DISCOVER
BANK

Via E-Mail

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

Re: Docket No. R-1286

Dear Ms. Johnson:

Discover Bank submits this comment letter in response to the proposed rule published by the Board of Governors of the Federal Reserve System ("Board") to revise those portions of Regulation Z regulating open-end credit products ("Proposed Rule"). Discover Bank, as one of the nation's largest issuers of consumer credit cards, is vitally interested in the requirements for consumer disclosures pertaining to the marketing and issuance of credit cards. We are pleased that the Board is conducting a comprehensive review of Regulation Z and appreciate the opportunity to provide our comments on the Proposed Rule.

In General

Discover Bank believes that consumers should be provided with clear disclosures in easy-to-understand language that describe the key provisions of their credit card accounts. Although Regulation Z may have fostered such a result in the past, the regulation has generally not kept pace with developments in the credit card industry. We commend the Board for its efforts in proposing to modernize Regulation Z to reflect the existing marketplace. On the whole, we believe the Board has taken the correct approach with respect to revising Regulation Z. In particular, we believe the Board's focus on improving disclosures, as opposed to imposing arbitrary price controls or similarly harmful prohibitions, should be retained. While we also agree that consumer testing of proposed disclosures is useful, we believe that the impact on actual credit card users is the true test of the effectiveness of a disclosure. We previously recommended to the Board that this analysis should be conducted before new disclosures are mandated industry-wide. In any event, the Board should monitor whether new disclosures actually motivate consumers to change negative behaviors (e.g., whether consumers who receive disclosures about the consequences of making only minimum payments change their payment behavior), so that requirements that do not have the intended effect can be revised or dropped.

Although we offer a variety of additional comments below, we urge the Board to consider the costs of any Final Rule compared to the corresponding benefits available to consumers. For example, we believe the Board's approach to revising the application and solicitation disclosures ("application disclosures") is a step in the right direction. Although the proposed revisions, even if modified as we suggest below, will be costly, we believe that the improvements in the application disclosures will generally benefit consumers. We also believe

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the account-opening disclosures could be improved in a manner similar to the Board's proposal, but we do not necessarily believe that a table is necessary to convey the required disclosures to consumers in the account-opening context.

As for periodic statements, we do not believe that significant revisions are needed to improve consumer understanding or convenience. Yet, these disclosures would be completely revised and made extremely inflexible under the Proposed Rule. For instance, we question whether the year-to-date cost disclosure would enhance the consumers' understanding of the costs associated with a credit card account, or motivate changes in consumer behavior. The Board should provide issuers with greater flexibility in designing their periodic statements, as innovation and creativity in this area have clearly benefited consumers and the significant cost of the proposed revisions may not result in any net benefit for consumers.

As for subsequent disclosures, imposing a 45 day advance notice for change of terms is unnecessary and would make it significantly more difficult for issuers to respond to credit risk or other market forces, potentially resulting in increased costs for many consumers.

General Disclosure Issues §226.5

<u>Terminology and Comprehension</u> §226.5(a)

The Board has made a concerted effort to improve the terminology used in the disclosures required under Regulation Z. We believe that use of the proper terminology is important if consumers are to understand the disclosures they are provided. For example, references to "interest" instead of "finance charges" should be retained. We also believe the Board has correctly segregated the information in certain disclosures to improve consumer comprehension. An example of this would be the separation of the APR and interest information from the fee information in the application disclosures and the account-opening disclosures. These types of improvements to the Regulation Z disclosures may not appear to be substantial, but they can have a significant impact on how disclosures are read and understood by consumers. The Board should not discount the value of this approach when crafting its Final Rule.

<u>Formatting of Disclosures</u> §226.5(a)(3)

We appreciate the fact that the Board seeks to ensure that issuers provide disclosures to consumers in a format that consumers can understand. As drafted, however, the Proposed Rule could foreclose the possibility of issuers providing disclosures in a manner that coincides easily and efficiently with their existing customer communications or materials. It is our hope that the Board recognizes that there are a variety of ways that disclosures can be formatted without compromising the ability of consumers to understand them. We ask the Board to revise the Proposed Rule accordingly.

