastic credit card or cards issued in connection with your Credit Account. Cards are not transferable and should not be given to anyone else to use. Additional people who desire a Credit Account should separately apply to us and you should apply to us for an additional Card for Authorized Users.

D) "Cash Advance" means credit you or an Authorized User obtains on your Credit Account under any of the following ways: By presenting the Card (or any other credit device we supply to you) to us or any other participating MasterCard® or Visa® financial institution to obtain cash or to transfer from your Credit Account to any other deposit or loan account; by using the Card at an authorized merchant or Automated Teller Machine (ATM) or other device to obtain cash or equivalent or to make a transfer from your Credit Account to any other deposit or loan account.

E) "Closing Date" means the last day of any Billing Cycle.

F) "Contract" means the terms and conditions outlined in this Agreement which govern the use of your Credit Account and Card.

G) "Credit Account" means the credit card account we open for you at First PREMIER Bank which is used to record transaction actively made by you when you access or otherwise utilize the line of credit we extend to you when you use your Card.

H) "Credit Until" means the maximum amount of credit we have approved for you on your Credit Account which may be outstanding at any time.

Any claim between you and the Bank arising out of or in any way relating to this Contract or your Credit Account shall be settled by binding arbitration in accordance with this Arbitration Provision and the Rules of the National Arbitration Forum ("NAF") in effect at the time the claim is filed (with the sole exception of collection actions by us relating to your Account); provided, however, as an alternative to binding arbitration, you and we retain the right to seek relief in a small claims within the scope of the court's jurisdiction. If for any reason the NAF is unable or unwilling or ceases to serve as arbitration administrator, another nationally recognized arbitration organization utilizing a similar code of procedure will be substituted by us. For any claims covered by this Arbitration Provision a party who asserted a Claim in a lawsuit in court may elect arbitration with respect to any Claim(s) subsequently asserted in that lawsuit by any other party or parties.

The rules and forms of the NAF may be obtained by calling (800) 474-2371 or by visiting the NAF's website at www.arb-form.com. All claims may be filed at the NAF office, P.O. Box 50191, Minneapolis, Minnesota 55405.

Waiver of Right to Trial: YOU UNDERSTAND THAT BECAUSE OF THIS ARBITRATION PROVISION, NEITHER YOU NOR WE HAVE THE RIGHT TO LITIGATE ANY CLAIM IN COURT OR HAVE A JURY TRIAL ON THAT CLAIM; OR TO ENGAGE IN PREARBITRATION DISCOVERY EXCEPT AS PROVIDED FOR IN THE NAF RULES. YOU AGREE THAT YOU ARE VOLUNTARILY AND KNOWINGLY WAIVING ANY RIGHT YOU MAY HAVE TO GO TO COURT, TO HAVE A JURY TRIAL, TO ENGAGE IN PREARBITRATION DISCOVERY EXCEPT AS PROVIDED FOR IN THE NAF RULES, AND OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT.

Waiver of Right to Participate In Class Action: YOU AGREE THAT UNDER THIS ARBITRATION PROVISION THERE IS NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED ON A CLASS ACTION BASIS. FURTHER, AN ARBITRATION PROCEEDING CAN ONLY DECIDE OUR OR YOUR INDIVIDUAL CLAIM AND MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS WHO MAY HAVE SIMILAR CLAIMS. YOU AGREE THAT YOU ARE VOLUNTARILY AND KNOWINGLY WAIVING ANY RIGHT TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION UNDER THIS ARBITRATION PROVISION

