citigroup

Carl Howard
General Counsel
Bank Regulatory

Citigroup Inc.
425 Park Avenue
2nd Floor/Zone 2
New York, NY 10022

Tel 212.559.2938
Fax 212.793.4403
howardc@citigroup.com

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

Re: Docket No. R-1286 – Proposed Amendments to Regulation Z

Dear Ms. Johnson:

Citigroup, one of the largest U.S. financial services holding companies, respectfully submits these comments in response to the Federal Reserve Board's (the "Board's") proposed amendments to the open-end credit rules of Regulation Z, 12 C.F.R. § 226 (2007), the implementing regulation of the Truth in Lending Act ("TILA"), 15 U.S.C. §§ 1601-1666 (2000 & Supp. IV 2005), as those amendments were published in the Federal Register on June 14, 2007.

A. Introduction

Citigroup has been on record for several months now as welcoming and strongly supporting the general sweep of the Board's proposed amendments to Regulation Z's open-end credit rules. We know how difficult it can be for consumers to understand credit card disclosures. We believe that all credit card issuers should aim to have materials that describe their products clearly, accurately, and fairly. We believe the Board's proposal will help issuers achieve those goals. Its Schumer box enhancements and new account-opening disclosure table, among other innovations, moves credit card disclosures toward the model of food labeling, where consumers can get all the information they need in simple, easy-to-use, uniform terms. This will better allow consumers to compare one product readily to another and more easily understand the details of their accounts.

In fact, we at Citi have already been working diligently to improve and simplify our disclosures in ways consistent with the Board's proposal. In 2005, for example, we added a "Facts About Rates and Fees" summary at the beginning of our card agreements. This year we have begun to introduce new versions of our basic card agreement and Schumer box that simplify their language to an 8th grade reading level. We have also begun to roll out a substantially revised periodic statement that emphasizes the information our customers told us was most important to them. At Citi, we are proud that our disclosures were the only real world

examples of effective credit card disclosures cited in the Government Accountability Office's September 2006 report to the Congress on that subject.[1]

Citi also understands and appreciates the Board's efforts to protect consumers against surprise changes in the rates, fees, and other terms of credit card accounts through several new notice rules and requirements. Again, we at Citi have already taken significant action in this area. In March of this year, we announced the end of "any time for any reason" changes to our Citi-branded consumer accounts. Now, we will not increase the rates and fees of an account or otherwise change the terms of the account until a consumer's card expires and a new card is issued, typically in two years. The only exceptions are for variable APR increases, previously disclosed increases to penalty APRs for "on-us" defaults, and changes imposed on us by law, our regulators, or our network providers. In short, we are going the extra mile to protect our customers against surprise changes in the rates, fees, and other terms of their credit card accounts. We hope others in the industry follow our example.

Citi remains a strong supporter of the Board's proposal following our in-depth review these past four months, but we do have comments about some aspects of the proposal. For example:

- We support the elimination of the periodic statement's effective APR disclosure, because we view it as an unhelpful, confusing, and often misleading disclosure. Of the two options the Board presents for the future of this disclosure, complete elimination is the appropriate one. Keeping the disclosure as a slightly modified and relabeled "Fee-Inclusive APR" disclosure simply perpetuates the problems it already presents.

- We are concerned about excessive formatting rigidity in the periodic statement and suggest ways to modify that aspect of the Board's proposal. We think the periodic statement works best when it can be reasonably tailored to meet the needs of a particular card issuer and its customers

- We support format standardization for the Schumer box and new account-opening disclosure table because it enhances comparison shopping and consumer understanding, but we think size standardization is not critical to achieve those ends. We are concerned about the *de facto* 8" x 14" size standard that may result from the Board's proposal.

- Although we share the Board's aversion to surprise changes in credit card pricing, as evidenced by our self-imposed limitations on rate and fee increases, we are concerned about the Board's proposed 45-day penalty APR notice. We believe the notice should be more precisely targeted to address the issue of surprise, and we suggest ways that it can be modified to do so. Without such modifications, we believe any benefit the notice provides to defaulting consumers may be outweighed by unwelcome consequences for all consumers.

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[1] *See* Government Accountability Office, *Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures*, GAO 06-929, September 12, 2006, pp. 42-46.

We discuss these and other aspects of the Board's proposal in more detail below. For the Board's convenience, we have organized our comments by the section order of Regulation Z. We look forward to continued dialogue with the Board on these and other aspects of its important and praiseworthy proposal.

B. Discussion

§ 226.2 Definitions and Rules of Construction

Citi supports the Board's proposed changes to § 226.2, except for the proposed changes to § 226.2(a)(20)-2 and 5 regarding the definition of open-end credit.

We believe proposed § 226.2(a)(20)-2, which provides that an open-end credit sub-account must generally replenish at the sub-account level, would seriously and adversely affect promotional and other sub-accounts that have traditionally been viewed as appropriate elements of an open-end credit plan. For example, low APR and major purchase promotions create sub-accounts that generally do not replenish at the sub-account level. If a card issuer were required to replenish such promotions at the sub-account level, they would effectively become permanent features of the account. The result is likely to be fewer of these promotions, which provide consumers with price, payment flexibility, and other benefits.

