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Via E-mail and Hand Delivery

March 28, 2005

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
Regs.Comments@FederalReserve.com

Re: Advance Notice of Proposed Rulemaking: Truth in Lending Docket No. R-1217

Dear Ms. Johnson:

Capital One Financial Corporation ("Capital One") is pleased to submit comments regarding the Board's Advance Notice of Proposed Rulemaking on the subject of the open-end credit provisions of Regulation Z.

Capital One Financial Corporation is a bank holding company whose principal subsidiaries, Capital One Bank, Capital One, F.S.B., and Capital One Auto Finance, Inc., offer a variety of consumer lending products. Capital One's subsidiaries collectively had 48.6 million accounts and $79.9 billion in managed loans outstanding as of December 31, 2004. Capital One is a Fortune 500 company and, through its subsidiaries, is one of the largest providers of MasterCard and Visa credit cards in the world.

Capital One commends the Board for undertaking this major project at this time. As the Board notes, these provisions of Regulation Z have not been substantially updated in over 20 years, while in the meantime, the nature of the credit card industry has changed. For that reason, Capital One recommends a number of enhancements to the Regulation Z disclosure regime.

In a phase of change in the late 1980s and early 1990s, the credit card industry moved from a regime of uniform, high interest rates, in which credit cards were available only to a limited segment of the population, to a regime of lower interest rates differentiated according to customers' risk. Large savings were achieved for consumers overall by this transformation,[1] and credit became more widely available to previously underserved populations. Widespread availability of credit at better rates was a major improvement in the industry, which any regulatory changes should be designed to preserve and foster.

In the most recent phase of industry change, continuing consumer demand for the lowest possible interest rates, coupled with vibrant competition and innovation in the credit card industry, has resulted in continuing market movement toward lower rates. That movement is enabled by increasingly complex products that, as a necessary adjunct to lower rates, implement tighter controls over risk in credit card accounts, including terms enabling lenders to respond to customer behavior indicative of credit risk, and preservation of the ability to change terms to respond to changing market conditions.

Capital One and other credit card issuers expend substantial resources and considerable management attention on complying with both the letter and spirit of existing consumer regulations, especially the disclosure provisions of Regulation Z. However, in light of the evolution of the industry that has occurred since the regulatory disclosure regime was last comprehensively reviewed, it is appropriate for the Board to look again at Regulation Z.

Capital One believes that the current Regulation Z disclosure regime has been successful in providing important information to consumers in an accessible way. Our desire is to build on the strengths of the existing system. To facilitate the Board's thinking about how the disclosure provisions of Regulation Z might be further developed, we have prepared a generic Fact Sheet showing a meaningful but clear and simple set of disclosures that could be used with credit card solicitations. A modified version of this Fact Sheet could also be sent to consumers at account opening, and appropriate information from this Fact Sheet could be used on the back of periodic statements, to keep customers conveniently informed throughout the life of their accounts of their key terms. These disclosures would be used in conjunction with some version of the customer agreements currently in use. This model Fact Sheet appears at page 6 below.

We set forth below a brief description of our standards in creating this Fact Sheet. We then offer our comments on the questions the Board has asked.

In crafting a new template for initial credit card disclosures, we have returned to the expressed underlying purposes of the Truth in Lending Act, which we think are as valid today as when TILA was first enacted in 1968. "It is the purpose of this title," says the Act, "to

[1] The Board observed in its recent prescreening study: "Importantly for consumers, annual percentage rates on credit card accounts have fallen over the past fifteen years. . . . In 1990, only 6 percent of credit card balances were on cards carrying rates of less than 16.5 percent; by 2002, that proportion was more than 70 percent." Board of Governors of the Federal Reserve System, Report to the Congress on Further Restrictions on Unsolicited Written Offers of Credit and Insurance, pp. 34-36 (Dec. 2004).

assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him [or her] ...."[2]

We have also been guided by the results of consumer focus groups that we have conducted for the purpose of learning more about what sorts of disclosure formats and content consumers actually prefer. The participants were randomly selected. They may or may not have been Capital One customers, and they were not informed that the exercise was being conducted by Capital One. While they are not a statistically significant sample of the card-carrying U.S. population, we believe the focus groups may provide directional insight into what consumers want and what they think is helpful. For example, these consumers confirmed the belief of many industry participants that more information is not necessarily better: Consumers want the important information, clearly conveyed, without a surfeit of distracting detail. Visual layout is very important; it can be either the door or the barrier to understanding. The consumers liked short sentences and bullet formats; they also liked a clear statement of what conduct on their part will trigger adverse consequences.

