

December 16, 2005



By Electronic Delivery

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

Re: Docket No. R-1217, Regulation Z—New ANPR Bankruptcy Amendments to
TILA

Dear Ms. Johnson:

This letter is submitted on behalf of Visa U.S.A. Inc., in response to the Federal Reserve Board's ("Board") advance notice of proposed rulemaking ("ANPR") on the bankruptcy amendments to the Truth in Lending Act ("TILA"). The ANPR focuses on the consumer provisions of the new Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("Bankruptcy Act"). Visa appreciates the opportunity to comment on this important ANPR.

The Visa Payment System, of which Visa U.S.A.¹ is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. In calendar year 2004, Visa U.S.A. card purchases exceeded a trillion dollars, with over 450 million Visa cards in circulation. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of Visa's member financial institutions and their hundreds of millions of cardholders.

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MINIMUM PAYMENT WARNINGS, EXAMPLES AND REPAYMENT ESTIMATES AND CLEAR AND CONSPICUOUS DISCLOSURES – AN OVERVIEW

The Bankruptcy Act includes provisions amending TILA to address open-end credit accounts and requires new "disclosures" on periodic statements and on credit card applications and solicitations. The new TILA requirements will not take effect until at least 12 months after the Board issues final regulations. The Bankruptcy Act also requires the Board to issue model forms and to provide guidance on the "clear and conspicuous" standard with respect to minimum

¹ Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

payments and introductory rates within six months of enactment of the Bankruptcy Act; however, the Board explains that the issuance of model forms and clear and conspicuous standards within six months would have no effect until final rules implementing the minimum payment and introductory rate disclosures are issued and become effective.

The Bankruptcy Act amendments, as described in the ANPR, would provide that for open-end accounts, creditors must provide on each periodic statement a standardized statement about the effect of making only minimum payments, including a hypothetical example of how long it would take to pay off a specified balance, and a toll-free telephone number that a consumer can use to obtain an estimate of how long it will take to pay off his or her balance if only minimum payments are made. Under the Bankruptcy Act, the Board is directed to develop a table that creditors can use in responding to consumers requesting estimates. The Board requests comment on what assumptions should be used in calculating the estimated repayment period.

In addition, as an alternative to the requirement that creditors provide a hypothetical example, creditors may provide a toll-free telephone number that a consumer can use to obtain what the Bankruptcy Act refers to as the actual number of months (“actual repayment figure”) that it will take the consumer to repay his or her outstanding balance. This actual repayment figure must be generated by the creditor, rather than an estimate based on the Board-created table. A creditor that chooses this alternative also must provide the standardized statement, but need not include the materially longer hypothetical example on periodic statements.

Under the Bankruptcy Act, minimum payment “disclosures” are required for all open-end accounts, such as credit card accounts. The Bankruptcy Act expressly states that these requirements do not apply to any “charge card” account, the primary purpose of which is to require payment of charges in full each month. In addition, the Board solicits comment, for example, on whether certain open-end accounts, such as reverse mortgages and certain home equity lines of credit, should be exempt from some or all of the minimum payment disclosure requirements.

THE BOARD SHOULD ONLY REQUIRE MEANINGFUL INFORMATION

Visa believes that the Board should only require information that is meaningful to consumers to be included in periodic statements. In Visa’s comments to the Board in connection with the initial ANPR, Visa discouraged the Board from “requiring” issuers to provide detailed information relating to the effects of making only minimum payments on an account. Visa was concerned that such detailed requirements would add complexity to an already complex disclosure regime and exacerbate the “disclosure overload” already prevalent, while providing little benefit to consumers. Rather, Visa was in favor of focused consumer education.

We believe it is important that the Board implement the amendments in a manner that attempts to provide meaningful information to consumers. In this regard, we continue to believe that education should be an important component of the Board’s initiatives to reform Regulation Z. Educating consumers about the consequences of making only the minimum monthly payment, along with educating consumers about other key credit terms, is the most efficient way to help consumers fully understand their credit card plans. The role of education is particularly relevant to the minimum payment issue. However, Visa also continues to believe periodic statements are for purposes other than general financial education. These statements contain

important information regarding fees and charges associated with a credit card account, as well as summaries of certain consumer rights. To minimize the extent to which the new minimum payment statement will distract from information that is currently required to be provided on periodic statements, Visa believes that the Board should undertake educational efforts, separate from implementing rules, and consider the Bankruptcy Act requirements in light of the educational efforts that the Board can undertake independently on this issue. For example, if the Board were to provide an informative Web site that would enable consumers to model the effects of their own credit card usage and payment patterns, then availability of such a site to which creditors could refer customers should diminish any perceived need for the minimum payment information on periodic statements.

