Department of Consumer Affairs
Office of Financial Empowerment

The New York City Department of Consumer Affairs' Comments to Docket No. R-1286, Truth in Lending Submitted to The Board of Governors of the Federal Reserve System

July 18, 2008

I. Introduction

The New York City Department of Consumer Affairs (DCA) appreciates the opportunity to comment on the rules the Board of Governors has proposed in its Docket No. R-1286.

DCA recognizes the Board's commitment to improve disclosures in the credit card market, which are critical for ensuring a strong financial services marketplace in which consumers at all income levels can access credit to meet short-term consumption or emergency needs. DCA strongly supports the proposed amendments that would improve advertising requirements, fee disclosures and the disclosure of a new right to opt out of changes in credit terms.

The terms and conditions under which increasingly complex credit products are offered must be clear and understandable to the consumer in order to have a fair and thriving marketplace. To ensure that the marketplace operates fairly and that both credit issuer and consumer have sufficient information to make informed choices, DCA proposes several complementary regulatory changes within the Board's rule-making authority. The Board should ban certain egregious advertisements and fees entirely, ensure comparability of credit card offerings with comprehensive effective APR disclosures and require that customers be offered the opportunity to opt in to new credit card terms, rather than be given the burden of opting out.

II. Background on DCA

DCA submits these comments as the city agency empowered under the New York City Charter to "plan, make recommendations, conduct research and develop programs for consumer education and protection, and facilitate the exchange and dissemination of information in consultation with agencies, federal and state officials, commercial interests, private groups and others working in this field and coordinate the consumer protection activities of other city agencies."[1] Among other functions, the Charter also grants the DCA the obligation to enforce all laws relating to advertising and offering goods and services, and to receive, evaluate, and investigate complaints.

To ensure a fair and vibrant marketplace for consumers and businesses alike, DCA licenses 55 categories of businesses; mediates thousands of consumer complaints annually; educates consumers and businesses through press releases, press conferences, educational materials, community outreach and public hearings; and works with other city and law enforcement agencies to protect consumers from unfair and deceptive practices.

DCA enforces the City's landmark Consumer Protection Law to prevent consumers from being defrauded in the marketplace. The Department's aggressive enforcement actions against industries including major wireless companies, tax preparers, electronics stores and secondhand car dealers, has ensured that consumers are protected from deceptive or misleading marketing practices and are provided with information to make meaningful market choices.

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[1] Chapter 64, §2203(a).

As a consistent and vocal proponent for meaningful disclosures across a range of industries. DCA implements and enforces local laws requiring clear and conspicuous disclosures. For example, home improvement contractors, licensed by DCA, must provide written contracts with an itemized list of labor and materials, a schedule of payments linked to project milestones, and notices of cancellation that the consumer can execute.[2] Similarly, consumers using paid tax preparers in New York City are protected by DCA's Consumer Bill of Rights Regarding Tax Preparers which entitles them to receive a statement describing the tax preparation service, with estimates of the service's total cost and the date when the refund will arrive, before becoming obligated to any tax preparer.[3]

DCA's impact on consumer disclosures is broad and extends beyond businesses licensed by the Department. For example, DCA petitioned to the New York State Public Service Commission to improve disclosure requirements for energy service providers, yielding promising preliminary rules.[4] DCA's rule-making and enforcement power, combined with effective consumer education, makes it a powerful advocate for more than eight million New Yorkers and millions of tourists.

DCA's Office of Financial Empowerment (OFE) was the first initiative launched by the Mayor's Center for Economic Opportunity (CEO), an ambitious and aggressive multi-pronged anti-poverty effort. OFE is dedicated to educating, empowering and protecting New Yorkers with low incomes to help them retain income and build assets. OFE's accomplishments include: negotiating with financial institutions to develop a specialized "safe" starter savings account for low-income participants in CEO's OpportunityNYC program;[5] piloting asset-building savings products for EITC recipients at tax time; and conducting research on the financial behaviors and attitudes of New York City residents and employees. OFE also regularly convenes financial education providers and stakeholders under the auspices of its Financial Education Network and recently launched a website with an online, searchable directory of financial education providers. DCA's partnership with non-profits and city agencies providing financial counseling and classes, as well as its licensing of debt collection agencies, gives it unique insight into consumers' use of credit and the existence of deceptive or predatory practices. It is this broad and varied experience that informs DCA's comments. Finally, OFE is a founder and co-chair of a national network of municipalities working to improve financial services for low-income households, called the Cities for Financial Empowerment. It is this broad and varied experience that informs DCA's comments.