To give content to the fundamental purposes of TILA and to the learnings we obtained from consumers, we have focused on the following desirable characteristics.

- Importance
- Comparability
- Clarity
- Simplicity
- Specificity

Importance

The principal disclosure documents, on which we expect consumers to focus their attention most directly, should include those matters that are likely to be most important to consumers.

For example, the Schumer box is very effective in providing standardized disclosure about initial pricing, but we recommend that the Board also standardize and highlight the bases for default repricing similarly to initial pricing disclosures. Our Fact Sheet shows a way in which that could be done.

An example of why clear disclosures are important in communicating to consumers is the practice by some in the industry of repricing customers based on their default on the terms of debt to other creditors. To some lenders, this is part of their credit-underwriting and risk-management strategy. However, our focus group findings indicate that consumers do not

[2] Truth in Lending Act § 102(a), 15 U.S.C. § 1601(a).

agree. In light of this divergence of views, this is a point on which clear initial disclosure is desirable.

Other subjects that may be important to consumers include how lenders allocate payments among balances with different interest rates, and the effect of paying no more than the minimum required amount for an extended period. For these subjects, we propose a standard disclosure of payment-allocation practices in the initial solicitation, when the customer is deciding whether to apply for the product, and we endorse a minimum-payment disclosure on the periodic statement, when the customer is deciding how much to pay. (The latter subject is addressed in the bankruptcy reform bill that is expected to become law shortly. See our response to Question 31 below.) Consumers in our focus groups were interested in both disclosures. The subject of payment allocation was new to them, but they quickly understood it, and found the disclosures they sampled to be useful; minimum-payment disclosures also interested them, but as a subject for the periodic statement rather than the initial disclosures.

Comparability

We believe that the form and content of disclosures should facilitate comparison of important points of competing offers. This has always been a central tenet of the Truth in Lending Act and Regulation Z, and we believe it is more important today than ever. Greater comparability not only benefits consumers, but also promotes competition among lenders as consumers are able to make choices among them more knowledgeably.

As a corollary to that principle, we believe that comparability should apply not only to pricing information – the focus of the current Schumer box – but also to all major practices that affect the cost of credit, such as the lender's triggers for repricing.

Our draft Fact Sheet is an example of how the principle of comparability can be made effective for those other practices. Like nutrition labels, the Fact Sheet provides for quick and simple comparison of products. For cost-relevant practices, we recommend a system of disclosure in which all rate-change triggers are clearly spelled out with prominence similar to the rates themselves, and in a standardized location and format in the box.

Clarity

Our guiding principle is that disclosures should be direct and understandable.

For example, the term "grace period" is required in the current Schumer box to mean the period within which a customer may pay a debt after it is incurred (*i.e.*, in most cases, a transaction is made on the credit card) without having to pay a finance charge. In common parlance, however (for example, on a utility bill), the term refers to the amount of time after the due date that an amount can be paid without incurring a late charge; and that is what some consumers in our focus groups thought "grace period" meant. Hence, the currently required term should be replaced by some other term, like "interest-free period." (We understand that the term "grace period" is required by the statute, but we are making recommendations based on what we believe consumers truly need, even if on some points this would require an amendment of the statute, see Question 56.)

Simplicity

Complex concepts must be simplified if their content is to be meaningfully transmitted to consumers. We should strive for the clarity and simplicity of the current nutrition labels, which contain less information than do comprehensive lists of ingredients, but are far more useful to consumers.

For example, in the current regime, some information with respect to variable interest rates is included in the Schumer box, while some information appears below the box, including details on where the underlying indices can be found. But that less-important information that is currently disclosed below the box was the subject of negative comment in our consumer focus groups and may impede a consumer's absorption of other information that is more important. Capital One proposes a simplified set of variable-rate disclosures in the marketing information, limited to: (1) the current rate, (2) the underlying index, (3) the amount added to the index to obtain the variable rate, and possibly (4) the frequency of reset. Other details should be relegated to another document, such as the customer agreement.

Specificity

Disclosures should be accurate and specific, in a number of ways:

- The lender should disclose what it will actually do in response to violations of the lender's account rules, in situations in which the lender's policies in fact prescribe a specific response. For example, if only late payments, not overlimit events, trigger repricing, then only late payments should be disclosed as triggering repricing. If that policy changes, the lender must implement the change by means of the standard process for changing terms, including providing advance notice as required by Regulation Z.

- The lender should accurately disclose what the customer must do, after default repricing, to recover a lower rate. If nothing the customer does will achieve that, the lender should say so.

Applying the principles enumerated above, we propose that credit card marketing disclosures be recast along the lines of the following Fact Sheet, which incorporates principles of visual layout and of focus on matters of importance to consumers that were preferred in the focus groups that we conducted.