Notwithstanding the benefits of general education, we understand that the Board must go forward with implementing the Bankruptcy Act requirements. Although the Bankruptcy Act refers to the new minimum payment requirements as “disclosures,” the provision requiring specified information to consumers is not a disclosure at all. This information is not a fact known to the creditor that is being “disclosed” by the creditor to the consumer. Rather, providing the required information is most properly viewed as an attempt to use periodic statements “to educate” the consumer about the economic effects of only making minimum payments, a function more appropriately the role of the government, rather than individual creditors. Because of the large number of variables associated with open-end credit accounts, in virtually no case will the statutory language, the Board table, or any other “actual” repayment figure that a creditor can provide, accurately reflect what will happen with a particular consumer’s account. These numbers will never be able to capture future purchases, advances, variations in interest rates, or variations in the timing of payments. Further, other variables, such as account balance, annual percentage rate and minimum payment formulas, are often complex or difficult to determine and, as a practical matter, can only be incorporated into calculations if tempered by simplifying assumptions that will affect the results further.

Moreover, the projected effects of making minimum payments will inherently disregard the opportunity costs and difficulties that may be associated with making payments greater than the minimum. While some consumers have incomes that produce consistent, predictable, periodic cash flows, others have seasonal incomes or cash flows, or incomes and cash flows that may be concentrated at certain times of the year, or may be even more sporadic. For these latter consumers, making minimum payments for a series of periodic billing cycles makes sound economic sense. Similarly, consumers enjoying low promotional or introductory rates maximize their economic benefit from these rates by making only minimum payments during a period where their balances are subject to such advantageous rates.

In this context, the most that the minimum payment information required by the Bankruptcy Act can do realistically is to increase consumer awareness of one aspect of making minimum payments. Further, any attempt to use that information to go beyond providing an appropriate awareness, so as to alarm consumers into changing behavior without weighing the consequences of increasing payments, runs the risk of causing economic harm to consumers.

Consequently, it is critically important that all revisions to Regulation Z be carefully considered to ensure that the benefits are meaningful and that the resulting costs can be justified by the benefits achieved. In this regard, we recommend that the Board work closely with

representatives of the financial services industry, as well as other interested parties, to understand the potential costs of various regulatory approaches, before issuing any proposed rule on this matter.

CREDITORS' INABILITY TO PROVIDE THE "ACTUAL" REPAYMENT PERIOD

The standard minimum payment statement specified in the Bankruptcy Act is long and will take up a significant portion of the front of a periodic statement. This statement would tend to crowd out other information, forcing that information to the back of the statement. If feasible, many creditors may prefer to use the shorter statement specified in the statute and a toll-free telephone number which the customer may use to obtain "the actual number of months it will take to repay the customer's outstanding balance."²

However, it is not possible to provide customers with the "actual" repayment period in the dictionary sense of that term. As previously noted, the actual repayment figure will be affected by future events that cannot be predicted at the time of any repayment period calculation. In addition, the repayment period would have to be based on numerous assumptions, including assumptions concerning the account balance, applicable interest rates on the account, the minimum payment rule on the account, any applicable grace period, the balance computation method and any promotional or introductory terms on the account. To illustrate, it is not possible to determine what interest rate will apply during the life of the loan. It could be an introductory rate for the first few months, a standard rate for other months or even a penalty rate for other months. All of these matters are subject to change over time. In addition, different balances may be subject to different rates. To provide the number of months it would take to repay the outstanding balance, however, there would have to be some assumption relating to whether there is a stable interest rate or not.

Thus, we believe that the Board should recognize that the figure that creditors provide to meet the requirement that creditors provide the "actual" amount of time that it would take to pay off a particular balance must depend on simplifying assumptions related to the consumer's account, such as assumptions that the consumer's account balance is the balance of the last statement provided to the consumer together with the simplified interest rate, minimum balance, payment timing and other necessary assumptions. Further, Visa believes that the Board should adopt safe harbors to protect from litigation creditors that are using those assumptions. In lieu of extensive explanations of these assumptions, the Board should allow creditors to inform consumers that actual repayment time may vary.