III. Background and Context: Significant growth in consumer debt and financial product complexity requires increased disclosure and consumer protections.

The consumer credit industry has grown at a massive pace in recent years. The Federal Reserve reported in July that consumer credit increased by $7.8 billion to $2.57 trillion, up 3.6% in the month of May 2008.[6] Consumer debt has been growing dramatically for years. According to the Government Accountability Office (GAO), the amount of credit card debt increased nationally by 238% between 1990 and 2005, from $237 billion to about $802 billion.[7]

Growth in debt-holding comes from both an increased debt burden among existing borrowers and an increased availability of mainstream credit offerings to lower-income households that were historically excluded from such credit. From 1998 to 2004, the number of low-income households with credit card

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[2] New York City Administrative Code, Title 6, §2-221.

[3] New York City Administrative Code, Title 20, §20-740.1.

[4] For more information. http://home2.nyc.gov/html/dca/downloads/pdf/psc_pr08035.pdf

[5] CEO has piloted an innovative conditional cash transfer program called the "OpportunityNYC". The OpportunityNYC account is a safe and affordable account which makes overdraft virtually impossible. Ten financial institutions agreed to offer this no-fee starter account for participants. To date, more than 1500 accounts have been opened.

[6] Federal Reserve Board. "Federal Reserve Statistical Release: Consumer Credit." July 8, 2008. Available at: http://www.federalreserve.gov/releases/g19/Current/

[7] Government Accountability Office. "Credit Cards: Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers." Report GAO-06-929, September 2006. (Hereafter "GAO 2006.") p. 88.

debt increased by 18%, the largest increase of any income group.[8] DCA/OFE's own research in two low-income New York City neighborhoods found that 58% of residents surveyed have at least one credit card and 71% of those cardholders carry a balance, averaging $2,500.[9] Even more striking, this growth in credit cards has even extended to people without bank accounts—among unbanked residents surveyed in these neighborhoods, 21% also have at least one credit card. While the extension of credit to low-income households is a valuable development, it opens the door to potential predatory and harmful practices.

It is also clear that families are struggling to pay off their debt. More than one-quarter of families in the lowest income quartile are now paying more than 40 percent of their income on debt payments; fully one-third of low-income borrowers reported in 2004 that they have difficulty making payments on time.[10] In New York City, consumer bankruptcy filings in 2007 were 69% higher than in 2006.[11]

IV. Proposed Amendments and DCA Recommendations

The proposed regulations represent a significant step toward increasing consumer information by requiring strengthened disclosures around credit card terms and conditions. DCA urges the Board to stand firm on its proposal regarding the following practices:

- Increased disclosure concerning teaser rates
- Plain-language disclosure of terms and conditions
- Increased disclosure of membership and other fees that reduce the consumer's effective credit limit
- Consistent cut-off times and the establishment of reasonable standards for payment

However, these improvements alone will not address all of the regrettable practices that have emerged in the credit card industry. In the following comments, DCA urges the Board to require credit card issuers to adhere to two critical principles of consumer protection: that customers receive sufficient information to make sound decisions in their own best interest, and that pricing and terms should not change without the consent of both the buyer and the seller. Specifically:

A. Egregious practices such as fee-harvester cards, promotional checks or "no interest" advertising should be prohibited outright;
B. Credit issuers must disclose all fees and interest rates in a comparable and meaningful manner, including a clear effective APR, at account opening and through periodic statements;
C. Establishment of standard payment practices is critical, but consumers should be given a more reasonable payment period;
D. Consumers must opt into changes in terms, instead of opting out of unilateral changes, and be given sufficient time to pay off their existing balance if their credit issuer would prefer to stop extending credit.

