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VIA FACSIMILE

December 16, 2005

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

RE: Docket Number R-1217

Dear Ms. Johnson:

This comment letter is submitted on behalf of GE Consumer Finance – Americas ("GECF") in response to the Advanced Notice of Proposed Rulemaking ("ANPR") issued by the Board of Governors of the Federal Reserve ("Board") in the October 17, 2005 *Federal Register*. In general, the ANPR is designed to solicit comment on how it should propose to implement the amendments to the Truth in Lending Act ("TILA") made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("Bankruptcy Act"). GECF is pleased to provide its comments on the ANPR.

Executive Summary

As discussed in more detail below, we offer the following points, among others:

- The Board should apply minimum payment disclosure requirements to credit card accounts only, and then only once annually to cardholders who may benefit from them, *i.e.*, cardholders who consistently make only the minimum payment, who have relatively high account balances, and who have relatively low minimum payments.
- The Board should develop an approach to providing the "actual" number of months to consumers that is workable for creditors, including by allowing for certain assumptions and by providing for a safe harbor.
- The disclosure requirements relating to introductory rates should be flexible.
- Internet solicitation disclosures are "readily accessible" if there is a link provided to them.
- Electronic advertisements appearing on a consumer's screen and similar electronic marketing tools should be treated as an "envelope or other disclosure" for purposes of the new introductory rate disclosure requirements applicable to electronic disclosures.

GECF's Unique Perspective

GECF is a member of the General Electric Company family. Our origins date to 1934, when we started by financing General Electric appliances. Currently we offer credit card products, mortgage products, and other payment programs. At year end 2004, we held approximately $28 billion in credit card receivables, making GECF one of the largest credit card issuers in the United States. The vast majority of these receivables are associated with private label credit cards, although GECF also offers general purpose credit cards including co-branded general purpose cards.

As a major private label credit card issuer, GECF partners with over 100 retail brands to provide consumers with over 100 million private label credit card accounts. The availability of store credit, including credit provided by GECF as part of its private label and co-brand programs, is a critical driver of the economy because it provides increased purchase power to consumers. Consumers and retailers alike also benefit from private label programs by creating a stronger affinity between the consumer and the retail brand. Consumers also receive unique discounts and promotions in connection with the use of private label cards. Private label customers also visit the retailer approximately 50% more often and spend 30% more per visit than other customers.

We take pride in offering each of our partner retailers with unique programs designed to meet each of their specific needs. As a result, GECF operates a variety of different private label programs with different pricing structures and disclosure regimes. Furthermore, we also offer a variety of programs within the same retail account in many circumstances, increasing the complexity of our offerings and our operations. GECF urges the Board to keep this important point in mind in connection with our desire for flexibility and simplicity in the implementation of the amendments to TILA.

GECF provides this information as background to the Board to illustrate our long history of providing private label and similar programs to consumers and retailers. We believe our position in the market allows us to provide important and unique input to the Board in response to the ANPR, and therefore GECF is taking the rare step of submitting comments to the Board.

Implementing the New TILA Provisions as Part of the Regulation Z Review

The ANPR notes that the Board initiated a review of the open-end credit rules in Regulation Z by issuing an advance notice of proposed rulemaking in December 2004 ("First Proposal"). The Board proposes to combine the current ANPR with the First Proposal so that it may issue only one proposed rule in connection with its rulemaking process. Specifically, the Board states that "[i]mplementing the Bankruptcy Act amendments as part of the broader Regulation Z review permits the new disclosures for minimum payments and introductory rates to be developed in the context of other changes that might be made both to the content and the format of current open-end disclosures,..By incorporating the Bankruptcy Act amendments into the Regulation Z review, the Board can coordinate the changes and make all changes to the periodic statement disclosures at one time."

We concur with the Board's assessment of how it should proceed with respect to the First Proposal and the ANPR. We agree that integrating the regulatory review into one proceeding, and one revision, allows for greater coordination among the revisions as well as reduced regulatory compliance costs. This is especially true given the number of programs we would need to review and adjust in connection with regulatory revisions. GECF urges the Board to retain this approach to its amendments to Regulation Z.

Minimum Payment Disclosures

The Bankruptcy Act amends Section 127(b) of TILA by adding a new paragraph (11) relating to minimum payment disclosures for open-end credit accounts. Generally, banks are given the option of: (i) providing a hypothetical "minimum payment warning" on the front of the periodic statement and a toll-free number the consumer can call to get an estimate of the number of months it would take to repay the balance on the account making only the minimum payments, calculated using tables developed by the Board; or (ii) providing a more generic minimum payment disclosure clearly and conspicuously on the periodic statement and a toll-free number the consumer can call to learn the "actual" number of months it would take repay the balance on the account making only the minimum payments.

