CONSUMER
BANKERS
ASSOCIATION

October 12, 2007

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

Re: Docket No. R-1286; Truth in Lending

Dear Ms. Johnson:

The Consumer Bankers Association (CBA)[1] is pleased to submit the following comments on the proposed revisions to Regulation Z and its Commentary dealing with open-end (not home secured) credit plans.

General Comments

Overall context

A. *Perspective.* This proposed revision of the open-end credit rules of Regulation Z is the first comprehensive review of those provisions since Congress enacted the underlying Truth in Lending Act ("TILA"), originally in 1968 and then through several major statutory additions in the 1980s. (The TILA "simplification" legislation of 1980 and the accompanying rewrite of the regulation and commentary concentrated mostly on closed-end credit.) This is therefore the first opportunity in nearly forty years for the Board and all interested constituencies to take a careful look at the TILA regulatory

[1] The CBA is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer, auto, home equity and education finance, electronic retail delivery systems, privacy, fair lending, bank sales of investment products, small business services and community development. The CBA was founded in 1919 to provide a progressive voice in the retail banking industry. The CBA represents over 750 federally insured financial institutions that collectively hold more than 70% of all consumer credit held by federally-insured depository institutions in the United States.

structure for open-end credit. There will likely not be another such expansive review for many years. All involved should commit to doing their best to "get it right."

We commend and thank the Board for initiating this project to refine and improve the disclosures and other rules concerning open-end credit plans, for we believe that transparency in credit offerings is the best safeguard against consumer misunderstanding and unwise decision making. It is also the best assurance of healthy industry competition for the consumer's business. Open-end credit, particularly through credit cards, has become virtually the universal medium of exchange – for short-term financing, to replace cash or checks as a payment system, and for a variety of incidental services and conveniences. Competition among issuers stimulates product innovation, and imaginative marketing provides consumers more and more choices and customization in their credit card plans. As communications technology develops, consumer disclosures and consumer transactions will more and more often be effected electronically. Our broadest comment, therefore, is that the Board should make every effort, not only to analyze and understand the *current* marketplace for open-end credit products, but also to project its comprehension to *future* developments to the extent the direction of them can be discerned. At the very least, the Board should be careful that it not create compliance requirements that are counter productive of effective disclosure or that act as incentives to blind standardization of open-end credit products and delivery systems.

This rulemaking involves substantial changes to Regulation Z and the staff Commentary. With continuing suggestions or directions from Congress for new open-end disclosures such as those required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act"), it may be understandable that the Board is not looking proactively for very much new statutory language.[2] But no group has more expertise on the sweep of the TILA statutory and regulatory structure and its impact of marketplace practices than the Board and its staff; we encourage the Board, in its review of Regulation Z, to consider possibilities for legislative change that would improve the regime of rules for open-end credit.

B. *Consumer testing*. We support the Board's determination to evaluate alternative disclosure techniques through focus groups and similar forms of consumer testing. A frustration over the life of the Truth in Lending Act has been the lack – or the inconclusiveness – of scientific data on how best to communicate credit cost information. The Board's testing exercises therefore bring a greater degree of confidence to judgments about how Regulation Z should deal with the content, format and timing of disclosures.

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[2] At 72 FR 32962 the Board raises the question whether the $25,000 cap for TILA coverage of non-mortgage credit should be adjusted for inflation, but defers the issue until it takes up the review of closed-end credit. We believe the Board would need statutory authorization for such a sweeping expansion of coverage.

Some card issuers have also conducted consumer testing exercises as part of their product development and marketing. The Board should encourage such activity by card issuers, including the sharing of testing experiences (within the bounds of confidential or proprietary programs). It is not likely that there is a single best answer on any question of disclosure methodology. The Board has shown itself willing, in this rule-making proposal, to exercise its TILA § 105(a) exception authority where a variation seems justified "to effectuate the purposes of" and "facilitate compliance" with the TIL statute. The Board should continue to use this discretionary authority where new data or experience suggest improvements can be made outside the black-letter statutory text.

To the extent consumer testing identifies equally effective alternative ways of accomplishing the disclosure objective, the Board ought to retain alternatives in the regulatory structure so that each card issuer can consider which of optional approaches is most consonant and functional for that creditor's product and customer mix. This is especially true for periodic statements, which are being used to transmit more and more of the critical information about the status of the account and, if the current proposals are adopted, will carry even more information.