We believe proposed § 226.2(a)(20)-5, which provides that verification of credit information under an open-end credit plan "may not be done as a condition of granting a consumer's request for a particular advance under the plan," would also have serious consequences for heretofore uncontroversial open-end credit practices. For example, the comment may preclude the review of a consumer's creditworthiness in connection with a credit limit override, even in emergency situations. It may also preclude the use of credit information to approve transactions for "no pre-set spending limit" products with flexible credit lines. The result is likely to be fewer overrides and fewer no pre-set spending limit products, both of which benefit large numbers of consumers.

We urge the Board to withdraw the proposed changes to § 226.2(a)(20)-2 and 5 because of the problems the changes would create for mainstream open-end credit products and practices.

§ 226.4 Finance Charge

Citi supports the Board's proposed changes to § 226.4 and, in particular, the changes to § 226.4(d) regarding the exclusion from the finance charge definition for voluntary credit insurance premiums, debt cancellation fees, and debt suspension fees.

Citi is concerned, however, about § 226.4(d)(4)-1, which would prohibit the use of "leading questions or negative consent" in scripts used to sell voluntary debt cancellation and debt suspension products over the telephone as a prerequisite for non-finance charge treatment of their fees. We support the prohibition on negative consent because it is appropriate and easy to follow. The prohibition on "leading questions," however, is more difficult to follow. We believe the distinction between a "leading question" and routine marketing and customer service

language would not be apparent in many instances and would require a case-by-case determination. Accordingly, we urge the Board to remove the rule against leading questions from the proposed comment and to address any underlying concerns about marketing techniques through regulatory guidance on unfair and deceptive acts and practices.

§ 226.5 General Disclosure Requirements

Form

Citi supports the Board's proposed changes to § 226.5(a). This includes the proposed changes to:

- §§ 226.5(a)(1)-1-5, which establish a new 10-point font or "readily noticeable" standard for the Schumer box, account-opening disclosure table, tabular convenience check disclosure, change in terms summary, and penalty APR notice;

- § 226.5(a)(1)(iii), which clarify the exclusion of electronic disclosures from the general requirement that disclosures must be in writing and in a form that must be kept. In response to the Board's request for comment on the matter, we also believe the Board should expressly permit card issuers and other creditors to provide disclosures in electronic form to a consumer at the time an online or other electronic service is used without first obtaining the consumer's express consent to electronic disclosures. This would speed transactions without harming the consumer, whose use of the service is the functional equivalent of express consent to the electronic disclosures; and

- § 226.5(a)(2)(ii), which exempt APRs and other finance charges disclosed in the account-opening disclosure table and other tabular disclosures from the "more conspicuous" disclosure requirement. Citi notes that these exceptions, plus the preexisting ones, would make the non-tabular portions of consumer credit card agreements virtually the only place where the "more conspicuous" disclosure requirement might apply. There, however, the requirement would be of little or no remaining value due to the prominent presentation of APRs and other finance charges in the new account-opening disclosure table. Accordingly, we urge the Board to consider complete abolition of the rule requiring "more conspicuous" APR and finance charge disclosure because it is now an anachronism.

Timing

Citi supports the Board's proposed changes to § 226.5(b). This includes the proposed changes to:

- § 226.5(b)(1)(ii), as well as the parallel changes proposed to § 226.9(c)(2)(ii), which provide that a charge not required to be disclosed in the account-opening disclosure table can be disclosed to the consumer at any "relevant time" before the charge is imposed on the consumer. We believe these timing changes would benefit both card issuers and

consumers by permitting disclosure of charges for optional copying, payment, and like services when the consumer is actually contemplating use of the services; and

- § 226.5(b)(1)(iii) and accompanying comment § 226.5(b)(1)(iii)-1, which provide a merchant with the flexibility to provide account opening disclosures "as soon as reasonably practicable" following the first transaction under a credit plan that is opened to finance goods purchased during an inbound consumer call, so long as the merchant maintains a reasonable return policy and gives the consumer "sufficient time" to reject the credit plan. For merchants to take full and appropriate advantage of this flexibility, however, Citi urges the Board to make the following four clarifications:

  (1) There should be an express acknowledgment that the credit plan can be provided on behalf of the merchant by a third-party creditor.

  (2) There should be an express acknowledgment that the consumer's right to reject the credit plan and keep the goods can be linked to the consumer's substitution of a reasonable means other than the credit plan to pay for the goods in full.

  (3) There should be a safe harbor providing that 6 or more days after the mailing of account-opening disclosures is "sufficient time" for a consumer to reject the credit plan.

  (4) The exception in § 226.5(b)(1)(iii)-1 allowing a no return policy for "consumed or damaged goods" should be revised to cover expressly a no return policy for installed appliances or fixtures, provided a reasonable repair or replacement policy covers defective goods or installations.

Citi is concerned, however, about § 226.5(b)(2)-3, a new comment providing that a creditor can stop sending periodic statements due to the "institution of collection proceedings" only after "filing a court action or initiating an adjudicatory process with a third party." Currently, creditors have the flexibility to determine when collection proceedings have advanced to the point that it is no longer advisable to send a periodic statement. It is appropriate that creditors have such flexibility because periodic statement information, such as the minimum amount due and the new minimum payment warning, can conflict with the creditor's collection demand, thereby creating confusion about the consumer's obligations to the creditor. This new comment would enhance the risk of such confusion and may have other adverse consequences as well. First, it may serve as an incentive for the earlier filing of court actions and adjudicatory processes, which would benefit neither consumers nor the card industry's reputation. Second, it may make it very difficult for card issuers to administer nationwide collection programs given the wide range of state law rules regarding what constitutes the filing of a court action or initiation of an adjudicatory process. For example, some state laws deem a court action to be filed upon service of process to a defendant, while others deem it filed only when a summons or complaint is filed with the court. For all of these reasons, Citi urges the Board to reconsider and withdraw this new comment.