For example, the Commentary provisions to the model forms for the application disclosures and the account-opening disclosures make specific reference to designing those disclosures for legal-sized paper. Legal-sized paper, as the Board tacitly admits in the Commentary, is not required to provide consumers with the appropriate disclosures. In fact, many issuers may not be able to use legal-sized paper without incurring significant production and other costs. Although the Commentary disclaims that use of such paper is *required*, the mere suggestion that the disclosures were designed for such paper may be read as a *de facto* requirement by examiners or others when assessing an issuer's compliance with Regulation Z. We ask the Board to omit any reference to paper size in the Final Rule.

Another example of flexibility relates to the model forms themselves. We note that they are all "portrait" oriented with the forms suggesting a straight top-to-bottom disclosure alignment. This is not necessarily how issuers provide their disclosures, nor are the models or formats provided in the Proposed Rule the only manner in which key information can be conveyed to consumers simply, meaningfully, or efficiently. We ask the Board to revise the Proposed Rule specifically to permit issuers flexibility in how they design the format of their disclosures so long as key structural requirements are retained (*e.g.*, the application disclosures must be in a tabular format). As we discuss in more detail below, this comment is especially important as it relates to periodic statements.

Timeframe for Mailing Periodic Statements §226.5(b)(2)(ii)

If a credit card account has a grace period in effect, the Truth in Lending Act ("TILA") requires an issuer to mail a periodic statement at least 14 days before finance charges could be imposed. The Board has extended this requirement in Regulation Z to require a statement to be mailed at least 14 days prior to the expiration of the grace period or the imposition of any "other" charge, such as a late fee. In the Supplementary Information to the Proposed Rule, the Board asks for comment as to whether it should recommend to Congress a statutory increase to this 14-day rule.

We do not believe that there is a need to change the 14-day requirement, statutorily or otherwise. The current timeframe has proven to be adequate to allow consumers to remit payments in time to avoid late fees and additional interest. Indeed, changes in practices and technology that have occurred since the 14-day provision was enacted in 1974 have enhanced the ability of consumers to make timely payments. Mail has become more efficient (through Zip+4 and other technology) and Discover Bank and other major card issuers work with the Postal Service to expedite both the mailing of statements and the processing of incoming payments. Internet payments have gained widespread consumer acceptance, allowing consumers to receive electronic statements before paper statements are even mailed, and to make payments, postage-free, over the Internet in a matter of minutes. Consumers can pre-authorize payments (in the amount of the full balance, the minimum payment, or any other amount) and avoid concerns about mail delays slowing down the movement of their monthly statements or payments.

Not only is a change to the 14-day period unnecessary to provide consumers sufficient time to make timely payments, but increasing the requisite number of days may cause unintended consequences. If Congress were to amend TILA to require a periodic statement to be sent for an account with a grace period 25 or even 20 days before the imposition of a finance charge or other charge, issuers could have difficulty meeting such a requirement reliably without increasing grace periods. Although technology has made the printing, assembly, and mailing of periodic statements relatively efficient, it is not an instantaneous process. The fact remains that we, like many other major credit card issuers, still have to send *millions* of periodic statements a month. Also, while a requirement that effectively mandates a longer grace period might benefit convenience users of cards by providing them with additional days of interest-free funds, consumers whose accounts revolve might tend to use the additional days to delay mailing their payments, thereby increasing the amount of interest they pay on their card balances.

Application Disclosures §226.5a

In General

Discover Bank believes that the proposed revisions to § 226.5a are generally appropriate. We believe that the application disclosures, as proposed to be revised, would result in clear communication of the information necessary for consumers to consider when applying for a credit card. Having said this, we note that the proposed revisions to the application disclosures would be costly to us, and presumably to other issuers as well. There would be additional costs in terms of the size of the table, even if legal-sized paper is not required as discussed above. The vast increase in data points in the table as compared to existing application disclosures would also result in more frequent changes to the disclosures.