C. *Reprogramming burdens.* It is a familiar observation from the credit industry that each new set of disclosure rules, or revision of existing ones, brings with it potentially significant costs for redesigning disclosure forms, reprogramming software, and retraining customer-service and compliance personnel. Those burdens are enhanced when new rules are imposed simultaneously across the whole spectrum of open-end credit products. Our concern is that the burdens and costs may explode exponentially if the current proposals are adopted *en masse*, requiring great detail in the information disclosed and precise specification of the format in which that information must be presented.

The solicitation disclosures under Regulation Z § 226.5a are the least difficult to re-program for, because the information is essentially static. These disclosures present pricing information and describe other account terms and features. But there is no need for the issuer to customize the disclosures for each marketing prospect, to reflect different features, balances, transaction activity, rates and fees, and so on. It is straightforward to prepare these disclosures on pre-printed paper stock, and the incorporation of most of the required disclosures in a tabular format is no great challenge.

The account-opening disclosures are more difficult, as the disclosures must reflect the range of features, and fees and charges, in the plan for which the consumer is enrolling. An issuer using risk-based pricing formulae, with different rates for purchases, cash advances, and introductory or promotional rates as well, may find it challenging to devise programming that can funnel all of that information into appropriate account opening disclosures that must now be in tabular format as well as "clear and conspicuous."

The problem of format inhibitions is most serious with respect to periodic statements, where the issuer must combine real-time information on transaction activity, balances under various plan components, the assessment and explanation of rates, fees and charges, notices of forthcoming changes in terms, and other matters affecting the account. Rigid format requirements, including mandatory tabular presentation of some items, and requiring certain items to be “ahead of” or “closely proximate to” others, can become booby traps for even the most sophisticated software designers. Some of the proposed disclosures, such as for penalty rates and payoff periods, will also require calculational linkages across the whole plan. These programming issues are equally or more challenging when disclosures are furnished electronically. Several CBA member banks have reported incurring substantial costs and extended time lags in working out the programming wrinkles for credit card disclosures, especially the periodic statement.

We urge the Board to treat its various format requirements with greater flexibility than appears in the proposal. The preferred format rules could be stated as best practices, or as safe harbors with model forms, but with issuers retaining some options in designing their disclosures under the conventional “clear and conspicuous” standard. We fear that the proposed format rules would lead all card issuers to migrate toward a generic set of disclosures whose developmental costs are shared by the industry as a whole, and to forsake more imaginative disclosures of their own design. To satisfy format requirements, issuers may adopt more generic – vanilla – pricing policies. This would deprive both issuers and consumers of the ingenuity that has been the hallmark of open-end credit since its inception.

D. *Transition; Effective date.* The issues of transition and effective date are important for CBA members who believe they will need substantial lead time to prepare for compliance with the new requirements. This is a massive regulatory effort that involves significant re-writing of the Regulation Z Part 2 provisions on open-end credit, plus the related Appendices and Staff Commentary. As noted above, card issuers face daunting pressures to develop software, systems, and training for the new regime. We therefore urge that the Board allow at least two years for transition from promulgation to effective date. Of course, creditors could comply with the new rules earlier if they wish.

Realistically, whatever the Board adopts is likely to be a somewhat modified version of the current proposal. Some matters will be adopted as proposed. Other parts of the current proposal will be dropped or adjusted. Beyond reconsidering each such change in the proposal, there will be a need to assess the entire project for consistency and clarity throughout, including tweaks of the regulatory and commentary language. The sheer scale of this project has made it difficult for participants to get their arms comfortably around the whole of it. It is and will remain a very large project. As a practical matter, therefore, CBA believes it would be best if the Board considered all the views and suggestions from this comment period, and then published a revised proposal with another comment period.

Specific Comments

In the material that follows CBA addresses particular matters of concern in the proposal. These comments follow the order of the proposal, i.e., the numerical order of the provisions of Regulation Z.