CREDIT CARD FACT SHEET

PRICING & FEES

X%min-X%max Variable	**Purchase APR after Month/Year**
X% Variable	**Intro Purchase APR until Month/Year** (PRIME + XX.XX%)
$X min-$X max	**Initial Credit Line**
$X (frequency)	**Membership Fee**
$X	**Late Fee**
$X	**Overlimit Fee**

X% Variable	Balance Transfer APR after account opening
X% Variable	Intro Balance Transfer APR
X% or $X	Balance Transfer Fee
X% Variable	Cash Advance APR
X% or $X min.	Cash Advance Fee
$XX	Minimum Finance Charge
X% or $X	Minimum Payment
XX days	Interest-Free Period for Purchases if balance is paid in full monthly
$XX	Return Check Fee

REASONS YOUR RATES MAY CHANGE

You pay late or you pay less than the minimum requested.	**• [Up to] XX% Default APR(s)** **• (creditor specific information for reduction or elimination of default APR)**
You break a rule on another account with us.	• [Up to] XX% Default APR(s) • (creditor specific information for reduction or elimination of default APR)
You break a rule on an account with another creditor.	**• [Up to] XX% Default APR(s)** **• (creditor specific information for reduction or elimination of default APR)**
You have negative information show up on your credit report.	• [Up to] XX% Default APR(s) • (creditor specific information for reduction or elimination of default APR)
Your transactions go over your credit limit.	**• [Up to] XX% Default APR(s)** **• (creditor specific information for reduction or elimination of default APR)**
Your check is returned – unpaid.	• [Up to] XX% Default APR(s) • (creditor specific information for reduction or elimination of default APR)
Your terms may change from time to time due to market conditions or other reasons.	**• Changes will be made in accordance with applicable law and the Card Agreement that will be sent with your card.**

Lender includes any reasons that the rates of this product may change.

ADDITIONAL INFORMATION ABOUT YOUR ACCOUNT

Your APR is a variable rate that changes monthly based on (Rate Index + XX.XX%).

Your payments and credits will be applied to balances with lower APRs before balances with higher APRs.

Please visit our website: www.creditcards.com or call us at 888.123.4567 for additional information.

This Standard Fact Sheet is used by all creditors. Please use it to make an informed decision.

This Fact Sheet breaks the important disclosures in the solicitation into three groups:

- Basic interest rates and fees.
- How rates may change based on customer behavior or for other reasons.
- Other information important to the customers, such as payment allocation.

Our goal is to set forth all of the major reasons why terms may change, so that those applicable to the particular offer may be clearly disclosed. We believe that this facilitates comparability between competing offers, and will bring desired clarity for the benefit of consumers. We believe that this form of disclosure would be useful, if used uniformly across the industry in the manner of nutrition labels.

Before turning to the specific questions the Board has asked, we make two observations about the enhancements we have proposed. First, in an industry like ours that is continuously evolving and innovating, no disclosure regime is likely to be perfect for all time, including the regime that we propose in this letter. For example, our proposed generic Fact Sheet includes the major reasons for changing interest rates and other account terms that are used in the industry today. We are responding to the industry as we see it now, but make no predictions as to its practices 10 years from now or whether a different set of disclosures would be desirable then. Consequently, as a regulatory process improvement, we urge the Board to regularly review and update the requirements for the disclosures that the industry uses, and to build such a process into Regulation Z; and if necessary, to seek modifications to the Truth in Lending Act to authorize that process of review and modification.

Second, because some of the enhancements that we propose differ significantly from the current regime, we believe that market participants who have relied in good faith on past and current rules, as well as market participants who will rely in good faith on the new rules, require protection. We recommend that the Board state, at the time that it announces its new rules, that those who relied on the old rules were compliant with the law and regulation as they applied at the time, and therefore have no liability on account of past disclosures simply because the rules changed thereafter, reinforcing the rule stated in Section 130(f) of the Act with respect to the Act's liability provisions. Further, the Board should affirm that any new model forms and clauses that the Board adopts in the new regime offer a safe harbor, in that compliance with them constitutes compliance with TILA and Regulation Z. We believe that these statements by the Board are necessary to ensure that this commendable project to improve the quality of information that consumers have readily available to them does not create unintended liabilities.

We now address the specific questions the Board has asked.

Question 1. The Board solicits comments on the feasibility and advisability of reviewing Regulation Z in stages, beginning with the rules for open-end credit not home-secured. Are some issues raised by the open-end credit rules so intertwined with other TILA rules that other approaches should be considered? If so, what are those issues, and what other approach might the Board take to address them?