The purpose of the minimum payment disclosures, regardless of the option chosen by the creditor, is to provide the consumer only with an illustration of the consequences associated with making only the minimum payment on an open-end credit account, and specifically a credit card. Neither the estimated repayment period nor the "actual" repayment period are intended to provide the consumer with information that can be used by the consumer for any practical purpose. We arrive at this conclusion because the assumptions underlying the calculations are inherently inapplicable to the vast majority of cardholders. It is our experience that it is only an extremely rare consumer who pays down an account balance making only the minimum payments without making additional purchases on the account. We will refer back to this point below.

Types of Accounts for Which Disclosures Are Inappropriate

The ANPR asks whether there are certain types of transactions or accounts for which the minimum payment disclosures are not appropriate (Question 59). GECF believes these disclosures will have little, if any, value to consumers. However, to the extent they have any value, we believe the value is limited only to those who receive the disclosures in connection with a credit card account. Therefore, the disclosures would not be useful in connection with other types of open-end accounts, such as:

- home equity lines of credit;
- reverse mortgages;
- personal loans; or
- open-end loan products developed in the future that are not credit card accounts.

The Board correctly notes that the legislative history surrounding Section 1301 of the Bankruptcy Act focuses on the disclosures in the context of credit card accounts. The Board is also correct when it implies in the ANPR that the disclosures would be redundant in some circumstances (*e.g.*, home-equity lines of credit) or impossible in others (*e.g.*, reverse mortgages that have no minimum payment feature). Instead of attempting to evaluate every possible current or future permutation of open-end credit and whether the minimum payment disclosures would be feasible or appropriate, we believe the Board should limit the minimum payment disclosures to open-end credit card accounts.

Types of Cardholders for Which Disclosures Are Inappropriate

The Board also asks whether creditors should be permitted to omit the minimum payment disclosures from periodic statements for certain types of accountholders, such as those who do not revolve balances or who regularly make payments that exceed the minimum (Question 60). We encourage the Board to allow creditors to omit the minimum payment disclosures for certain types of accountholders. Specifically, GECF believes that a "minimum payment warning" is not particularly useful or informative for consumers who:

- do not regularly make the minimum payment;
- have relatively small account balances; or
- who have relatively high minimum payment amounts.

With regard to consumers who do not consistently make minimum payments, such a disclosure is not relevant to their payment behaviors. We also believe the disclosures are not generally illustrative for consumers who receive a statement with a small balance or no balance (*e.g.*, a statement reflecting only a pay off of the previous month's balance) or who must repay significantly more of an outstanding balance in a given billing cycle than the examples depict.

In addition to the fact that the minimum payment disclosures are not particularly applicable to large numbers of cardholders, we believe it is important for the Board to understand how costly the disclosures required under Section 127(b)(11)(A) and (B) could be. GECF estimates that the additional disclosures required by subparagraphs (A) and (B) could cost our company approximately *$20 million* per year in increased paper, printing, call center and postage costs alone. Yet, our projected costs represent only a portion of the costs industry as a whole will bear if disclosures under Section 127(b)(11)(A) and (B) must be provided to all cardholders.

We believe that the costs associated with providing the hypothetical minimum payment disclosure are enormous with little corresponding benefit, if any, to a majority of cardholders. This is especially true for GECF's private label cardholder base, which has an average balance of only $560 (compared to approximately $1,680 for all types of credit cards[1]) and a typical minimum payment of between 4% and 5%. Therefore, we urge the Board to allow creditors to omit the minimum payment disclosures for cardholders who make only the minimum payment for at least six consecutive billing periods,[2] for cardholders with balances of $500 or less,[3] and for cardholders who must repay at least 4% of an outstanding balance in the current billing cycle. Furthermore, the disclosures should be provided only once annually to cardholders who "qualify" for the disclosures, as the marginal benefit to providing the same information on a monthly basis does not justify its cost. In so doing, the Board would require the disclosures for the small population of cardholders who may stand to benefit from them while drastically reducing the potential compliance costs.

[1] The Nilson Report, 2004 Annual Reports.

[2] If the Board is uncomfortable with requiring the disclosures for consumers who have made only the minimum payment for six consecutive months, it could consider alternatives involving consumers who make only the minimum payments for three consecutive months or even those making only the minimum payment in the most recent billing cycle.

