Bank of America
Legal Department
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101 South Tryon Street
Charlotte, NC 28255

December 16, 2005

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20^{th} Street and Constitution Avenue, N.W.
Washington, DC 20551

Via Electronic Submission: Regulation.comments@federalreserve.gov

RE: Docket No. R-1217, Regulation Z –Second Advance Notice of Proposed Rulemaking

Dear Ms. Johnson:

Bank of America Corporation ("Bank of America" or "Company") appreciates the opportunity to comment on the Federal Reserve Board's (the "FRB") second advanced notice of proposed rulemaking regarding the open-end (revolving) credit rules of the FRB's Regulation Z, which implements the Truth in Lending Act ("Regulation Z").

Bank of America is one of the world's leading financial services companies that provides financial products and services to 33 million consumer households. Bank of America is the fourth largest issuer of consumer credit cards in the United States with nearly $60 billion in average outstandings.

SPECIFIC COMMENTS

MINIMUM PAYMENT DISCLOSURES

Should certain types of accounts or transactions be exempt from the disclosures? **(Questions 59-61)**

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*

We believe that the minimum repayment examples are not appropriate for HELOCs since the terms of repayment are set forth in the line agreement provided to the borrower at the time of closing. However, the standard warning indicating the effect of making only the minimum payment *during the draw period* would be appropriate and relevant for HELOC borrowers.

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

We believe the disclosure would be of little value on accounts where the customer pays in full, or pays more than the minimum, and would recommend that the "warning" and "hypothetical" disclosures appear only on statements for customers who make only the minimum payment due for a certain amount of consecutive billing cycles (to be determined by the FRB). Excluding non-minimum payers supports the FRB's overall initiative to provide only disclosures that are "meaningful" to the consumer.

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?

Bank of America believes that any credit plan with an open-end feature should be subject to the same disclosure requirements. Many of these plans that begin structured like a closed-end loan can eventually become revolving if not paid within the fixed repayment period.

***Hypothetical examples for periodic statements* (Questions 62-64)**

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?*

Bank of America believes if the hypothetical example is targeted to accounts that revolve and only make the minimum payment, the hypothetical example would be more beneficial using the average APR on accounts that were assessed interest. The average APR should be determined by product type e.g. credit card plans, HELOCs, and we would recommend an annual recalculation of the repayment period, balancing the need to keep the average APR current with the complexities of system maintenance.

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?

We believe if the hypothetical repayment example is to have any benefit at all, would recommend the factors used reflect a "typical" minimum payment for each type of open-end product.

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

In order to avoid this confusion, we believe the use of the term "typical" in describing minimum payment percentages will require additional disclosure that the hypothetical example does not represent their actual account terms.

***What assumptions should be used in calculating the estimated repayment period?* (Question 65)**

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?

No Comment at this time.

***How should the minimum payment requirement and APR information be used in estimating the repayment period?* (Questions 66-75)**

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?

While recent OCC mandates on minimum payment has resulted in some consistency, a "typical" minimum payment formula would still require specific versions for each type of account subject to the regulation. One approach the FRB could pursue is to survey existing minimum payment formulas for particular types of open-end accounts (e.g. general-purpose credit cards, retail credit cards, HELOCs, and other lines of credit), and develop "typical" formulas for calculating the repayment estimates based on current practices within the industry.

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 answer to question 66.

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?

Bank of America believes the FRB should provide as many options as possible in addressing these amendments to TILA, and allow financial institutions as much flexibility as possible in achieving compliance, including the options to use an institutions' actual payment formula in the repayment estimate.

Bank of America is not able to calculate specific costs associated with many of the FRB's suggestions, however significant modifications would cause us to incur disclosure re-design costs and possible system changes that may result in substantial expense to the Company. In addition, we would incur substantial other compliance costs associated with ensuring that revisions are properly implemented, as well as training costs for employees in connection with ensuring proper compliance.

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 instances where negative amortization occurs?*

We believe the FRB should use a formula for calculating repayment periods that assumes a "typical" minimum payment that does not result in negative amortization. Most negative amortization situations occur infrequently from events such as the imposition of a late fee on a small balance account, and accordingly would not be included in a "typical" minimum payment formula.

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?