Arbitrator's Award: You and we agree that, except as set forth below, the arbitrator's decision will be final and binding on all parties subject to this Arbitration Provision. The arbitrator shall apply applicable substantive law consistent with the FAA and applicable statutes of limitations and shall honor claims of privilege recognized at law. Further, you and we agree that the arbitrator has no authority to conduct class-wide proceedings and will be restricted to resolving the individual claims between the parties. The arbitrator otherwise has the ability to award to the prevailing party all remedies available by statute, at law or in equity, including injunctive and declaratory relief where applicable, and including the recovery of reasonable attorneys' fees and the costs of the arbitration as determined by the arbitrator, but specifically excluding punitive damages. YOU AND WE AGREE THAT PUNITIVE DAMAGES ARE NOT RECOVERABLE IN ANY ARBITRATION OR OTHER PROCEEDING UNDER THIS CONTRACT. For awards that do not exceed \$5,000.00, the timely request of any party, the arbitrator shall provide a brief written explanation of the basis for the award. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. In an arbitration in which the award exceeds \$5,000.00, or in which there is a request for equitable relief with a potential financial impact in excess of \$5,000.00, the award of the arbitrator shall be in writing and shall specify the facts and the law on which it is based. In such case, the arbitrator's findings of fact must be supported by substantial evidence and the arbitrator's conclusions of law must not be based on legal error or be erroneous under the substantive law of the United States or, where applicable, the law of the State of South Dakota. Further, in addition to the grounds for vacation, modification or correction of an award under the FAA, the parties shall have the right to judicial review of the arbitrator's award to determine whether the arbitrator's findings of fact are supported by substantial evidence, and whether the arbitrator's conclusions of law are based on legal error or are erroneous under the substantive law of the United States or, where applicable, the law of the State of South Dakota. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction only if the court determines that the award is supported by substantial evidence and is not erroneous or based on legal error. In conducting the arbitration proceeding, the arbitrator shall not apply the Federal or any state rules of civil procedure or rules of evidence. In addition to the parties' rights to exchange information pursuant to the NAF Rules, either party to expand the scope of discovery allowable under the NAF Rules. The objecting party may submit objections to the arbitrator with a copy of the objections provided to the requesting party, within fifteen (15) days of the requesting party's notice. The granting or denial of either party's request will be in the sole discretion of the arbitrator who shall notify the parties of the arbitrator's decision within twenty (20) days of the objecting party's submission.

Location and Expenses: You or we may initiate Arbitration under the rules of the NAF. If you initiate Arbitration, your cost will be limited to approximately \$125.00 (except for optional services you request). An arbitration hearing that you attend shall take place in the federal judicial district of your residence. At your written request, we will consider in good faith making an advance of part or all of the filing, administrative and/or hearing fees up to \$2,500.00, for any Claim you initiate and which is submitted to arbitration. At the conclusion of the arbitration the arbitrator will decide who will ultimately be responsible for paying the filing of administrative and/or hearing fees in connection with the arbitration. Unless inconsistent with applicable law, each party shall bear the expense of the party's own attorneys', experts' and witness fees, regardless of which party prevails in the arbitration.

Survival and Severability: This Arbitration Provision shall survive the termination of your Credit Account as well as voluntary payment of the debt in full by you, any legal proceeding by us to collect debt owed by you, a bankruptcy by you, and any sale by us of your Credit Account. If any portion of this Arbitration Provision is deemed invalid or unenforceable under any law or statute consistent with the FAA, it shall not invalidate remaining portions of this Arbitration Provision the Contract or any prior agreement you may have had with us, each of which shall be enforceable regardless of such invalidity, in the event of a conflict or consistency between the NAF Rules and this Arbitration Provision, the Arbitration Provision shall govern.

I) "Joint Account" If this is a joint Credit Account, each person who signed the application (1) may obtain Purchases and Cash Advances (but the total of these cannot exceed the Credit limit); (2) will be responsible for paying all amounts owed; and (3) can close the Credit Account.

J) "New Balance" means the outstanding balance of your Credit Account at the end of any Billing Cycle. The New Balance is the sum of the Previous Balance (defined as the New Balance shown on your last Statement) less payments and credits, plus new Cash Advances and Purchases and our charges posted during the Billing Cycle.

K) "PIN" means Personal Identification Number which may be assigned to your Credit Account.