A. The Department applauds the Board's proposal for improved disclosures related to advertisements for introductory and promotional interest rates, but urges broader application of disclosures and outright prohibition of certain egregious practices.

1. Board proposal effectively addresses "teaser rates"

The proposed rules (Section 226.16) require that advertisements include the terms "introductory" and "promotional," along with the post-promotional interest rate or range of rates, and the date that the promotional period ends. Advertising "teaser" rates has been a longstanding problem for consumers

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[8] GAO 2006.

[9] New York City Department of Consumer Affairs. "Neighborhood Financial Services Study: An Analysis of Supply and Demand in Two New York City Neighborhoods." June 2008. (Hereafter "Neighborhood Financial Services Study.") Available at www.nyc.gov/ofe

[10] Matt Fellowes and Mia Mabanta. "Borrowing to Get Ahead, and Behind: The Credit Boom and Bust in Lower-Income Markets." Brookings Institution, May 2007.

[11] Consumer bankruptcy filings. (2008). Wall Street Journal, A4

who may not be aware when, or how much, their rates may change. It is well recognized in other industries that "special promotions" often attract consumers and thus must be subject to special regulation; one could even consider this type of advertisement "classic" consumer fraud. Adjustable-rate mortgages, which attracted consumers with reasonable early payments that would reset in the future, are a leading factor in the current foreclosure crisis and a prime example of how disclosure, while important, is insufficient to prevent consumer abuses if not regulated.[12] These disclosures should make clear the interest rate that both the balance and new purchases will be subject to after the promotional period, and the indexed rate of the line of credit over a 3-5 year period following the promotional period. DCA also urges the Board to require that the disclosures appear in close proximity to the words "introductory" and "promotional." Proximity can have a sizable impact on the likelihood of reading and reacting to the notification.[13]

2. "No interest" advertising disclosures insufficient

While the Board's proposal reflects a concerted effort to target deferred interest plans, DCA finds the proposal insufficient to educate and protect consumers from a deceptive product. Section 216.16(h) requires that the length of the deferral period and terms of the period be disclosed, along with statements informing consumers about the potential to be charged back interest and the inability of minimum monthly payments to fully amortize the balance as appropriate. This provision provides consumers with moderately better disclosure on the inherent risks in so-called "no interest" or "no payment" plans, but it does not go far enough. The term "no interest" should not be used in conjunction with any advertisement that could potentially result in the consumer being charged back interest for the length of the deferral period. It is reasonable for a consumer to assume that interest would never be assessed on a deferral period advertised as "no interest," yet the Board's proposal does not fully address this type of misleading advertisement.

3. Advertising restrictions should apply to penalty interest rates

DCA questions the imposition of advertising restrictions applying to promotional, introductory and deferred interest offers without also applying to penalty interest rates, as mandated for credit card applications and solicitations in Section 226.5a(b) and account opening disclosures in Section 226.6(b)(4)(ii)(C). Penalty rates should be included as part of the range of applicable rates that a consumer may be required to pay under certain circumstances. Penalty rates could also be included in advertisements that do not contain the "promotional rate" or "deferred interest" language. In both contexts, disclosure of penalty rates in advertising would enable consumers to compare products more fully and would foster appropriate credit behavior once credit accounts are opened, assuming that consumers seek to avoid the circumstances disclosed which would incur a penalty rate.

4. Advertising restrictions should apply to electronic pop-up and banner advertisements

While DCA recognizes that some circumstances exist in which regulations on advertising may not be effective, it questions the exclusion of electronic banner and pop-up ads from advertising regulations regarding promotional and deferred interest offers. Serving as the initial point of contact for consumers, banner ads are a marketing tool particularly prone to misinformation, and consumers may be unaware of the Internet locations to which banner ads may refer them. One prime example is LowerMyBills.com, a "lead generator" that steers loan applicants to financial institutions, which uses colorful ads such as "two-stepping cowboys, frisky rooftop dancers, and weird tattoos."[14] In an interview with *The New York Times*, the creator of many of these ads said her online advertisements for financial companies typically earned around $4 in lender referral fees for each dollar spent on the ad—double the average for most lead-generation companies. This type of pervasive banner

[12] New York State recently passed a law aimed at the subprime mortgage crisis that requires mortgage brokers to factor "ability to pay" in lending decisions and to offer the consumer the most appropriate loan product possible. For more information: Manny Fernandez. "In Confronting the Foreclosure Crisis, A Bill Strikes a Balance." *New York Times*, June 22, 2008.