§ 226.5a Credit and Charge Card Applications and Solicitations

Citi strongly supports the Board's proposed changes to § 226.5a and notes that many of the Board's enhancements to the Schumer box are consistent with recommendations we made in April 2005 during the Board's preliminary rulemaking proceedings. These include, for example, the placement in the box of all material fees and all triggers for penalty APRs, removal from the box of the reference to the balance computation method, a reference in the box to a Board website for purposes of consumer education, and more uniform requirements for the format of the box.

Citi does, however, have comments about some details of the proposed changes to § 226.5a, which we present below.

Size

Citi is concerned about the *de facto* 8" x 14" or "legal size" paper standard for the Schumer box and the account-opening disclosure table that might result from Model Forms G-10(B), G-10(C), G-17(B), G-17(C) and accompanying comment § 226.6 App. G-5(v). The comment notes that the model forms for these two disclosures "are designed to be printed on an 8 x 14 sheet of paper." Although the comment goes on to disclaim any paper size requirement, that disclaimer might well be ignored by bank examiners and others in light of the substantial weight given to the model forms and the requirements in § 226.5a(2)(i) and § 226.6(b)(4)(i) that these two disclosures must be "substantially similar" to the model forms. Citi does not believe that size standardization is critical to format standardization for the Schumer box and account-opening disclosure table, which Citi strongly supports. Citi also fears that size standardization could impose substantial costs on card issuers by requiring them to shoehorn a one-size-fits-all disclosure into various types of marketing materials. It may also impair credit card marketing innovation for that same reason. Accordingly, Citi believes that the Board should remove the reference to paper size in the proposed comment.

Color

Citi believes that the use of color, shading, and similar graphic techniques in the Schumer Box and account-opening disclosure table can help enhance the readability of these disclosures for consumers and enhance competition in the credit card industry by reinforcing brand identity. To eliminate any ambiguity on whether the use of color, shading, and similar graphic techniques are permitted in these disclosures, Citi urges the Board to add an affirmative statement to that effect to § 226.6 App. G-5(v) or other appropriate provision.

Electronic Disclosures

Citi believes that § 226.5a (a)(2)-1 too narrowly codifies the "close proximity" standard for Schumer box disclosures accompanying electronic card applications. As proposed, this comment provides that the standard is met only if the disclosure appears on (1) the same screen as the application, (2) the same web page as the application, or (3) on a website page that cannot be bypassed by the applicant. This list would straightjacket innovation in online card

applications and may prevent those applications from keeping pace with the rapid changes in the online world and the devices that support it. In addition, the "no bypass" requirement has no analogue in a paper-based application. On paper, an application's cross-reference to an accompanying but separate Schumer box is sufficient to meet delivery requirements, even if that disclosure can be ignored or "bypassed" by the consumer. *See* § 226.5a(a)(2)-2. Accordingly, we believe § 226.5a(a)(2)-1 should allow creditors to satisfy the close proximity standard for electronic disclosures through (1) any of the three currently listed electronic delivery methods, or (2) any other reasonable electronic delivery method accompanied by the consumer's affirmation that he or she has reviewed the disclosures. At the very least, the proposed comment should be revised to indicate that the three currently listed electronic delivery methods are not the only ways the close proximity standard can be met.

Citi believes that § 226.5a(a)(2)-6 is too narrow as well. This comment would require electronic disclosures for electronic applications and paper disclosures for paper applications. We can see no sound policy reason for this rule in all instances. For example, it should be appropriate for a card issuer to distribute a paper Schumer box containing a code that a consumer can use to apply online. In fact, the consumer's need to read the paper disclosure closely to extract the code arguably increases the likelihood that the consumer will study such a disclosure before applying online. Accordingly, the comment should expressly acknowledge and permit this and similar disclosure techniques where electronic and paper documents are inextricably linked.

APRs

Citi is concerned that § 226.5a(b)(1)-2, which elaborates on the exclusion of variable APR index detail from the Schumer box, does not expressly prohibit rate floors and ceilings in the box. The Board's supplemental information describes such a prohibition as part of its proposal. If that is the case, this prohibition should be stated expressly in the commentary or regulation itself. Without that express statement, card issuers could be vulnerable to deceptiveness claims under state law for the omission from the box of any floors or other limitations on variable APRs.

Citi is also concerned that § 226.5a(b)(1)(iv) and § 226.5a(b)(1)-4, which establish rules for the disclosure of penalty APRs, their triggers, and their duration in the Schumer box, do not adequately distinguish between the imposition of penalty APRs for late payments and other default behavior and the loss of promotional APRs in favor of standard or other non-penalty APRs (such as a different level of promotional APR) for failure to satisfy promotional terms, such as the need to make a certain number of purchases in a given period. Citi believes that it would be inappropriate and confusing to consumers if such an APR were characterized as a "penalty APR." It would also confuse and clutter the Schumer box if promotional terms had to be disclosed as triggering events for a penalty APR. Accordingly, Citi urges the Board to clarify that the disclosure requirements for penalty APRs do not apply to the loss of a promotional APR in favor of a standard APR or variations in promotional APRs based on the consumer's failure to satisfy promotional terms.