L) "Purchase" means credit you or an Authorized User obtains on the Credit Account when the Card or Credit Account number is presented to a merchant honoring the Card to purchase goods and/or services and we pay the merchant on your behalf for the transaction.

M) "Statement" means a statement of your Credit Account which we send at the end of any Billing Cycle in which we owe you or you owe us more than \$1.00, or we impose any FINANCE CHARGES, Fee or any payment, or your credit, Cash Advance or Purchase is posted to your Credit Account, We may send one or more Statement(s) with respect to your Credit Account(s).

3. Using Your Credit Account To Obtain Credit: You can use the Card and your Credit Account to make Purchases and obtain Cash Advances at any time, as long as you do not exceed your Credit Limit. All our sole discretion, we may authorize your Purchase which exceeds your Credit Limit or otherwise permit additional credit. When you receive the Card, you may be assigned a PIN. If a PIN is assigned to you, you can obtain a Cash Advance at any authorized ATM by using the Card and PIN.

4. Credit Limit: Your Credit Limit will appear on the accompanying Card carrier and on your Statement. You may not exceed your Credit Limit at any time. However, if we choose to permit you to obtain additional credit, we may require that you pay us any excess immediately on demand, rather than in monthly installments.

5. Promise to Pay: By applying for and obtaining credit on your Credit Account, you agree jointly and severally, it more than one person applied for the Credit Account to be obligated and pay for all credit obtained on your Credit Account by you, or by any Authorized User, as well as our FINANCE CHARGES and any other fees imposed by us, as provided for by this Contract.

6. Statements: The Statements we send to you will reflect the activity and our FINANCE CHARGES on your Credit Account during the Billing Cycle. They will also show your Minimum Payment and the Payment Due Date, which is the date by which we must receive your Minimum Payment. The information contained on the Statement will be deemed to be correct unless you advise us in writing, within sixty (60) days of the date on which we send you your Statement, of any error. If there are more than one of you living at different addresses, we will send the Statements only to the person named as the "Applicant" on the application signed.

7. Applying Your Payments: We will apply all payments in the following order: unpaid FINANCE CHARGES; unpaid fees; Credit Life Charges (if applicable); old Cash Advances; old Purchases; new Cash Advances; and new Purchases. Payments posted to your credit card account may be held up to 15 days to allow for verification of cleared funds. Therefore, your payment credit may not be available for immediate use.

8. Method of Payment: Payment must be made by check in U.S. dollars or other negotiable instrument payable to First PREMIER Bank. Payment made through the mail in the form of cash or third-party checks may not be accepted, and all checks or negotiable instruments must be payable at a domestic bank or at a domestic office of a foreign bank.

9. Irregular Payments: We may accept late payments or partial payments or checks and money orders marked "payment in full" without waiving any of our rights under this Contract.

10. Cancellation: You may cancel your Credit Account at any time by notifying us in writing at the address on your monthly Statement and returning all Cards issued on your Credit Account, cut in half. Even after your Credit Account is closed, you remain responsible for paying any amounts you owe on the Credit Account according to the terms of this Contract. If this is a joint Credit Account, either of you may request that the Credit Account be closed and we will honor that request (without the Bank having to contact the other of you). We can suspend your Credit Account privileges or cancel your Credit Account at any time, for any reason. We will notify you if we do so, unless you are in default at that time.

11. Default: You will be in default of this Contract if any of the following occur:

- You do not make a Minimum Payment on your Credit Account on or before the Payment Due Date.
- You die or become legally incompetent.
- You become insolvent or bankrupt.
- You exceed or attempt to exceed your Credit Limit.
- You provide us with or have provided us with false or misleading information or signatures at any time.
- You fail to comply with Contract.
- You fail to make any payment or perform any promise in any agreement or obligation you have with us.
- Any judgement, lien, attachment or execution is issued against you or your property.
- You request an excessive number of replacement Cards.
- We reasonably deem the prospect of repayment of your Credit Account to be in jeopardy for any reason.

Upon your default, we will have all remedies provided by law including, without limitation, the right to close or refuse to renew your Credit Account, demand the return of your Card(s), declare your entire balance immediately due and payable, and initiate collection activity, all without prior notice or demand. To the extent permitted by applicable law, you must pay any collection costs, including reasonable attorney's fees, the costs of placing you in the Warning Bulletin, and the costs of confiscating your Card, that we incur as a result of your default.

12. No Responsibility: We are not responsible in any way for the failure or refusal of any person to honor a Card or other credit instrument or device we supply to you, nor are we responsible if an ATM or other device fails to operate or operates improperly. All transactions, even those for which we have provided you with a receipt, are subject to our final verification.

13. Lost or Stolen Cards: You agree to notify us immediately if your Card is lost or stolen or if you suspect that it has been used or may be used without your permission. If your Card is reported as lost or stolen or you are claiming unauthorized use of your Credit Account or Card, we reserve

the right to require you to file one or more reports with the appropriate law enforcement agencies as well as with us prior to our removal of alleged unauthorized charges made against your Credit Account. To notify us of the loss, theft or possible unauthorized use, call us at (800) 987-5521. You will not be liable for unauthorized use of your Card. However, to protect your rights, you are required to notify us orally or in writing as soon as you are aware that your Card has been lost, stolen or used without your consent. Certain exceptions apply and you may be liable for up to \$50.00.

14. Severability: If any provision of this Contract is invalid or unenforceable under any law, rule or regulation, it shall not affect the validity or enforceability of any other provision of this Contract.

15. Changing this Contract: We may amend this Contract from time to time. For example, we may change your Credit Account number or the Minimum Payment, add new FINANCE CHARGES or Fees, change the ANNUAL PERCENTAGE RATE, or change the method of computing the balance upon which we impose our FINANCE CHARGES. We may also make other changes. When we amend your Contract, we will send you written notice of change. The change in terms will apply to amounts you owe at the time the change is effective and to new transactions on your Credit Account, unless otherwise required by law.

16. Information Sharing: The following describes your agreement with us with respect to information sharing. By requesting, obtaining, or using a credit Card from us you agree that we may release information in our records regarding you and your Credit Account to comply with any properly served subpoena or similar request issued by a state or federal agency or court; to share your credit performance with credit reporting agencies and other creditors who we reasonably believe are or may be doing business with you on your Credit Account; to provide information on your Credit Account to any third party who we believe is conducting an inquiry in accordance with the Federal Fair Credit Reporting Act; to share information with our employees, agents or representatives performing work for the Bank in connection with your Credit Account; or to communicate information as to our transactions or experiences with you to persons or entities related by common ownership or affiliated by corporate control or with any third party (including non-affiliates).

We may also share information such as (1) information other than our own transactions with you with persons or entities related to the Bank by common ownership or corporate control or (2) information on your Credit Account with certain companies to provide or offer you selected products, services, or cardholder benefits. You may direct us not to share one or both of these. If this is your request call 1-605-335-7321 or submit in writing to First PREMIER Bank, Card Services, P.O. Box 5524, Sioux Falls, South Dakota 57117-5524. Be sure to include your name, address and Credit Account number. You may receive a copy of our information on your Credit Account by writing or calling us at the address or telephone number listed above. By requesting or obtaining a Credit Card, you authorize us to check your credit history. You authorize your employer, bank and any other references listed to release and/or verify information to us and our affiliates in order to determine your eligibility for the credit card and any renewal or future extension of credit. If you ask, you will be told whether or not consumer reports on you were requested and the names of the credit bureaus, with their addresses, that provided the reports. If you designate an Authorized User to use your Card, you understand that account information may also be reported to credit bureaus in the Authorized User's name.

17. No Waiver: If we do not exercise any right we may have against you, we do not waive that right. We can exercise it against you in the future.