We support reviewing Regulation Z in stages, beginning with open-end credit that is not home-secured. We believe that the need for an improved disclosure regime for credit card lending is here today, and should not await review of the rest of the regulation.

Question 2. What formatting rules would enhance consumers' ability to notice and understand account-opening disclosures? Are rules needed to segregate certain key disclosures from contractual terms or other information so the disclosures are more clear and conspicuous? Should the rules require that certain disclosures be grouped together or appear on the same page? Are minimum type-size requirements needed, and if so, what should the requirements be?

Current Commentary to Regulation Z provides that account-opening (226.6) disclosures may be combined with Solicitation and Application (226.5a) disclosures. *Commentary Paragraph 5a-2.* It is important to maintain this interpretation because it encourages creditors to give consumers additional relevant information while they are still in the process of comparing offers and shopping for a credit card. Modifying the Regulation to expressly permit that practice would be helpful. As noted above, the important disclosures at marketing stage include:

- Basic interest rates and fees.
- How rates may change based on customer behavior, or for other reasons.
- Other information important to the customers, such as payment allocation.

An example of this disclosure format is set forth in our proposed Fact Sheet.

Question 3. Are there ways to use formatting tools or other navigational aids for TILA's account-opening disclosures that will make the disclosures more effective for consumers throughout the life of the account? If so, provide suggestions.

We believe that the information provided on our proposed Fact Sheet should be made available to customers throughout the life of their accounts. Providing pertinent information on the back of the periodic statement would be one way to do it; providing this information on-line would be another. We propose that more-complex account terms be included in the account agreement available in print at account opening, which could also be made available on the creditor's website.

Question 4. Format rules could require certain disclosures to be grouped together or appear on the same page where it would aid consumer's understanding. For example, some card issuers disclose a 25-day grace period on the back of the periodic statement

that can be used to calculate the payment due date; the same card issuer might also show a "please pay by date" on the front of the periodic statement that is based on a 20-day period. Some consumers might assume the 20-day period reflects the due date; other consumers may ascertain the actual due date by looking on the back of the statement. Potential consumer confusion might be reduced by requiring creditors to disclose the grace period or the actual due date on the first page of the statement, adjacent to the "please pay by" date. Is such a rule desirable? Are there other disclosures that should be grouped together on the same page?

Capital One does not use the practice described in the Board's question. In the event that an issuer does use the practice described in the question, the disclosure grouping that the Board proposes would provide useful clarity to consumers. In the alternative, the Board could mandate uniformity and require the time period to be the same for both disclosures in order to avoid any customer confusion.

Question 5. Could the cost of credit be more effectively presented on periodic statements if less emphasis were placed on how fees are labeled, and all fees were grouped together on the periodic statement? Are there other approaches the Board should consider? If so, provide suggestions.

Under the present regime, the way in which fees are labeled has varying consequences for whether the fee is included in the calculation of effective APR. This consequence leads to an over-emphasis on how fees are classified and labeled.

As a general matter, we believe that the current method for calculating and disclosing effective APR does not serve consumers well. The inclusion of an isolated fee in the calculation of effective APR, amortized over a single billing cycle, causes the effective APR to "spike" for a short period of time. This is not an accurate or meaningful way to present the annual percentage rate applicable to the account.

As more fully described below, we believe it would be advisable to revise the disclosure scheme so that consumers are provided two basic categories of information regarding the cost of maintaining their accounts: (a) those costs that are calculated by reference to the outstanding balance of the account ("finance charges" and APR), and (b) other charges associated with the account ("fees"). Such a change would serve at least two purposes. First, it would clearly advise consumers what they are being charged for, and second, it would permit consumers to make direct comparisons between issuers as to the cost of maintaining an outstanding balance.

Question 6. How could the use of formatting tools or other navigational aids make the disclosures on periodic statements more effective for consumers?

We believe that the periodic statement should contain only the most relevant disclosures, particularly those that are relevant to monthly transactions, fees and account activity. As noted above, the current requirements around historical APR should be revised to provide the most useful information to consumers.

The best way for the Board to change disclosure practice and encourage consistency is to publish model clauses and standard terminology. For example, model clauses could be used to define and organize fees on the periodic statement. Appropriate information from the initial Fact Sheet, reproduced on the back of the periodic statement, would provide a useful continuing reference to customers of the key terms of their accounts.

Question 7. Is the "Schumer box" effective as currently designed? Are there format issues the Board should consider? If so, provide suggestions.