At Bank of America, more than 90 percent of the consumer credit card portfolio accrues finance charges at more than one periodic rate. Accounts often have many periodic rates as consumers take advantage of promotional balance transfer offers in addition to purchase and cash advance transactions. In general, at Bank of America purchases compromise the largest balances in our portfolio, followed by promotional/balance transfers, then cash advances. Promotional/balance transfer balances tend to have the lowest rates, followed by purchases, then cash advances having the highest 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?

We believe a single APR would not in most cases account for all finance charges assessed, which will impact the repayment estimate, and will result in an estimate that is either too long or too short, and not meaningful to the consumer (see question 70). However, hypothetical examples with multiple APRs will add significant complexity to this requirement. If the intent of the hypothetical example is to provide the most conservative estimate to the consumer, then using the balance with the highest APR on the account would have that impact.

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?

We believe that a formula using multiple APRs with a lowest to highest payment allocation would reflect a more accurate estimated repayment period. A range of repayment estimates using the lowest APR on the entire balance followed by the highest APR would create large variances in repayment estimates due to the wide range of APRs that could be involved, for example a promotional rate at 0% vs. a cash advance rate at 22.99%.

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?

We believe this approach would require considerable system development since periodic statements typically only display the average daily balance for each APR. We believe adding additional "ending balances" to the periodic statement would create customer confusion related to the finance charges assessed during the billing cycle.

Bank of America is not able to calculate specific costs associated with many of the FRB's suggestions, however significant modifications would cause us to incur disclosure re-design costs and possible system changes that may result in substantial expense to the Company. In addition, we would incur substantial other compliance costs associated with ensuring that revisions are properly implemented, as well as training costs for employees in connection with ensuring proper compliance.

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?

See answer to Question 73 regarding costs.

In addition we believe the FRB should provide as many options as possible in addressing these amendments to TILA, and allow financial institutions as much flexibility as possible in achieving compliance vs. one size fits all requirements.

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?

Our observation is that payment allocation varies by financial institution, but generally would assume that most payment allocations are applied to the lowest APR balances first (also, this is the most conservative assumption).

***What disclosures do consumers need about the assumptions made in estimating their repayment period?* (Question 76)**

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?

We believe that underlying assumptions will need to be disclosed. In addition to the assumptions noted in this ANPR (*estimated repayment period is based on the assumption that there will be no new transactions, no late payments, no changes in the APRs, and that only minimum payments are made)* additional assumptions would include that payments will be made and on-time, payments will be applied to balances lowest to highest APRs, no additional fees are imposed, and no there are no changes to the credit plan with regard to the minimum payment formula.

***Option to provide the actual number of months to repay the outstanding balance* (Questions 77-79)**

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?

We believe that standards and assumptions for "actual" repayment formulas should be consistent with formulas and tables that will be developed by the FRB for estimating repayment periods. A safe harbor needs to be included given the complexity of combining actual account terms with assumptions that must be made to calculate an "actual" repayment period. No number provided will be "actual" because it will vary depending on the consumer's future use of the account. Assumptions relied upon should be specified by the FRB in model disclosures and forms.

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

We believe a tolerance factor should be provided since many of the estimated repayment time-frames will extend many years. As previously mentioned in *Q77* the accuracy of the disclosure is impacted by future use of the account by the consumer; therefore accuracy and tolerances should be determined within the context of a single billing cycle.

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?

While the information required to calculate "actual number of months" is available, it will require system development to create repayment disclosures discussed in this ANPR.

***Are there alternative approaches the Board should consider?* Questions (80-82)**

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?

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?

Within Bank of America's online planning tools is a calculator that consumers can use to determine how long it takes to payoff a balance. Calculator asks for current balance, future monthly charges, future monthly payments, interest rate, annual fee, and desired term to payoff. The Results tab shows payments required to meet selected term as well as calculated term based on future cash flows entered.

See
http://www.bankofamerica.com/financialtools/index.cfm?view=planning&calcid=card04

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?

In addition to toll-free telephone numbers, we believe that a web-based alternative should be allowed for repayment estimates or actual number of months. We believe it would be challenging to disclose a repayment estimate or actual repayment period on the periodic statement. There may be space constraints or system limitations that would make it difficult to provide explanations about all the assumptions used in the minimum payment estimate.