Definitions; Scope; Finance Charge

1. "*Open-End Credit.*" CBA strongly opposes the revision to Commentary ¶ 2(a)(20)-2, for a number of reasons. First, for those who argued that satellite dish and other big ticket purchases should be outlawed as "spurious" open-end credit, their principal argument has become moot. As a result of the Bankruptcy Act and this rulemaking, card issuers will now have to provide consumers with information about how long it will take to pay off card balances. Second, there is nothing in the regulatory history of the definition of "open-end credit" that requires that each sub-account be replenishing; nor is there any reason in common sense. There may be perfectly legitimate reasons why a particular plan is structured with sub-accounts, including differential pricing, promotional marketing, account maintenance, and underwriting considerations for various products the creditor offers. For example, a card issuer may treat a convenience check as a one-time advance, to be repaid on a fixed schedule without replenishing. In addition, it is quite common for credit card issuers to offer introductory or promotional rates for specified periods of time. These promotions could be viewed as establishing "sub-accounts," under the proposed changes to Regulation Z, which would not be replenished and would accordingly trigger disclosures so complex that it is unlikely that these special, usually lower-rate, programs would be offered.

Under the proposed Commentary, it would be impossible for a creditor ever to know whether its plan was open-end or not. By focusing on the type of credit used, rather than the relationship between creditor and consumer, the proposed characterization of the plan as open-end or closed-end would depend on how the customer used it over time. Presumably, for the same card issuer, some card holders would have "pure" open-end credit, while consumers who used a particular feature would have "spurious" open-end credit. Or would everything hinge on an elusive definition of what constitutes a "sub-account"?

It is time to put these arguments to rest. Case law and Commentary amendment have clarified the "repeat transactions" part of this definition. Since the promulgation of Commentary ¶¶ 2(a)(20)-1 to -3 twenty-five years ago, there has never been a requirement that the "replenishing" criterion applies identically across all sub-accounts of the creditor's plan. And this very rulemaking will assure that open-end customers get much more frequent and complete information about their accounts. The implicit argument that open-end disclosures are somehow inferior to closed-end disclosures can no longer be true, if it ever was.

2. *Business purpose credit on consumer card.* New Commentary ¶ 3(a)-2 would clarify that business purpose credit acquired on a consumer-purpose card is covered by TILA. While this may be justified on expediency grounds, it is anomalous given the general exclusion of business credit from TILA coverage. Moreover, there is no obvious or reliable way of knowing whether a particular card is a "consumer purpose card" or not; they are not always so branded. The effect is that card holders will sometimes enjoy TILA consumer protections that would not be available to them otherwise in their business purpose transaction. This question of TILA coverage is better left to be resolved on a case-by-case basis as in the past.

3. *Debt suspension agreements as Finance Charges*. Reg. Z § 226.4(d)(3) and related Commentary. We support the Board's effort to clarify and rationalize the treatment of "debt suspension agreements" (DSAs) generally in parallel with the existing treatment of credit insurance and debt cancellation agreements (DCAs). We understand the proposal as follows: Charges for DSAs are prima facie Finance Charges when written in connection with the credit transaction. But the creditor may exclude the charge if it gives the consumer a disclosure of the cost of the product and its voluntariness, and the consumer assents to the purchase; the disclosure for DSAs must include a warning that the product merely defers repayment and that interest continues to accrue during the suspension period.

The Board continues to insist that these products are excludable from the finance charge only if they cover certain events specified in the statute – *property accident, or loss of life, health, or income*. This would omit some of the new "life cycle" DSAs where the triggering event is some milestone of personal or family life. But new Commentary ¶ 4(d)(3)-3 would allow exclusion of the entire DSA charge so long as at least one covered event is within the rubric of "accident, or loss of life, health, or income."

We suggest that the Commentary be clarified to say that it applies where there is either a "single charge" without differentiation of components, or where the fee is an aggregate from a menu of covered events.

4. *Deferred disclosure of other post-account opening fees*. New Reg. Z § 5(b)(1) permits creditors to omit certain contingent fees or charges from the account opening disclosures, so long as the proper disclosure is made, even orally, before the consumer pays or commits to the charge. Like the prior item, CBA supports this technique as a way to allow a creditor to relate the disclosure directly to the event that triggers it (such as a fee for expedited delivery of a new card), rather than have it buried in account-opening documents from months or years ago. Consumers and creditors can benefit from this kind of flexibility and experimentation.

Card Applications and Solicitations.