We believe that such an actual repayment figure can be distinguished from the estimate based on the Board table. The actual repayment figure can be a more personalized figure and can be more reflective of the customer's interest rate, account balance and actual minimum payment requirements. Again, we encourage the Board to work closely with the industry to develop standards, as well as assumptions, for both the actual repayment figure number generated by the creditor and the estimate generated by the Board table.

² 15 U.S.C. § 1637(a)(11)(J).

THE BOARD SHOULD USE ITS EXCEPTION AUTHORITY

Based on industry reports and surveys, it is our understanding that approximately 75 percent of consumers either pay off their credit card balances in full or pay more than the minimum each month. Six percent occasionally pay the minimum, and four percent only make minimum payments each month. More specifically, one survey shows that for balances over \$100 and under \$1,000, only 2.9 percent of customers make only the minimum monthly payment for six consecutive months and for balances over \$1,000, only 4.6 percent of customers make only the minimum monthly payment for six consecutive months.³ Furthermore, many consumers that make only the minimum monthly payments on the account for a period of six months may have planned to do so in order to take advantage of introductory or promotional rates in effect on the account. Thus, consumer payment behavior indicates that the minimum payment information required under the Bankruptcy Act is only potentially educational to a very small percentage of consumers.

Visa believes that the Board should use its exception authority under TILA to only require minimum payment disclosures when they are likely to be meaningful to consumers. The Board specifically solicited comment on whether the Board should provide such exemptions for certain accountholders, regardless of the type of account for consumers who typically: (1) do not revolve balances; or (2) make monthly payments that regularly exceed the minimum. In addition, with respect to home equity products, the Board asks whether an exemption from disclosing the hypothetical example and the toll-free telephone number on periodic statements, but still requiring a standardized warning, would be appropriate. Visa believes that such an exemption may be appropriate for home equity loans and that far more significantly, an exemption is appropriate for consumers who typically make more than minimum payments on the account, only carry relatively small balances or that otherwise evidence that they understand the economics of minimum payments.

More specifically, the Board should consider only requiring the standardized statement required by the statute for the relatively small percentage of consumers who repeatedly only make the minimum payments required. If, from an educational standpoint, the Board believes that there may be some benefit to providing consumers with a warning statement that advises consumers that "making only the minimum payment will increase the interest you pay and the time it takes to repay your balance," the exception could be conditioned on providing this statement.

Visa strongly believes that providing the hypothetical example and the actual repayment figure will not provide meaningful information to consumers who do not consistently make the minimum payments. Further, providing the statutory statement and the example to consumers on the front of their periodic statements would not only be meaningless to those consumers, but it would also deemphasize other information in the statement that would be more meaningful to those consumers, including other information that is required to be clear and conspicuous under Regulation Z.

³ Roundtable Discussion-Credit Card Minimum Payment Disclosures, Credit Research Center, McDonough School of Business, Georgetown University (Nov. 29, 2005).

Accordingly, we recommend that the Board consider using its exception authority to only require the statutory statement or the alternative of the toll-free telephone number and the actual repayment figure for those customers that make the minimum monthly payment for a specified period of time, such as for six consecutive months and that carry a balance of \$500 or more for that six-month period. TILA's focus is on providing meaningful information to consumers. Visa believes that the Board has the authority to use its exception authority under section 105(f) of TILA to only require creditors to provide certain disclosures when the consumer has in fact made only minimum payments for a specified period of time, such as six months. Section 105(f) states that the "Board may exempt, by regulation, from all or part of this title any class of transactions . . . for which, in the determination of the Board, coverage under all or part of this title does not provide a meaningful benefit to consumers in the form of useful information or protection."⁴ In this regard, since the majority of customers do not make only the minimum payments on their accounts, providing detailed examples and estimates on each periodic statement regarding the time it would take to pay down balances if only the minimum payment is made would not be a meaningful benefit for a large percentage of consumers.