Other Content Requirements

Citi believes that the proposed guidance regarding disclosure of the grace period on purchases in § 226.5a(b)(5)-1 is helpful and appropriate, but also believes that it could be improved through additional models of grace period language. Citi offers the following as such an additional model:

> The grace period on purchases is at least __days if you pay the entire balance in full by the due date every billing period. If you do not, you will not get a grace period.

Citi believes that a payment allocation disclosure like the one required by proposed § 226.5a(b)(15) is appropriate, but we have some concerns with the model payment allocation language in Model Forms G-10(B) and G-10(C). In our view, the proposed language is potentially inaccurate because it states that an introductory APR applies only to balance transfers and suggests that all promotional APRs are introductory APRs. In fact, some promotional APR offers apply to both purchases and balance transfers, and some extend for the life of the balance, rather than just for an introductory period. We also believe the explanation could be more complete in the interest of promoting greater consumer understanding. Accordingly, we believe the Board should consider revising the model language to read as follows:

> **How low APR offers work.** We apply your payments to low APR offers before we apply them to regular purchases and cash advances. You cannot pay off regular purchases and cash advances until you pay off the low APR offer. You will not receive any grace period until your entire account is paid off.

We also believe the Board should expressly recognize the need for flexibility in the payment allocation disclosure, whether in the form of the Board's proposed model language or the alternative recommended above. In particular, the statement that payments "will" be applied first to low APR balances is probably accurate for most general purpose credit cards, but it is inaccurate for many private label credit cards. In the private label business, complex mixes of standard, promotional, and expiring promotional balances result in frequent exceptions to a general low to high APR balance allocation rule that benefit the consumer. Requiring private label issuers to state that payments "will" be applied first to low APR balances in all instances might force them to choose between inaccurate disclosures or payment allocation practices less favorable to consumers. To address this problem, the Board should provide additional guidance allowing card issuers to use "may" or similar words when describing a payment allocation rule that is a worst case but not necessarily a typical case.

Citi also believes that the payment allocation language required by § 226.5a(b)(15) and shown in Model Forms G-10(B) and G-10(C) should be removed from the "APR for Balance Transfers" section of the Schumer box in favor of its own section because payment allocation practices apply to more than just balance transfer APRs. For example, placing the payment allocation language in its own section immediately beneath the "Penalty APR and When It Applies" section, which is the last of the APR sections, would visually reinforce the message that payment allocation can affect the interplay of all APRs. Given the importance of payment allocation to the evaluation of balance transfer offers, however, the retention of a cross reference

to the payment allocation language in the "APRs for Balance Transfers" section would be appropriate.

§ 226.6 Account-Opening Disclosures

Citi strongly supports the Board's proposed changes to § 226.6, particularly the new account-opening disclosure table proposed in § 226.6(b)(4) and shown in Model Forms G-17(B) and G-17(C). Citi again notes that this new disclosure is consistent with an idea we championed in April 2005 during the preliminary rulemaking proceedings. We believed then as now that the new disclosure will enhance comparison shopping and consumer understanding of credit card accounts.

Citi's specific comments about the account-opening table are the same as those about the proposed changes to the Schumer box and reflect our concerns about the following matters:

- the large paper size used for the model forms;
- the narrowness of the electronic delivery rules;
- the absence of an express rule prohibiting disclosure in the table of APR ceilings and floors;
- the absence of an express distinction between the imposition of penalty APRs and the loss of a promotional APR in favor of a standard APR or variations in promotional APRs based on the failure to satisfy promotional terms; and
- problems with the content and placement of the model payment allocation language.

In addition, Citi believes that the Board should expressly allow the account-opening table to cross-reference APRs printed on accompanying documents, such as cash register receipts, card carriers, or tailored account-opening letters. This would be of immense practical benefit to card issuers, who could avoid printing and distribution costs and problems associated with multiple versions of tables that may be identical but for the APRs. For example, card issuers could more easily offer variable APR products at the point of sale if they were permitted to combine pre-printed disclosure forms with up-to-date APR information downloaded onto cash register receipts or the like.

§ 226.7 Periodic Statement

Content

Citi supports the Board's changes to the content of the periodic statement, but we think certain aspects of those changes warrant clarification. Our specific comments are as follows:

- We support the Board's changes to §§ 226.7(b)(2) and (3) requiring the grouping of like transactions and credits, but we urge the Board to provide card issuers with the flexibility to add and decide on groupings that work best for them. In particular, the tri-partite categorization of transactions into purchases, cash advances, and balance transfers shown in Model Form G-18(A) does not work well for promotions. It is often far more understandable for consumers to have promotions grouped by the APR or the length of

the promotional term than, for example, to have them mixed in chronologically with all other purchase transactions. Many types of promotional offers used in the retail private label credit card business, such as deferred interest and no interest offers with or without minimum payments, are also often better grouped by type of offer than type of transaction. In addition, we urge the Board to clarify that billing error correction credits provided pursuant to §§ 226.13(e) and (h) and their accompanying commentary can continue to be listed separately on the periodic statement and need not be placed in the section on credits described in § 226.7(b)(3). Showing such credits separately would make them more visible to the consumer than folding them into the credit section and would save on reprogramming and other implementation costs for many issuers.

- We support the Board's proposed changes to § 226.7(b)(4), which eliminate the periodic rate as a required disclosure, and § 226.7(b)(5), which permit the shorthand disclosure of standard balance computation methods. Both changes would benefit consumers by reducing information overload.