[13] New York City local rules, developed and enforced by DCA, require that when the use of the word "free" is used, terms and conditions must be clearly and conspicuously disclosed in close proximity to that word. (Rules of the City of New York, Title 6, § 5-06(b). The Board should also ensure that disclosures in a sufficiently large and clear font to be legible to consumers, as illustrated by the sample disclosure provided in the proposed rules.

[14] Brad Stone. "Don't Like the Dancing Cowboys? Results Say You Do." *New York Times*, January 18, 2007.

advertising may serve as an effective mechanism to steer consumers in a particular direction, but it does not appropriately give them the information to make decisions about where they are ultimately directed. Effective disclosures must inform consumers as they are making purchase decisions, rather than allowing companies to lure customers with misinformation and providing disclosures just before the sale.

5. Promotional checks constitute deceptive advertising.
The Board's recommendation for increased disclosure on interest rates and terms regarding checks used to access a credit card account in Section 226.9(b)(3) is sound. However, these products are deceptive on their face (i.e., intended to appear like another banking product with considerably lower costs). These are not standard "checking" products, and may be subject to higher rates than standard credit card purchases, including treatment as cash advances. As evidenced by the Board's own focus groups on payment allocation cited in its proposed amendments to Regulation AA, consumers have difficulty understanding the order in which balances are paid, and that different types of transactions incur different interest rates. The Federal Trade Commission has worked diligently to ensure that "fake checks" are not used to lure customers into sweepstakes or lottery scams.[15] Promotional checks only add to the staggering number of deceptive direct-mail credit solicitations sent to consumers. More than half of credit cards held by consumers come from mail solicitation.[16] Consumers are frequently bombarded with mail solicitations for credit; in 2004, 5.2 billion solicitations were mailed in the United States, or 47 per household.[17] Banning promotional checks outright is the only truly effective way to ensure that consumers are not ensnared in costly scams nor unneeded debt.

B. The Board's plain language disclosure requirements at account opening are critical, but should be expanded to include a comprehensive "Effective APR."

1. The Board's proposed use of plain language and consistent terms in account opening disclosures is critical for consumers to understand increasingly complex financial products.
The ability to make comparisons between credit offerings is critical to a fair and vibrant marketplace. Credit card disclosure statements are notoriously difficult for consumers to understand, as revealed by the Board's own focus group findings on terms such as "grace period" and "finance charge." The Department applauds the Board's proposal to replace these terms with "How to Avoid Paying Interest" and "Paying Interest," respectively, or materially similar terms. These are terms that consumers should be able to comprehend and use well when reviewing credit card solicitations. Literacy experts have stressed that the use of "plain language" materials enable people with lower literacy levels to be able to make better decisions as consumers. DCA/OFE's research found that 33% of residents who lacked a high school degree held at least one credit card.[18] Given that evidence suggests that lower-literacy individuals are less likely to be participants in the mainstream financial sector, plain language disclosures could also help bring people into the financial mainstream and help protect them from abusive offerings. The Board should ensure, therefore, that plain language disclosures are written in a clear, sufficiently large and legible font.