1. *Changes to content and format of tabular presentation of disclosures.* Reg. Z § 226.5a. The proposal would add a number of new items to be included in the table referred to as the "Schumer box." Objectively, CBA has no real basis for objecting to any of these changes, as they promise to flesh out the information graphic in ways that consumers may find helpful. At some point, though, there must be a question of information overload or disclosure piling-on. Is it really critical that all of this information be in the consumer's hands at this early exploratory stage of the issuer/cardholder relationship? In any event, CBA members have reported that the proposed changes to the solicitation disclosures add significantly to the content of the table, and that mock-ups of the new requirements indicate it will either require larger paper, or a reduction in font size, or both. We suggest permitting a 9-point font to begin to accommodate these concerns.

The proposed revisions to the disclosure table are also laden with format requirements, from font size to bolding of rates and charges, to "close proximity" to related terms." There is very little room for creditors to maneuver or experiment with these requirements. It may be defensible that we want essentially a standardized disclosure statement at the solicitation stage, where the consumer is in shopping mode and may be interested in comparing card products from different issuers. But, as discussed above, detailed and standardized format rules become more problematic for the account-opening and periodic statement disclosures. "One size fits all" may work for the solicitation disclosures but not necessarily for later disclosures that focus on the terms of, and behavior under, a particular account.

2. *Consequences of payment allocation*. Reg. Z § 226.5a(b)(15). The Board acknowledges that in its consumer testing, "a significant percentage of participants still did not fully understand how payment allocation can affect their interest charges, even after reading the [model] disclosure tested." 72 FR 32982. Nonetheless, the Board directs creditors to do what its own testing showed was ineffective, in a regulatory provision that has three factual predicates, and three elements of disclosure information, all conditioned on whether the solicitation material actually offers a discounted rate to consumers who accept the offer. A more concise disclosure would be more useful to consumers.

Account Opening Disclosures

1. *Format and Clarity of Regulation.* As a general matter, we believe the final regulation could be laid out in a clearer and more organized way, particularly in the section on account opening, which we find extremely difficult to parse. We find the headings confusing and lacking in parallel structure, and related disclosure terms located

in unrelated subsections.

2. *Disclosable non-rate charges imposed as part of the plan*. Reg. Z § 226.6(b)(1). We believe the Board is on the right track in eliminating the confusing categories of charges that might be imposed on consumers: the current law speaks of "finance charges," "other charges," and yet a third group of "not other charges." (Commentary ¶ 6(b)-2.) From the open-end credit consumer's point of view, the classification of the various charges is largely irrelevant; what is important is the amount of the charge and the event(s) that trigger it. These account-opening disclosures are intended to give the consumer a picture of the plan as a whole, its features and its possible costs. The disclosures assume no transactional or payment activity because none has yet occurred.

In the proposal, the Board identifies a half-dozen types of charges that may be "imposed as part of the plan." This is the exclusive list of charges that must be included in the account-opening disclosures; in fact some of these charges need not be disclosed then but may be deferred until the event occurs that triggers the fee. We support this approach as far as it goes. It bogs down and leaves creditors at risk if the Board's classifications of charges are unclear or equivocal. The Board itself acknowledges that the proposal "would not completely eliminate ambiguity about what are TILA charges." For example, one type of covered charges are those "resulting from the consumer's failure to use the plan as agreed," but excluding collection costs. Few creditors, reading that language, could say with confidence whether that included a fee for stopping payment on a cash-advance check. It may help to provide in the Commentary a safe-harbor to the effect that it is not a TILA violation to over-disclose charges imposed as part of the plan.

3. *Tabular format*. Reg. Z § 226.6(b)(4). We agree that the tabular format may enhance a consumer's grasp of the disclosed information. We also agree that there may be some value in replicating in the account opening disclosures the format and most of the contents of the table from the solicitation/application stage. But the more rigid and inflexible are the format rules, the less opportunity and incentive there are for a card issuer to experiment or to exercise an independent judgment about how to convey information to satisfy its customers' expectations.

As discussed elsewhere in this comment letter, strict formatting requirements create obstacles for reprogramming and software design . This has the effect of discouraging in-house systems design (because of the cost), and moving all card issuers to buy generic programming off the shelf from vendors – systems that may represent the lowest common denominator in the industry. This in turn frustrates creditors on the crest of the wave who want to be able to feed comprehensive, real-time information into all their customer communications, but cannot do it readily or affordably because of format restraints.

