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Delivered by E-Mail

October 12, 2007

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1286 – Proposed Rulemaking on the Open-End Credit Provisions of Regulation Z

Dear Ms. Johnson:

This letter is submitted by American Express Travel Related Services Company, Inc., on behalf of itself and its card-issuing affiliates (collectively "American Express") in response to the Federal Reserve Board's ("Board") proposed amendments to the open-end credit provisions of Regulation Z, 12 C.F.R. § 226, the implementing regulation of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1666. American Express appreciates the opportunity to comment on these proposed amendments, just as it appreciates the Board's efforts to develop them.

I. Introduction

American Express applauds and supports the overall direction of the Board's work on these proposed amendments to the open-end credit provisions of Regulation Z, the most substantial change in these provisions in over 25 years. Given the tremendous innovation that has taken place in the industry in recent years and the added complexity in revolving credit products, we think this is vital work and will make open-end credit disclosures more useful to consumers. In particular, we support the Board's proposed revisions to the Schumer box and its proposed addition of a new account-opening disclosure table. We believe the uniform formatting and enhanced content of these disclosures will better enable consumers to compare the price and other terms of open-end credit products and make more informed use of those products. This will benefit consumers and card issuers alike.

American Express also commends the Board for the emphasis on consumer testing in the development of its proposal. Like the Board, we believe that disclosure policy for consumer credit works best when it is informed by empirically tested consumer reactions and needs. We hope the Board will continue to rely on consumer testing as it works to fashion the pending proposal into a final rule.

American Express, however, does have discrete comments and concerns about specific aspects of the Board's proposal. We discuss these in detail in the following section, but summarize three of our larger concerns here.

First, based on our research and the research of others, we do not believe that consumers find the effective APR useful or even understandable. Therefore, we believe that it should be abolished. We do not believe the Board's alternative for the future of this disclosure, a slightly modified and relabeled **"Fee-Inclusive APR"** disclosure, is a material improvement over the current disclosure. We believe it would perpetuate and, based on our own recent market research, might even exacerbate the consumer confusion and misunderstanding associated with the effective APR. In our view, the Board's addition of monthly and year-to-date APR and fee summaries on each periodic statement is a far more straightforward and effective approach to informing consumers about the costs of their credit card accounts than the effective APR disclosure.

Second, we are concerned about **formatting rigidity in the periodic statement.** Although we support the Board's overall objective of ensuring that essential account information appears prominently on the statement, it is not evident to us that the current formatting of periodic statements has been a significant cause of consumer complaint or concern. Indeed, we have conducted extensive consumer research over the years to develop the current layout of our statements. Customers tell us that they like the current layout precisely because they can easily find the information they consider to be most important. Yet, the formatting mandates in the Board's proposal would require card issuers to make wholesale changes in the look and feel of their statements and to incur substantial implementation costs toward that end. Equally important, the formatting requirements in the Board's proposal may promote clutter in various circumstances and dilute the messages the Board is attempting to emphasize. To the extent the Board continues to believe that more uniformity in periodic statements is required, we urge the Board to adopt several revisions to its proposal:

(1) Card issuers should be given the flexibility to group payment information on the front of the first page of periodic statements in close proximity to each other without strict adherence to a model form.

(2) The strict front-of-the-first-page location and sequential disclosure requirements for the proposed penalty APR notice and change in terms summary should be eliminated in favor of a more general requirement that these disclosures appear before the transaction detail. This would still ensure a prominent location for these disclosures while providing issuers with much needed flexibility for the introductory pages of their periodic statements.

(3) The model forms provided in the proposal for various elements of the periodic statement should be replaced by model clauses, or should be explicitly characterized as examples and not mandatory formats.

(4) The illustrative model forms of the entire periodic statement (Model Forms G-18(G) and G-18(H)) should be deleted from the proposal, because they may establish *de facto* formatting mandates for all periodic statements.

Third, although American Express supports the proposed increase in the change in terms notice period from 15 to 45 days, we are concerned that the proposed **45-day penalty APR notice**, as presently structured, may be counterproductive. It would impose significant costs on card issuers by interfering with legitimate account-specific, risk-based pricing actions and may actually have the unintended consequence of steering some issuers toward using penalty APR disclosures and practices that are less transparent to consumers. We also believe there are more effective ways to achieve the Board's stated goals of preventing "costly surprise" in the imposition of penalty APRs and promoting greater consumer awareness of penalty APRs and their triggers. As discussed in greater detail beginning on page 14 of this letter, we therefore propose an adjustment to the penalty APR notice requirement to distinguish between credit card accounts with penalty APRs that may be triggered by a broad set of factors not readily understood or managed by the consumer, and those accounts with triggers that are limited to customer-controlled behaviors on that account itself that have been communicated to the customer well in advance.

We look forward to working with the Board on these and other aspects of its proposal to achieve our mutual objectives of improved disclosures without unintended and harmful consequences for consumers or our business.

II. Discussion

Set forth below are American Express comments and concerns about the Board's proposal. In general, the discussion follows the order in which the various issues arise under Regulation Z as it would be revised by the Board's proposal.

§ 226.2 Definitions and Rules of Construction

§ 226.2(a)(15) Credit and Charge Card Definitions.

American Express supports the Board's decision not to make material changes to these definitions. We agree with the Board that adding convenience checks to the definition would add needless complexity and potential contradictions to the legal rules currently governing these items, and that adding "no physical device" plans to these definitions is premature and otherwise unnecessary. We also support the conforming changes made by the Board to **Comment 2(a)(15)-3,** which notes that charge cards are exempt from the new late payment warning implemented by **§ 226.7(b)(11)** and the new minimum payment notice implemented by **§ 226.7(b)(12)**.

§ 226.2(a)(20) Open-end Credit Definition.

American Express supports the Board's decision not to change the open-end credit definition in the regulatory text, but we are concerned about the changes to accompanying **Comments 2(a)(20)-2 and 5.**

Proposed **Comment 2(a)(20)-2** states that open-end credit sub-accounts must "generally replenish" at the sub-account level. This may have unintended consequences for current open-end credit products and practices and may stifle marketplace innovation in this area. For example, low APR promotional balances, such as those resulting from introductory balance transfer offers, are a legitimate and ubiquitous feature of credit cards that have benefited consumers, but they are typically of limited duration and often do not replenish. Arguably, they are a type of non-replenishing sub-account that could be subject to challenge under the revised comment. It benefits neither consumers nor the card industry to cast doubt on the legitimacy of these features, but that could be a consequence of the revised commentary.

Proposed **Comment 2(a)(20)-5** states that for a credit plan "to meet the definition of open-end credit," verification of consumer credit information "may not be done as a condition of granting a consumer's request for a particular advance under the plan." This change, too, may have serious and unintended consequences for longstanding and uncontroversial open-end credit risk management practices. For example, this language may affect the use of credit information as part of the transaction authorization process for credit card transactions, including emergency transactions and other approvals above the credit limit. If this comment is adopted, card issuers may be forced to manage credit lines more strictly in these and other respects to the detriment of consumers.

For these reasons, American Express urges the Board to withdraw the proposed revisions to **Comments 2(a)(20)-2 and 5** and to retain the current text of those comments.

§ 226. 4 Finance Charge

§ 226.4(a) Definition.

American Express is concerned by the Board's proposed revision to **Comment 4(a)-4 insofar as it applies to foreign transaction fees**. We urge the Board not to revise this comment with respect to such fees.

We believe the proposed revision may be construed as mandating a particular disclosure approach for all foreign currency conversions despite the variety and complexity of practices in this area. The various conversion formulas used by card networks, merchants, and issuers might become the subject of uncertainty and dispute under the revised comment.

Such uncertainty and disputes would be particularly unproductive and troublesome in this area because they would come on the heels of roughly seven years of major class action litigation regarding disclosure of foreign currency conversion practices. This litigation involved several cases brought by consumers represented by sophisticated counsel against various card networks and issuers. It has resulted in several court-approved settlements and, as part of those settlements, court-approved disclosures and practices for foreign currency conversions. In short, the industry, with the approval of consumer representatives, their legal counsel, and the courts, has arrived at a stable set of disclosures and practices around foreign currency conversion after long and arduous litigation.

The proposed revision to the comment with respect to foreign transaction fees may upset this hard-won equilibrium in foreign currency disclosures and practices. It may create issues in an area where any that did exist have been resolved and should remain in repose.

§ 226.4(d)(4) Telephone Sales of Credit Insurance, Debt Cancellation, and Debt Suspension Coverage.

American Express supports the Board's use of its exemption authority to exclude as finance charges amounts paid by consumers for credit insurance, debt cancellation, or debt suspension coverage purchased over the telephone so long as the purchase transaction complies with certain requirements. One of these requirements, which is imposed by proposed **§ 226.4(d)(4)(ii),** requires the card issuer to mail to the consumer required disclosures for the purchased product within three business days of the telephone purchase. We believe that this three-business-day deadline would present difficult operational issues for many card issuers and, as such, would either deter the use of this procedure or impose compliance risks on those who do. In either case, it would be contrary to the Board's purpose in facilitating legitimate telephone sales of these products. We believe that an increase in the mailing deadline from three business days to five business days would continue to provide consumers with the protection intended by this requirement while allowing card issuers to comply with the requirement more effectively. Therefore, we urge the Board to extend the deadline accordingly.

§ 226.5 General Disclosure Requirements

§ 226.5(b)(2)(ii) Timing of Periodic Statements.

In response to the Board's request for comment on the issue, American Express does not believe the Board should recommend to Congress any change in this section's requirement that periodic statements be mailed or delivered at least 14 days prior to the expiration of any grace period.

First, the 14-day period is adequate to ensure that both mailed and electronically delivered statements are received by consumers in a timely manner. American Express, for example, maintains stringent standards to ensure the prompt mailing of periodic statements. We use a sophisticated, state-of-the-art, automated system to track and control periodic statement production and ensure timely mailing. Periodic statements are printed and mailed around the clock, 365 days a year. We also believe the grace periods we offer consumers are more than adequate to accommodate both the mailing of periodic statements to consumers and the remittance of payments from consumers.

Second, the growing popularity of electronic payment options is generally increasing the time consumers have to review and digest their periodic statements. To facilitate such payments, American Express does not charge a fee for any of our payment channels, including pay-by-phone or pay-by-computer. For American Express Cardmembers who choose to pay by mail, we direct their payment to the closest of our four remittance centers to speed the crediting process.

Third, any increase in this mailing period may actually hurt consumers who use revolving credit, as it may result in extended due dates with a further accumulation of finance charges. In short, any increase in this 14-day period could materially disrupt established and effective credit card billing systems without providing a significant benefit to consumers.

§ 226.5a Credit and Charge Card Applications and Solicitations
§ 226.6 Account-opening Disclosures

American Express generally supports the Board's proposed revisions to the Schumer box in § 226.5a and the addition of an account-opening disclosure table to the initial disclosure requirements of § 226.6. However, we are concerned about **Comment § 266. Appendix G-5.v** to the extent it states that the model forms for the two disclosures "are designed to be printed on an 8 x 14 sheet of paper." Although the statement is accompanied by a disclaimer of a paper size requirement, we believe the statement, coupled with the requirement that the two disclosures must be presented in ways "substantially similar" to the model forms, may create a *de facto* 8" x 14" size requirement for the disclosures. This standard could be applied in bank examinations and private TILA litigation and, if widely accepted, would burden issuers economically and creatively through a one-size-fits-all approach to credit card marketing and account opening materials. To avoid these results, we urge the Board to remove any reference to paper size from the proposed comment.

§ 226.7 Periodic Statement

§ 226.7(b)(6)(iv) and (b)(7) Fee-Inclusive APR.

American Express strongly supports the abolition of the effective APR disclosure. This disclosure is neither well understood nor useful to consumers, who often misinterpret the effective APR as their nominal APR and can be confused when a transaction fee vastly inflates the effective APR over their nominal APR. To borrow from the Board's own consultant, most consumers do not understand the effective APR "regardless of the explanatory text provided," and those who do understand it "indicate that it does not provide useful information." [1]

American Express also believes that the slightly modified and relabeled "Fee-Inclusive APR" alternative described in the Board's proposal will not solve and may even exacerbate the problems with the effective APR disclosure. In recent market research we conducted on the alternative, no Cardmember shown the proposed Fee-Inclusive APR table was able to determine its meaning. Most respondents in our research did not understand what it referred to, or how it was calculated, and felt it unnecessarily repeated information already displayed on the statement in a confusing way. One Cardmember, for example, thought that the Fee-Inclusive APR was the interest rate being charged on the corresponding fee. Accordingly, it is quite possible that many consumers would view any Fee-Inclusive APR disclosure as involving the interest rate charged on fees or, perhaps, an additional finance charge on fee balances beyond the nominal APR. Coupled with the perennial confusion over the relationship between the effective APR and nominal APR, this new potential for confusion makes the proposed Fee-Inclusive APR an inferior choice to the elimination of the effective APR disclosure from open-end credit.

In addition, to the extent the effective APR disclosure attempts to inform consumers about the aggregate costs of their credit card accounts, it will be superseded by the far more straightforward monthly and year-to-date APR and fee summaries added by the Board's proposal to each periodic statement. This approach to cost disclosure should be more easily understood by consumers and makes any retention of the effective APR disclosure unnecessary.

§§ 226.7(b)(11)(i) and (ii) Late Payment Warning.

American Express strongly supports proposed **§ 226.7(b)(ii)**, which exempts charge cards from the proposed late payment warning set forth in **§ 226.7(b)11(i).** We agree with the Board that this exemption is compelled by the statutory language establishing the late payment warning.

American Express believes, however, that the Board should clarify the application of the charge card exemption to charge cards with adjunct revolving credit features. These include such features as the American Express Card's optional Sign & Travel ® and Extended Payment Option features, which permit charge card customers to extend payments on certain

[1] *See* Macro International, Inc., *Design and Testing of Effective Truth in Lending Disclosures,* May 16, 2007, p. viii.

purchases. Specifically, we believe the Board should add commentary language or revise the text of proposed **§ 226.7(b)(11)(ii)** to clarify four basic points with respect to the exemption as applied to charge card products with adjunct revolving credit features:

(1) The Board should clarify that the charge card portion of the product continues to benefit from the exemption despite the revolving credit feature.

(2) The Board should clarify that any late payment warning required for the adjunct revolving credit feature must appear on a periodic statement for the product only when the revolving credit feature has a positive balance.

(3) The Board should clarify that any late payment warning required for the adjunct revolving credit feature applies only to that feature and the late payment fees and penalty APRs associated with it. For example, if the charge card portion of the product has a late payment fee and the adjunct revolving credit feature has a penalty APR but not a late payment fee, the Board should clarify that the warning needs to address only the penalty APR associated with the adjunct revolving credit feature.

(4) The Board should clarify that the language of the warning can be tailored to state that it applies only to the adjunct revolving credit feature.

Without these clarifications, the application of the late payment warning to charge cards with adjunct revolving credit features would create uncertainty for both issuers and consumers. It may also disrupt the availability and servicing of these features without any countervailing consumer benefit.

American Express urges the Board to clarify the reach of the proposed late payment warning set forth in **§ 226.7(b)(11)(i)** in two other ways as well. First, the warning should not be required unless a late payment will result in a late payment fee or APR increase in the next billing period. Without such an exemption, card issuers with consumer-friendly, multiple late payment triggers for late payment fees or APR increases may be forced to choose between a simple but misleading warning and an overly complex warning. Alternatively, these issuers may find it better simply to abandon the multiple late payment trigger in favor of the less consumer-friendly approach of a single late payment trigger. Second, the warning should not apply to customers who have already paid late and have already received a late payment fee or APR increase, unless a subsequent late payment would trigger an additional fee, trigger an additional APR increase, or prolong a penalty APR. In particular, this would avoid the confusing and wasteful practice of giving such a warning to a customer already at a card issuer's maximum penalty APR.

<u>§ 226.7(b)(12)(iii) Minimum Payment Notice Exemptions.</u>

American Express supports all of the Board's proposed exemptions from the notice regarding the effect of making the minimum payment, including the exemption for charge cards in **§ 226.7(b)(12)(iii)(D)** and the exemption in **§ 226.7(b)(12)(iii)(F)** for accounts that pay the full balance in the preceding two billing periods. We believe, however, that the exemptions are cumulatively too narrow and should be broadened to focus the notice on consumers who most need it, namely those who habitually pay only the minimum payment. Accordingly, we believe the notice requirement should be limited to those customers who make only the minimum payment for three or more consecutive billing periods. Reserving the notice for these consumers should enhance its impact, particularly for a consumer who had been paying more than the minimum payment but then begins to make only the minimum payment routinely. These and other habitual payers of the minimum payment are those for whom the notice will have most value.

<u>§§ 226.7(b)(2),(3),(6), (13), and (14); 226.9(g)(3)(i); 226.9(c)(2)(iii)(B)(2); and Model Forms G-18(A)-(H) Periodic Statement Format.</u>

American Express is concerned about the rigidity of the new periodic statement formatting requirements. These requirements would prevent card issuers, including American Express, from using their periodic statements to communicate basic account information and important service messages in ways consistent with their own styles and the preferences of their customers. They would result in statements that are less tailored to the needs of particular products and customers and would be less able to adapt to evolving customer preferences. They would stifle innovation and competition in the credit card industry, where the periodic statement serves as a critical link in the relationship between issuer and customer. They would also impose significant implementation costs on card issuers, as existing equipment, systems, and procedures may be unable to accommodate them either at all or without costly modifications.

American Express believes these problems can be addressed while still ensuring "clear and conspicuous" disclosure of all the required components of the periodic statement. Toward that end, we urge the Board to revise its formatting requirements as follows.

First, we urge the Board to eliminate the requirement in proposed **§ 226.7(b)(13)** that the new balance, minimum payment due, due date, any cut-off time prior to 5:00 p.m., late payment warning, and minimum payment notice be grouped together in a manner "substantially similar" to that shown in **Model Forms G-18(E) or G-18(F)**.

We do not object to the requirement that this information must be shown on the front of the first page of the statement "closely proximate" to each other, and we think it is feasible for card issuers to implement that requirement in ways consistent with their usual styles and customer preferences. However, we believe any mandatory format for grouping this information may require wholesale changes in the look and feel of issuer statements. This may result in clutter, crowd out other important information, and generally prevent issuers from presenting basic account information in ways they and their customers prefer.

For example, American Express presents new balance, minimum payment due, new charge and payment activity, and the payment due date on the front of the first page in a horizontal format that uses text boxes and "reverse video." This format has been very well received by American Express Cardmembers and combines certain information shown in the Board's model forms (new balance, minimum payment due, and payment due date) with some that is not (new charge and payment activity). In our own consumer testing, one Cardmember stated that "I feel like it [current statement] is labeled better. I like that it's in a box and it's labeled and I can't confuse it. I don't have to keep double checking and making sure." When shown the model form, one Cardmember commented that "because everything is exactly the same size, nothing stands out to me."

If the Board's proposal were adopted as is, we may be forced to abandon our current formatting with no discernable benefit to our Cardmembers and at a considerable cost. In fact, changing this format would be to the detriment of our Cardmembers in the sense that it would require us to deemphasize the information regarding new charges and payment activity that they value and have come to expect up front in our statements. If, however, the Board's proposal were modified to provide card issuers with formatting flexibility, American Express could retain its current format and integrate the required information appropriately into that format. Figure 1 shows an example of how this could be done:

Prepared For		Account Number		Closing Date	
ANY CARDMEMBER		XXXX-XXXXXX-XXXXX		08/06/07	Page 1 of 6
Previous Balance $	Payment Activity $	New Activity $ inc. Adjustments and Finance Charges if any	New Balance $	**Minimum Amount Due $**	**Payment Due Date 08/26/07 12:00pm CST**
1,275.94	50.00	+347.38	=1,573.32	32.00	
Credit Line Summary on 08/06/07	Total Credit Line $	Available Credit Line $	Cash Advance Limit $	Available Cash Limit $	Please refer to page 2 for important information regarding your account
	5,000.00	3,426.68	1,000.00	1,000.00	

Late Payment Warning: If we do not receive your payment by the date listed above, you may have to pay a late fee and your APRs may be increased to the Penalty Rate of 20.74%.

Notice About Minimum Payment: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For more information, call this toll-free number: 1-800-XXX-XXXX.

Figure 1: Sample Modified Statement with Formatting Flexibility

Second, we urge the Board to eliminate the strict front-of-the-first-page location and sequential disclosure requirements for the proposed penalty APR notice and change in terms summary when they are mailed with the periodic statement, which are set forth in **§ 226.9(c)(2)(iii)(B)(2)** and **§ 226.9(g)(3)(i),** cross-referenced in **§ 226.7(b)(14)**, and modeled in **Model Forms G-18(G) and G-18(H)**. Instead, the Board should require only that issuers provide these tabular disclosures prior to the transaction detail.

Requiring card issuers to provide these tabular disclosures prior to the transaction detail would ensure a prominent location for the disclosures, while allowing them flexibility in the particular placement would permit the seamless integration of the disclosures into various statement formats. Without such a change, these location and sequential disclosure requirements may make the front of the first page of the billing statement cluttered and difficult for consumers to absorb, thereby defeating the purpose of the requirements. The requirements may crowd out important account servicing information from that page, such as information regarding account status, benefits, rewards, renewals, and disputed charges, and may even force issuers to choose between using periodic statements for such servicing messages or the required disclosures. In addition, the requirements may stifle statement innovation (for example, by making it infeasible for issuers to produce compliant statements using large sized type for vision impaired customers). All of this would impose significant planning, presentation, and cost burdens on card issuers to the ultimate detriment of consumers as well as issuers.

Third, we believe the Board should substitute model clauses for **Model Forms G-18(A)-(F)**, which address various elements of the periodic statement, or at least expressly characterize those forms as examples and not mandatory formats. In doing so, the Board should eliminate all requirements that periodic statement information be presented in ways "substantially similar" to the model forms, including such requirements set forth in **§§ 226.7(b)(2), (3), and (6),** and the previously discussed **§ 226.7(b)(13).** Using these model forms as mandates presents all of the problems of formatting rigidity discussed above, from the intrusion into the issuer-customer relationship to stifled innovation and competition to significant implementation costs. By way of example, these mandates could constrain issuers from grouping transactions separately for authorized users, for sub-accounts, or for other categories that are useful and informative to consumers. We believe such mandates are unnecessary to ensure appropriate disclosure of the new content requirements for the periodic statement given the applicability to them of the "clear and conspicuous" disclosure standard of § 226.5(a)(i) and its related commentary.

Fourth, we believe the Board should delete **Model Forms G-18(G) and G-18(H)** from the proposal. The Board characterizes these model forms as mere illustrations of periodic statements containing the various elements described in § 226.7. However, we are concerned that these forms, which include information and formatting not required by the regulation, could become a *de facto* standard for the look and feel of all periodic statements. If they do, they would virtually eliminate all periodic statement variation to the detriment of card issuers, consumers, competition, and innovation. In our view, the risk of such a result far outweighs the minimal benefits of keeping these forms in the regulation.

§ 226.8 Identifying Transactions on Periodic Statements

§ 226.8(a) Sale Credit.

American Express supports the Board's proposed changes to this section, which would adjust and reorganize the rules for identifying sales transactions on periodic statements when the sales receipt or similar document is not provided with the periodic statement. However, we believe that the changes do not go far enough and should allow card issuers to aggregate small dollar transactions at the same merchant for billing purposes. This would benefit issuers and consumers alike by enhancing the utility and cost effectiveness of emerging card industry technologies, such as radio frequency interface devices, that are particularly well suited to small dollar purchases. It also should enhance and not detract from the ability of consumers to track their small dollar spending at particular merchants in ways meaningful to them. For example, it may help consumers better gauge the effect on their household budgets of a month's worth of purchases at their neighborhood coffee shop or fast-food restaurant.

Accordingly, we urge the Board to permit the aggregation of purchases of $10 or less at the same merchant.

§ 226.9 Subsequent Disclosure Requirements

§ 226.9(c)(2)(i) Change in Terms Notice Period.

American Express supports the proposed increase in the notice period from 15 to 45 days for changes in terms disclosed at account opening. These changes modify the fundamental terms of the customer's agreement. It is therefore appropriate that the customer be given additional time to consider the new terms. In practice, this 45-day period is effectively a notice period of 60 days or more given that delivery with a periodic statement would require advance notice of at least two monthly billing cycles to ensure compliance with the 45-day notice period.

§ 226.9(g) Penalty APR Notice.

American Express supports the Board's stated objectives for the proposed 45-day penalty APR notice of preventing a "costly surprise" to consumers and increasing consumer awareness of the behaviors and other circumstances that can trigger penalty pricing. American Express believes, however, that the notice requirement as presently structured does not align well with those objectives. It does little to increase consumer awareness of the factors leading to the imposition of a penalty APR, and therefore puts consumers in no better position than before to avoid triggering penalty APRs. And, although the proposed notice might help some consumers avoid penalty APRs by paying down or transferring the debt, neither of these alternatives is universally available. (Paying down the entire balance may present an untenable financial burden, and transferring the balance to another creditor may subject the consumer to heightened underwriting requirements and substantial fees.)

The Proposed Advance Notice Requirement May Cause Unforeseen Consequences

The 45-day penalty APR notice as proposed would impose significant costs on card issuers. Recent research conducted for the card industry concluded that 31.60% of accounts in penalty pricing were likely to be written off within a two-year period.[2] Penalty APRs have

[2] Proprietary analysis conducted by Argus Information and Advisory Services, September 2007, based on the cumulative write-off of accounts who exhibited a 100 basis point change in price and paid late, were delinquent, or over their credit limit in the prior cycle. See p. 37 of *An Economic Assessment of Regulating Credit Card Fees*

become a leading tool for mitigating the risk and cost of such write-offs, and the proposed 45-day notice would generally delay the use of that tool for two months or more given the practical barriers most issuers would face in changing APRs in mid-cycle. The resulting change in portfolio economics would put significant pressure on issuers to mitigate the risk associated with defaulting consumers.

To compensate for this encumbrance on risk-based penalty pricing, issuers may take several steps. One alternative would be to shift costs over time from defaulting consumers to those who manage their accounts responsibly, in the form of higher APRs and/or fees across entire portfolios. The resulting cross-subsidization of higher-risk consumers by less risky consumers would be detrimental to the consumer population as a whole.

In addition, issuers may expand the set of behaviors and circumstances that trigger penalty pricing. This would give an issuer more flexibility to determine when the "45-day clock" starts running – the sooner the period begins to run the sooner a risk-based pricing increase can go into effect. As issuers seek to mitigate costs, some issuers might impose triggers earlier in the process with less transparency to consumers. Transparency in penalty pricing to consumers would be reduced, and more consumers would become subject to penalty pricing for more reasons and much more quickly than at present.

This trend could culminate in issuers imposing risk-based price increases through change in terms notices. This presents no greater delay in activating a price increase (since both a change in terms notice and a penalty pricing notice must be sent 45 days in advance), while providing far more flexibility to implement a risk-based pricing strategy. Issuers could avoid committing to any pre-determined penalty APR mechanism or rate, and retain absolute flexibility to respond to market conditions and competitive developments. The burden of delivering a change in terms notice would be no greater, and arguably simpler, than delivering a penalty APR notice. Delivery of an "adverse action" notice and, under certain circumstances, an opportunity to "opt out" from the APR increase might be required as part of the change in terms notice. However, the costs to modify current systems and processes used to perform these functions would most likely be greatly outweighed by the increased flexibility and control an issuer would gain over its ability to price to risk.

The change in terms approach to implement risk-based pricing is made more enticing by the simplifying effect it would have on disclosures. Specifically, the Schumer box and new

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and Interest Rates, Orszag, Jonathan M. and Manning. Susan H.
(http://www.aba.com/aba/documents/press/regulating credit card fees interest rates92507.pdf)

account-opening disclosure table would be streamlined by the removal of penalty APR information. Removal of various cross references to penalty APRs would further simplify the tables. Issuers may see this as an opportunity to gain a competitive advantage.

As competitive pressures and market conditions steer issuers in the direction of this change in terms approach to risk-based pricing, the Board's objectives in proposing the penalty APR notice would become increasingly frustrated. Transparency to consumers would not only be reduced, but virtually eliminated. Consumers might be given no information as to the behaviors and circumstances that might trigger an increase to a penalty APR; they would simply be notified once the increase was imminent, and be left to scramble to make alternate arrangements.

Proposed Adjustment

American Express believes these problems can be addressed through a carefully crafted adjustment to the notice requirement. For credit card accounts with penalty APRs triggered by an expansive range of factors, not readily understandable or readily manageable by the consumer, advance notice is appropriate. The Board should make a distinction, however, for credit card accounts with penalty APRs tied only to behaviors on that specific account, which are readily understood and readily managed and controlled by consumers. The Board's objectives are fulfilled in this instance, not by an additional notice period, but by the clarity and simplicity of the penalty APR construct. Therefore, we recommend the Board adjust the proposal so that no additional notice is required for credit card accounts with penalty APRs and triggers that meet the following requirements:

- Triggers are limited to actions on the specific credit card account.
- Triggers are within the consumer's knowledge and control.
- Triggers are specifically described in Schumer box and account-opening disclosure tables (as currently contemplated in the Board's proposal).
- Triggers are clearly and conspicuously disclosed on each periodic statement.
- Penalty APR (Index + Margin and current penalty APR) is specifically disclosed. (While the Board is proposing that the actual penalty rate be disclosed in the Schumer Box, we believe it is also important to disclose the formula used to derive the penalty rate so that consumers can have a better understanding of how the rate is calculated.)

The following is an example of how a periodic disclosure statement might look if it incorporated the disclosures referenced above:

Payment Information

New Balance	$1,285.00
Minimum Payment Due	$32.00
Payment Due Date	05/18/07

Late Payment Warning: If we do not receive your payment by the date listed above, you may have to pay a $35.00 late fee and your APRs may be increased to a Penalty Rate (see below).

Penalty Pricing Warning: The APRs applicable to all balances except Cash Advances will increase to 20.74% if you pay late once. The APRs applicable to all balances on your Account will increase to 29.74% if:
- You pay late twice within 12 months;
- Your New Balance exceeds your credit limit 3 times within 12 months; or
- Your payment to us is dishonored by your bank.

Notice about Minimum Payment: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For more information, call this toll-free number: 1-800-XXX-XXXX.

Figure 2: Sample Periodic Disclosure Statement
Incorporating Penalty Pricing Warning

We believe this recommendation would fulfill the Board's goals in the area of penalty APR pricing without the undesirable side effects. It would avoid "costly surprise" in the imposition of penalty APRs by encouraging issuers to use sharply defined, account-specific penalty APR triggers and to engage in robust disclosure of penalty APRs and their triggers each month. This monthly disclosure would also be more effective in enhancing awareness of penalty APRs and their triggers than the proposed after-the-fact penalty APR notice. It would reach more consumers more often and would be more timely as well, as it would inform those consumers when they are still in a position to take action to avoid the imposition of a penalty APR. For all of these reasons, we urge the Board to adopt our recommendation.

<u>§ 226.13(c) Time for Billing Error Resolution</u>.

American Express is concerned about proposed **Comment 13(c)(2)-2** to the extent its finality rule (1) is not tied expressly to the consumer's obligation to allege billing errors in good faith and cooperate in good faith with billing error investigations, and (2) does not permit exceptions to prevent unjust enrichment of the consumer, such as when the merchant and card issuer both issue credits for the same alleged billing error or the consumer has received both credit for allegedly undelivered merchandise and has actually received the merchandise. Accordingly, we urge the Board to modify the finality rule to permit the reopening of billing error investigations and the reversal of credited amounts based on new evidence of (1) consumer bad faith, or (2) unjust enrichment. Without such a requirement, the bright line finality rule imposed by the proposed comment may reward consumers who allege billing errors in bad faith or intentionally delay, misdirect, or otherwise impede billing error investigations during the requisite time frame. It may also make issuers more hesitant to issue credits expeditiously due to the inability to recoup credits to which the consumer is not entitled.

Effective Date

American Express urges the Board to adopt an effective date for its Regulation Z amendments that is at least two years from the date the amendments are promulgated. Whatever the final content of the amendments, they are likely to require costly and time consuming systems development and operational changes by card issuers. A two year implementation period would allow issuers to plan, budget for, and execute the required changes in an orderly manner.

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Once again, American Express thanks the Board for the work it has done on this proposal and the opportunity to comment on it. We would also welcome the opportunity to discuss our comments further with the Board's staff. Toward that end, any staff member should feel free to call me at any time at 212-640-5418.

Sincerely,

/s/

Thomas J. Ryan
Senior Counsel