18. Our Property: Each Card that we issue on your Credit Account must be signed by the person named on it. You agree to surrender each Card issued on your Credit Account, upon demand by the Bank or its agents.

19. Binding Effect: If we pay a participating merchant for a Purchase or post a Cash Advance to your Credit Account before we receive actual written notice of your death or incompetence, or if we pay a participating merchant for a Purchase made by you or post a Cash Advance taken by you prior to your death or incompetence, that transaction will be a valid and binding Credit Account obligation upon you, your estate and your personal representatives.

20. Collection Costs: To the extent permitted by law, if we refer your Credit Account for collection, you agree to pay all court and other collection costs, including any amounts incurred by us in recovering your Credit Account and the reasonable fees of any attorneys who are not our regularly salaried employees.

21. Our Liability To You: We have no liability to you, other than as placed on us by law. We will meet our duty to care for your Credit Account(s) under reasonable banking procedures. Our mere clerical error or honest mistake will not be considered a failure to perform any of our obligations.

22. Refund Policy: If you elect to close your Credit Account within thirty (30) days of receiving this Contract and before you make any additional charges to the card, the first month's statement fees will be refunded to you. After this 30-day period these fees are no longer refundable and you are responsible for the account.

23. Minimum Cash Withdrawal: The Minimum Cash Withdrawal per transaction is set at \$20.00.

24. Illegal Use: A Visa Card may not be used as payment for any illegal purchase.

YOUR BILLING RIGHTS. KEEP THIS NOTICE FOR FUTURE USE. This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR STATEMENT. If you think your Statement is wrong, or if you need more information about a transaction on your Statement, write us on a separate sheet at the address listed on your Statement. Write to us as soon as possible. We must hear from you no later than sixty (60) days after we send you the first Statement on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information: Your name and Credit Account number; the dollar amount of the suspected error. Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about. If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop payment on any amount you think is wrong. To stop the payment, your letter must reach us three (3) business days before the automatic payment is scheduled to occur.

YOUR RIGHTS AND OUR RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE. We must acknowledge your letter within thirty (30) days, unless we have corrected the error by then. Within ninety (90) days, we must either correct the error or explain why we believe the Statement was correct. After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question. Including FINANCE CHARGES, and we can apply any unpaid amount against your Credit Limit. You do not have to have any questions

amount while we are investigating, but you are still obligated to pay the parts of that are not in question. If we find that we have made a mistake on your Statement, we will pay any FINANCE CHARGES related to any questioned amount. If we find that you are correct, you may have to pay FINANCE CHARGES and you will have to make payments on the questioned amount. In either case, we will send you a Statement you owe and the date that it is due. If you fail to pay the amount that we think you owe, we will report you as delinquent. However, if our explanation does not satisfy you and you feel (10) days after us that you still refuse to pay, we must tell anyone we report to have a question about your Statement. And, we must tell you the name of anyone to whom we must tell anyone we report you in that the matter has been settled before finally is. If we do not follow these rules, we cannot collect the first \$50.00 of amount, even if your Statement was correct.

SPECIAL RULES REGARDING CREDIT CARD PURCHASES. If you have a problem of property or services that you purchased with a Card, and you have tried in good faith to resolve the problem with the merchant, you may have the right not to pay the remaining property or services.

There are two limitations on this right:

A) You must have made the purchase in your home state or, if not within your home state, 100 miles of your current mailing address; and

B) The purchase price must have been more than \$50.00. These limitations do not apply to the purchase of a new car, or if we mailed you the advertisement for the purchase.

YOUR LIABILITY FOR UNAUTHORIZED USE OF YOUR VISA/MASTERCARD. You will be liable for unauthorized use of your Card. However, to protect your rights, you are required to notify us orally or in writing as soon as you are aware that your Card has been lost, stolen or used without your consent. Certain exceptions apply and you may be liable for up to \$50.00. To notify us of the loss, theft or possible unauthorized use of your Card, call us at (800) 987-5521. 2. NOTICES

California Residents: A married applicant may apply for a separate account. As a condition of a credit reporting agency if you fail to fulfill the terms of your credit or credit approval, each applicant shall have the right to use the Credit Card account of the account. Each applicant may be liable for amounts extended under the plan.