- We also note our specific support for proposed § 226.7(b)(4)(ii), which requires periodic statement disclosure of promotional APRs offered "for a specific and limited time" only when those APRs are actually applied to the consumer's account. In response to the Board's request for comment on the matter, we also urge the Board to extend § 226.7(b)(4)(ii) to HELOCs because the Board's rationale for the provision -- reductions in information overload on consumers and operational burdens on creditors -- apply equally in the HELOC context. However, we think the phrase "for a specific and limited time" should be clarified (perhaps by changing it to "for a promotional period") to avoid an overly narrow construction. For example, some retail private label credit card offers can remain outstanding for indeterminate amounts of time (e.g., "while supplies last," or "for the life of the balance"), while others can last for relatively long periods of time (e.g., "all year in honor of our 50th anniversary"). In both cases, the key point regarding disclosure of the promotional APR on the periodic statement should be whether or not it is applied to the consumer's account, not the promotional period's indeterminacy or length.

- We support § 226.7(b)(6)-3, which explains that the year to date totals for interest and fees can be expressed based on a calendar year or 12 billing period basis. However, we urge the Board to clarify that it would be permissible to calculate 12 billing periods by using the billing period ending in January through the billing period ending in December.

Format

Citi is concerned about the excessive rigidity of the Board's proposed format requirements for the periodic statement. Format standardization for the Schumer box and account-opening disclosure table promotes comparison shopping and pushes the industry toward the food-labeling model, which Citi strongly supports. Format standardization for the periodic statement, on the other hand, would interfere with the servicing relationship between a card issuer and its established customers at substantial costs to consumers, card issuers, and competition in the card industry. Consumers would receive statements that are less targeted to

their preferences today and less able to evolve with and adapt to their preferences tomorrow. Card issuers would be faced with far more substantial systems, equipment, and other costs to implement the Board's proposal than would be the case if each is permitted to adjust its current statements to disclose newly required information "clearly and conspicuously." Competition in the card industry would suffer due to the stifling of innovation in periodic statement design and content, as well as the displacement of servicing communications between card issuers and their customers.

To remedy these problems, Citi urges the Board to change the approach to periodic statement formatting in the proposal as follows:

- The Board should not provide model forms for the periodic statement and should therefore delete Model Forms G-18(A)-(H) from the proposal. In their stead, the Board should provide issuers with model clauses for the required elements of the periodic statement and should provide issuers with the flexibility to present those elements in any way consistent with the "clear and conspicuous" disclosure standard of § 226.5(a)(1)(i) and its accompanying commentary.

- The Board should eliminate the "closely proximate" grouping standard of § 226.7(b)(13) for the due date, cut off time, late payment warning, and minimum payment notice. In its place, the Board should simply require "clear and conspicuous" disclosure of this information on the front of the first page of the periodic statement.

- The Board should eliminate the strict location and sequential disclosure requirements in proposed §§ 226.7(b)(14), 226.9(g)(3)(i), and 226.9(c)(2)(iii)(B)(2) for the penalty APR notice and change in terms summary when delivered with the periodic statement. In their place, the Board should simply require "clear and conspicuous" disclosure of this information in the periodic statement at any point prior to the transaction detail. Without this flexibility, card issuers may not be able to use the front page of their statements for both these notices and other important servicing messages either at all or without the risk of substantial clutter and confusion.

- The Board can and should continue to require a tabular format for the new change in terms summary and penalty APR notice. Accordingly, we support the retention of Model Forms G-20 and G-21. However, the Board should provide issuers with the flexibility to modify these tables reasonably when they are incorporated into the periodic statement in the interests of seamless incorporation into the statement.

Effective APR

In §§ 226.7(b)(6)(iv) and 226.7(b)(7) the Board presents two alternatives for the future of the effective APR disclosure. One is its complete elimination. The other is slight modification of the disclosure along with its re-labeling as a "Fee-Inclusive APR" disclosure.

Citi reiterates our strong support for the abolition of the effective APR disclosure. We continue to believe that an effective APR is more accurately described as an artificial or

"inflated" APR. It is based on an illogical division of account fees, can distract consumers from more important information, and is often a source of consumer confusion as evidenced by calls to our customer service centers. It also can result in a mathematically misleading disclosure that tends to undermine the integrity of the TILA disclosure regime. The effective APR misleads because it takes fees that will be imposed only once and suggests that the fees will be imposed at least twelve times. It also misleads because it takes fees that will be paid off over time and suggests that the fees will be repaid in a single billing period.[2]

We do not believe the proposed Fee-Inclusive APR would solve these fundamental problems. It is still a complex disclosure that would be confusing to consumers. For example, the Fee-Inclusive APR is to be disclosed as 0.00% if fees are attributed to the standard purchase APR but there is no standard purchase balance for the billing period. *See* proposed §§ 226.7(b)(6)(iv)(B), 226.7(b)(6)-5, and § 226.14(d)(2)(i)(A). This might well mislead a consumer to believe that the nominal APR on the standard purchase balance is 0.00%. In general, we believe the Board's consultant aptly summarized consumer response to the effective APR disclosure by stating that most consumers studied by the consultant "did not understand that effective APRs ...included both interest and transaction fees, and many of those who did understand the rates indicated that they did not provide useful information." [3]

Minimum Payment Notice

Citi supports the Board's three proposed options in § 226.7(b)(12) for calculating and providing the notice regarding the effect of making the minimum payment, subject to the following comments.