***What guidance should the Board provide on making the minimum payment disclosures "clear and conspicuous?"* (Questions 83-84)**

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

Bank of America believes the FRB should provide guidance on the general placement of the disclosures. However, we believe the FRB should not mandate certain type sizes or bolding of the minimum payment disclosure that could cause creditors to revise systems. We believe reasonable guidance would allow for disclosures that are similar in type size to the existing information on the periodic statement, and would satisfy the requirement under The Bankruptcy Act that the minimum payment disclosure be prominent, clear and conspicuous.

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

We believe that the FRB should provide a model form for the warning disclosure, hypothetical example disclosure and repayment estimate disclosure. In addition, model forms should provide a safe harbor for institutions that choose to use them.

INTRODUCTORY RATE DISCLOSURES

(Questions 85-92)

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

Bank of America does not believe that imposing format requirements would necessarily equate to clearness and conspicuousness; however, guidance and clarification on what "immediate proximity" means would be helpful in ensuring compliance with the regulation. We believe that font sizes should not be mandated as it would likely require creditors to make system design changes and revise large volumes of marketing materials at a substantial cost to the industry.

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

We believe that having the term "introductory" immediately preceding or following the APR would be sufficient to make it clear and conspicuous and understandable to the consumer that the APR mentioned is a temporary rate.

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

Bank of America believes the definition of "first mention" of the temporary APR should be its first mention in the body of the primary marketing copy. We do not believe the APR using the largest font size or highest on the page should be considered the first mention as in both of these examples, these are APRs usually used as 'attention-grabbers' and consumers would not expect term details in this space. Instead of making the temporary rate more understandable, it instead would most likely confuse the consumer.

When speaking to online solicitations, it is not feasible to put the newly-required disclosures on banner advertisements and small marketing nodules on host pages; a link to the primary marketing page with full disclosures would be more appropriate, and this supports the belief that the first mention in the body of the primary marketing page would be the more favorable definition of "first mention."

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

Bank of America believes one document should be identified as containing the "first mention" of the temporary APR and as stated in our response to Q87, that one document should be the primary marketing page.

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

We believe because the location of the first mention of the temporary APR will vary by creditor, only general guidance should be provided in relation to this requirement.

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

The FRB should provide strong guidance and Bank of America believes that guidance should be that all issuers be permitted to provide a range of rates to be specifically determined based on creditworthiness.

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

Circumstances that may result in revocation of the temporary APR are often different than the circumstances that may trigger an increased penalty rate, as is the rate that will be imposed if those circumstances occur. Therefore, these differences need to be considered in any guidance provided for this requirement. Bank of America believes the general description of the circumstances that may result in revocation of the temporary APR should be limited to maintaining consistency with the detailed description contained within and in close proximity to the Schumer Box.

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

While consistency between the two media should be done whenever possible and is preferred, there are certain characteristics that are inherent in electronic technology which do not allow consistency in all cases. One of those characteristics we have already discussed in Q87 (banner advertisements and marketing modules), and another equally challenging characteristic is with regards to font size. In electronic presentation, pixels determine size rather than the font like in print media. In addition, guidance around the use of hyperlinks would be required when speaking to electronic applications and solicitations.

INTERNET BASED CREDIT CARD SOLICITATIONS

(Questions 93-96)

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

We see no reason for treating Internet applications differently than Internet solicitations.

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

As stated in several other earlier questions, when providing guidance on how solicitation and application disclosures may be made clear and conspicuous, hyperlinks must be considered and the term 'pixels' or 'relative size' used when speaking to mandated font size (although we continue our objection to having mandated font size for the previously-stated reasons). Bank of America would also support guidance on placement of disclosures on long Web pages, where the customer must scroll to see all content; however, it is not appropriate to give generic guidance such as requiring disclosures "on the same page or screen" as computers can be configured to individual taste and may vary by manufacturer, making compliance to such a requirement near impossible.

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

Bank of America concurs that disclosures should be made by non-bypassable link, as part of the page content, or contained in a scroll box (I-frame) located on the application. Customers should affirmatively agree to the T&C, either separately or in conjunction with overall acceptance/submission of an application. We do not believe additional or different guidance to the 2001 interim final rules is needed.