Range of APRs §226.5a(b)(1)

We are particularly pleased the Board has taken the opportunity to clarify that an issuer may provide a range of APRs, as opposed to a specific APR, in the application disclosure box. As the Board is well aware, many issuers engage in risk-based pricing, a practice that benefits consumers by making more credit available at prices appropriate to a consumer's risk profile. One result of risk-based pricing is that an issuer will not be able to pinpoint the APR that may apply to any particular consumer until the consumer actually applies for an account. This may be true even in cases involving "firm offers of credit" provided to consumers. Although a creditor may obtain a sufficient amount of information from a consumer reporting agency to make such an offer, the creditor may not have sufficient information to provide a specific APR. For example, information obtained from consumers who respond to credit offers, such as income and/or employment, may be utilized in setting the APR. We believe it is critical for issuers to have the ability to provide the range of applicable rates in the application disclosures if risk-based pricing is to continue.

Balance Computation Method Disclosure §226.5a(b)(6)

With respect to the specific disclosure items proposed by the Board, we believe that the application disclosures could be simplified slightly by omitting or revising certain information. For example, the Board proposes to require issuers to describe briefly the balance calculation method that applies to the account, but to place the explanation just below the application disclosure table. However, based on the Supplementary Information to the Proposed Rule, it would appear that such a disclosure is not meaningful to consumers, nor does it provide for a significant price differentiation among issuers. In the Supplementary Information, the Board appears to recognize that the difficulty in explaining balance computation methods in a concise manner appropriate for application disclosures is not limited to any specific method; rather, all methods are complex and relatively lengthy to explain in terms of a written disclosure. This is an important point, as some have suggested that the Board should prohibit balance calculation methods that are not easily summarized in a disclosure. Such an approach, of course, would result in a complete reworking of how virtually all issuers calculate account balances. Therefore, based on the Board's testing, it appears that: (i) it is not possible to include a concise disclosure pertaining to balance calculation methods that consumers can understand; and (ii) consumers do not necessarily consider balance calculation methods when considering or comparing accounts. Such findings should support a determination to omit the disclosure altogether from the application disclosures, not simply to remove them from the table.

Payment Allocation Disclosure §226.5a(b)(15)

We also ask the Board to revise the payment allocation disclosure in a manner that makes it less complicated, yet more broadly applicable. For example, an issuer could state that it may allocate payments to balances with lower APRs first and that use of a balance transfer may eliminate the grace period until the consumer repays the balance in full. We believe that such a disclosure would be more complete and easier for consumers to understand than the disclosure in the Proposed Rule.

Account-Opening Disclosures §226.6

Tabular Requirement §226.6(b)(4)

The Proposed Rule would make significant revisions to the disclosures required under §226.6. We agree that Regulation Z should provide for improved account-opening disclosures. We believe, however, that the Board could achieve such improvements without necessarily requiring the disclosures to be in the form of a table. Although the tabular disclosure may have benefits as it relates to application disclosures, there are two key distinctions the Board should consider. First, unlike certain application disclosures, Congress does not require account-opening disclosures to be in a table. Second, the purposes of the disclosures are generally different. Application disclosures are designed to give the consumer a summary of key cost comparison provisions in a format that allows "apples to apples" cost comparisons across issuers. The tabular format facilitates such a comparison. The purpose of account-opening disclosures is to educate consumers about the terms of their account. Although we concur with the Board's conclusion that account-opening disclosures could be revised to improve consumers' understanding of account terms, we do not believe that a table is necessary to achieve that goal. Providing a full-page table *in addition* to the account agreement increases costs without being more effective than less cumbersome disclosures, such as bullet points, a list, or a more compact chart/table than the one in the Proposed Rule. The Board should provide issuers greater flexibility in how required account-opening disclosures are made.