2. Disclosure of APRs should also include an "effective APR" that takes into account additional fees.
The Board's proposal in Section 226.5a(b)(1) requires card issuers offering a range of APRs to disclose either specific rates or a range of rates, and that these rates vary based on the consumer's creditworthiness, as was announced in the June 2007 proposal. However, this disclosure does not require a comprehensive "effective APR," which takes into account all fees. The "effective APR"

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[15] Press Release: "Court Halts Bogus Check Scam Targeting "Lottery Winners;" Money Transfers Used to Defraud Consumers." Federal Trade Commission, February 2007. Available at: http://www.ftc.gov/opa/2007/11/cashcorner.shtm
[16] Testimony of Travis B. Plunkett, Legislative Director, Consumer Federation of America, before the Committee on Banking, Housing and Urban Affairs, United States Senate. "The Effect of Current Credit Card Industry Practices on Consumers." January 25, 2007.
[17] Kidane/Mukerji in Financial Services Review, quoted in GAO 2008 (page 91).
[18] Unpublished tabulations from Neighborhood Financial Services Study.

should be disclosed within the Schumer box to allow consumers to compare products from various credit issuers without being deceived by a lower APR and higher flat fees. As consumers use credit, they are subjected to a wide variety of discretionary fees not calculated as part of the APR, such as account opening fees, annual fees, late payment fees, over-limit fees, and foreign currency fees. Annual fees alone may be upwards of $75. Similar to unit cost disclosure requirements in grocery stores, consumers cannot make meaningful credit comparison without comprehensive effective APRs.

Additionally, DCA recognizes the value of the Board's proposals to improve disclosures relevant to membership fees, usage fees and other one-time charges. Section 226.5(b)1 requires disclosure on the right to cancel memberships with fees refunded, and Section 226.6(b)4 requires disclosing the remaining available credit. Both provisions are critical to avoiding "fee-harvester" credit cards identified by groups like the National Consumer Law Center that charge obligatory "membership" and other fees that occupy the majority of that card's credit limit. *However, the proposal still falls short of requiring an effective APR disclosure that would simplify comparison of fees between these and more mainstream cards.* The proposal also allows the continued practices of opt-out "membership fees" where consent is conferred by making a purchase, or even by lack of action. These "negative option" fees are often charged without consumer knowledge or explicit consent. Negative options have been barred from usage in many other industries; allowing a consumer to be refunded membership fees is not nearly as effective for consumers as requiring opt-in consent for membership or usage fees.

C. Establishment of a standard cut-off time and reasonable repayment period will be a critical step towards consumer fairness. However, the Board should require a more reasonable payment period.

1. Standards for payment are important but are a minimum threshold to be met for fair transactions.
Consumer complaints about credit card practices often include nominally on-time payments that were treated as late due to creditor inaccessibility or arbitrary cut-offs. Indeed, some even speculate whether creditors sometimes force such payments to be treated as late. Late charges have a large financial impact on consumers; the average late fee increased from $13 to $29 between 1996 and 2002, as revenue from late fees rose from $1.7 billion to $7.3 billion.[19]

The Board proposes reasonable disclosures that would inform consumers of their right to make a payment anytime before 5:00 p.m. local time and that payments received by mail will not be counted as late if they were received the business day following a holiday or other closure. Informing consumers of their responsibilities as borrowers—such as the use of checks or money orders and the inclusion of a payment stub or account number—provides some clarity to a marketplace with inconsistent and often arbitrary policies. Reasonable and clear payment acceptance policies are a basic requirement for fair transactions between credit issuers and consumers. These standards for payment should be added to other disclosures that the Board has linked to periodic statements in Section 226.10(b)(3), such as those provided at account opening. One possible best practice disclosure of what constitutes a timely payment is the Internal Revenue Service's guidance to consumers regarding tax filing.[20]

2. A 30-day "Safe Harbor" period would be more reasonable than 21 days.
Credit issuers have been steadily reducing the length of time during which consumers could be assured that they would pay no punitive fees. Until the 1990's, a 30-day repayment period before any

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[19] Demos 2003.