[3] This concept is not unique, even among the California legislators who thrust the issue of minimum payment disclosures onto the national stage. California minimum payment laws include a similar exclusion for retail credit card accounts with balances of $500 or less. *See* Cal. Civ. Code § 1748.13(a)(2)(A)(ii).

Assumptions by Board in Creating Tables

The Board requests comment on what assumptions it should use for purposes of the tables it must create (Questions 65 to 75). In general, we believe the Board should use the same assumptions as were used by Congress when creating the hypothetical disclosures under Sections 127(b)(11)(A), (B), and (C). Therefore, the Board should assume that the minimum payment floor is $20 (or $15 for non-banks), that there is no grace period, that there is no residual interest, and that the previous balance calculation method is used. In short, the consumer should receive the same information from a calculation using the Board's tables as is provided through the hypothetical examples provided in the periodic statement.

The ANPR also addresses other variables for purposes of calculating the consumer's repayment period using the Board's tables (Questions 66 to 75). For example, it will be necessary to obtain APR information and minimum payment calculations. We believe the Board should use inputs that are reasonably accessible and commonly used. For example, a consumer can provide the go-to APR for purchases when he or she makes the toll-free call because that APR is generally the most commonly used. Similarly, the Board could assume a commonly used minimum payment formula, such as 1% plus interest. The number generated through use of the Board's tables is intended to be only an estimate of the consumer's repayment period, and we believe that use of these two inputs will allow consumers to receive a reasonable estimate.

GECF urges the Board to avoid requiring creditors to retrieve account information for purposes of providing an estimate under subparagraphs (A), (B), or (C). Such a requirement would be costly and we do not believe it was intended by Congress. We also note that such a requirement would have significant operational issues to be resolved for creditors relying on the toll-free numbers to be provided each by the Board and by the Federal Trade Commission.

We also strongly urge the Board not to make substantive revisions to the periodic disclosure requirements of Regulation Z in an effort to provide information sufficient to calculate a more "accurate" estimate. Not only would such a requirement be difficult to justify in light of the marginal benefits it would provide consumers, but we do not think it was intended by Congress. Had Congress sought changes to Section 127(b) (and therefore to Section 226.7 of Regulation Z) for these purposes, it could have made further amendments to Section 127(b) than it did.

Disclosures Under Sections 127(b)(11)(J) and (K)

Banks are permitted to forego the hypothetical disclosure required under subparagraphs (A) and (B) if they provide a clear and conspicuous disclosure on the periodic statement of the "actual number of months" it would take for the cardholder to repay his or her balance making only the minimum payments. The Board solicits comment on how it should implement this alternative compliance option (Questions 77 to 84). GECF urges the Board to implement subparagraphs (J) and (K) in a manner that allows banks a true opportunity to make disclosures under these subparagraphs. In this regard, the Board must develop guidance as to how banks are to calculate the "actual" number of months in a manner that will not subject them to unnecessary litigation or compliance risks.

We note at the outset that it is impossible to tell a cardholder, with certainty, the number of months it will take for the cardholder to repay a balance making only the minimum payment. For example, variables such as the date on which the payments are made and the length of future billing cycles may have an effect on the calculation of the repayment period.[4] Therefore, it seems clear that Congress could not have intended that banks be required to calculate a repayment period that will necessarily vary in manners beyond the banks' control. We also note that, for the reasons articulated above, even the calculation performed under subparagraphs (J) and (K) is intended to be illustrative to the consumer (albeit more illustrative than the repayment period calculated using the Board's tables).

Given these realities, it will be possible to provide consumers with a reasonably accurate repayment period so long as certain assumptions can be made. For example, the Board must allow a bank to assume:

- that the payment is made on the same day each billing cycle (such as the payment due date);
- an equal number of billing days in a cycle;
- a single, simple payment allocation method, such as payments being credited to balances with lower APRs first;
- that reduced rate promotional balances are subject to a non-promotional APR;
- a balance calculation method that is used by the bank; and
- a minimum payment formula that is used by the bank.[5]

Providing for these assumptions is especially important to GECF as a provider of private label programs. As discussed above, we operate dozens of different private label programs with a variety of characteristics and pricing structures. Furthermore, the properties relatively unique to private label programs (*e.g.*, specific promotional offers based on unique purchase behavior) cause us to operate multiple programs within a program. Therefore, issues such as accessing a specific minimum payment formula or payment allocation method on a consumer-by-consumer basis present potentially increased difficulties and costs to GECF compared to other types of credit card issuers. These costs and difficulties are simply not justified in light of the general accuracy that would be provided through use of standard assumptions.

