December 16, 2005

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

Re: Truth-in-Lending – Docket No R-1217 - Bankruptcy Reform Act
Minimum Payments, Introductory Offers and Other Issues

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on proposed revisions to Regulation Z, Truth in Lending, to implement recent statutory changes. On April 20, 2005, President Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Reform Act), which in part amends the Truth-in-Lending Act (TILA) by adding provisions on open-end credit disclosures. The Federal Reserve is asking how to implement these new disclosures and plans to coordinate the new disclosures with revisions to the TILA regulations already being considered.

Overview of ICBA Comments

The ICBA believes that, since these disclosures were designed for credit card accounts, it would be appropriate for the Federal Reserve to exempt other types of accounts, such as home equity lines of credit or reverse mortgages, but

[1] The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 17,000 locations nationwide and employing over 260,000 Americans, ICBA members hold more than $631 billion in insured deposits, $778 billion in assets and more than $493 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

INDEPENDENT COMMUNITY BANKERS of AMERICA The Nation's Voice for Community Banks℠
One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

not exempt classes of accountholders. To develop minimum payment disclosures, the Federal Reserve should limit the number of variables to outstanding balances, blended APR and specific minimum payment amounts as a dollar figure. Otherwise, developing the tables will be unnecessarily burdensome and complex at costs that far exceed the minimal benefit for a small percentage of consumers. As mandated by Congress, the Federal Reserve should publish tables and make the tables and educational materials readily available for consumers and bankers. And, the final rule should incorporate tolerance levels and safe harbors.

For introductory rates, late fees and Internet solicitations, the ICBA believes creditors should highlight disclosures to call it to consumers' attention, but that creditors should be allowed sufficient flexibility to determine how best to highlight that information. This is especially important in a dynamic marketplace. The ICBA finds the statutory guidance on mortgage credit sufficient, but recommends the Federal Reserve incorporate it into the final rule for ease of reference.

To assist bankers, the ICBA also recommends the Federal Reserve issue additional guidelines and model disclosures for these new requirements after an opportunity for public comment. Finally, the ICBA finds that the 12-month transition outlined in the Bankruptcy Reform Act for any final rules is probably sufficient, but encourages the Federal Reserve to work with the industry to facilitate the transition.

Bankruptcy Reform Act Requirements

Title XIII of the Bankruptcy Reform Act requires creditors that offer open-end accounts to provide a standardized warning on each periodic statement about the effect of making only minimum payments, including an *example* of how long it would take to pay a specified balance by making only the minimum payment and a toll-free telephone number for consumers to call for an estimate of how long it will take to pay their *particular* balance by making only minimum payments. Banks have the option of establishing and maintaining their own toll-free telephone numbers or using a third party. The Federal Reserve is required to develop a table for creditors to use when responding to consumers' requests. For the first two years, the Federal Reserve must set up and run a toll-free number for use by customers of banks with $250 million or less in assets, something the ICBA believes will be especially important for smaller institutions with limited resources.

In addition, card issuers offering discounted introductory rates must clearly and conspicuously disclose on the application or solicitation the date the introductory rates expire, the rate that applies after that date, and an explanation of any contingency that could defeat the introductory rate before it would otherwise expire (e.g., making a late payment). Credit card offers made over the

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

Internet must include the same disclosure table (commonly known as the "Schumer box") currently required for direct-mail applications or solicitations. And, creditors must include information on each periodic statement about the earliest date a late payment fee may be charged and the amount of the late fee.

For both open-end and closed-end credit secured by a home, if the credit available might exceed the dwelling's fair-market value, the creditor must provide additional disclosures in any advertisements and at application to alert consumers that interest on that portion of the loan that exceeds the home's fair-market value is not tax deductible. And finally, in addition to the new disclosures, creditors are prohibited from terminating an open-end account before its expiration date solely because the consumer has not incurred finance charges on the account.

ICBA Comments

The ICBA supports the Federal Reserve's approach of coordinating the new disclosures on minimum payments and introductory rates with other possible changes to the TILA disclosure system already under consideration when the bankruptcy reform law was adopted.[2]

However, the ICBA is concerned that the approach the Federal Reserve is considering for implementing the Bankruptcy Reform Act's disclosures, as evidenced by the questions raised in its October 17, 2005 *Federal Register* notice, could make them unnecessarily complicated. The number of variables being considered could actually produce meaningless information and "information overload" that is burdensome and costly to produce but confusing for consumers *and* bankers. As a result, the disclosures would not meet either the Congressional goals for enacting these requirements or the primary goals of the Truth-in-Lending Act.[3] Moreover, it is extremely ironic that at the same time federal banking regulators are considering measures to reduce regulatory burden under EGRPRA,[4] the Federal Reserve is proposing what could be an extremely burdensome and costly disclosure regime that would not serve consumers' needs.

---

[2] Earlier this year, the ICBA submitted comments on the Federal Reserve's comprehensive review of Regulation Z. See ICBA Comment Letter, March 25, 2005. This December 16 comment letter focuses on the additional changes being contemplated and supplements our March 25 comment letter.

[3] As stated by the Federal Reserve, Truth in Lending disclosures are designed: (1) to provide a meaningful disclosure of credit terms to enable consumers to compare the various credit terms available in the marketplace more readily and avoid the uninformed use of credit, and (2) to protect consumers against inaccurate and unfair credit billing and credit card practices.

[4] Economic Growth and Regulatory Paperwork Reduction Act of 1996.

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

Since the primary goal of the Bankruptcy Reform Act's disclosures is to help educate and inform consumers, the ICBA strongly urges the Federal Reserve to consult actual consumers to see what types of information would be most useful and most informative. Failure to consult actual consumers before developing disclosures is likely to seriously flaw the final product.[5] And, since these disclosures are designed to educate consumers, the ICBA urges the Federal Reserve to develop educational materials for consumers to help them understand the disclosures and how they differ from traditional Truth-in-Lending disclosures.

The ICBA also recommends that the Federal Reserve develop model optional disclosure language for creditors and offer additional guidance for creditors in the form of *optional* best practices or answers to frequently-asked-questions. The ICBA recommends that these be published for public comment before being adopted to allow the Federal Reserve to solicit additional feedback

Following are ICBA's comments on the proposal. More detailed comments that respond to specific questions raised by the Federal Reserve are attached in *Appendix A.*

Exempting Certain Accounts or Accountholders

Since the new disclosures were designed primarily for credit card accounts, the ICBA believes it would be appropriate to exempt certain types of open-end accounts, such as home equity lines of credit and reverse mortgages. One burdensome element of regulations identified by bankers is that many current rules are not product-focused. However, there are existing provisions of Regulation Z that focus on credit card accounts and the ICBA believes that would be the logical approach here, too.

While it is appropriate to exempt certain *accounts* from these disclosure requirements, the ICBA does not believe it would be beneficial to exempt certain *accountholders*. Attempting to exempt certain classes of accountholders, such as those who regularly make more than the minimum payment, would be unduly burdensome and the costs would very likely outweigh any potential benefit.

However, one possible option might to limit the disclosure to those accountholders that only make the minimum payment, so that the disclosure would be provided on the periodic statement following the payment cycle in which the minimum payment was made. Such a disclosure should be relatively simple to produce without excessive costs and would be directed at consumers who might derive the most benefit from the disclosure.

[5] When conducting consumer research, it will be important for consumers to understand that costs will increase as more variables are factored into the disclosures. Consumers also must understand that the disclosure must assume an account becomes static at a specific moment and so any disclosure can only be an estimate.

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

Minimum Payment Disclosures

The Bankruptcy Reform Act requires creditors that extend open-end credit to provide a disclosure in a prominent location on the front of each periodic statement about the effects of making only minimum payments along with a toll-free number to call for more detailed information. Under the statute, consumers may be connected to an automated device to obtain repayment information using a touch-tone telephone or similar device. Consumers must also have the option of being connected to an individual who can furnish repayment information. The more complicated the information consumers must provide to obtain disclosures, the greater the chance for errors to occur (which defeats the purpose for making the disclosures). Therefore, the ICBA recommends that the variables used to calculate the disclosures be kept simple.

To develop useful disclosures, consumers should be consulted to determine what information is most important. Granted, the more variables used to create a minimum payment disclosure, the more accurate that information is likely to be for a given consumer. However, the more details used to create the disclosure, the more complex and costly it will be to produce the disclosure, the greater the potential for error, and the more likely the information will be less useful for consumers due to "information overload." And, the more detail involved, the more likely the costs will outweigh the benefits.

Since the goal is to educate consumers with an illustrative example, the ICBA recommends that the disclosure be based on outstanding balance, the blended interest rate provided on the periodic statement, and the minimum dollar payment specified on the periodic statement. Those three parameters are relatively simple and straightforward and already disclosed. Those are also the three parameters outlined in the statute for the Federal Reserve to include in the disclosure tables. However, using those three factors to calculate a disclosure would give consumers a disclosure focused to their particular account that can help them understand the impact of making only the minimum payment.

Disclosure Tables. The statute requires the Federal Reserve to publish a "table" illustrating the approximate number of months it would take to repay an outstanding balance if the consumer pays only the required minimum monthly payments and no other advances are made. The table must include different annual percentage rates, account balances, and minimum payment amounts. The Federal Reserve is proposing to publish formulas for developing the tables but only making the actual tables available "on request."

While formulas for developing disclosure tables can be useful, the ICBA believes that Congress clearly instructed the Federal Reserve to publish tables with these disclosures. The proposal to publish formulas but only provide the tables "on request" would not satisfy the Congressional mandate. Furthermore, to be useful, the ICBA urges the Federal Reserve to make the tables readily available and easily accessible by banks *and* consumers. The ICBA also strongly recommends the Federal Reserve clearly articulate what assumptions

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

are used to develop the tables. In addition, since the statute requires the Federal Reserve to provide guidance on how to use the tables, the ICBA urges the agency to develop concise educational materials for consumers and separate educational materials to help bankers understand the disclosures.

Creditors may not use the toll-free telephone number to provide information other than repayment information from the Federal Reserve's "table," although creditors may furnish the actual number of months it would take to repay the outstanding balance instead of an estimate from the table. The ICBA believes that most creditors, especially community banks, are likely to rely on the Federal Reserve's tables to provide the disclosures – another reason for the Federal Reserve to make the tables readily available. However, the Federal Reserve should also clearly articulate what additional variables creditors might use to provide the disclosures. And, finally, the Federal Reserve should institute safe harbors and tolerance levels for the disclosures.

Key Assumptions for Developing Minimum Payment Disclosures. At the outset, the ICBA believes it is critical for the Federal Reserve to address certain parameters for developing the tables and the final rule. One of the key objectives for requiring minimum payment disclosures is to provide information for consumers that would allow them to change behavior. Unlike traditional Truth-in-Lending disclosures, which are designed to allow consumers to shop for credit, this disclosure is designed to inform existing borrowers about the impact of certain behaviors on the use of credit.[6] As a result, the ICBA again has to emphasize that a key starting point for developing useful disclosures is through work with actual consumers through surveys or focus group meetings.

Accuracy of Disclosures. A key question is the level of accuracy needed to accomplish the preceding objective. As evidenced by the number of questions raised by the Federal Reserve in its request for comment, many variables can be taken into account to produce these disclosures. However, the number of variables that must be factored into the equation will prevent a truly "accurate" disclosure and it is important to recognize that any minimum payment disclosure can only be an "estimate." The question is how accurate that estimate should be. Therefore, it is important to define "accuracy" and to determine what level of accuracy is sufficient.[7] Making this determination is another reason for the Federal Reserve to obtain feedback from actual consumers.

Cost-Benefit Analysis. A factor significantly related to the definition of how accurate the tables and disclosures should be is a cost-benefit analysis, especially with respect to the marginal value for more "tailored" disclosures. Before a final rule is produced, this cost-benefit analysis should be clearly

[6] In that sense, this disclosure has been said to more closely resemble the warning on cigarette packages than traditional Truth-in-Lending disclosures.
[7] According to Merriam Webster online (www.m-w.com), accurate is defined as: (a) free from error, especially as the result of care, (b) conforming exactly to truth or to a standard; or (c) able to give an accurate result (an *accurate* gauge).

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

articulated. Costs that must clearly be factored into the analysis are costs for changes to procedures and systems and mechanisms to handle customer inquiries. The Federal Reserve should also consider possible "information overload" for consumers and potential limits on consumer choice through decreased products and providers due to increases in costs. And finally, the Federal Reserve should consider the impact the additional costs will have on marginal borrowers who are priced out of the market by the rising costs.

Existing Data. Data from studies done in California in 2000 and 2001 of over 300,000 accounts show that approximately one-third of consumers pay 90% or more of the outstanding balance each month, another one-third pays less than 5%, with the remaining third spread more-or-less evenly between 5% and 90%.[8] Payment level varied by the amount of the outstanding balance, with an increased balance correlating to a decreased payment level (suggesting payment levels may be affected by external budget constraints). Generally, where balances were over $100, approximately 2.9% of borrowers made only the minimum payment for six months, while 4.6% of borrowers with outstanding balances over $1,000 paid only the minimum for six months. However, analysis of the data also suggests a significant number of borrowers make the minimum payment one month but then pay the balance in full the following month.[9] And, there are instances where consumers elect to make the minimum payment to take advantage of low interest rates, e.g., a zero percent introductory offer. Therefore, based on this information, it is important that the Federal Reserve recognize that these disclosures will only benefit a small number of consumers. That minimal benefit must be weighed against the potential costs.

Reliance on Consumers to Make Disclosures. Another issue is how much reliance can be placed on consumers to provide information for more "tailored" disclosures, since the more creditors rely on consumers to input variables and the more information consumers must provide, whether on a website or using a touch-tone telephone, the greater chance for errors. Therefore, the ICBA recommends that the number and extent of variables be limited to facilitate the ability of consumers to provide factors needed for the disclosure. Since reliance on consumers to input data might require additional disclosures for consumers to give them the necessary information, using existing disclosures would help minimize costs and potential consumer confusion. While an alternative would be to allow creditors to develop in interface between an account system and the disclosure system, the costs for such a connection might outweigh the benefits and so the formulas and tables developed by the Federal Reserve are likely to be the most viable option, especially for community banks.

---

[8] Credit Research Center, McDonough School of Business, Georgetown University.

[9] Separate data provided by Certegy suggests that as few as 2% of customers make the minimum payment for three successive months.

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

Introductory Rates and Late Fees

The ICBA believes it is appropriate to require creditors to highlight introductory rates in some manner. However, since this is a very dynamic marketplace, the ICBA believes individual creditors should have the flexibility of deciding the best way to highlight an introductory rate and its expiration date.

Similarly, given the growing significance of late fees for credit card accounts, creditors should highlight late fees in some way, along with the date the late fee applies. Many billing statements have found means to do this in a simple manner, e.g., utility bills. However, creditors should be given the flexibility for how best to highlight the information to call it to a borrower's attention. While the Federal Reserve may wish to offer guidance, through a variety of *optional* best practices or responses to frequently-asked-questions, specific mandates should not be issued.

Internet Solicitations

The ICBA finds it artificial to draw a distinction between applications and solicitations. Absent a clear showing that consumers distinguish applications and solicitations, creating an artificial one is more likely to generate confusion than clarity. With respect to disclosures posted on a website, as long as the information posted is current, the ICBA does not believe additional guidance is needed to specify how often the information must be updated, although creditors should be allowed reasonable time to update the website.

High Loan-to-Value Mortgage Credit

The ICBA believes the parameters set forth in the Bankruptcy Reform Act are sufficient for the disclosures for high loan-to-value mortgage credit. For ease of reference, though, the ICBA recommends that the Federal Reserve incorporate the statutory language in the final rule. The property value used to make the disclosure should be the assessment used at loan closing. Since the purpose of the disclosure is to educate consumers, a disclosure at closing should be sufficient.

Effective Date

Under the terms of the Bankruptcy Reform Act, any rules on new disclosures will not take effect until 12 months after the Federal Reserve publishes final rules. The ICBA believes that this is generally adequate but encourages the Federal Reserve to work with the industry to assist with and facilitate the transition.

Conclusion

The ICBA commends the Federal Reserve for undertaking this project, and looks forward to continuing to work with the agency and other interested parties to develop disclosures that meet the Congressional mandate without being unduly complex, confusing or burdensome. The key starting point, though, must be input from actual consumers to develop a better understanding of how to

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

accomplish Congress' goals and provide educational information that is meaningful and useful for consumers.

Because Congress required the Federal Reserve to produce tables, the ICBA strongly urges the agency to make those tables readily available to both bankers and the public. While formulas are useful for developing the disclosure tables, making those tables only available "on request" does not satisfy the Congressional mandate. Moreover, to help consumers understand the information, the ICBA strongly urges the Federal Reserve to develop educational materials for consumers.

To help examiners and bankers understand what must be done to comply with these new requirements, the ICBA also urges the Federal Reserve to develop a series of a variety of *optional* best practices or answers to frequently-asked-questions. Second, to ensure consistency, the ICBA also urges the Federal Reserve to develop model disclosures that banks have the option of using. However, because this is an extremely dynamic market and because technology is rapidly changing delivery systems, creditors should have flexibility in delivering the information.

Finally, to avoid misunderstandings and unnecessary risk, tolerance levels and safe harbors should be built into the final rule.

Thank you for the opportunity to comment. If you need additional information or have any questions, please contact me by phone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

Robert G. Rowe

Robert G. Rowe, III
Regulatory Counsel

APPENDIX
ICBA Responses to Specific Questions

Q59 and 60: Should certain accounts or transactions be exempt?[10]
Different credit products are designed to meet different consumer demands. This is implicitly recognized under the Federal Reserve's Regulation Z in that special sections address some of the unique features of certain credit products. For example, Subpart E of the regulation sets out separate requirements for certain home mortgages, with a special provision to address reverse mortgages (12 CFR 226.33).

The disclosures designed under the Bankruptcy Reform Act were created for credit cards. Therefore, the ICBA believes other open-ended accounts, such as home equity lines of credit and reverse mortgages, should be exempt. While a simple warning might be appropriate for other types of open-end accounts, such a warning should only be required *if* the credit product has a minimum payment option.

The ICBA disagrees that exceptions should be permitted for certain classes of account holders, such as those that pay the balance in full or regularly make payments that exceed the minimum. Attempting to segregate customers within account types is likely to be expensive, prone to error and confusing for both lenders and consumers.

Q62 through Q64: Hypothetical examples for periodic statements.
The hypothetical examples on periodic statements required by the Bankruptcy Reform Act vary depending on the creditor's required minimum payment. If the minimum payment is 4% or less of the account balance, creditors must disclose that it will take 88 months to pay off a $1000 balance at an interest rate of 17 percent if the consumer makes a "typical" 2 percent minimum monthly payment. If the minimum payment is over 4% of the account balance, creditors must disclose that it will take 24 months to pay off a balance of $300 at an interest rate of 17 percent if the consumer makes a "typical" 5% minimum monthly payment. Creditors also have the option to substitute an example based on an APR greater than 17%.

Q62: The Bankruptcy Act lets the Federal Reserve periodically adjust the APR used in the hypothetical examples and to recalculate repayment periods accordingly. The ICBA does not believe the hypotheticals need to be adjusted. Instead of adjusting the statutory hypotheticals, the ICBA believes the tables the Federal Reserve must develop should be the primary source of information.

---

[10] The Truth in Lending Act grants the Federal Reserve broad authority to establish exceptions from disclosure requirements.

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

Q63: As noted above, different credit products are structured for different purposes and consumer demands. One of the problems and compliance burdens community banks face – and that has been a source of confusion for consumers – is the fact that regulations and products are not always coordinated. Therefore, since these disclosures are being designed for credit card products, the ICBA believes that different analysis is needed for other types of open-end accounts. The ICBA urges the Federal Reserve to begin to incorporate a product-based approach to regulations to ease burden and reduce confusion for both bankers and consumers. However, before developing separate disclosures for other types of open-end accounts, the ICBA believes that additional analysis is needed. To begin with, the Federal Reserve should assess the extent to which minimum payments are used for other types of accounts before it can develop appropriate disclosures.

Q64: The Federal Reserve is concerned that the term "typical" might mislead some consumers. The ICBA agrees the term could be misleading. Even after extensive consumer surveys and analysis, designation of a "typical" consumer would be difficult if not impossible. Moreover, since consumer behaviors change over time, any definition of a "typical" consumer in 2005 may quickly become outdated and irrelevant. Rather, the disclosures should be referred to as "examples" with a caveat that actual payments can vary depending on payment history over time.

Q65: Federal Reserve Tables

The Bankruptcy Act requires the Federal Reserve to create tables for different outstanding balances, payment amounts, and interest rates. The Federal Reserve plans to publish formulas for creating the tables, although the tables will be available on request.

The ICBA strongly disagrees with the Federal Reserve's proposal to restrict the availability of the tables to those who request them. The Bankruptcy Reform Act is clear in requiring the Federal Reserve to publish tables. While creation of formulas is appropriate to help develop the tables and while the formulas should be available for those that want to incorporate them into their own systems, the tables should be published and made easily available for both creditors and consumers.

Periodic statements currently do not disclose *how* a creditor determines a stated required minimum dollar payment, only the required minimum payment. Furthermore, that dollar amount might vary as the account balance declines. And, while periodic statements must disclose applicable APRs, the statement might not indicate what portion of an account balance is subject to different APRs. Therefore, the Federal Reserve is considering three options for estimating the minimum time to pay an outstanding balance: (1) ask consumers to provide account balance, minimum payment amount, and APRs or create a formula assuming a "typical" account; (2) let creditors disclose information from their own systems about a specific consumer's account terms (although more

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

accurate for a particular consumer, it might differ from the Federal Reserve's tables; or (3) *require* creditors to download information from their own systems.

The ICBA believes that a slightly modified version of the first option, using account balance, minimum payment amount and the blended APR given on the periodic statement, is the best approach. While adding additional variables, including grace factors, skipped payment options, and varying APRs will increase the accuracy, the additional factors will make the tables much more cumbersome and difficult to use, more confusing for creditors and consumers, more prone to error and more costly. Based on data from the Credit Research Center that shows these disclosures will only benefit a small percentage of consumers, the additional costs for incorporating a greater number of variables are not justified. Creditors should be given the *option* of creating an interface between their own systems to create the disclosures, but that should not be required.

Q66 through Q68: Minimum Payment Amount. Another question is whether a creditor's actual minimum payment requirement should be factored into the equation. Most creditors calculate a minimum payment each month based on a formula, typically based on a percentage of the outstanding balance. However, formulas can vary among creditors and accounts and may include other factors such as finance charges, late fees or other fees or include the different APRs that apply to different portions of the outstanding balance (such as different APRs for cash advances or purchases). While the minimum dollar amount payment due is disclosed on periodic statements, how it is calculated is not (and even if it were, it might be too complex to be useful to consumers). In addition, as the outstanding balance declines, the minimum payment might also decline until a certain floor is reached (such as $20). As a result, estimates provided by the Federal Reserve would underestimate the repayment period.

Again, the ICBA believes that trying to factor this into the disclosures is unnecessarily complicated, unnecessarily adds to burdens and the costs, and increases the potential for confusion. Using the actual dollar minimum disclosed on a periodic statement as the variable to provide the estimate for time to pay the outstanding balance should be sufficient.

Q69: **Negative amortization** can occur if the required minimum payment is less than the total finance charges and other fees imposed during a billing cycle. Under guidance issued by the Federal Financial Institutions Examination Council (FFIEC) in January 2003, credit card issuers were strongly issued against prolonged negative amortization for credit card accounts.[11] Many

[11] January 8, 2003, *Credit Card Lending, Account Management and Loss Allowance Guidance:* "The Agencies expect lenders to require minimum payments that will amortize the current balance over a reasonable period of time, consistent with the unsecured, consumer-oriented nature of the underlying debt and the borrower's documented creditworthiness. Prolonged negative amortization, inappropriate fees, and other practices that inordinately compound or protract consumer debt and disguise portfolio

creditors have taken steps to minimize or eliminate negative amortization in their credit card portfolios.[12] Therefore, the ICBA does not believe it makes sense to factor into the disclosures tables an element that the regulators have strongly discouraged.[13]

Q71 through Q76 - APR information. The Bankruptcy Reform Act hypotheticals assume a single APR, but in reality, multiple APRs may apply and may differ for purchases, cash advances, and balance transfers. While periodic statements disclose an APR, it is usually a "blended" APR that does not provide information about what portion of the outstanding balance is subject to each particular APR. Creditors could develop automated systems that could incorporate this information, but the same data would not be included in the Federal Reserve's tables.

The ICBA believes a single APR, using the blended APR currently disclosed on periodic statements, is the most appropriate factor to use for these disclosures. Since the disclosure is designed as an illustrative example to alert the cardholder, it should provide sufficient information in a cost-effective manner. Any alternative would require calculations that are confusing to consumers, burdensome for creditors, prone to errors and at costs that outweigh the benefits.

Q77 through Q82: Option to furnish the actual number of months to repay an outstanding balance. The statute also gives creditors the option of furnishing the "actual number of months" to repay the balance instead of providing an estimated repayment period. Because borrower behavior might change over time and because the disclosures apply to accounts that are neither static nor fixed, any disclosure of the actual months to repay the account can never be anything other than an estimate. Therefore, the ICBA recommends that the final rule provide that it is acceptable when a creditor provides disclosures based on reasonable calculations, especially if they are within a certain tolerance of those set forth in the tables or follow methods established by the Federal Reserve.

Q83: Guidance for providing "clear and conspicuous" minimum payment disclosures. The Bankruptcy Reform Act requires the minimum payment disclosures be "clear and conspicuous." The Federal Reserve must provide model disclosures and rules outlining what is meant by clear and conspicuous, ensuring it adopts a standard that "can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the

---

performance and quality raise safety and soundness concerns and are subject to examiner criticism. "

[12] In addition to credit cards, recent indications from the regulatory agencies imply similar guidelines restricting or advising against negative amortization are likely to apply to other types of credit products.

[13] See, e.g., Speech by Comptroller of the Currency John Dugan to the Consumer Federation of America, December 1, 2005.

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

notice." The ICBA believes that this might be an area where a variety of *optional* best practices would be appropriate due to the variety of disclosures and disclosure formats, especially with increased use of the Internet. To help develop appropriate disclosures, the Federal Reserve should meet with focus groups of consumers and industry representatives to develop models and then publish those models for additional public comment before finalization.

Introductory Rates

The Bankruptcy Reform Act also requires new disclosures for direct mail or Internet credit card applications and solicitations that offer a "temporary" APR.[14] The statute also requires credit card issuers to use the term "introductory" clearly and conspicuously in immediate proximity to each mention of the temporary APR in applications, solicitations, and all accompanying promotional materials. In a prominent location closely proximate to the first mention of the introductory APR, credit card issuers also must disclose the date the introductory APR will expire, the APR that will apply after the introductory rate expires (commonly called the "go-to rate') and a clear and conspicuous general description of any circumstances that might result in the introductory rate being revoked (as well as the APR that will apply if the introductory APR is revoked).

Again, the ICBA believes the best approach is to develop a set of a variety of *optional* "best practices" creditors can use to develop disclosures. Strict mandates can become quickly outdated and unnecessarily restrict flexibility in a dynamic environment. For instance, requiring specific font size for disclosures could produce unintended consequences by causing creditors to reduce the amount of information provided in order to reduce printing and mailing costs, thereby decreasing instead of enhancing the information available. Moreover, as new delivery systems such as the Internet are used, guidelines developed for a different medium, such as print, can make less sense. To avoid these problems, flexibility in how these standards are met is important. Guidelines through a variety of "best practices" or frequently asked questions can be helpful (as well as more easily updated than regulatory restrictions), but any guidance should be issued for public comment before being finalized.

Q86: Credit card issuers must use the term "introductory" in immediate proximity to each mention of the introductory APR. The ICBA believes that the requirement can easily be met if the term "introductory" immediately precedes or follows the APR (e.g., "Introductory APR 3.9%" or "3.9% APR introductory rate").

Q87: The expiration date and go-to APR must be closely proximate to the "first mention" of the temporary introductory APR. However, an introductory APR might appear several times on the first page of a solicitation letter. The ICBA

---

[14] A "temporary" APR is defined as one that applies "for an introductory period of less than 1 year, if that rate is less than an APR that was in effect within 60 days before the date of mailing the application or solicitation."

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

believes it appropriate to use any step that calls attention to the introductory rate, especially the first time it appears, but creditors should be given the flexibility of electing the best means to highlight the information.

Q88: Direct-mail offers often include several documents sent in a single envelope. Due to the broad variety of marketing formats and media, trying to identify one document as the "first mention" of the introductory rate could become misleading. The ICBA recommends that the most logical approach would be to require making the introductory rate prominent in some way the first time it appears and also possibly requiring disclosure of an additional line item for introductory rates in the Schumer Box.

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. The ICBA believes that the most appropriate mechanism would be to require a creditor to emphasize the expiration date in some way. While it might be useful for the Federal Reserve to provide examples of how this can be accomplished, the ICBA urges the Federal Reserve to allow individual creditors flexibility to determine the most appropriate way to accomplish this goal.

Q90: Some credit card offers list several possible permanent APRs, with a consumer's qualifications for a particular rate being determined by information gathered later in the application process. Attempting to list all possible rates or variations would be costly to produce and confusing to consumers. Therefore, the ICBA believes that the most appropriate means to accomplish this goal is a simple warning that the actual rate can vary depending on the individual and his or her credit history. The disclosure might also include a range of rates, e.g., a high and low rate.

Q91: Currently, Regulation Z requires a credit card issuer to disclose whether an initial APR might increase when one or more specific events happen, such as a late payment. Both the initial rate and the increased penalty rate must be included in the Schumer Box (the specific event or events that trigger a penalty rate are disclosed outside the Schumer Box with an asterisk or other method to direct the consumer to this additional information). On the other hand, the Bankruptcy Reform Act requires creditors to provide a general description of the circumstances, if any, that might cause a temporary rate to be revoked, and this information must be disclosed "in a prominent manner" on the application or solicitation. To avoid confusion and duplicative disclosures, the ICBA believes it would be appropriate for the Federal Reserve to determine that the disclosures currently required under Regulation Z satisfy the Bankruptcy Reform Act requirements.

Q92: The introductory rate disclosures required by the Bankruptcy Reform Act apply to applications and solicitations whether sent by direct mail or provided electronically. The ICBA recommends the Federal Reserve allow sufficient flexibility in the final rule to allow creditors to apply the requirements to both

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

electronic and print media. Different standards for print and electronic disclosures are likely to cause confusion and inconsistencies.

Internet Based Credit Card Solicitations

When Internet or other interactive computer solicitations are used to open a credit card account, the Bankruptcy Reform Act requires creditors to give the same disclosures as those provided in direct mail applications or solicitations. As proposed by the Federal Reserve, a "solicitation" would be an offer to open an account without requiring an application.

Q93: Although the Bankruptcy Reform Act refers to Internet credit card solicitations, it could be interpreted to include applications. However, the ICBA questions whether a distinction should be drawn between "application" and "solicitation." While the distinction being considered by the Federal Reserve is likely to be lost on many and possibly more confusing than enlightening for consumers and bankers. Absent a clear need to make such an artificial distinction, the ICBA urges the Federal Reserve not to create this abstract difference.

Q94: As noted previously, the ICBA believes that guidelines in the form of responses to frequently asked questions or possibly a variety of *optional* best practices would be helpful, but should be published for public comment before being issued. The ICBA also recommends that the Federal Reserve develop optional model disclosures, preferably after working with consumer focus groups and industry representatives to develop disclosures that are appropriate and informative without being unduly expensive or burdensome to produce.

Q95: In 2001, the Federal Reserve issued interim final rules requiring a consumer be able to access the disclosures when an application or solicitation reply form is made available electronically. However, the rule also provided flexibility. For example, a card issuer could provide a link on the application (or reply form) to disclosures as long as a consumer could not bypass the disclosures before submitting the application or reply form. Instead of a link, an 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. The ICBA finds these guidelines are still appropriate.

Q96: The Bankruptcy Reform Act also requires Internet disclosures to be "readily accessible to consumers in close proximity to the solicitation" and "updated regularly to reflect the current policies, terms, and fee amounts." The ICBA does not believe that specific guidance is needed to define what is meant for disclosures to be "updated regularly to reflect the current policies, terms, and fee amounts." The danger in creating an artificial mandate is the potential liability

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

for failure to "update" a disclosure that is current. Instead, creditors should be deemed to be in compliance as long as the disclosures reflect the current policies, terms and fees (with reasonable tolerance for updating information posted on a website).

Disclosures Related to Payment Deadlines and Late Payment Penalties

Q98: The Bankruptcy Reform Act requires periodic statements to disclose whether a late payment fee will be imposed for failure to make a payment on or before the required due date. The periodic statement must clearly and conspicuously disclose the date on which the payment is due or, if different, the earliest date on which a late payment fee might be charged along with the amount of the late payment fee. At this time, the ICBA does not believe additional guidance is required for making these disclosures "clear and conspicuous." The ICBA believes flexibility should be allowed for providing the disclosures but that specific font sizes or types should not be mandated. However, the ICBA recommends the Federal Reserve publish optional model disclosures for public comment If at some future date additional guidance is needed, the Federal Reserve can propose possible responses to frequently-asked-questions or a variety of *optional* "best practices" in coordination with the other federal banking regulators.

Q99: Currently, Regulation Z lets creditors set reasonable cut-off hours for receiving payments, and payments received after that time (such as 2:00 pm), do not have to be posted on that date. The ICBA does not believe that the Federal Reserve should require payments to be posted on the date received if the payment is received after the established cut-off time. While it is appropriate to disclose the cut-off time, creditors should be allowed to establish reasonable cut-off times for processing of payments. This is especially important for smaller creditors that may not have the resources to allow posting on a specific date no matter when on that date the payment is received. Cut-off times have been an accepted banking practice for many years and allow banks to process transactions in an orderly fashion. Absent a clear showing for a need to change this practice, the ICBA urges the Federal Reserve not to change the requirement.

Q100: A late payment might trigger an increased APR. This information should be included in the initial disclosures provided to consumers. However, to require this information on each and every periodic statement is the type of additional information that would cause the periodic statement to become the type of "information overload" that is costly to produce but not particularly useful to consumers.

Q101: The ICBA does not believe there are special considerations for late payments on open-end accounts other than credit cards.

Additional Disclosures for Home-Secured Loans

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

Currently, if a creditor offers an open-end loan secured by a home, it must inform the consumer at application that he or she should consult a tax adviser for information about the deductibility of interest and charges. The Bankruptcy Act requires new disclosures for any home-secured credit (open-end and closed-end) where the available credit exceeds or might exceed the fair-market value of the dwelling securing the loan. There must be a “clear and conspicuous” statement in any advertising that: the interest on that portion of the credit that exceeds the fair-market value of the dwelling is not tax deductible for Federal income tax purposes and advising the consumer to consult a tax adviser for further information about the deductibility of interest and charges. This requirement is limited to paper and Internet advertisements and does not apply to radio or television advertising. The disclosures also must be made at the time of application.

Q102: The ICBA believes that the requirements outlined in the Bankruptcy Reform Act are sufficient. However, for ease of reference, it would be helpful for the Federal Reserve to incorporate the statutory provisions into the final regulation.

Q103: To determine whether a loan “may exceed” the dwelling’s fair-market value, only the initial amount of the loan or line of credit and the then current property value should be considered. Any other approach would be unduly complex and any potential benefits would be outweighed by the costs.

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org