Periodic Statements; Identification of Transactions

1. *Format issues in general*. By far, the most significant changes the proposal makes are to the rules concerning periodic statements in Reg. Z § 226.7 and identification of transactions in Reg. Z § 226.8. These include regulations to implement statutory requirements in the Bankruptcy Act calling for disclosure and other information about how long it will take the consumer to pay off the account balance making only minimum payments. The disclosure of interest and fees incurred during the billing period is simplified, and the proposal stresses proximity requirements for certain disclosure items. The proposed revisions with respect to the format of the periodic statement appear to be heavily influenced by the Board's consumer testing exercises.

CBA generally supports the movement toward improving the consumer's comprehension of account information from the periodic statement, because that statement has become the primary communication vehicle between issuer and cardholder. But, as we have said several times in these comments, we are concerned that some aspects of the proposed rules would inhibit the ability of creditors to build any kind of customized or self-created "message board" quality into the monthly statements they provide their customers. Several examples follow.

2. *Grouping of transactions*. Proposed § 226.7(b)(2) would require that transactions be reported on the periodic statement "grouped by type" as on Sample G-18(A). CBA believes that this prescription is unwise and unduly restrictive. Who knows for sure how individual consumers may respond to differing presentations of the transaction and related fee information? A chronological log could be clearer to some. Separating transactions into "purchases" and "cash advances" might help some consumers trace account activity, but could be a meaningless distinction to others. Separating fees from the transaction entry that generated the fee seems to invite confusion rather that clarity. This seems another example where suggestions drawn from consumer testing may be turned into universal dictates without justification. The Board notes (72 FR 32992) that "some financial institutions presently group transactions by type," implying that some do not. The Board does not indicate why one practice is better than the other.

3. *Monthly "interest" and "fees" totals*. Reg. Z § 226.7(b)(6) will require disclosure of the "interest charge" for each type of transaction reflected on the statement, and an aggregate "total interest charged" for the cycle and year-to-date. We believe this is generally a helpful approach, although we are unsure why the law needs to mandate "year to date" interest totals; these interest payments are not deductible for tax purposes.

We do note, in passing and without regret, that this shift to "interest" and "fees" labels, combined with the suggested elimination of the "effective" APR disclosure, and the substitution in 226.7(b)(5) of the label "Balance subject to interest rate," mean that the term "finance charge" no longer has any relevance or function in open-end credit.

4. *"Effective [or historical] APR."* The Board suggests two options for dealing with the "effective" or "historical" APR, i.e., the APR that results from annualizing the periodic rate produced by combining interest and other finance charges for the period. The debate on the integrity and utility of this artificial number is summarized in the Supplementary Information, 72 FR 32996-98, and we will not rehash the controversy except to note that there is little evidence that consumers understand what the effective APR means, and equally little evidence that consumers ever use this retrospective calculation for credit shopping. The stated justification for the effective APR disclosure is its "shock value" to consumers. But that value, too, has never been measured, and it seems hard to justify retaining a possibly startling disclosure figure that is unrealistic and utterly unpredictive of any future account activity.

CBA strongly urges the Board to adopt Alternative 2, that is, delete § 226.7(b)(7) in its entirety, repealing the effective APR disclosure. Alternative 1 would coin another artificial label – the "fee-inclusive APR" – to capture those cases where non-rate finance charges are imposed in a billing period. Assuming this would be calculated in the same fashion as the current "effective APR" (under § 226.14 and Appendix F), it merely continues the "effective APR" under another name. In order to give a consumer a chance to verify the "fee-inclusive" APR, the proposal [§ 226.7(b)(6)(iii)] carves up the old "finance charge" category into "transaction fees" and "fixed fees," requires their disclosure as such, and then requires another tabular box construct to present the resulting "fee-inclusive APRs." With all respect, this is as opaque and unhelpful as the present law.

5. *Minimum payment disclosures.* Reg. Z § 226.7(b)(12). These are the disclosure requirements imposed by the Bankruptcy Act that seek to tell consumers how long it will take to pay off balances on the account if the consumer makes minimum payments each period. CBA believes the Board proposals respond to this statutory directives about as well as is possible. In particular:

a. We agree with the various categories of exemptions that the Board proposes, particularly HELOCs, reverse mortgages, overdraft and other general purpose lines of credit, cards with specific repayment periods, or where the card holder pays the balance in full for two consecutive cycles. The patterns that concerned Congress involved credit cards with minimal payments, and the legal response should be limited to them;

b. The Board should adopt its proposal that, if the creditor includes the actual repayment projection on the periodic statement, it need not otherwise deal with the matter. That is, the creditor would not need to disclose the warning or the hypothetical example, nor would it need to maintain the toll-free number for customer inquiries. We do not know how many card issuers would opt for this approach, but we support including it as an alternative for card issuers to consider. An incentive for creditors to use this alternative might be model language and location instructions that afford a compliance safe harbor.

c. In computing the "actual number of months", the Board should provide a two-month tolerance so that the complexity of this disclosure does not dissuade creditors from making the disclosure in this, the most favored, method.

6. *Statement Delivery.* Pursuant to Section 163(a) of the Truth in Lending Act, creditors that provide grace periods on open-end plans must send out statements at least 14 days before the grace period ends. The Board seeks comment on whether it should recommend to Congress this period be lengthened. The 14-day period has generally worked well over the many years it has been in effect and seems even more reasonable in light of the increasing use of alternative means of payment, e.g., on-line payments. Creditors need sufficient time to prepare statements at the end of the cycle and arrange for delivery. Where delays occur, many creditors make accommodations to protect consumers. We would therefore not recommend that the time period be increased.

7.*Payment Time Cut-Off Disclosure.* The Board proposes to require creditors to disclose the cut-off time on the front of the statement closest to each reference of the due date, if the cut-off time is before 5 P.M. If there are other cut-off times before 5 P.M., contingent upon the method of payment, the creditor must state the earliest time without specifying the method to which it applies. This would be potentially misleading to many consumers. Many card issuers will have different cut-off times for different payment channels. In the case where the earliest cut-off may be for a channel not used by many consumers, the information would be largely inaccurate and potentially misleading. While a full explanation on the front of the statement would be too much information, we suggest a simple reference on the front of the statement to the explanation of cut-off times elsewhere—such as the back of the statement.

Subsequent Disclosure Requirements

1. *Convenience checks.* Proposed § 226.9(b)(3) will require a new set of disclosures to accompany checks that access the card account. We agree that disclosures of the four salient terms are appropriate in this setting, i.e., any discounted rate, the type of regular rate, transaction fees, and grace-period information. We suggest, however, that the format rule requiring that these disclosures appear "on the front of the page containing the checks" may be unduly restrictive in some situations, as where the checks are part of an accordion-fold multi-panel notice.

The Board asks about the operational burdens associated with disclosing the customer's actual rate where the creditor is engaged in risk-based pricing. The degree of burden will likely depend on the sophistication of the creditor's information systems. The regulation might give creditors the option of disclosing the actual rate where they have the capacity to do so, or providing a toll-free phone number the consumer could call for the current rate.

2. *Change-in-terms notices*. Proposed § 226.9(c) and (g) would significantly change the current law. This part of the proposal has generated more concern among CBA members than any other, and the concern takes different forms – to the point where we believe the Board needs to think through from scratch its objectives and intentions in this area:

a. Extending the lead time to 45 days may be beneficial to consumers by giving them more time to respond to the changed term such as by finding an alternative source of credit. But for a creditor that sends change notices with periodic statements, that means at least two cycles must elapse before the changed term takes effect, and in the interval the old (unchanged) term appears in account documentation, and the consumer may simply forget the earlier change notice.

b. If the Board intends to encourage creditors to communicate change notices along with periodic statements, the 45 day period is a distinct disincentive for creditors who want to impose the changed term as quickly as possible. Advance notice of on billing cycle –typically 30 days –should be sufficient to allow the changed term to apply on the first day of the next period.

c. At least as a matter of semantics, subsections (c) and (g) are difficult to read together, and seem to introduce terminology not necessarily consistent with industry usage. What is the difference between a delinquency/default rate and a penalty rate, for example?

d. Some CBA members believe that the rules ought to recognize the difference between rate changes triggered by violations of the consumer's explicit contract with the creditor, and changes prompted by outside – "off us"– events, such as a reduced FICO score. For the first, there can be no consumer surprise when the rate changes, and no advance notice seems necessary. And a 30-day, or even a 45-day, advance notice of changes triggered by an off-us event, even including a right for the consumer to opt out, may have greater justification. It is also worth noting the potential for unintended consequences in mandating an advance notice where the penalty APR has already been disclosed to the consumer and is part of the account terms. If the prior notice is required both for changes in terms and penalty APRs, there may be no advantage to the issuer to choose the latter over the former. Thus, the penalty APR would not be in advertising, account opening disclosures or billing statement disclosures, and the consumer would be less well informed.