Even if the Board allows for these assumptions, key information pieces are still necessary to provide the consumer with a repayment period. The Board could consider requiring the bank to retrieve certain information from the cardholder's files for purposes of completing the calculation. For example, the cardholder could call the toll-free number and provide his or her account number. The bank would then retrieve the relevant APR and balance information from the last billing period, including the portions of the balance that are subject to each APR. This information, combined with the information described immediately above, could be used to calculate the actual number of months it would take the cardholder to repay his or her balance making only the minimum payments.

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[4] It may not be possible for a bank to forecast the exact billing cycles into the future for the duration of a cardholder's balance.

[5] Although banks should be permitted to make these assumptions, a bank should also be permitted to use information specific to the consumer's account, as well, if they choose to do so. We also note that the bank will obviously assume no change in terms, no late payments, no additional purchases, no residual interest, etc.

In order to avoid unnecessary litigation and compliance risks, GECF strongly urges the Board to provide for a safe harbor for banks who use reasonable policies and procedures to provide a creditor-calculated repayment period using the Board's formula and assumptions. Not only will such a policy allow for a reasonable tolerance for accuracy, but it will also avoid challenges to banks' choice of assumptions in the calculation. We are concerned that, without a safe harbor, banks will not attempt to provide cardholders with a more accurate repayment period due to the increased risks relative to using the Board's basic tables. Even those who would consider attempting to provide the more accurate repayment period absent the safe harbor may feel the need to provide lengthy and cumbersome disclaimers to consumers in order to manage the litigation risk. Such results would frustrate the congressional intent to incent banks to provide such information.

Introductory Rate Disclosures

The Bankruptcy Act amends Section 127(c) of TILA to require additional disclosures for credit card applications and solicitations sent by direct mail, and solicitations provided over the Internet, that offer a "temporary" APR. TILA requires credit card issuers to use the term "introductory" clearly and conspicuously in immediate proximity of each mention of the temporary APR in applications, solicitations, and all accompanying promotional materials. The expiration date of the temporary APR, and the "go-to" APR, must also be disclosed in a prominent location closely proximate to the first mention of the temporary APR. The latter requirement does not apply with respect to temporary APRs listed "on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed." A credit card issuer must also disclose clearly and conspicuously in mailed offers with temporary APRs a general description of the circumstances that may result in revocation of the temporary APR (other than its expiration) and the APR that will apply upon revocation.[6]

The Board asks what guidance, if any, it should provide in interpreting the "immediate proximity" requirement pertaining to the use of the term "introductory" and each mention of the temporary APR (Question 86). We believe that use of the term immediately preceding or following the temporary APR (*e.g.*, "introductory APR 3.9%" or "3.9% APR introductory rate") would certainly satisfy the statutory requirement. However, we caution the Board against limiting compliance to those two examples. Congress stated that the word "introductory" be used in "immediate proximity" to the temporary rate. This suggests more flexibility than using the term "immediately preceding or following" the temporary rate, as use of the term "proximity" would appear to be more general. We believe that use of the term immediately above or below the temporary rate, whether in the same sentence or not, should also satisfy the requirement. Similarly, use of the term in the sentence immediately preceding or following the sentence in which the temporary rate is discussed in the solicitation should also comply. We urge the Board to provide flexible compliance examples such as these.

The Board also requests comment on how it should implement the requirement to place the expiration date and go-to rate in a prominent location and closely proximate to the "first mention" of the temporary APR (Questions 87 to 90). GECF requests that the Board interpret the statute to require the requisite disclosure closely proximate to the first listing (*e.g.*, the one highest on the page) of the temporary rate on the principal promotional document that is designed to be seen first by the consumer, such as the cover letter. We believe that it is reasonable to conclude that the principal promotional document will be the

[6] We believe that compliance with existing Regulation Z requirements will result in compliance with this requirement. *See*, *e.g.*, Comment 5a(b)(1)-7.

primary document read by the consumer. It is also the document that the Federal Trade Commission has chosen for making certain prescreening disclosures. *See* 16 C.F.R. § 642.3(a)(2)(ii). GECF also believes it is reasonable to permit the disclosure closely proximate to the listing highest on the document, as this will likely be the "first listing" in the consumer's mind. However, the Board should allow some flexibility on this latter point, as the nature of the marketing material may alter a reasonable interpretation of the "first listing" of the temporary rate.