BOARD REGULATIONS ON THE CLEAR AND CONSPICUOUS STANDARD

The Bankruptcy Act requires the Board, in consultation with the other banking agencies and the Federal Trade Commission, to promulgate regulations to provide guidance regarding the meaning of the term "clear and conspicuous" as used in certain Bankruptcy Act provisions. In particular, the Bankruptcy Act requires the Board to implement a standard that would result in "disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice."⁵

Visa believes that it is important that the Board: (1) provide clear guidance on the clear and conspicuous standard; and (2) provide safe harbors in the form of permissive, rather than restrictive, examples. In particular, we urge the Board to adopt standards that are consistent with the plain language of the Bankruptcy Act and to be clear about what is required by the standard. The plain language of the statute requires that the disclosures be reasonably understandable and designed to call attention to the nature and significance of the information. The reference to the nature and the significance of the information clearly contemplates a flexible approach to disclosures under which the prominence of each disclosure would depend on the nature and significance of the particular information provided. The language clearly does not contemplate a "one size fits all" standard. Accordingly, the Board should clarify that the standard does not necessarily require that such information be highlighted, segregated or that information be provided in any particular format or type size.

Thus, the Board should avoid requiring a "one-size fits all" standard, and as intended by the Bankruptcy Act, the Board should provide institutions with the flexibility to weigh the significance of the information required with respect to other information provided, and to use a wide variety of appropriate methods to call attention to that information. Depending on the information, these methods might vary anywhere from large, bold type to appropriately placed footnotes.

⁴ 15 U.S.C. § 1604(f).

⁵ Bankruptcy Act, Pub. L. No. 109-8, Title XIII, § 1309, 119 Stat. 213 (2005).

Furthermore, the Board should avoid including ambiguous examples, such as the example proposed in connection with the Board's previous clear and conspicuous proposal that instructed creditors to "avoid legal highly technical business terminology when making disclosures." Such vague examples will impair rather than promote creditors' ability to design disclosures to comply with the requirements and could result in significant liability risks in trying to interpret how creditors can comply with the new format rules.

RESPONSES TO SPECIFIC QUESTIONS RAISED BY THE BOARD

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

Yes, there are certain types of transactions or accounts, such as HELOCs, for which the minimum payment disclosures are not appropriate. We recommend that the Board use its exception authority to make an exemption for HELOCs.

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

As discussed above, Visa believes that consumer payment behavior indicates that the minimum payment information required under the Bankruptcy Act is only potentially educational to a very small percentage of consumers. Thus, we recommend that the Board consider using its exception authority to only require the hypothetical example or the alternative of the toll-free telephone number and the actual repayment figure only for those consumers who make the minimum monthly payment for a specified period of time, such as for six consecutive months and who carry a balance of at least \$500 for that period.

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

No comment.

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

are considered, the average APR rises to 14.81 percent. See Board of Governors of the Federal Reserve Board, Statistical Release G. 19, (July 2005). Should the Board adjust the 17 percent APR used in the statutory example? If so, what criteria should the Board use in making the adjustment?

If the Board decides to adjust the APR used in the statutory examples, the Board should avoid insignificant adjustments. Adjustments should only be made when there are significant changes in the APR. Since the statutory example is intended to provide consumers with a general message that paying off a balance by only making minimum payments will take a long time, it is not necessary that the number be frequently updated or adjusted. Any proposed adjustments, however, should provide creditors with an implementation period of six months to one year.

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

No comment.

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

Because the statutory use of the term "typical" is ambiguous, we recommend that the Board avoid using the term "typical." Visa believes that the Board should consider referring to the example provided as a hypothetical, rather than an example, to help consumers understand that the figure is not based on the consumer's account.

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

We recommend that the Board use all the assumptions underlying the hypothetical example specified by the statute when developing the formulas to use for the estimated repayment periods. It is our understanding that the statutory assumptions include the following assumptions: (1) only minimum monthly payments are made; (2) no additional extensions of credit are obtained; (3) there is no grace period; (4) the previous balance method is used for the balance calculation; (5) the minimum payment percentage is either 2 percent or 5 percent; and (6) there are no residual finance charges. Using the statutory assumptions used for the hypothetical example would be simple and straightforward and for comparison purposes it would provide some consistency between the hypothetical example and the estimated repayment period.

Specifically, we support the Board's use of the previous balance method, no grace period and no residual interest assumptions as used in the statutory examples. If the consumer is paying only the minimum each month, as the estimate assumes, in most instances there would be no grace period and residual finance charges would not usually apply if the balance is paid in full.

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

It is our understanding that typical minimum payment formulas do not apply to any specific type of account or vary by type of accounts. Thus, making distinctions based on the type of account would not be meaningful to consumers and, therefore, would add to compliance with no meaningful benefit.

As noted above, for the estimated repayment period, we recommend that the Board use the statutory assumptions. Accordingly, we recommend that the Board table use the minimum payment formula used to generate the statutory examples. The table could then flush out the table with a significant number of annual percentage rates, account balances and minimum payment amounts.