First, we believe the Board should provide an express tolerance for error of at least two months (prior to rounding) in all of the proposed calculations. This error tolerance is needed because a variation as small as a penny can change amortization calculations and repayment period disclosures materially. Take, for example, a minimum payment formula of the greater of

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[2] Our April 2005 comment letter elaborates as follows:

> Consider, for example, the distorted mathematics of a balance transfer offer of 0% interest for twelve months with a one-time balance transfer fee of 3%. The current inflated APR calculation method would require the creditor to disclose...that the APR on that offer is 36%. However, the consumer will in fact NEVER pay 36% on the balance transfer. If the transferred balance is $1,000 the consumer will pay 3%—or $30—for that credit whether the consumer repays the balance transfer in twelve months or two months. However, the consumer will never, under any circumstances, pay 36%—or $360—for that credit. The disclosure is misleading because it makes the 0% offer with a 3% fee look much more expensive than a balance transfer offer at 19.99% interest. Presumably, the rationale for the inflated APR formula is that the consumer *might* repay the balance transfer after a single month. This, though, is inconsistent with the consumer's motivation for transferring a balance, which is to carry that balance and *not* repay it immediately.

Letter from Carl V. Howard, General Counsel-Bank Regulatory, Citigroup, Inc., to Jennifer J. Johnson, Secretary of the Board of Governors of the Federal Reserve System, commenting on Docket R-2717-Regulation Z Advance Notice of Proposed Rulemaking, April 15, 2005, pp. 6-7.

[3] Macro International Inc., *Design and Testing of Effective Truth in Lending Disclosures*, May 16, 2007 ("Macro International Report"), p. viii.

$20 or 2% and two separate amortization calculations that, at the end of 28 months, arrived at remaining balances of $20 and $20.01 respectively. The $20 remaining balance would be paid off in the 29th month, resulting in the disclosure of a 2-year repayment period due to the Board's rounding rule. The $20.01 remaining balance would be paid off in the 30th month, resulting in the disclosure of a 3-year repayment period due to the Board's rounding rule. Without an express tolerance for error, card issuers could become embroiled in needless disputes regarding such disparities in repayment period disclosures.

Second, we support the Board's proposed exemptions from the minimum payment notice requirement as far as they go, but we do not believe they go far enough to target the disclosure where it would be most useful. For example:

- We support the Board's proposed exemption for non-revolvers in § 226.7(b)(12)(iii)(F), but believe it should go much further. Currently, this provision exempts from the minimum payment notice requirement any consumer who has paid in full (or had a zero or credit balance) for the previous two billing cycles. We believe the provision should exempt any consumer who (1) has paid his or her account in full during the past 12 months, (2) has paid more than the minimum payment during any of the past 3 months, or (3) has promotional balances that equal 50 percent or more of his or her total account balance. We believe this broader exemption for non-revolvers would help preserve the impact of the disclosure, particularly for consumers who drift from non-revolving to revolving status. It would also contain costs by eliminating the disclosure for those who have little interest in it, such as the 55% of non-revolvers who would find the minimum payment notice not useful or only slightly useful according to an April 2006 Government Accountability Office report.[4]

- We support an exemption for discontinued products for which no new accounts are being opened and for which existing accounts are closed to new transactions. Such products usually involve a very small number of accounts; the systems used to produce periodic statements for those accounts are often old and cannot be changed; and the systems and other efforts required to revise the periodic statement for those accounts could be extraordinarily costly and burdensome, particularly when evaluated on a per-account basis. We urge the Board to apply such an exemption to all products discontinued as of the date the proposed minimum payment notice requirement takes effect.

§ 226.9 Subsequent Disclosure Requirements

Change in Terms

Citi supports the Board's decision to review the change in terms policy of Regulation Z, because we believe the card industry needs to do a better job of stabilizing the contractual terms of existing accounts, particularly new ones. Consistent with that view, we took the step earlier this year of implementing a policy against "any time for any reason" changes to our Citi-branded

[4] *See* Government Accountability Office, *Credit Cards: Customized Minimum Payment Disclosures Should Provide More Information to Consumers, but Impact Could Vary*, GAO 06-434, April 21, 2006, p. 26.

consumer accounts. Now, we will not increase the rates and fees of an account or otherwise change the terms of the account until a consumer's card expires and a new card is issued, typically in two years. The only exceptions are for variable APR increases, increases to previously disclosed penalty APRs for "on-us" defaults due to late payments, exceeding the credit line, or dishonored payments, and changes imposed on us by law, our regulators, or our network providers.

Although we hope the industry follows our example with respect to all card accounts, we believe that change in terms policy for *new* card accounts warrants particular attention. We believe that changes in terms in the early stages of the account cycle surprise the consumer unfairly and undermine the integrity of the TILA disclosure regime for solicitation and account-opening disclosures. Accordingly, we urge the Board to consider a rule prohibiting a change in terms in a credit card account for at least 1 year from the date the card is issued. This would ensure that a consumer receives what was promised to him or her in solicitation and account-opening disclosures for a reasonable period, subject to the expiration of promotional APRs and the operation of other contractual provisions, such as variable APR and penalty APR provisions.

Following such a 1 year prohibition on changes in terms for new accounts, Citi believes a 45-day notice period prior to a subsequent change in terms is appropriate (again, excluding changes due to the operation of contractual provisions, such as variable APR and penalty APR provisions). For mature accounts, therefore, we support the Board's increase in the change in terms notice period from 15 to 45 days in proposed § 226.9(c)(2)(i).

Penalty APR Notice

Citi has substantial concerns about the new 45-day penalty APR notice set forth in § 226.9(g), which we believe does not sufficiently target penalty APR changes based on the element of surprise. Specifically, we believe the proposed notice errs by not distinguishing between "off-us" defaults with other creditors, which have an inherent element of surprise and perceived unfairness, and "on-us" defaults with the consumer's card issuer, which do not. As the Board's own consultant found, consumers already understand that APRs on their credit card accounts can increase if they "mess up somehow" through late payments or other on-us defaults.[5] What consumers need to be protected from are APR increases due to defaults that are in fact a surprise because they arise from off-us behavior.

Comptroller of the Currency John C. Dugan made exactly this point in recent remarks. In those remarks, Comptroller Dugan noted that penalty APRs imposed on credit card accounts due to off-us defaults are a "source of bitter consumer complaints" because of the element of surprise. He therefore recommended a more forceful remedy than notice alone. He recommended that any notice of such increases should be accompanied by a consumer right to opt out of them for a reasonable period of time until the consumer paid down the account or transferred the remaining balance elsewhere.[6]

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[5] *See* Macro International Report at 10.

[6] *See* Remarks by John C. Dugan, Comptroller of the Currency, Before the Financial Services Roundtable, Washington, D.C., September 27, 2007, pp. 6-9 (available at http://www.occ.treas.gov/ftp/release/2007-104a.pdf).

Citi agrees fully with Comptroller Dugan's focus on penalty APR increases due to off-us defaults as a fundamental source of consumer misunderstanding and complaint. Accordingly, we believe that the penalty APR notice should be targeted to off-us defaults, and we believe that it should be accompanied by a consumer opt out right. In fact, Citi adopted just such a policy in early 2005. This year we went even further and eliminated repricing due to off-us behavior altogether, except upon card expiration (typically, once every two years) and then only with prior notice and a right to opt out.

We urge the Board to apply the proposed 45-day penalty APR notice only to off-us defaults and not to apply them to on-us defaults for other reasons as well.

First, as previously noted, consumers already understand from the current disclosure regime that an on-us default may lead to an increase in their APRs. This understanding can only be enhanced by the more robust penalty APR disclosures in the Board's proposal at each stage of the account cycle. These include (1) the Schumer box's more thorough description of the penalty APR, its triggers, and its duration, (2) the repetition of that information in the new account-opening disclosure table, and (3) the proposed late payment warning for the periodic statement, which will reinforce each month that the penalty APR will be a consequence of late payment.

In fact, providing a 45-day penalty APR notice after a default on the credit card account itself may cause consumer confusion and aggravate rather than remedy consumer surprise -- as it would result in a penalty rate that takes effect well after a consumer has engaged in the defaulting behavior. Our experience with consumers is that they are surprised and confused when a default pricing change relating to behavior on the account is applied in a billing cycle after the one in which the triggering behavior occurs. When the acts are aligned -- the late payment or other default behavior and repricing treatment of the account -- consumers are able to relate the increase to their behavior and feel much less surprise and dissatisfaction with the change process.

Second, it is a misnomer to call the proposed penalty APR notice a 45-day notice. In general, card issuers do not change APRs in the middle of a billing cycle for customer relations, systems limitations, and other reasons. Accordingly, the 45-day notice requirement would probably result in notices of 60 days or more. This would exacerbate the alignment problem between acts and consequences noted above and the economic consequences noted below.

Third, a blanket delay in the imposition of penalty APRs would impede and delay risk-based repricing responses to defaulting consumers who now pose a higher credit risk. This delay would shift the cost of that risk from only those defaulting consumers who are demonstrating higher risk to *all* consumers regardless of their risk profile. These costs will likely manifest themselves in higher APRs, late fees, and other costs for credit cards generally to compensate for the limitations on risk-based repricing. These costs may also manifest themselves in pricing, underwriting, and operational inefficiencies that may adversely affect the industry and the general consumer population for some time to come. For example, the Board's supplemental information suggests that an express goal of the proposed 45-day penalty APR notice is to

provide increased time for defaulting consumers to shop for balance transfer offers. Such offers, particularly offers with preferential low APRs, may become less available to all consumers, as issuers become wary of the higher proportion of defaulting consumers in the balance transfer market and struggle to recalibrate their approach to that market.

Fourth, the penalty APR notice requirement as proposed would impede new product development. Today there are ideas about building flexible payment products with APR levels controlled by customer based payment behavior. These products might eliminate risk-based pricing as we now know it and replace it with customer controlled APRs. If the Board requires that a separate penalty APR notice be provided each time a consumer pays less than a required minimum, or hits a default trigger, such a product would not be feasible. Other new product opportunities and their attendant consumer benefits could similarly run afoul of any unduly restrictive advance notice requirement for penalty APRs.

If the Board still insists on applying the penalty APR more broadly than we support by treating on-us and off-us defaults alike, Citi urges the Board to at least decrease the notice period to mitigate the adverse consequences of the broader notice. Citi urges the Board to reduce the length of the notice period to (1) 15 days from the date of mailing, if the notice is mailed on a stand-alone basis, or (2) 1 billing cycle (adjusted for mailing time) if the notice is provided on the periodic statement. By the latter, we mean that a notice given on a periodic statement mailed to a consumer will take effect as of the first day of the consumer's next billing cycle (so that, for example, a notice provided in a periodic statement mailed in early October following the close of the consumer's September billing cycle would take effect on the first day of the consumer's November billing cycle). Both notice periods would provide the consumer with ample time to adjust to a penalty APR increase, particularly given the relative speed and ease of finding and applying online for credit card accounts with promotional APR offers.