The disclosure must be "closely proximate" to the first listing of the temporary APR. We believe that Congress intended for credit card issuers to have more flexibility in placing this disclosure than we would when placing the term "temporary" in immediate proximity to each mention of the temporary APR. Therefore, regardless of what standard the Board uses for the term "temporary," the expiration date/go-to APR disclosure placement should not be as rigid. GECF urges the Board to adopt a standard that allows for the expiration date/go-to APR disclosure to be placed within several inches of the first listing of the temporary APR (or the functional equivalent for electronic disclosures taking into account the fact that the distance will depend on the device the consumer uses to view the solicitation). If the go-to rate is actually a range of rates, the issuer should be able to disclose the range of possible applicable rates.

We believe that implementing the statute in such a manner would also satisfy the requirement that the disclosure be in a prominent location. We believe that a disclosure that is closely proximate to the first listing of the temporary rate on the solicitation letter would be, virtually by definition, to be in a prominent location. As for whether the disclosure should be required on the first listing of each document, we note that the statute simply refers to the "first listing" of the temporary rate. If Congress had intended multiple disclosures relating to multiple listings, we believe it would have referred to the "first listings" or the "first listing on each document in the solicitation." We believe the better reading is that a disclosure required by the "first listing" strongly implies only one listing and one disclosure.

Making Minimum Payment and Introductory Rate Disclosures Clear and Conspicuous

Section 1309 of the Bankruptcy Act requires the Board to issue regulations to provide guidance regarding the meaning of the term "clear and conspicuous" for purposes of the hypothetical minimum payment disclosure and for the expiration/go-to disclosures on certain solicitations. The Board must ensure that the disclosures are "reasonably understandable and designed to call attention to the nature and significance of the information in the notice." The Board solicits comment on how to implement this requirement (Questions 83 to 85).

As a general matter, all clear and conspicuous disclosures made under Regulation Z must be reasonably understandable based on the current regulation and the Official Staff Commentary. Furthermore, we believe that the hypothetical minimum payment disclosure will by its very nature "be designed to call attention to the nature and significance of the information" in the disclosure as it would appear on the front of the periodic statement. We believe the same is true for the expiration/go-to rate disclosures because the disclosures will appear closely proximate to the first listing of the temporary rate. Therefore, specific guidance on this matter may not be necessary. Rather, compliance with Section 1309 may be achieved solely through the implementation of the substantive requirements themselves.

Internet-Based Credit Card Solicitations

Section 127(c) of TILA, as amended by the Bankruptcy Act, requires creditors to provide the same information be disclosed for solicitations provided over the Internet as is disclosed for solicitations and applications provided by direct mail to consumers. The Internet disclosures must be "readily accessible to consumers in close proximity to the solicitation" and "updated regularly to reflect current policies, terms, and fee amounts applicable to the credit card account." The ANPR requests guidance on how to implement these new statutory obligations (Questions 93 to 96).

GECF believes that a creditor would meet the statutory requirement to make the required disclosures "readily accessible" if it provides a link to the disclosures on the solicitation web page or if it provides the disclosures on the web page itself.[7] In the ANPR, the Board notes that in its interim rule implementing the E-SIGN Act that a creditor would have met the requirements of the interim rule if the card issuer provided a link to the solicitation disclosures so long as consumers could not bypass the disclosures before submitting an application. We caution the Board against a similar interpretation of the requirement to make the disclosures "readily accessible." In fact, we believe the plain language indicates that Congress did not intend to force consumers through the disclosures, so long as the consumer had ready access to the information.[8] Such a result would be consistent with consumer expectations, as well. In the electronic environment, consumers are aware that disclosures and other important information are generally made available by a clear and conspicuous electronic link (*e.g.*, privacy policies, terms and conditions for use of the web site, etc.).[9] We do not believe it would be appropriate for the Board to mandate a deviation from these generally accepted practices.

The requirement to provide certain disclosures in connection with Internet solicitations encompasses the new introductory rate disclosures described above. When implementing this requirement, GECF requests the Board to consider the appropriate application of the law to solicitations delivered electronically. In particular, we note that Congress did not expect a credit card issuer to place the expiration date of the temporary APR and the go-to APR on the "envelope or other enclosure" used to mail an application or solicitation. We request that the Board interpret this exclusion to apply also to similar electronic "envelopes," such as advertisements on a consumer's screen providing introductory information about an offer, similar to the information provided on an envelope for a paper solicitation. For example, electronic advertisements that encourage consumers to click on a link or use a similar mechanism to view the full solicitation and/or application should be treated in the same manner as an envelope is treated for paper-based solicitations. We believe that these advertisements are functionally similar to an envelope for purposes of the requirement because they are simply a delivery mechanism the consumer can "open" by clicking on a link. Furthermore, the information contained in such an advertisement is generally similar to that contained on the outside of an envelope—it provides sufficient information to allow the consumer to determine whether he or she is interested in learning more about the offer.

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[7] For the same reasons discussed above, we do not believe that the link should be required on a pop-up advertisement.

[8] Had Congress intended a result more specific than simply providing access to the disclosures, we believe the statute would reflect that intention. For example, instead of making the disclosures "readily accessible," Congress could have required that a creditor provide the disclosures "in a manner that cannot be bypassed by the consumer."

[9] We note that the Board itself uses this approach for disclosures it would like every person to read before using the Board's web site. *See*, *e.g.*, www.federalreserve.gov/disclaimer.htm, a link to which is provided at the bottom of the Board's home page.

Therefore, we urge the Board to propose to treat electronic advertisements as an "envelope or other enclosure" for purposes of Section 127(c)(6)(B) of TILA.[10]

Disclosures Related to Payment Deadlines and Late Payment Penalties

Section 127(b)(12) of TILA was added by the Bankruptcy Act to require certain disclosures pertaining to late payments. In particular, if a late payment fee is to be imposed due the consumer's failure to make a payment on or before a required date, the date on which the payment is due (or, if different, the earliest date on which a late payment fee *may* be charged) and the amount of the late payment fee must be stated clearly and conspicuously on the billing statement. The ANPR presents several questions as to how this requirement should be implemented (Questions 97 to 101).

As a general matter, GECF may impose a late fee for payments that are made after the stated cut off time. However, it is also true that we generally allow for a one-day grace period for late payments before assessing the fee. This grace period is not disclosed to the consumer, and it is provided as a matter of courtesy. By contract, GECF could impose the fee without the one-day grace period. However, we believe this is a consumer friendly approach which results in more payments being made prior to the date on which a penalty fee would be assessed than if the one-day grace period were disclosed. The one-day grace period gives the consumer relief if they simply forgot to make the payment in a more timely way, or if there are delays in the mail. To disclose the one-day grace period may result in consumers delaying their personal payment schedule by a day, eliminating any cushion for forgetfulness or the U.S. Postal Service. We believe it is logical to conclude that a disclosure of the one-day grace period will result in more consumers paying more late fees.

We urge the Board to allow GECF to continue to provide for a silent grace period for late payments. Such an approach would also be consistent with the statute. Specifically, the statute requires disclosure of the payment due date *or* (not *and*) the earliest date on which a fee may be imposed. Therefore, GECF's current disclosure practices with respect to the due date should comply with the statute. This is true because the date is also the earliest date on which a late payment fee *may* be charged. Because the date on which the fee will be assessed is generally different from the earliest date on which the fee *may* be charged, a disclosure of the date on which the fee may be charged is consistent with the statutory obligation without the need to disclose the date on which the fee is usually assessed.[11]

As with most periodic statement disclosures, the Board should avoid prescribing specific format requirements for the late payment fee disclosures. We believe that creditors should be permitted flexibility to convey information through use of the periodic disclosure so long as the required information is provided clearly and conspicuously. Furthermore, we note that Congress did not hesitate to prescribe formatting requirements in its amendments to TILA made by the Bankruptcy Act (*see, e.g.*, Section 1301 of the Bankruptcy Act). Given that no such formatting requirement was specified here, we urge the Board to refrain from imposing one. For the same reason, we do not believe that a "late payment warning" consisting of the default rate (or other consequences) should be required. Congress was clear when it believed

[10] We also respectfully note that such a determination would be consistent with the Federal Trade Commission's treatment of pop up advertisements for purposes of prescreen solicitation disclosures. *See* 70 Fed. Reg. 5022, 5024. ("The Commission is in agreement with those commenters who equated a pop-up promotional screen with an envelope.")

[11] Two separate due date disclosures could be the practical result if the earliest date on which the fee could be imposed were *prior* to the payment due date.

a "warning" was necessary on the periodic statement, and no such requirement was imposed in connection with the late payment disclosures.

In conclusion, GECF appreciates the opportunity to comment on this very important topic. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to call me at (203) 585-6339.

Sincerely,

Julie S. Schechter
General Counsel
Retail Consumer Finance
GE Consumer Finance - Americas