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

Bank of America believes 30 days is generally adequate for recurring internal updates such as changes in prime-based rates, but believes 60 days is more appropriate for third party vendors and non-automated content changes as they require more complex system coding and comprehensive testing.

DISCLOSURES RELATED TO PAYMENT DEADLINES AND LATE PAYMENT PENALTIES

(Questions 97-101)

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

Bank of America discloses that payments must be received by the payment due date shown on the periodic statement to avoid a late fee. Accommodations may be made for certain customers, such as our Private Bank and Premier customers, where we will not assess a late fee even if we do not receive payment by the disclosed payment due date.

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

Bank of America does not believe disclosing the late payment fee in close proximity to the payment due date equates to clear and conspicuous. In addition, formatting changes on statements would require major and costly system changes

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

As stated in our comments to the December 2004 ANPR, Bank of America believes that issuers need the flexibility to work with external vendors and internal systems and processes to determine timing regarding the crediting of payments, and as such, believes the FRB should allow reasonable cut-off hours. It is our further belief that disclosing the cut-off hour in close proximity to the payment due date does not provide any great value to the consumer and would require major system changes to accommodate such a requirement if mandated.

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

While Bank of America believes providing a notice that an increased rate would apply to outstanding balances if the requested payment is not made on or before the required due date would be beneficial to the consumer, we would caution the FRB to thoroughly consider any placement requirement. Mandated formatting could require major system changes and result in customer confusion. For example, if the late payment fee disclosure is mandated to be in close proximity to the payment due date and on an issuer's statement this means on the payment coupon, there would be no room for the late payment disclosure, much less the increased rate disclosure. The entire statement would need to be redesigned. If it was left to general guidance, issuers could follow Bank of America's lead and provide this disclosure via a more compatible method such as statement messages.

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

No comment at this time.

DISCLOSURES FOR HOME-SECURED LOANS THAT MAY EXCEED THE DWELLING'S FAIR-MARKET VALUE

(Questions 102-105)

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

The Internal Revenue Service guidance on mortgage interest deduction (Publication 936) permits the mortgage interest deduction if the mortgage is secured debt. Bank of America believes FRB guidance in this instance should be consistent with the direction of the IRS. With respect to home equity debt, the IRS provides that any new credit extension that exceeds the dwelling's fair market value would be limited in terms of tax deductibility. We believe it would be more consistent with interest reporting to look at the new extension of credit as opposed to the combined loan to value.

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

We believe that only the initial amount of indebtedness should be considered. If the FRB includes the possibility of negative amortization and its impact on loan to value then the proposed tax disclosure wording should address the possibility of negative amortization.

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

Bank of America believes the FRB should provide model clauses and/or forms along with direction on the placement of these disclosures in both advertising and applications.

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

Additional guidance would be needed if the timing requirements vary from the current requirements under 12 CFR sections 226.17(b) and 226.19(a). We would recommend that the proposed application disclosure regarding tax deductibility of interest follow the same delivery timing requirements as the application disclosure under these sections.

PROHIBITION ON TERMINATING ACCOUNTS FOR FAILURE TO INCUR FINANCE CHARGES

(Questions 106-108)

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

The FRB should consider any other sections of Regulation Z that speak to or could be considered (and sometimes confused with) account expiration, including Account Renewal and assessing of an annual fee.

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

No comment at this time.

Q108: The prohibition on terminating accounts does not prevent creditors from terminating an account for inactivity in three or more consecutive months (assuming the termination complies with other applicable laws and regulations, such as the rules in

Regulation Z governing the termination of HELOCS, 12 CFR 226.5b(f)(2)). Should the Board provide guidance on this aspect of the statute, and what constitutes "inactivity?"

Bank of America believes the FRB should provide guidance on what constitutes inactivity, especially with regards to customer-initiated actions. We believe the definition should be refined to state charge backs and adjustments made by the issuer would not be considered activity on the account.

Bank of America appreciates this opportunity to comment on these very important issues. We would be happy to discuss our views in greater detail at any time upon your request. If you have any questions concerning these comments or we may otherwise be of assistance to you, please do not hesitate to call.

Sincerely,

JoAnn Powlus Carlton
Bank of America
Associate General Counsel
704-386-6637

Douglas J. Hinkley
Bank of America
Senior Compliance Manager
602-597-3902