For similar reasons, Citi also urges the Board to accommodate penalty APRs that are triggered by two sequential default events in any penalty APR notice. To do so, Citi urges the Board to (1) require the notice only after the first triggering event, and (2) allow the imposition of the penalty APR immediately after the second triggering event without further notice to the consumer, provided the second event occurs within a reasonable time after the first event. Again, this accommodation would contain somewhat the disruption to risk-based pricing responses by issuers in a context where the risk of surprise is virtually eliminated by the notice following the first default event.

§ 226.10 Prompt Crediting of Payments

Citi supports the Board's proposed revisions to § 226.10 regarding the prompt crediting of payments. This includes the revisions to § 226.10(b)-2, which provide that payments made via a creditor's web site are generally conforming payments if the creditor promotes such payments on the creditor's website. Citi urges the Board to extend this comment to payments made in a retail store by providing that in-store payments are generally conforming payments if the creditor or merchant promotes such payments. Citi believes such a modification to the comment would help clarify when in-store payments are conforming, which is an issue that arises from time to time in the retail private label credit card business.

§ 226.12 Special Credit Card Provisions

Citi supports the Board's proposed changes to § 226.12 regarding card issuance and liability.

However, Citi urges the Board to clarify the meaning of the term "employee" in § 226.12(b)(5). This provision implements the TILA provision permitting a card issuer and organizational customer to agree privately to the organization's liability for unauthorized card use if ten or more cards are issued by the card issuer to "employees" of the organization. *See* TILA § 135, 15 U.S.C. § 1545. In today's workforce environment, the "employees" participating in an organization's corporate card program might include, for example, traditional employees, temporary employees, independent contractors, or even members of an organization's supplier, dealer, or other commercial network. We believe these and any other individuals permitted by an organization to participate in its corporate card program should be deemed "employees" for purposes of this provision.

§ 226.13 Billing Error Resolution

Citi is concerned about § 226.13(a)-2, a new comment that applies billing error resolution procedures to underlying goods and services purchased through third party payment intermediaries rather than just to the purchase of the payment service itself. We believe this requirement may unfairly burden card issuers, who are likely to find it difficult in many instances to trace goods and services purchased through payment intermediaries, particularly those used for purchases on Internet auction sites and the like. We also do not understand why the card industry should be forced to subsidize Internet and other payment intermediaries by allowing them to ride freely on the card industry's billing error procedures and protections. For these reasons, we believe the proposed comment should be withdrawn.

Citi is also concerned about the blanket statement in proposed § 226.13(c)(2)-2 that a creditor may not reverse any amounts credited to an alleged billing error after the required resolution period "even if the creditor subsequently obtains evidence indicating that the billing error did not occur as asserted by the consumer." Presumably, this statement is not intended to apply to instances of consumer fraud or bad faith in asserting an alleged billing error or impeding the investigation of that error during the resolution period. Accordingly, the comment should be clarified to exclude such situations.

§ 226.16 Advertising

Citi supports the Board's proposed changes to § 226.16, but we believe the proposed minimum monthly payment advertising rule in § 226.16(b)(2) requires substantial clarification as follows:

- The Board should specify a manageable set of assumptions for the disclosure of the total dollar amount of the pay off. These assumptions might include, for example, that minimum payments are the only amounts paid and always on the due date; no interest

rate changes will affect the account; no other balances are carried on the account; no taxes or other ancillary charges are added to the purchase price; and the goods in question are delivered on a single date.

- The Board should provide card issuers with model language describing the assumptions used for the disclosure and identifying the disclosure as a rough estimate. Such language should be brief and simple in the interests of consumers and issuers alike, and its use should grant card issuers an express "safe harbor" against any claims that the disclosure is misleading. Absent such a safe harbor, we believe the proposed disclosure is an invitation to claims against card issuers under both TILA and state laws regarding deceptive practices.

- The Board should clarify that this new advertising rule is not triggered unless the advertising promotes a minimum monthly payment as a positive dollar amount. In particular, the Board should clarify that ancillary presentation of a minimum payment formula as part of a "no interest" or similar promotional offer (which is often an imperative to avoid deceptiveness claims on a promotional offer with minimum payments) does not trigger this requirement.

Effective Date

Citi urges the Board to adopt an effective date for its Regulation Z proposal that is at least 18 months from the date of final promulgation. The Board's proposal is a large and complex one and will remain so whatever its final content. To comply with it, Citi and other card issuers will need to engage in extensive systems development, operational changes, and multiple rounds of testing and adjustment. An implementation period of at least 18 months would be required for issuers to do this efficiently and well.

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On behalf of Citigroup, I thank you again for this opportunity to comment on the Board's proposed amendments to Regulation Z's open-end credit rules. If you have questions on any aspects of this letter, please feel free to call me at (212) 559-2938, Joyce ElKhateeb at (212) 559-9342, or Karla Bergeson at (718) 248-5712.

Sincerely,

Carl V. Howard
General Counsel-Bank Regulatory

Cc: Joyce ElKhateeb
Karla Bergeson
Viola Spain