[20] Internal Revenue Service disclosure on timely tax filing: "Your paper return is filed on time if it is mailed in an envelope that is properly addressed, has enough postage, and is postmarked by the due date. If you send your return by registered mail, the date of the registration is the postmark date. The registration is evidence that the return was delivered. If you send a return by certified mail and have your receipt postmarked by a postal employee, the date on the receipt is the postmark date. The postmarked certified mail receipt is evidence that the return was delivered." Publication 17 (2007): Your Federal Income Tax, Chapter 1 (Filing Information). Available at: http://www.irs.gov/publications/p17/ch01.html

fees would be levied was standard practice, but this "float" declined, on average, to 24 days by 1999 and 20 days today.[21] The Board's establishment of a 21-day "safe harbor" in its related proposal for Regulation AA does not reflect best practice, but rather existing industry practice. Current legislation in the House of Representatives would establish a 25-day repayment period from the date a statement is mailed.[22] DCA urges the Board to consider a return to a 30-day "safe harbor" period that would allow consumers sufficient time to receive, review, and mail payments.[23]

Additionally, the Board's disclosure proposal is ineffective unless the consumer knows when the bill was actually mailed. The Board should require date-stamping of statements, along with plain-language disclosures that inform consumers that they cannot be charged a late fee for at least 30 days from statement mailing. The Board should also amend its proposal to include on periodic statements both the date at which fees would be levied and the date at which the account would be considered in default.

D. Ensuring that consumers know they have the right to opt out of changing terms is valuable, but would be far more effective if credit issuers were instead required to give consumers only the right to opt in to new terms.

Consumers have the right to be confident that the price they pay for credit will not change arbitrarily or without their knowledge. The Federal Trade Commission (FTC) recognizes this fundamental principle in many industries. For example, it recently brought a case against an online advertiser that changed its privacy policy midstream.[24] This argument rests on the concept that consumers should not be surprised; if an agreement has been made, a change requires the explicit, not implicit, agreement of both parties. Changes in credit terms generally indicate a change in the consumer's cost of credit. In some cases, as further detailed in other Board proposals relating to credit cards, these changes are in response to particular events, such as making late payments, for which the consumer is ultimately responsible. In others, these changes may appear to be arbitrary, as evidenced by one major credit-card lender that more than doubled the rates of non-default card-holders in January 2008, without giving an explanation for the increase.[25]

While DCA respects the right of credit issuers to change future offers of credit based on changing consumer risk profiles, it is not acceptable to change the terms of credit applicable to current balances, nor is it acceptable to change terms without the explicit consent of the consumer. Complete disclosure of new terms, coupled with the requirement of affirmative consent to new terms, enables consumers to evaluate information that directly affects their financial well-being and to respond immediately.

1. Requiring consumers to affirm changes through opt-in mechanisms would enable consumers to make better decisions.

Given the Board's desire to fully inform consumers of changes in terms, DCA questions whether regulations aimed at an assumption that consumers will accept new terms is an appropriate default choice. Since changes in terms are often to the consumer's detriment, it would be imprudent for many

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[21] Testimony of Adam J. Levitin, Associate Professor of Law, Georgetown University Law Center, before the Subcommittee on Financial Institutions and Consumer Credit, Financial Services Committee, United States House of Representatives. March 13, 2008.

[22] H.R. 5244: Credit Card Holders Bill of Rights, sponsored by Rep. Carolyn Maloney (D-NY) and Rep. Barney Frank (D-MA).

[23] DCA also questions whether late fees levied within 30 days of billing date can be justified. Unlike close-ended loans, revolving credit issuers already charge consumers for late payments through finance changes as long as the balance is not paid in full. The Board should consider reviewing a requirement that credit issuers wait a full 30 days past the statement due date before issuing any late fees.

[24] Press Release. "Gateway Learning Settles FTC Privacy Charges: Company Rented Customer Information It Pledged to Keep Private." Federal Trade Commission, July 7, 2004. Available at: http://www.ftc.gov/opa/2004/07/gateway.shtm

[25] Bank of America sent letters notifying some responsible cardholders that it would more than double their rates to as high as 28%, without giving an explanation for the increase, according to copies of five letters obtained by *BusinessWeek*. Robert Berner. "A Credit Card You Want to Toss." *BusinessWeek*, February 7, 2008.

consumers to accept such terms in the presence of alternative sources of credit. Empirical research has catalogued the importance of default settings. Consumers often make decisions to their own detriment by not making a decision at all.[26] An "opt-in" system would expressly remind consumers that they have the option of continuing their relationship with a creditor, but that they must elect to exercise this option and proactively accept the risks and fees associated with it. In cases where consumers discover new, predatory terms, they would thus be empowered to "vote with their feet" and move their business to another creditor, thus supporting a competitive market.