e. Some creditors use a double trigger for penalty rate changes. On the occurrence of the first specified event, e.g., a late payment, the consumer is notified that on a second late payment within a certain time frame, the rate will increase. It would seem that if a proper change notice is given after the first event, there should be no need for another notice after the second event, and the changed term should be applicable immediately. This kind of flexibility would benefit consumers by providing notice and an opportunity to alter behavior <u>before</u> adverse changes in the account occur.

f. As written, the proposal might be read to apply the notice requirement to the loss of promotional rates—either automatically at their expiration or due to a triggering event— and this would be neither sensible policy nor meaningful to consumers. The rationale behind providing prior notice is to permit the consumer to find alternatives before a default rate is applied. Yet the concept of a promotional rate does not lend itself to this treatment. The issuer should not be required to continue to make promotional rates available to consumers who have not met the terms of the offer, or beyond the end of the promotional period. The result would be to treat the *standard* rate as a *default* rate with a disclosure to that effect—a result that would be confusing and nonsensical to consumers. The operational difficulties may also lead to a decrease in the availability of such programs, which would be to the detriment of consumers.

g. Over the past several years, credit card issuers have developed sophisticated underwriting systems that have allowed assessment and assignment of risk appropriate to each consumer's creditworthiness. This has resulted in lower cost of credit for many, with riskier consumers bearing their fair share of the risk burden. Creditors have been able to keep rates lower for many consumers because they can react quickly to changes, not only in the consumer's circumstances, but also to economic risks that can affect the cost of credit (e.g., sudden changes in cost of funds). Because of the dynamic nature of open-end credit and the ability of consumers to access new credit advances in a variety of ways over an "open-ended" time-frame, creditors need to have the flexibility to react to changes in the credit-granting environment. A reaction time of 45 days, for example, extends out to 60 days or more after compliance and other legal and operational requirements are satisfied. This increases credit risks and necessarily will need to be factored into rates, if only as a matter of safety and soundness in re-pricing credit card portfolios. An extension of this notice period to 45 days does not come without a price—to creditors and consumers alike.

We urge the Board to reassess how best to balance the consumer's expectation of fair warning before account terms are changed, with the creditor's need to price the account according to its risk. A flat 45-day notice period is too blunt an instrument for that purpose.

Billing Error Resolution

Comments 2 and 3 to §226.13(a)(3) would make "purchases" made using a third-party intermediary, or payer, subject to billing errors if the goods are not delivered as agreed. This is fraught with problems. A third party payer (e.g., Pay Pal) provides payment services that resemble cash advances, rather than purchases. This payer provides a direct transfer of funds from one account to another. A purchase transaction with a credit card involves an approved merchant, providing comfort that the merchant's bank has conducted a degree of due diligence and will stand behind that merchant. Underlying these transactions is a series of contractual relationships that link the card-issuing bank into a relationship with the merchant accepting the card. This relationship does not exist in the case of third-party payers, as the bank has no relationship with the ultimate vendor.

As an example, if the proposed changes were to be adopted as written, a customer complaining of non-receipt of goods after a third-party payment would create a situation very similar to a complaint that would arise after non-receipt of goods purchased with an ATM withdrawal. There is no direct or indirect contractual privity on which the bank may rely in pursuing this claim against the party that failed to deliver the purchased goods. Without the relationship with the ultimate vendor, the bank will fail in its attempt to determine whether the goods were delivered and in any attempt to bring pressure on the merchant involved to resolve the dispute. Nevertheless, under the billing dispute rules, the bank would incur liability for the non-delivery.

We urge the Board to reject this proposed amendment to the dispute resolution provisions of Regulation Z. Banks will otherwise face open-ended exposure to disputes it has neither the information nor the authority to resolve.

CBA appreciates this opportunity to comment on this important rulemaking proposal, and looks forward to working with the Board and its staff on further refinement. If you have any questions, please feel free to contact me at 703-276-3871 or szeisel@cbanet.org.

Sincerely,

Steven Zeisel
Senior Counsel