Delaware Residents: Service charges not in excess of those provided by law will be charged on the outstanding balances from month to month.

Kentucky Residents: You may pay the unpaid balance of your account in whole or in part.

Maine Residents: Credit insurance provided herein is voluntary and you have the right to cancel it at any time.

New York Residents: Consumer reports may be requested in connection with the issuance of this application and any resulting account. Upon your request, we will provide you with the names and addresses of any consumer reporting agencies which have provided such reports. New York residents may contact the New York State Department of Banking to obtain a comparative list of Credit Card rates, fees and terms. New York State Banking Department: 1-800-518-8866.

Ohio Residents: The Ohio laws against discrimination require that all credit products be equally available to all credit worthy customers, and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission enforces this law.

Wisconsin Residents: Are not eligible for this program.

Foreign Currency Disclosure: If you elect a transaction with your Visa or MasterCard currency other than U.S. dollars, Visa or MasterCard will convert the charge into U.S. dollars. Visa or MasterCard will use its currency conversion procedure, which is based on the issue Visa or MasterCard cards. Currently the currency conversion rate is determined by Visa or MasterCard to determine the transaction amount in U.S. dollars for such transactions. The rate is generally either a government mandated rate or a wholesale rate determined by Visa or MasterCard. The rate is effective one day before the transaction date and MasterCard uses a rate for the transaction date and Visa uses the conversion rate by one percent and keep the currency conversion rate used by Visa or MasterCard on the processing day of the transaction. We will post to your account the converted U.S. dollar amount determined by Visa or MasterCard as described above.

Arbitration: This Arbitration Provision sets forth the process by which claims that we and you shall be settled.

Definitions: For all purposes of this Arbitration Provision, the following terms shall have the following meanings set forth below.

"Claim" means any claim, dispute or controversy between you and us arising from this Contract or your Credit Account relationship, any related or prior agreement, application for credit or financing you may have had with us or the relationships under this Contract or any prior agreement, including but not limited to the validity, enforceability or scope of this Arbitration Provision, this Contract or any prior contract. "Claim" includes any kind and nature, including but not limited to initial claims, counterclaims, cross-claims, party claims, and claims based upon contract, tort, fraud and other intentional or negligent acts (including Truth-in-Lending Act, regulations, common law and equity).

Contract Subject to Arbitration: You agree that this is a contract involving interstate commerce and is governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as it may be amended from time to time, and to the extent any provision of that Act is inapplicable, the laws of the State of Minnesota.

Dispute Resolution: Any dispute or controversy between you and us arising from this Contract or your Credit Account relationship, any related or prior agreement, application for credit or financing you may have had with us or the relationships under this Contract or any prior agreement, including but not limited to the validity, enforceability or scope of this Arbitration Provision, this Contract or any prior contract, shall be resolved by arbitration.

Finality of Arbitration: The arbitration award shall be final and binding on you and us, and shall not be subject to appeal, review, or challenge in any court of law.

Waiver of Jury Trial: You agree to waive your right to a jury trial in any arbitration proceeding.

Assignment: This Arbitration Provision shall survive the termination, expiration, or rescission of this Contract.

Entire Agreement: This Arbitration Provision, together with the other terms and conditions of this Contract, constitute the entire agreement between you and us.

Severability: If any provision of this Arbitration Provision is held to be unenforceable, the remaining provisions shall remain in full force and effect.

Notices: All notices shall be in writing and shall be deemed to have been given if mailed to the address set forth in this Contract.

Choice of Law: This Arbitration Provision shall be governed by the laws of the State of Minnesota.