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

See comments above.

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

In principle, Visa supports providing creditors with a number of compliance options. However, the Board must make clear in the regulation that use of the Board table satisfies the creditor's responsibility to provide an "estimate" of the time to repay an outstanding balance.

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

formula to estimate the repayment period if the creditor's actual minimum payment requirement allows negative amortization? What guidance should the Board provide on how creditors disclose the repayment period in the instances where negative amortization occurs?

The Board should assume the absence of negative amortization.

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

Multiple periodic rates are common. Most credit card transactions are purchases which are typically at a lower rate than cash advances. Consumers can be expected to take advantage of promotional and introductory rates that are lower than other rates.

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

Visa believes that the Board table should use the statutory assumptions, including a single APR. Using multiple APRs would increase costs and would not provide information that is more useful than information based on a single APR.

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

The Board should avoid adopting a formula that uses multiple APRs. As noted above, we believe that using multiple APRs would be more costly and would not necessarily provide information that is more accurate or meaningful to consumers.

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

Visa does not believe that the Board should expand the already extensive periodic statement disclosure requirements in pursuit of an illusion of accuracy in the Board table.

Q74. As an alternative to disclosing more complete APR information on periodic statements, creditors could program their systems to calculate a consumer's repayment period based on the APRs applicable to the consumer's account balance. Should this be an option or should

creditors be required to do so? What would be the additional cost of compliance for creditors if this was required? Would the cost be outweighed by the benefit in improving the accuracy of the repayment estimates?

As discussed above, although in principle Visa supports compliance options, Visa opposes going beyond the statutory requirements of the Bankruptcy Act. See answer 73.

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

As discussed above, for purposes of the "estimate" multiple APRs should not be used. Only a single APR, such as the standard non-promotional APR, should be used to calculate the estimated repayment period.

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

The Board should use the statutory assumptions used for the hypothetical example. The Board, however, should not require the disclosure of such assumptions. Given the complexity of the various assumptions, any attempt to disclose the assumptions would likely be confusing and possibly misleading to consumers. Thus, while we think that the Board should permit creditors to include language clarifying that the examples and estimates are hypothetical, and the actual repayment periods may vary, we would strongly oppose any additional disclosure requirements.

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

Visa encourages the Board to adopt safe harbors that would allow creditors to use simplifying assumptions when providing consumers with actual repayment figures. It is essential that the Board recognize that the figure that creditors provide to meet the requirement that they provide the "actual" amount of time that it would take to pay off a particular balance must depend on simplifying assumptions related to the consumer's account, such as assumptions concerning the consumer's account balance as of the last statement provided to the consumer. The adoption of safe harbors would protect creditors using those assumptions from litigation. Visa believes that the Board also should allow creditors to inform consumers that the actual repayment time may vary from the time provided.

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

Yes, the Board should provide a reasonable tolerance for errors even when simplifying assumptions are used.

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

Visa does not believe that true "actual" information is available to creditors because a true "actual" number would depend on unpredictable future events. However, Visa believes that with appropriate simplifying assumptions, creditors may be able to provide this information.

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

See comments above.

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

Visa believes that it would be an appropriate role for the Board to provide Web-based calculation tools to help consumers understand the operation of open-end credit accounts.

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

The Board should permit creditors to provide repayment periods either through a toll-free telephone number or the creditor's Web site. Providing estimates on periodic statements, however, would be costly and difficult. While the Board should consider providing creditors that provide estimates on the statements with relief from the requirement to maintain a toll-free number, we would strongly oppose any requirement that creditors provide such estimates on statements.

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

Visa encourages the Board to permit flexibility in location and format. As discussed above, Visa believes it is important for the Board to: (1) provide clear guidance on the clear and conspicuous standard; and (2) provide safe harbors in the form of permissive, rather than

restrictive, examples. In particular, we urge the Board to adopt standards that are consistent with the plain language of the Bankruptcy Act and to be clear about what is required by the standard. The plain language of the statute requires that the disclosures be reasonably understandable and designed to call attention to the nature and significance of the information.

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

Visa strongly supports the development of model forms and clauses. Such model language will provide important safe harbors to creditors. We recommend that the Board work closely with the industry, other interested parties, as well as focus groups, to provide model forms and clauses that would be understandable and meaningful to consumers.

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We appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel