



**Bank of America**  
**Comment Letter to Proposed Amendments to Regulation Z**  
 October 12, 2007  
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October 12, 2007

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, D.C. 20551

**Re: Docket No. R-1286**

Dear Ms. Johnson:

Bank of America is pleased to submit these comments to the Federal Reserve Board's proposed amendments to Regulation Z. We applaud the Board in undertaking to rewrite Regulation Z, and appreciate the extensive work represented by this Proposal. Like the Board, we firmly believe in the importance of strong disclosures. Proper disclosures lead to informed consumers— which is good for us as a lender, and for the banking industry as a whole.

At Bank of America, we strive to provide every customer with accurate and complete pricing disclosures in all communications (including via telephone, internet, branches and mail). We go beyond what would otherwise be required by Regulation Z in providing up-to-date account pricing information, such as describing pending changes before they become effective, at customer touch points like check mailings and on our Internet sites. As a consequence, we have considerable experience in assessing the timing and content issues associated with disclosures of pending changes.

**I. The Role of Disclosures**

We agree with the Board's position that consumer credit disclosures serve the critical purpose of informing consumers about the pertinent aspects of a credit account relationship. Disclosure requirements are conceptually very straight forward: disclosures benefit consumers by providing, in a clear format, key information necessary for consumers to make rational decisions related to the credit account. This not only benefits consumers, but also promotes an efficient credit market. However, in execution and delivery, disclosures can present a more complex balancing of competing interests, as lenders strive to provide clear and useful consumer information about a product that is fundamentally complex in its terms and operation. It is worthy of note that this complexity arises in large part from the inherent flexibility in credit card accounts: flexibility designed to promote consumer usage in the marketplace, and flexibility designed to enable consumers to shape the terms that apply to them by the way in which they use and repay their accounts. In this sense, the goals of consumers and lenders align— both wanting to optimize the credit product to fit consumers' needs.

Disclosures should focus on and be limited to material issues and practices, for, as noted by the Board, the impact of disclosures is diffused if too much information is provided at once or repeated too often. In the extreme, this can lead to disclosures that are ignored by

the very consumers we intend to educate. If a disclosure requirement is likely to drive a change in practice by the creditor, that change in practice should be reviewed to determine if it is more desirable than the original practice.

It is in this spirit that we provide our comments to the proposed amendments to the regulation.

## **II. Terminology**

### ***Promotional/Introductory Rate, Standard Rate, Default/Penalty Rate***

Recognizing the value of consistent phrasing, the Board's Proposal sets out some phrases that must be used by all card issuers. A later section in this letter provides more detail, but throughout our letter, we use the following phrases: Promotional Rate, Standard Rate, and Default Rate. We strongly encourage the Board to adopt these concepts as well; they will provide clarity and a strong foundation for accomplishing the goals of the Board—certain of the phrases proposed by the Board will otherwise create confusion, rather than communicate information.

A "Promotional Rate" is a rate that is lower than the Standard Rate for a certain type of transaction, and is a rate that cannot be changed by amendment because of the marketing promise made in its creation. A Promotional Rate is characterized by qualifications and conditions: qualifications might include types and amounts of transactions (*e.g.*, balance transfers in excess of \$500); conditions would include temporal and performance restrictions (*e.g.*, balance transfers made before June 30, 2008, with the Promotional Rate ending December 31, 2008, or sooner if the account is late or overlimit at any time, or if a purchase transaction was not made in a given billing cycle). If a Promotional Rate is offered in connection with the opening of the account, it would be referred to as an "Introductory Rate." The term "Promotional Rate" is well understood and accepted; see, for example, the OCC Advisory Letter AL 2004-10, which provides guidance to national banks on "*Promotional Rate Marketing*" (emphasis supplied).

The "Standard Rate" is the rate that would apply to all transactions of a given balance type. It may be changed by an amendment to the agreement, and if the agreement so provides, a Default Rate may be applied if there is a default event. However, absent these default events (and absent any Promotional Rate), this is the rate that will apply on an ongoing and otherwise unconditioned basis. The Standard Rate for purchases is the rate that will be disclosed in the 16 point font in the §226.5a Summary Box. Usually, Standard Rates are discussed without the use of the word "Standard" (*e.g.*, "your APR for purchases is 16.9%").

A "Default Rate" is a rate that the agreement expressly provides may apply in the event of a clearly defined default event (limited by §226.9(c)(1) to instances of delinquency or default, *i.e.*, late payments, overlimit events, and a returned payment check). The term "Penalty Rate" can be used to describe a Default Rate, though as noted below that is not recommended. Some agreements provide that the Default Rate will be lowered after a period of no default events (*i.e.* the account is subject to a "cure"). In such a case, the

rate that is lower than the Default Rate and is no longer subject to further cure would be the account's new Standard Rate.

**III. 45 Day Notice Provision**

*Timing: align with billing cycle*

We strongly encourage the Board to modify the proposed 45 day advance notice of a rate change, as set forth in §226.9(g) (when “due to delinquency or default or as a penalty”) and §226.9(c)(2) (in connection with an amendment to the account). We recommend that the advance notice timing requirements be shortened to align with billing cycles. Changing this notice period to align with billing cycles would encourage lenders to use the billing statements to provide advance notice.

Many important notices to consumers are included in billing statements— it is an efficient and highly effective way of communicating to a consumer. Consumers open their statements and pay attention to the contents. Moreover, the statement contains a clear summary of the relevant interest rates on the account; consumers have critical account information literally at their fingertips. Therefore, in order to encourage use of the statement as the delivery vehicle of this advance notice, we recommend the Board align the notice with the billing cycle, as is done with an annual fee notice (see, for example §226.9(e)(1), “30 days or one billing cycle, whichever is less,” although the actual language should be along the lines of: “mailed no later than the mailing of the periodic statement that is delivered to the consumer prior to the first day of the billing cycle in which the new rate will apply; or mailed no later than 30 days before the effective date of the new rate, whichever is less”).

To illustrate our proposal:

Cycle 1	Cycle 2	Cycle 3
	<b>Notice:</b> (Mailing of statement for cycle 1)	
<b>Default Event</b>		
Standard Rate-->	Standard Rate-->	<b>Default Rate--&gt;</b>

This structure would reduce the likelihood of providing confusing or misleading rate disclosures to consumers during the interim period between the notification and the effective date of change. Stretching the notice out 45 days goes beyond a single billing cycle. This, coupled with the practice that most lenders apply a single rate to a given balance for an entire billing cycle, will result in a lengthy prior notice period of at least two complete billing cycles, exacerbating the likelihood of confusing and misleading disclosures during that interim period.

For example, assume a default event occurs in February, and February’s statement contains the APR-increase notice. A 45 day advance notice requirement pushes the APR increase into mid-April at its earliest. However, as a result of cycle-based APRs, neither the March nor the April statement will show any sign of the rate increase because the new rate will not be implemented until May. Two consecutive statements after the notice that

do not reflect the action taken seem too many. Extending beyond a single billing cycle dramatically increases the possibility that other required APR disclosures (*e.g.*, an annual fee notice) will be mailed during the interim period, leaving the lender with uncertainty as to which APRs to disclose. It is far better to give the notice, allow a billing cycle for reaction, and then have the April statement reflect the new rate. As proposed by the Board, every statement will bear a reminder of the possibility of a Default Rate being applied if the consumer is late (§226.7(b)(11)). Given this repetitive notice, a single notice that the default event has happened and that the Default Rate will be effective with the next billing cycle is more than adequate.

Moreover, a rational industry response to the 45 day period would be to take at least some of the notices out of the periodic statement (*e.g.*, if the consumer is overlimit on day five, mail the notice on day six so that the Default Rate will be effective one billing cycle sooner than if the notice was sent with the next statement), or adopt mid-cycle rate changes (which will compound the complexity and resultant confusion with the periodic statement). Otherwise, the 45 day notice would push the effective date of such rate changes out well past the 45 days. We do not consider any of these results to be the goal of this section. Therefore, we urge the Board to adopt a time period that aligns: 1) the mailing of the periodic statement that contains the notice; 2) an intervening billing cycle; and 3) the application of the rate beginning the first day of the next billing cycle.

***Do not apply to Promotional Rates***

We urge the Board to clarify that the 45 day notice does not apply to the loss of Promotional Rates. Comment 4 to §226.5a(b)(1), along with §226.9(g)(1)(i) and (ii), and §226.6(b)(4)(ii)(C) appear to apply this 45 day notice to *any* rate increase that is triggered by a late or overlimit event. This is a net too wide, as it will capture the loss of limited time Promotional Rates when such promotions end because of late payments or overlimit status. This result penalizes the bank and leads to disclosures that do not make sense.

As noted by the Board in its supplementary information discussing §226.9(g), the rationale behind prior notice is to allow time for the consumer to find alternatives before a Default Rate is applied. This can be understood in the context of increasing a Standard Rate to a Default Rate; a Standard Rate by its terms has no predetermined end. Such a rationale does not, and should not, extend to the simple restoration of a Standard Rate in place of a Promotional Rate. A bank should not be required to continue to make available promotional rates, possibly below cost, to consumers who have not met the terms of the offer.

In addition, if a Promotional Rate is turned off and the account is subject to the Standard Rate, under the Board's proposed structure, that Standard Rate is a Default Rate (of indefinite duration), which is a very confusing way to speak of what is in fact a Standard Rate of the account. Consider a Promotional Rate on an account that is not utilized by the consumer. That rate need not appear on the periodic statement under this Proposal (§226.7(b)(4)(ii)). However, if that promotion is no longer available to the consumer because of a late payment, the periodic statement would have to provide a notice that the Promotional Rate (that doesn't appear on the statement) will be turned off and replaced

by the Default Rate (that is equal to the Standard Rate already appearing on the statement) and that this Standard Rate, masquerading as a Default Rate, would be of unlimited duration (except of course that, as the Standard Rate, it remains subject to the true Default Rate).

In another example, assume that there is a Promotional Rate that is in use by the consumer, but it ends only if a consumer is late, whereas a Default Rate can be triggered by a late or overlimit event. In this case, if the consumer is overlimit, the 45 day advance notice will state that the Standard Rate will be increasing for those transactions and balances then at the Standard Rate. Note that because the payment was not late, the Promotional Rate will continue for the transactions and balances at the Promotional Rate. However, if the consumer was late two months later, a second 45 day notice would be required stating that the Promotional Rate will be increasing (unless the promotion was going to expire naturally in less than 45 days, in which case no action would be taken, the promotion would expire, and the Default Rate triggered by the overlimit event would then apply).

Equally compelling examples exist regarding special workout programs for consumers who are having financial challenges. Rates are lowered in return for the promise of payments; such programs should not be subject to a 45 day advance notice when payments are not received.

The advance notice requirement should not apply to the loss of Promotional Rates or workout programs. Any contrary result raises a host of confusing questions (*e.g.*, as noted above, is a Standard Rate a Default Rate of unlimited duration if it is applied after a Promotional Rate has ended because of a late payment?), and leads to inconsistent disclosures. Further, application of the notice period to Promotional Rates may serve to decrease the availability of promotional offers to consumers, which will raise the overall cost of credit. Most ironically, with fewer offers available in the credit market, consumers will be deprived of the very relief the notice is designed to provide.

***Allow advance notice on first event to preserve two-event trigger default pricing practices***

Unlike many of our competitors, Bank of America does not reprice a consumer to a Default Rate based on a single late payment or a single overlimit event (and we do not consider a returned check a default event). At present, Bank of America will only apply a Default Rate if a given consumer has been late and/or overlimit *twice* in a rolling twelve month period. This is a significant advantage to the consumer and a practice that should be encouraged throughout the industry. As drafted, however, the 45 day advance notice provision penalizes lenders who utilize two-trigger default pricing. To mitigate loss, lenders may rationally be expected to change their practices to require only a single event trigger before implementing a Default Rate.

We think that a two-trigger default pricing practice should be preserved. This can be accomplished by allowing the banks to give the §226.9(g) advance notice upon the occurrence of the first trigger, and to be able to reprice on the second trigger without the

notice and delay constituted by the §226.9(g) notice (assuming the second event occurred after the first notice's effective date). Consumers would have the advantage of the notice, the ability to react and plan, and a clear warning of the consequence of a second misstep—all the while not being subject to a Default Rate increase based on a single event.

***Notices associated with an amendment***

The 45 day timing requirements associated with changing account terms via amendment (§226.9(c)(2)) should be limited to APR amendments, and, as noted above, should align with billing cycles. Given that these requirements are primarily tailored to provide consumers with an opportunity to avoid a higher interest rate by moving balances to other lenders, its application should be limited to such changes. By contrast, changes to transaction-based fees, for example, which are based on account usage—within the control of the consumer—should not be afforded a lengthy prior notice period.

The scope of §226.9(g) should be solely limited to rate increases arising under a lender's pre-disclosed default pricing program— all trigger conditions having been clearly identified in the agreement. By contrast, APR increases in which consumers are selected and mailed a notice of an amendment to their agreement, are governed by §226.9(c)(2), not §226.9(g), even if a reason for selection was account delinquency or default. We recommend eliminating §226.9(g)(1)(i). When an account is selected for a price change by amendment, an adverse action notice will identify the primary reasons for the change, usually based on a combination of bureau and relationship information. Such an indication of delinquency, be it recent or more removed, should not, for example, trigger a different notice requirement.

Some comment letters may recommend a right to reject an APR increase via amendment (as opposed to through default pricing) as an element of §226.9. Most state laws, including those states where credit card issuing banks are located (*e.g.*, Delaware and South Dakota), already provide for this. Therefore, there is little need to dramatically change the proposal to add a further substantive provision to what is a disclosure-focused regulation. By its nature, such a change would be a dramatic expansion of the Proposal and should be subject to a full proposal and comment period independent of this letter.

In considering such an expansion, based on our experience with a right to reject rate amendments, there are certain aspects that could be overlooked if such a provision were simply inserted in the current Proposal. First, as discussed earlier, the provision should be limited to increases in the Standard or in the Default Rates. In addition, any time period in which to reject such amendments should be sufficiently shorter than the 45 days to allow processing of the opt-outs. Opt-outs should be in writing, or an other response mechanism at the bank's discretion, to allow for a controlled response mechanism. As with existing state laws, there should be a "debit-ratify" provision, in which subsequent use of the account ratifies the change even if the consumer had previously rejected the change. If consumers want to reject the change, they may, but they cannot use the account any longer, and are simply in a pay-out mode unless and until they change their mind. Certain state laws, such as §952 of Title V of the Delaware Code, offer considered guidance on the sorts of issues (*e.g.*, is a change from a variable to a fixed rate a change

that requires an opportunity to opt-out?) that need to be considered with an opt-out mechanism. When and if the Board were to contemplate the addition of an opt-out provision, we would refer the Board to the Delaware Code for additional guidance on how to do so.

The lengthy advance notices called for by §226.9 are substantive changes to bank operations and profitability. The purpose, to give consumers sufficient time to adjust their finances before they are subject to a higher rate, can still be met by our proposed modifications. The notices should apply only to interest rate increases, and should be able to be sent with the billing statement, with the effective date then being the first day of the billing cycle that starts after the mailing of that periodic statement. That will provide ample time for consumer reaction. In addition, the provision should not apply to the turning off of Promotional Rates or to work-out plans; these are not the circumstances that the provision seeks to address. Lastly, if a bank has a two-event trigger prior to the application of the higher rate, then the notice should be able to be provided on the first of these two events, and then the new rate applied upon second occurrence without further notice or delay. This will encourage more banks to adopt a two-event trigger, which is clearly in the consumers' interest.

#### **IV. Use of Terms and Phrases**

At the beginning of this letter, we set out the definitions we think the Board should adopt. In this section, we further comment on the contrast between Bank of America's structure and the terminology proposed by the Board.

##### ***Introductory Rate***

The Board's Proposal requires lenders to use the term "Introductory Rate" in describing any temporary rate that is lower than the Standard Rate (§226.16(c)(2)). By extension, this requires that "Introductory Rate" be used to describe discounted rates of limited duration that are offered well after an account has been established, which would be quite awkward. We urge the Board to either adopt the term "Promotional Rate" to be used exclusively in describing these types of rates, or clarify the section to permit the use of either "Introductory Rate" or "Promotional Rate" at the lender's discretion.

##### ***Penalty Rate***

Similarly, the Board's requirement to use the term "Penalty Rate" is troublesome. For one, it creates a false impression that lenders who utilize this type of trigger-based repricing are penalizing consumers, when we are pricing them based on a behavior pattern that indicates greater risk. We use the phrase "Default Rate," as that better describes a rate triggered by an event of default (*i.e.*, late payment or overlimit on that account). As noted, this phrase is even more problematic if it is used to describe rates that are decisively not "penalty" rates: a Standard Rate should not be referred to as a Penalty Rate simply because that Standard Rate applies after a Promotional Rate has turned off due to a late or overlimit event.

### ***Interplay Among Terminology and Rates***

If adopted in its current form, the Board's requirements on lenders to use these terms in certain circumstances leads to inappropriate rate labeling, which will detract from, rather than enhance, clarity of account terms.

There is a logic to having three types of rates: (1) a Standard Rate, which is a given interest rate for an account or balance category; (2) a Promotional Rate, which is a rate lower than the Standard Rate for a limited duration or circumstance, and which, upon expiration/termination, returns to the Standard Rate; and (3) a Default Rate, which supplants the Standard Rate when triggered by certain pre-disclosed events of default. The interplay between terms and rates is best exemplified in the context of default pricing.

At Bank of America, our default pricing structure works as follows: If a consumer is late and/or overlimit twice in any 12 month period on a specific account, we will review that account and may increase the applicable APRs up to a maximum disclosed Default Rate (or increase it to a rate less than that Default Rate based on the consumer's overall risk profile). If the consumer then goes for six months with on-time payments and stays below his or her credit limit, rates will then be reduced by at least 200 basis points (two percentage points) and possibly more – though not necessarily back to the pre-default Standard Rate. So clearly, there is a Standard Rate, a Default Rate and, upon cure, a new Standard Rate.

There are many aspects of this innovative default pricing structure that make it fair to consumers, and we urge the Board to review the proposed regulation with the goal of preserving, rather than discouraging, this type of pricing structure; these aspects include:

- the consumer must be late or overlimit on the specific account that is subject to default pricing, not another account with us, and not an account with some other issuer (*i.e.*, we do not engage in universal default, where a default with another issuer is a trigger for the Default Rate automatically on our account);
- the consumer must be late or overlimit twice in a 12 month period;
- the consumer's rate could be increased to something less than the maximum Default Rate;
- the consumer can cure this rate in six months;
- if cured, the reduction is guaranteed to be at least 200 basis points, and would be considered the new Standard Rate;
- the Standard Rate after cure, being determined to be the appropriate rate for that consumer at that time, may reduce the likelihood of future pricing-related actions because the consumer will already be priced at an appropriate rate.

For many of the reasons set forth in this letter, we believe the Proposal itself, if unchanged, will act as an incentive for lenders to more fully adopt pricing practices which emphasize single trigger events and no right to cure, counter to consumer interests. Consider, for example, the scenario where an account has a Promotional Rate that is subject to increase to the Standard Rate in the case of a single event of default, but also has a Default Rate that applies only if there are two default events.

Under Bank of America's rate structure, when the consumer is late the Promotional Rate is turned off, and the Standard Rate applies. When the second default event occurs, the Default Rate will apply, with an opportunity to cure. When the conditions to cure are met, the rate is lowered to a new Standard Rate.

By contrast, under the Board's Proposal, the fact that the Promotional Rate ends early because of a late payment leads the lender to inappropriately label the post-promotional Standard Rate as a Default Rate of unlimited duration (e.g., Comment 4 to §226.5a(b)(1) and §226.9(g)(3)(i)). If there is a second default event, that rate (having been disclosed as a Default Rate) will increase to the actual Default Rate disclosed in the agreement, though now the duration of the Default Rate will be disclosed as six months if there are no further defaults. Further, when that Default Rate is cured, and the account is adjusted downward to its new Standard Rate, because that adjustment may not return the consumer to his/her pre-default Standard Rate (again, ignoring that that original Standard Rate may have been thought to be a Default Rate because of a Promotional Rate turn-off), the rate resulting from cure must be inappropriately labeled as a Default Rate of unlimited duration. If faced with this illogical result, there would be little incentive for the bank to offer a cure in the first place—again an example of an unintended and misaligned incentive.

Therefore, to restate our opening comment, consumers will be best served if the rate descriptions capture the essence of the account status, and the terms used should be:

- Promotional Rate (can be an Introductory Rate if offered upon account opening): a conditional or qualified rate lower than the Standard Rate;
- Standard Rate: an unqualified rate that applies to the balance category (other than default-based);
- Default Rate: a rate that replaces the Standard Rate (or other lower Default Rate) upon the occurrence of one or more default events specified in the agreement. If subject to a cure, the cure rate would then be disclosed as operating as the new Standard Rate.

## **V. Definition Changes**

### ***Meaning of credit card***

We support the Board's disinclination to expand the §226.2(a)(15) definition of credit cards to include checks. Like most of the industry, Bank of America gives its customers a vehicle by which they may opt-out of receiving checks. Relatively few consumers so elect. But to create a need to request a check before it could be sent (as is the case for a credit card) will reduce the ability of a consumer to quickly and easily access cash or pay off other accounts that had become less attractive. In addition, by definition, the checks would then be subject to claim or defense, an impossible situation, as the bank has no relationship with the merchant accepting checks. Therefore, in our opinion, the regulation should not include checks in the definition of "credit card," and should be clarified to provide that, while some disputes concerning checks are of course subject to billing error resolution procedures (double posting, etc.), the non-delivery example of a

billing error does not apply. Otherwise, banks will be exposed to easily-engineered fraudulent claims, as discussed in the next section.

***Meaning of billing error:***

***Non-receipt***

The major credit card associations have an elaborate process for handling billing disputes, which includes an internal arbitration process between the members of the network, cross-indemnifications, and clear and understood allocation of risks between merchants, merchant banks, consumers, and the banks that issue the credit cards. These parties are bound to each other by a circle of contractual relationships; the flow of the dollars, as a transaction wends its way through the process, defines the value and purpose of a credit card. Merchant banks stand behind their merchants, and merchants that are scoundrels are kept out of the payment system because of that relationship. If a merchant bank fails to identify a bad merchant, that bank, having in essence vouched for that merchant, will be responsible for that merchant's misdeeds.

Comments 2 and 3 to §226.13(a)(3) disrupt this structure and allocation of risk by making "purchases" made using a third-party intermediary subject to billing errors if the goods are not delivered as agreed. A classic example of a third-party intermediary is Pay Pal, though the section applies to any and all third-party intermediaries that may come along, without any distinction. Pay Pal transactions are more like cash advances than purchases. They are a direct transfer of funds from an account one person controls to an account another person controls. One of the hallmarks of a purchase transaction with a credit card is the presence of an approved and known merchant— the knowledge that a merchant bank has conducted a degree of due diligence and will stand behind that merchant, and the existence of a series of contractual relationships that link the card-issuing bank into a relationship with the merchant accepting the card. This is not the case with a Pay Pal transaction.

Moreover, the question of non-delivery properly relates only to whether the funds were delivered (*i.e.*, was the check paid, was the Pay Pal account credited), not whether the ultimate goods or services were delivered. As noted, there is no screening of merchants who can accept payments by a third party intermediary and no merchant bank standing behind the seller of the goods and services. Without the ability to conduct a due diligence, without a trusted gatekeeper, the card issuing banks cannot be responsible for a billing error based on the misdeeds of a merchant with whom they have no contractual relationship (or frankly, with whom they may have no relationship whatsoever).

The following example illustrates the problem created by this change to the billing error definition: a consumer writes the credit card bank and says, "I never got the goods I was supposed to get when I wrote this check/transferred funds via Pay Pal. Here is the address of the individual who sold me the item." The bank's dispute system, which is seamlessly integrated into the associations network of merchants, is useless. The only thing the bank can do is write the individual at the address they were provided. The individual, even if otherwise good intentioned, gets the letter, and decides to do nothing with it— perhaps because they are not prepared to handle these letters, or perhaps because

they realize there is simply nothing obligating them to respond. The individual seller's only relationship is with the consumer (again, this is not the case in the world of chargebacks and disputes within the association systems). Time runs, and the bank has no information on which to base a conclusion that the goods were delivered. The bank cannot even request that the consumer have first tried to deal with the merchant, where arguably the merchant would at least recognize they have a duty to the consumer to prove delivery.

This proposal is indistinguishable from including the ability to dispute goods not received when purchased with cash withdrawn from an ATM using the credit card. PayPal and other similar transactions should only be subject to billing errors outside of non-delivery, or a non-delivery of the funds should be the only basis for such a billing error. Otherwise, the banks will face an unsafe and unsound exposure to claims with no recourse.

#### ***Dispute Resolution***

Comment 2 to §226.13(c)(2) inappropriately narrows a bank's ability to take into account additional information related to a billing dispute that is received after the completion of the second billing cycle. The Truth in Lending Act, with the \$50 adjustment, provides the appropriate mechanism for those limited instances where information comes in after the two cycles.

#### ***Disputes and Automatic Payments***

§226.13(d)(1) limits draws on automatic payment plans in the event of a dispute, even if the consumer is not a deposit customer. We recommend that this only apply if the consumer signed up for an ongoing direction of "Pay in full every month" or "Make the minimum payment every month." If a consumer has set up payments of \$1,000 a month for the next five months without regard to what the actual balance is, it may make sense that this specific directive, that is not balance related, should not be subject to this restriction.

#### ***Commercial use of a consumer card***

Part ii of Comment 2 to §226.3 provides for billing disputes related to commercial use of a consumer card. This is an unwarranted expansion of coverage. If a consumer clearly uses the card for commercial purposes, buying inventory for a business, for example, their misuse of the card should not grant them the luxury of a consumer protection if there is a problem with that inventory.

#### ***"Participation" in a mail solicitation***

§226.12(c)(3)(ii)(F) provides that consumers may assert a claim or defense if the consumer obtained the order through a mail solicitation *participated* in by the card issuer. This use of "participated" is entirely too broad. If a bank, along with several other banks, provided names to a third party for the mailed solicitation, did the bank "participate?" The appropriate test is whether the mailing used the bank's name and directed the consumer to use that bank's credit card.

***Meaning of sub-accounts***

Comment 2 to §226.2(a)(20) creates confusion over the definition of a sub-account in determining whether an account is an open-end credit account by requiring that each sub-account must replenish, or it is not open-end credit. What is a sub-account? If a creditor makes a special promotional check offer, for example: “use this check #117, and only this check, and until that balance is paid in full, your interest rate will be 5.9% on the balance created by the use of this check #117.” To track this transaction, a separate balance “category” is created, titled “Check #117.” This has the appearance of a sub-account, but it will not replenish, for by definition there are no other transactions that can go into the sub-account titled “Check #117.” However, this check was merely a tool to offer a promotional rate within a larger category of transactions—namely cash advances—which may be at a different rate, but replenishes. Payments will be applied to Check #117’s 5.9% balance if it is the lowest active APR on the account, that is, maybe in some months and maybe not in others. Is this account therefore not open-end credit, even though the cash advance line replenishes? Such a conclusion would be extremely disruptive (for example, generally speaking securitizations do not allow a mixing of closed and open-ended accounts). We urge the Board to clarify that the primary account features, such as balance transfers, cash advances, and purchases, must replenish in order to disclose the account as open-end. Differentiating sub-accounts within account features, for example, by rate structures, should not be deemed to create separate sub-accounts subject to the replenishment requirement.

**VI. Changes to Disclosure Documents**

Currently, the open-end credit provisions of Regulation Z only require a tabular format for those disclosures associated with new account solicitations. The Board’s proposed changes extend the concept of tabular format to many other disclosure documents, and dictate location as well. While the tabular format is a visually appealing means of delivering information, it can also be among the most complex to implement in a fluid environment. Account solicitation materials are generally static, and the combinations created by the offers are somewhat limited and completely within the control of the bank making the offer. The printing of these tabular disclosures is a relatively straightforward process. However, once an account has been in existence for a period of time, any subsequent disclosures must account for a far greater range of terms (and the potential absence of those terms) and combinations. Moreover, this printing is not static, and is far more complex. For example, the Proposal effectively eliminates the notion of a pre-printed form for the periodic statement, because information may or may not have to appear in different formats and locations depending on that account’s status. Broadly speaking, the clear and conspicuous standard remains the preferred approach.

***Periodic Statement******Timing***

The Board has requested comment on whether the current 14 day period required under §226.5(b)(2)(ii) should be increased. Under the current rule, the periodic statement must be mailed at least 14 days prior to the end of the grace period. Bank of America recommends that the Board not change this time period. 14 days is an adequate length of time for a consumer to receive and review the periodic statement and to mail the

payment. Consumers do not labor for days over the bill. When they elect to turn their attention to it, even the longest bill is reviewed in a matter of tens of minutes, not days. While everyone would like more time to pay, it is not appropriate for the Board to mandate additional time during which the banks must extend interest-free loans— for this is what an extension would require. The payment due date establishes whether or not an account qualifies for a grace period, and by pushing that date out further, the Board is dictating that Banks must give more time in which no interest will be earned on pay-in-full consumers. This question should be framed from the perspective of who does this help, and who does this hurt— by giving pay-in-full consumers a longer grace period, that further increases the subsidy of the pay-in-full consumer by the revolving consumers, a balance that should be struck by business evaluations, not regulatory declaration.

### ***Location***

The Board has abandoned the notion of issuer discretion and has dictated how the periodic statement shall present required information, including what must come first, and what must be proximate to what. Broadly speaking, Bank of America does not object to the content specifically, so much as to the strict application of these location requirements. Issuers should be able to design their statements to present required information in a clear and conspicuous manner. Every statement should be distinguishable in presentation from the other, for if all statements look the same, that reinforces the notion that one bank's card is the same as the next, and Bank of America works very hard to distinguish itself from its competitors; our periodic statement presentation is one tool we use to accomplish that.

Grouping of fees under one heading follows a certain logic, but it will not always serve the consumer. For instance, if a fee is related to a specific transaction, we believe issuers should have the discretion to place the fee in the transaction field immediately following the transaction to which the fee relates. For example, if a consumer has traveled overseas, it will be more useful for that consumer to have each foreign currency transaction fee next to the specific transaction, rather than listed separately. If the consumer wants to know, "what was the final cost of that Aran sweater I bought in Ireland?" he or she should not have to look in two places and be left to try to figure out which transaction fee on that day related to that particular transaction. Similarly, the most meaningful way to assess the cost of credit of a cash advance is to have the fee next to the transaction.

### ***Content:***

#### ***Effective APR***

Effective APR fails the test of a meaningful disclosure in every regard, and can arguably only be called a "success" if its purpose is to shock and confuse the consumer. The concept of expressing the cost of credit on an annualized basis makes sense, but not if the cost that is captured is a single event that does not repeat itself over the course of the year, and certainly not if two nearly identically situated individuals get two dramatically different results from the same transaction. To illustrate, assume Consumer A and Consumer B start the year with zero balances, and both have the same billing cycle, which happens to close on the next Wednesday. On Tuesday, Consumer A goes to the

ATM and withdraws \$50 cash (subject to a minimum transaction fee of \$15). Consumer B makes the exact same transaction, only he does so on Thursday. The Effective APR for these two consumers on the statement that shows the transaction will differ dramatically simply because of the day of the week (and its relation to the end of the billing cycle) and neither will align with the actual cost of credit if that were their only transaction for the year. A disclosure that is inaccurate and varies significantly because the transaction happened on a Tuesday instead of a Thursday is not explainable, informative, realistic, nor helpful. Effective APR should be laid to rest alongside the phrase "finance charge."

#### ***Overlimit Fee Assessment***

§226.9(c)(2)(v) provides that an overlimit fee cannot be assessed for a 45 day period from the date of a line decrease. This provision should not apply to credit line decreases that were requested by the consumer.

#### ***Debt Cancellation as a Fee***

§226.6(b)(1)(i)(F) sets out that debt cancellation and debt suspension services are fees. Debt cancellation is an optional service purchased by the consumer, just as they might purchase credit insurance from an insurance company and pay for the product with the credit card. Debt cancellation and debt suspension should continue to be treated as purchased services, not as fees. Further, Comment 1 to §226.4(d)(4) is too broad in limiting how a script may obtain consent. The question, "would you like to enroll in the optional debt cancellation product?" should be provided as an acceptable form of a non-leading question, and the ban on leading questions should relate specifically to the enrollment question itself. For example, some benign leading questions to establish a rapport with the consumer should not jeopardize a script that otherwise clearly obtains the consumer's affirmative request.

#### ***Fee Totals***

In terms of watching their cost of credit, consumers will be served by the summary of the fees billed for that month. Bank of America does not believe the year-to-date total should be printed every month, though that figure should be available to consumers who request it at the end of the year, just as year-to-date finance charges are available today for those who request that information.

#### ***Notice of Potential Penalties***

The §226.7(b)(1)(i)(C) notice should not have to appear if the Default Rate has in fact been triggered, as it will create confusion as to whether the existence of the warning undercuts the message that the Default Rate is about to be applied.

#### ***Other Requirements:***

##### ***Change in Terms Notice***

By requiring any change in terms that accompanies the periodic statement to be in tabular form, the Board is creating an incentive for banks to send such amendments in separate mailers. Banks should be permitted to include the information in a clear and conspicuous manner without creating a tabular format and without the disclosure having to precede

the transaction itemization. The redesign of a statement to have information displayed in a tabular format is significant, and will likely drive these notices from the statement, when, as noted earlier, the periodic statement is probably the delivery vehicle preferred by banks and consumers alike.

In addition, the Proposal creates confusion when a change in terms in the periodic statement includes some terms required to be in tabular format but not others, even if the others are more significant terms. Generally, Bank of America includes all changes in a single notice; however, this section of the Proposal would force two notices in one statement-together, yet separate.

#### ***Promotional Rates and Annual Fee Renewal Notices***

§226.7(b)(4)(ii) should use the phrase “Promotional Rates” as a part of the overall adoption of the rate concepts set out in this letter. In addition, the regulation should be clarified to explain that the relief from disclosing Promotional Rates extends to Annual Fee notices—Promotional Rates not actually used need not be printed. Otherwise, the periodic statement would cease to be a viable delivery vehicle for the renewal information, which is clearly not the purpose of the regulation. In addition, it should be clarified that the 16 point font requirement of §266.5a does not apply to the renewal notices, or again, the option to use statements for that notice is no longer a real choice.

#### ***Meaning of “uncollectible”***

The Board has sought comment on what the meaning of “uncollectible” should be for purposes of delivery of a statement. Rather than a fact-based subjective test that is impossible to implement, Bank of America recommends that the regulation confirm the existing practice that, upon charge-off, statements are no longer required.

#### ***Meaning of “Sale Credit”***

Part ii of Comment 1 to §226.8(a) sets out that “funds transfer services (such as telegrams) from an intermediary or an expedited payment from a creditor” are examples of sales credits. This essentially forces the bank to post these transactions as purchases, and it is very unclear what these phrases mean and why they must be posted as a purchase, when generally speaking the bank has flexibility in how it determines what posts where (outside of the classic true purchase of goods and services through the use of the card). The continued yet anachronistic use of the telegram as an example only further confuses the comment. The entire comment should be deleted: if the consumer sends cash through any means, lenders should have the flexibility to post this transaction in its entirety as a cash advance, and fees in general should be at the discretion of the creditor.

#### ***Balance Methods***

The removal of the balance calculation information on every statement is welcome relief from a disclosure that we suspect was rarely read by the consumers. To that end, however, the list of balance methods in §226.5a(g) should be expanded to include daily balance methods which generally apply to cash advances.

***Solicitation Materials:******Grace Period description***

Appendix G-10(B) and (C) should be modified in the section in which they describe Grace Period to read as follows: "If you pay your entire balance in full each month, you have at least 25 days after the close of each period to pay your balance in full without being charged interest on purchases." Otherwise, the proposed language would create the impression that only the purchase balance need be paid to get a grace period, which is not true generally.

***Minimum Font Size***

The minimum font size called for in Comment 3 to §226.5(a) and part v of Comment 5 to Appendix G should be 9 points instead of 10. Based on some of our mock-ups, with all of the additional disclosures, we will have some challenges that are only satisfactorily solved by using a 9 point font, which remains very readable.

***Promotional Offer Payment Allocation***

§226.5a(b)(15) provides for payment allocation language associated with a Promotional Rate applicable to balance transfers or cash advances. Because the text does not contemplate multiple promotions, or lower rate promotions for some or all purchases, or a single promotion that applies to all balance categories, the proposed language becomes impractical and confusing. For example, if the account offers 3.9% on balance transfers for 6 months, and 4.9% on cash advances for 18 months, and 2.9% on purchases in excess of \$500 for 12 months, the notice will fail to do anything but confuse. Therefore, we recommend the Board add the following disclosure in proximity to the Disclosure Boxes:

**Payment Allocation:** Your payment will be applied to the balance with the lowest APR first.

If the Board deems it necessary to reinforce the fact that revolving a promotional balance precludes a grace period for purchases, that message should appear in the Grace Period Box, by adding the following sentence to the end of the existing grace period disclosure: *This means that if you take advantage of a Promotional Rate and revolve a balance, you will not have a grace period on purchases.*

***Fee description***

Appendices G-10(B) and (C) show the fees listed separately on their own lines. Fees that are of the same amount should be permitted to be listed clearly and conspicuously without a carriage return after each fee, as this uses up a good deal of what is increasingly critical space.

***Arrangement of Disclosure Boxes***

Part ii of Comment 5 to Appendix G removes the flexibility to display the summary boxes in a horizontal form. The Board should provide that the summary boxes do not have to be in portrait mode, nor must they be stacked vertically as would appear to be dictated by §226.5a(a)(2)(i).

***Disclosures with Checks***

The §226.9(b)(3) disclosures should only have to be provided on checks that the consumer did not request. Many issuers, including Bank of America, receive and process requests for books of checks from consumers; these checks are generally created by third party check printers who will not be a part of the disclosure systems that exist for those traditional check mailings sent by the bank.

In addition, check mailings should be subject to the same accuracy requirement as a direct mail card solicitation, *i.e.*, the rates should be rates that were in effect within 60 days of the mailing of the checks.

***Account Opening Materials:  
Credit Protection Amendments***

If a debt cancellation/suspension service was offered along with the application for the account, §226.6(b)(3) appears to require the agreement to incorporate the terms of that coverage, even if the consumer never requested the coverage. Presently, the amendments implementing such coverage are sent only once consumers actually enroll. To include this information with every agreement will add irrelevant length, and should not be required.

***Timing of Disclosures***

§226.5(b)(1)(iii) rationally permits the Account Opening Materials to be disclosed after the first transaction when opened in connection with a purchase from a merchant on the phone. This is a rational proposal that should be extended to online merchants as well. In addition, part (A) should be clarified to allow that the merchant does not have to establish the actual open end plan, and that the solicitation and acceptance, while associated with the sale, can be accomplished by a transfer to a bank representative (or online, to a lender's website), as opposed to too literal a meaning of "at the same time."

**VII. Costs and Time**

As one of the world's largest banks, and a premier issuer of credit cards, Bank of America clearly has the resources and ability to adopt, and adapt to, any disclosure requirements the Board may determine to impose. However, that ability can obscure the fact that such adaptation is very time consuming and expensive. More importantly, it may create a pressure for the industry that the Board would find undesirable.

At present, Bank of America has its own in-house processor for its credit card operation. In the past, this has been a competitive advantage, as we have been able to design and create new products that the competition could not immediately match. Now it is a liability, for when we undertake our redesign of our periodic statement and new account disclosures, we bear the full costs ourselves. Issuers who use one of the common platforms will share this cost, at a considerable savings.

As a consequence, there is a tremendous incentive for the industry to consolidate servicing even further, and that will lead to a real reduction in product design, creativity,

and competition, because if everyone shares the same platform, then everyone has the same capability, and anything new will be immediately available to others.

Bank of America has an industry-leading disclosure system, one of the few that can print a real-time disclosure of all terms on the account without having to assemble a daisy chain of amendments and references to promotional offers sent some time in the past. The breadth of disclosure changes proposed by the Board jeopardizes the ongoing viability of that system and its customer-friendly approach.

As the Board considers what recommendations to implement, now and in the future, it should bear in mind that there is a significant cost to overhaul disclosure regimens.

In terms of time, Bank of America recently redesigned its periodic statement. That undertaking cost several million dollars and took well over two years. Therefore, on the basis of this experience alone, Bank of America recommends at least 24 months prior to implementation of the new rules, though, for example, some format changes could be made to the §226.5a tables in advance of that time.

#### **VIII. Conclusion**

In conclusion, disclosures are a fair and necessary component of a financial service marketplace. Such disclosures should be limited in scope and frequency in order to better meet the goals of accurately drawing the consumer's attention to the information most necessary to make an informed judgment. Bank of America has what we believe to be an industry-leading approach when it comes to disclosures to, and education of, consumers (see, for example the attached pamphlet provided to new customers entitled Credit Cards and You). The Board has undertaken a significant task in recasting Regulation Z's approach to consumer credit cards. Properly refined, the new disclosure regimen set forth in the Proposal will help consumers compare and consider their credit choices.

Respectfully submitted,



Gregory A. Bacr  
Deputy General Counsel  
Bank of America

At Bank of America, we want to help you understand how your credit card works so you can better manage your finances. This brochure explains some features of your card, like interest rate (sometimes expressed as an Annual Percentage Rate, or APR) and fees that determine your cost of credit.

This brochure is educational. It is not a substitute for, or even a part of your Credit Card Agreement, which provides greater detail regarding these and other features. Please read your entire Credit Card Agreement and any amendments carefully.



**Thank you for being a valued customer!**

There's a lot more to your credit card; that's why there's a separate Credit Card Agreement (included with your cards). It contains the full contractual terms and required disclosures. But we hope this brochure helps explain the basics of how your credit card works. Don't forget, at Bank of America, we are ready to answer your questions 24 hours a day. Our number is on the back of your card.

**[How to learn more](#)**



**Credit Cards and You**



## Interest, the effects of partial payments, and cash advances

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The amount of interest you pay depends on two things, how you *use* the account and how you *pay* the account. As described below, one way to limit your interest cost is to only make purchases while paying the entire balance due each month by the payment due date.

**Grace Period for Purchases:** If you use your card only for purchases, and pay the balance in full *every* month by the payment due date (the whole balance due, not just a part of it), then you will not pay any interest, because purchases have a grace period. If you pay less than the full balance, then you get no grace period at all, and the entire balance will start to accrue interest.

**Cash Advances and Balance Transfers:** Credit card accounts also allow you to obtain cash and to transfer balances from one card to another. For example, you can take your card to an ATM or bank branch (did you know Bank of America has over 5,700 banking centers in the United States – no other bank has more). Or you can get cash by writing a check on your account. Cash advance and balance transfer balances may be at different APRs than purchases, and may be subject to transaction fees. In addition, they have no grace period, so even if you pay your balance in full every month, you will pay interest on cash advances and balance transfers. Still, they offer great convenience, and possible interest savings.

**Payment Allocation:** For your convenience, you may make partial payments and not pay your entire balance in full. Generally, your payment is applied to balances with the lowest APR first, even if those are new balances. So, if you have balances at a discounted promotional rate, they will be paid first. Payments will be applied to balances that are at a higher APR only after all lower rate balances have been paid in full.

## The importance of on-time payments and staying within your credit limit

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Paying by the payment due date and staying below your credit limit are the most important things you can do to keep your credit rating high and your cost of credit down.

When you get your billing statement, check the payment due date. Your payment due date may vary from month to month. Make sure you mail your payment at least seven days before the payment due date, so it arrives on time, or make your credit card payments online at [www.bankofamerica.com](http://www.bankofamerica.com). At Bank of America, we keep our payment processing centers open until 5:00 pm (Eastern Time) every day of the year. So, if the post office delivers your confirming payment to us by 5:00 pm, we will process it as of that same day. By paying on time, you'll avoid late fees, the loss of promotional rates, and you'll avoid triggering higher interest rates.

Payments also help keep your account balance below your credit limit. If your balance ever exceeds your credit limit, even if we authorized the charge, you may be assessed an overlimit fee, lose promotional rates, and you may trigger a higher interest rate.

## Interest rate changes, and how on-time payments help keep your cost of credit low

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During the life of your account we may periodically change your rate or other terms by amending our Credit Card Agreement with you. We will let you know in advance of making any such change. If applicable, you will have an opportunity to reject such an amendment that increases your interest rate, although you may lose future charging privileges. In addition, if you have a variable rate account, your interest rate will change if your index (usually the prime rate) goes up or down.

More importantly, by paying your account as agreed – no missed payments, or account balances which exceed your credit limit – you can avoid the default conditions set out in your Credit Card Agreement that could result in the loss of promotional interest rates, and the assessment of higher, default interest rates. If you trigger default pricing by being late or overlimit, this higher rate is applied without any further notice or opportunity to reject that change.

### Helpful Hint

If you limit your cash advances to essential situations, and pay them back as soon as possible, you will reduce your fees and interest.

### Helpful Hint

Scheduling regular online payments can help you avoid late and overlimit fees.