Printing APR in Table §226.6(b)(4)

We also ask the Board to reconsider the requirement that the APR for an account appear in the tabular disclosure (or bullet points, list, or any other preprinted document) as part of the account-opening disclosures. Such a requirement could impose significant costs on issuers, which could be avoided if the APR could be disclosed clearly and conspicuously elsewhere in the § 226.6 disclosures. For example, an issuer with products that have many potential APRs, would need to maintain a separate account-opening disclosure document for each potential APR. If a variable APR applies, the account-opening table would have to be revised and reprinted quickly, and the existing stock thrown away when the index rate changed. Additionally, many issuers would need to create a disclosure assembly mechanism to ensure that each customer received the specific table in addition to the other preprinted materials (such as an account agreement). We believe an appropriate solution is to continue to allow issuers to provide the APR elsewhere with the required § 226.6 disclosures so long as the "integrated document" requirement is met. For example, the account-specific APRs could be printed on the card carrier as they are today or other material accompanying the account-opening disclosures.

Timely Oral Disclosures §226.6(b)(4)

Regardless of how the Final Rule ultimately revises the format of the account-opening disclosures, we commend the Board for allowing us to disclose certain information orally at a time that will be most relevant to cardmembers. These disclosures would generally be of the type associated with relatively little-used services that are not integral to a consumer's use of an account (such as those relating to various APRs or annual fees). In particular, the Proposed Rule would not require the written account-opening disclosures to include *every* disclosure required by § 226.6 so long as the disclosure is not required in the account-opening table and is made to the consumer at a relevant time before the consumer becomes obligated for the charge in question. We believe this is an inherently more consumer-friendly approach, as it ensures that a consumer will receive the necessary disclosure in a meaningful context, as opposed to at a time that may be several years prior to the consumer's use of the service for which he or she is incurring a fee. We urge the Board to adopt this Proposed Rule.

Periodic Statements §226.7

In General

As we noted at the outset of our comments, we believe that the existing periodic statements provided to consumers communicate key information to consumers in an effective manner. Although the format used for periodic statements is not necessarily standardized across issuers, such standardization does not appear to be necessary to meet consumers' needs. Despite the criticism that some policymakers and advocacy groups have voiced relating to credit card disclosures in general, we are not aware of criticism concerning periodic statements. Given the general satisfaction that consumers appear to have regarding periodic statements, the proposed significant overhaul of these disclosures is not warranted. The changes outlined in the Proposed Rule could result in significant additional costs and ongoing implementation costs, and would reduce the ability to customize the content to reflect other features consumers find important, helpful, or of interest. The Final Rule should retain the flexibility to design periodic statements in a manner issuers deem most appropriate for their cardholders, an approach that has served consumers well to date.

Year-to-Date Cost Disclosures §226.7(b)(6)

The Proposed Rule includes a new requirement to provide consumers with calendar year-to-date ("YTD") cost disclosures on the periodic statement. The Board's intent is to give consumers information summarizing the amount of money the consumer has spent since January 1 of the current year in connection with his or her use of the credit card account. Consumers already receive significant cost information as part of the periodic statement, and the Final Rule is intended to organize this information in a manner that will better highlight fees and interest.

We do not believe that YTD cost disclosures should be on the periodic statement. Consumers who might find this information useful already have several means of obtaining it (e.g., saving their periodic statements, requesting the information from customer services representatives, or in some cases, consulting year-end account summaries). Mandating a running tabulation of this information for all customers will increase the costs and time needed to prepare monthly statements, and require ongoing systems technology work, while producing little of value to the consumer. In addition, the YTD cost disclosures may not always be accurate due to occasional account adjustments made to accommodate cardmember requests, such as fee waivers. Continuously adjusting the YTD cost disclosures to reflect such adjustments and avoid consumer misunderstanding and disputes will be a difficult process.

Should the Board conclude there is a basis for mandating an YTD cost disclosure requirement in some form, we ask the Board to consider two alternatives. One alternative is that the disclosure be required once a year, such as on the first or last billing statement of the year. Another alternative is to allow issuers to provide customers access to this information online. In either case, issuers should be provided with a safe harbor on the accuracy of the YTD cost disclosures as long as an issuer uses reasonable methods in reconciling adjustments. These alternatives would provide consumers with the understanding of the long-term costs of credit desired by the Board while reducing at least some of the implementation and compliance burdens on issuers.

Payment Information Box: Minimum Payment Disclosures §226.7(b)(12)

The Proposed Rule includes a requirement to make one of three minimum payment disclosures in the Payment Information box. The three choices are: (i) a bulky, generic disclosure with a toll-free number for an "estimate" of a minimum repayment period; (ii) a more concise disclosure with a toll-free number for more information; or (iii) a concise disclosure including the estimated repayment time period. The first two disclosure options are those provided in TILA, the third is proposed by the Board. We also note that the Proposed Rule does not require the disclosure for a "billing cycle where a consumer has paid the entire balance in full for that billing cycle and the previous billing cycle, or had a zero outstanding balance or credit balance in those two billing cycles."

We ask the Board to allow issuers to provide the minimum payment disclosures in a manner that is clear and conspicuous, but not necessarily at the top of the first page of the billing statement. These disclosures are not particularly meaningful to most consumers, and they are not an accurate portrayal of how consumers use credit card accounts. In addition, at least with respect to the second option, Congress specifically did not require that this disclosure appear on the front of the statement. Therefore, issuers should not be required to place them in a location that may be used for more pertinent or useful information from the consumer's perspective. The Board specifically requested comment on how it may provide an incentive for card issuers to use the third minimum payment disclosure option. We believe some issuers may find the second and third options more appealing if they may include the minimum payment disclosures someplace other than on the top of the front page of the periodic statement.

We do commend the Board, however, for recognizing that the minimum payment disclosures are not necessarily meaningful for all consumers. We applaud the Board for allowing issuers to omit the disclosures in those circumstances in which they would not be of value to the consumer. However, we believe the Board should expand on this approach and require the minimum payment disclosures only after a consumer has demonstrated behaviors suggesting that the disclosure could be meaningful. For example, the Board could require minimum payment disclosures only for those cardmembers who have paid the minimum required payment in three or more months over a twelve month period. In the alternative, perhaps an issuer could simply provide a clear and conspicuous notice on the periodic statement referencing an online minimum payment calculator for use by consumers. If the Board instead retains its proposed approach in the Final Rule, we ask for clarification that an issuer is not required to provide the disclosure if the customer meets at least one of the stated conditions (*i.e.*, paid balance in full or had zero outstanding balance) for two months in a row. As proposed, it appears a cardmember could use the card in some but not all billing cycles, never revolve a balance, and still have to have the minimum payment disclosure on the billing statement.

<u>Effective APR</u> §226.7(b)(7)

The Board has provided significant support in the Supplementary Information to justify elimination of the effective APR disclosures on periodic statements. These disclosures are inaccurate by design because they require calculations based on an amortization of fees over a single billing period for the included fees. A small fee can create a relatively large effective APR if the balance is otherwise small, and a greater amount of fees can have less of an impact on the effective APR if the balance is larger—and all of it must be calculated using an arbitrary and inaccurate amortization schedule. As the Board is certainly aware, the effective APR disclosure is not only inaccurate, it is also confusing to consumers. We continue to receive cardmember inquiries pertaining to the effective APR disclosure because cardmembers do not understand what the disclosure means. Given these irreparable flaws in the effective APR, we do not believe that the disclosure meets the needs of consumers, nor is it consistent with the objectives of TILA. We urge the Board to eliminate the requirement so as to avoid providing confusing and inaccurate information to consumers.

<u>Payment Information Box: Late Payment Disclosures</u> §226.7(b)(11)

The Proposed Rule includes a "Payment Information" box that includes, among other things, the late payment disclosure required by §127(b)(12) of TILA. Although section §127(b)(12) refers only to a disclosure regarding a fee for late payment, the Board also proposed to include a disclosure relating any applicable penalty APR, as well. The disclosure, as part of the Payment Information box, would appear at the top of the front page of the periodic statement. For the reasons described above relating to the format of the periodic statement, we believe an issuer should be permitted to include the late payment disclosure (even as proposed to be enhanced by the Board) in a clear and conspicuous manner on the periodic statement, but not necessarily on the top of the front of the periodic statement. We believe that Congress intended this flexibility, as they did not require the disclosure to be on the front of the periodic statement, unlike other TILA disclosures mandated by Congress in the same amending legislation. We also do not believe that the late payment disclosure is of such importance to consumers (the vast majority will not be assessed the fee in any given month) as to require it to be the first information provided to them.

The Board notes that consumers appear to comprehend information when it is grouped with other similar information. We do not disagree. This begs the question, however, of whether consumers have difficulties comprehending the information when disclosed in other clear and conspicuous manners, and whether the burdens associated with grouping the information as proposed are justified by a measurable consumer benefit. We believe that consumers generally understand that a late fee may be charged when they make a late payment, and that an increase in the applicable APR may occur. These facts are disclosed to them as part of the application disclosures, the account-opening disclosures, the account agreement, and every month on the periodic statement. We do not believe that requiring the disclosures to be placed in the manner proposed will improve comprehension. We also note that other payment-related information may be included elsewhere in the periodic statement, and that it is not necessarily less effective simply because it is not located next to the payment due date.

With respect to the date that must be disclosed for purposes of late payments, the Board proposes to require the date on which the issuer may impose a late fee under the terms of the account, regardless of whether the issuer usually provides consumers with an additional day or two before imposing the late fee. To essentially eliminate such "silent" late fee grace periods would be a disservice to consumers, as it would probably result in more late fees rather than less. We urge the Board not to include this requirement in the Final Rule.

The Board is proposing to require issuers to disclose any cut-off time in close proximity to the due date, if the cut-off time is before 5 p.m. on the due date. With "silent" late fee grace periods in place, there should not be a requirement to disclose this cut-off time. We urge the Board to eliminate this in the Final Rule and retain its current approach on this issue.

<u>Tabular CIT/Penalty Pricing Disclosures</u> §226.7(b)(14)

The Board proposes specific tabular disclosures on periodic statements if an issuer includes a change-in-terms ("CIT") notice or a penalty pricing notice with the periodic statement. Although we discuss our thoughts on the notice requirements in more detail below, we ask the Board to permit card issuers to provide CIT and any required penalty pricing notices in a clear and conspicuous manner with the periodic statement without prescriptive formatting or location requirements. These notices are not necessarily more or less important than other information included in the statement, and we do not believe the Board should mandate such prominence for their placement. We also do not believe that these notices should necessarily be included as part of a bulky table that will unnecessarily increase the length of periodic statements. A viable alternative is to permit issuers to include the CIT notice with the periodic statement and to highlight the inclusion of such notice by placing a note on the outer envelope (e.g. "Important Information about your Account is enclosed"). To the extent the Board believes it is necessary or appropriate to highlight specifically and prominently the existence of a CIT or penalty pricing notice in a periodic statement, we ask that an issuer be permitted to provide a brief notice on the front of the periodic statement informing the consumer of an important CIT/penalty pricing notice and where the consumer can find the notice. This would reduce the regulatory burden on issuers while still providing consumers with appropriate notification of a CIT or implementation of penalty pricing.

Subsequent Disclosure Requirements §226.9

Change in Terms §226.9(c)

The Proposed Rule includes a requirement that an issuer provide any required CIT notice to a consumer 45 days prior to the change becoming effective. The Board also proposes to require CIT notices and the 45 day notice provision for increases in late and overlimit fees. We urge the Board to reconsider its proposal in an effort to ensure that consumers continue to receive access to credit at an appropriate cost. As proposed, the CIT notification requirement would make it more difficult for issuers to change terms on an account for purposes of risk management, such as due to a decline in a customer's creditworthiness or due to a change in credit markets. The ability of an issuer to change terms in these and other circumstances is critical if the issuer is to offer credit at the lowest price possible. Restricting the ability to change terms on a timely basis may force some issuers to establish account terms at the outset with an increased margin to compensate for the potential of increased risk in the future that cannot be managed swiftly.

By requiring a 45-day CIT notification, the Board would make it significantly more difficult for issuers to respond to credit risk or other market forces, potentially resulting in increased costs for many, if not most, consumers. In effect, the 45-day time period is likely to be much longer for two reasons. First, most issuers, like Discover Bank, try to utilize the periodic statement as a communication vehicle for cost efficiency by including inserts or statement messages. Accordingly, they are likely to schedule the notification process around the mailing of statements each month rather than sending a separate letter. Second, it is generally difficult from a systems perspective to effectuate account changes mid-cycle. Therefore, issuers may be forced to wait a longer period of time than 45 days to actually implement changes. This lengthy risk exposure in the face of changing circumstances means that customers may ultimately pay an unnecessary premium on accounts. It is possible that some issuers may even find it necessary to close an account rather than assume the increased risk over an extended period of time, a result which is not optimal for the issuer or the consumer.

We do not dispute that a consumer should have time to review a CIT notice and seek alternative sources of credit if necessary. However, we believe a better balance can be struck than requiring issuers to wait an extended period of time before changing terms and possibly forcing them to price accounts for such exposure at the outset. A 30-day notice period would clearly provide ample time for consumers to assess the impact of the changes and make other financial arrangements if they are dissatisfied. More importantly, we believe that for changes that include an opportunity to "opt out", the notice period should be measured from the date of the mailing to the opt out deadline, rather than the effective date (even where in some cases the opt out date may be later than the effective date). If consumers have the option of closing their account and paying off the existing balance at the current terms, they simply need to make a phone call or write a letter to notify the issuer of their election to reject the terms and close their account. Most consumers carry more than one credit card, so they would have the opportunity to transfer balances or use another card for new purchases. Even if a consumer does not have another card, the current competitive marketplace provides many options and multiple channels for opening a new account with little delay.

In addition, the notice period should not apply to an increase in late or overlimit fees. In both situations, the increase in fee would apply only prospectively after the consumer has been informed. Consumers can avoid the fee in each instance by paying their bill on time in the case of late fees and by controlling their spending in the case of overlimit fees.

Penalty Pricing §226.9(g)

Many issuers, including Discover Bank, disclose to consumers that an APR or other costs may increase automatically if the consumer engages in certain behavior, such as paying the issuer late or exceeding a credit limit. These provisions are also part of the account agreement, and they are agreed to by consumers at the outset of the account relationship. We believe that such arrangements are beneficial to consumers as they allow issuers to offer credit at a lower price than they may otherwise be willing to do and they discourage behavior that is detrimental to consumers.

The Proposed Rule would make significant changes to penalty pricing. For the reasons described above relating to CIT notices, we believe that a 45-day notification requirement maybe harmful to consumers in general. We also believe it is unwarranted for penalty pricing, as the circumstances in which the consumer's terms would change would be specifically disclosed to the consumer in the application disclosures, the account-opening disclosures, and the account agreement. Penalty pricing resulting from a late payment would also be disclosed to consumers *on every billing statement*. In short, consumers are well informed regarding when penalty pricing may be automatically triggered. Furthermore, the penalty pricing is the result of an affirmative action taken by the customer, such as by paying late or going over limit. Therefore, the proposed notice would generally not provide them information of which they would otherwise be unaware. Issuers should not be required to wait a specified period of time before implementing these types of automatic rate increases. The Board should not adopt the Proposed Rule for penalty pricing.

Convenience Checks §226.9(b)

The Board proposes to add certain disclosure requirements with respect to convenience checks provided to consumers more than 30 days after the issuer provides the account-opening disclosures to the consumer. The disclosures must be "on the front of the page containing the checks" and provide information regarding the applicable APR(s) (including the promotional APR), any applicable transaction fees, and the applicability of a grace period. If the APR is variable, it must be one that was in effect within 30 days of when the disclosures were given.

We believe that the consumer will receive significant and useful disclosures providing the relevant information applicable to use of convenience checks in the application disclosures and the account-opening disclosures. Thus, we do not believe additional compliance burdens are necessary in connection with convenience checks.

If the Board determines that additional disclosures are required for convenience checks, we ask the Board to provide some needed flexibility. First of all, we recommend that the Board require these additional disclosures only if the consumer does not specifically request the checks. In addition, the Proposed Rule references the front of a "page" containing the convenience checks for purposes of the location of the disclosures. While many issuers may currently provide convenience checks as part of a "page," that may not necessarily be the case, now or in the future. We ask the Board to allow the disclosures to be provided in a clear and conspicuous manner on or with the convenience checks, which would be similar to other disclosure requirements under Regulation Z. We also ask the Board to allow issuers the ability to rely on an APR that is in effect within 60 days of the disclosure instead of the 30 days in the Proposed Rule. This is necessary because some issuers may adjust a variable APR at the end of the billing cycle. The adjusted APR would then be applied to the entire billing cycle, meaning that issuers may not always be able to print disclosures that have the APR in effect for the 30 days prior to providing the disclosure. Therefore, we ask that the Board allow a variable APR disclosure to be an APR that was in effect within 60 days of mailing the disclosure so long as the disclosure indicates that the APR was in effect "as of" a certain date. This would be consistent with the disclosure requirements of APRs in connection with direct mail applications.

Billing Errors §226.13

Third-Party Intermediary §226.13(a)

The Proposed Rule would permit a customer to assert a billing error, at least in certain circumstances, against an issuer in connection with transactions made using a third-party payment intermediary. As drafted, it appears that a customer could use a credit card to fund a wire transfer for purposes of making a purchase with a distant seller, and then require the issuer to compensate the customer if the distant seller does not perform. We do not believe that such a requirement comports with the reasoning behind the billing error provisions in TILA or Regulation Z, and it is not clear how an issuer would be able to resolve any such billing error short of simply refunding the consumer's transaction amount regardless of the underlying circumstances.

The proposed revision to the Commentary makes special mention of third-party Internet payment intermediaries. To the extent the Board seeks to extend billing error rights involving on-line marketplace purchases made indirectly through use of a credit card, we ask the Board to limit the circumstances to those in which the funding transaction includes information submitted through the payment network that associates the funding transaction with a specific purchase.

Although we would still disagree with the notion that an issuer is responsible for the performance of a merchant when the merchant did not accept the issuer's card, a requirement that the funding for the third-party intermediary be specifically identified in the payment chain as relating to a specific purchase may make the provision more operationally feasible.

Investigation Time Period §226.13(c)

If a consumer asserts a billing error, an issuer is expected to resolve the dispute within two complete billing cycles, not to exceed 90 days. TILA provides that if the issuer's investigation exceeds this time period, the issuer must forfeit up to $50 if the ultimate resolution is not in favor of the customer. A proposed revision in the Commentary would "clarify" the billing error investigation requirements by stating that if the investigation is not completed in the specified time frame, the issuer may not require the customer to pay for the transaction, even if further investigation demonstrates that there was no billing error.

We believe the Board should reconsider this proposed revision. Aside from the fact that the clarification does not comport with the investigation regime established by Congress, we are concerned that the Proposed Rule would impose an arbitrary deadline that could lead to fraud and abuse by unscrupulous individuals. Some billing error disputes are complex and can take time to resolve. We suspect that if issuers are forced to conclude an investigation prematurely—and thereby are forced to accept the billing error allegation—that sophisticated criminals may be able to develop fraud schemes that cannot be resolved neatly within two complete billing cycles. This would be an unfortunate development, especially since we are unaware of widespread dissatisfaction with the diligence of issuer billing error investigations.

Conclusion

Discover Bank appreciates the opportunity to provide the Board with comments on the Proposed Rule. It is our hope that the Final Rule will make the necessary changes to Regulation Z to improve consumer disclosures in a manner that balances costs and benefits appropriately. We would be pleased to provide additional information to assist the Board as it continues its deliberations.

Respectfully submitted,

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