2. Consumer rights to opt-out of changes in terms and conditions are only effective if in conjunction with clear disclosures, sufficient time to respond and reasonable allowances for repayment of debt on current terms.

Even if the Board declines to adopt DCA's proposal to require opt-in rather than opt-out changes in terms, additional protections can strengthen consumer fairness. First, consumers must be given sufficient time to opt out of price changes. Historically, rapid turnaround on opt-out has hampered consumers' ability to take advantage of this right regardless of the clarity of the disclosure.[27] Second, disclosures must make clear to consumers that subsequent usage of the card indicates acceptance of the new terms if such a provision exists. Finally, consumers must be given a reasonable repayment period in cases where the only option under "right-to-reject" is to pay or transfer the balance. Current right-to-reject laws in several states have proven underutilized because consumers with high debt levels are unable to repay in full in a short time period. With extremely high debt levels found throughout the country—a survey of low-to-middle-income borrowers found average credit card debt of $6,504, or more than two months gross salary[28]—short repayment periods effectively eliminate a consumer's realistic "right-to-reject." More appropriately, if a consumer opts out of new terms, the creditor should stop extending credit, and allow the consumer to pay off the existing balance at the current interest rate over a time period dictated by the minimum payments. Thus, a consumer would have the right to pay off a balance at the minimum payment level, as specified by the creditor, provided the consumer maintains a sound payment record over that time period.[29]

V. Conclusion

The Board's proposed amendments to Regulation Z would enhance disclosure of terms and conditions for credit cards in advertising, account opening disclosures, periodic statements, and changes in terms. These amendments would improve consumer awareness of terms and practices that may be predatory or otherwise detrimental. However, disclosure cannot be the only tool utilized by regulators to create a fair market for credit cards. Egregious and abusive practices, such as fee harvester cards, promotional checks or "no interest" advertising should be prohibited outright. Credit issuers must adhere to basic principles of consumer fairness by disclosing all fees and interest rates in a comparable and meaningful way, including a clear effective APR, both at account opening and through periodic statements. The

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[26] Richard H. Thaler and Cass R. Sunstein. *Nudge: Improving Decisions About Health, Wealth, and Happiness.* New Haven: Yale University Press, 2008.

[27] In the example cited by *BusinessWeek*, Bank of America's unexpected interest rate increases required customers who wished to opt out to contact the lender by mail only (with no form or envelope provided) within a quick turn-around period: those receiving notices during the second half of January had until either February 19 or 29 to respond. In another example, consumers who wanted to reject changes in terms on a Capital One card were unable because of the limited time frame. Michael Donovan, a consumer lawyer testifying on behalf of the National Consumer Law Center and National Association of Consumer Advocates, told a U.S. Senate committee hearing in 2007 that one of his clients was given fifteen days to reject changes in terms on his Capitol One card, and missed the deadline because he had been on vacation and the mailing looked no different from Capitol One's blanket credit card solicitations. "Written Testimony of Michael D. Donovan, Partner, Donovan Searles, LLC, on behalf of National Consumer Law Center and National Association of Consumer Advocates." Committee on Banking, Housing, and Urban Affairs, United States Senate. January 25, 2007.

[28] Demos and the Center for Responsible Lending. "The Plastic Safety Net: The Reality Behind Debt in America." October 2005.

[29] An advantage to a minimum payment-linked repayment period would be that credit issuers would be given a strong incentive to ensure that minimum payments were paying down at least some principal each month, as recommend by the Board's interagency "Account Management and Loss Allowance Guidance," January 8, 2003

Board should limit unilateral contract changes by requiring that consumers must opt in to changes in terms and be given sufficient time to pay off their existing balance if their credit issuer would prefer to stop extending credit. The alarming increase in consumer debt, the increasing complexity of credit products, and the clear evidence of consumer hardships related to these trends compels more serious action than the Board proposes at this time.

Respectfully submitted,

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