The Schumer box has been very effective in providing consumers with key information in a standard format. It has provided consumers with a straightforward reference page for many relevant credit card terms. Indeed, we believe it is time to build on the Schumer box's success and make enhancements to ensure that all key terms are standardized and displayed in a clear, uniform manner. We believe that in addition to disclosing interest rates, the Schumer box could be enhanced by including disclosures about how those interest rates could change. Under current rules, the default interest rate is set forth in the Schumer box, but the ways in which a consumer can trigger that default rate are not.[3] Our proposed Fact Sheet provides information about default repricing triggers in a manner that can be easily standardized.

There are several enhancements that we urge the Board to consider with respect to the Schumer Box, both in terms of what would and would not be included going forward. First, there are several disclosures that are not currently required to be inside the Schumer Box, which we propose to include in the box (or in our proposed Fact Sheet). These include:

- Fees: We believe that certain fees, such as cash advance fees, balance transfer fees, late fees, returned-check fees, and overlimit fees should be disclosed in the Schumer Box (or our proposed Fact Sheet). Consumers should have a clear way to compare and assess these fees when they are shopping for a credit card and, therefore, those fees should be highlighted and standardized in solicitation materials.
- Default Rate Triggers: As noted above, we would standardize disclosures of default rate triggers and include them in the Schumer Box (or in our proposed Fact Sheet) rather than outside the box.

[3] Because disclosure within the Schumer box is not currently permitted, Capital One's practice is to prominently disclose how such interest rates could change directly below the Schumer box. However, we believe that disclosure within the Schumer box would enhance comparability of credit card offers.

Second, with respect to items which are required to be in the Schumer Box under current law, but which we believe have limited or no utility to consumers:

- Balance Computation Method: We believe that disclosing the balance computation method for purchases is not an important disclosure for customers, in particular at the solicitation stage. It should be eliminated from the Schumer Box (and does not appear in our Fact Sheet).
- Periodic Rates: We believe consumers are interested in annualized rates, which provide the best means of comparison between issuers. But we believe providing the Periodic Rate does not provide any added benefit to consumers. The Board should consider proposing that the Periodic Rate disclosure not be required in the initial disclosures.

Question 8. Balance transfer fees and cash advance fees may be disclosed inside the "Schumer box" or clearly and conspicuously elsewhere on or with the application. 12 CFR § 226.5a(a)(2)(i). Given the prevalence of balance transfer promotions in credit card applications and solicitations, should balance transfer fees be included in the Schumer box?

Yes. As set forth in our proposed Fact Sheet, disclosure of balance transfer and cash advance fees should be standardized and included in the revised Schumer box or reference page.

Question 9. Are there formatting tools or navigational aids that could more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures, such as those accompanying convenience checks and balance transfer checks? If so, provide suggestions.

Yes, there are formatting tools and navigational aids that could more effectively link information in the account-opening disclosures with the information provided in subsequent disclosures. As noted above, our Fact Sheet could be provided at account opening, and appropriate information from it also could be placed on the back of the periodic statement for easy reference. These documents could also be available on-line. Furthermore, the Board should create model forms for disclosures that accompany convenience checks and balance transfer checks.

Question 10. Should existing clauses and forms be revised to improve their effectiveness? If so, provide specific suggestions.

Yes, existing clauses and forms should be revised to improve their effectiveness. Our proposed Fact Sheet offers multiple examples of how the disclosures in the Schumer box and other disclosures provided at the time of account solicitation could be revised. (See also Question 7.) We would be pleased to work with the Board on how documents provided at other stages of an account could be revised in a similar manner, including the periodic statement and customer agreement.

Question 11. Would additional model clauses or forms be helpful? If so, please identify the types of new model clauses and forms that the Board should consider developing.

Increased standardization increases the comparability of products and services. The result is not just better disclosure to consumers, but more competition among lenders as consumers are able to make choices among them more knowledgeably. Therefore, additional model forms and clauses should be added to standardize descriptions of common terms across the industry. Model clauses for descriptions of fees, both fees for optional account functions and default fees for rule violations, would be useful, as would standardized placement of the descriptions on each disclosure, particularly the periodic statement. The Board should consider model clauses or forms which place emphasis on default fees (and possibly a total of default fees for the billing period) for use on the periodic statement.

Question 12. In developing any proposed revisions or additions to the model forms or clauses, the Board plans to utilize consumer focus groups and other research. The Board is aware of studies suggesting that, for example, bolded headings that convey a message are helpful, but using all capital letters is not. Is there additional information on the navigability and readability of different formats, and on ways in which formatting can improve the effectiveness of disclosures?

Consumer focus groups and other research, if conducted properly, can be a valuable source of information for making policy decisions on revisions or additions to model forms. As noted above, Capital One engaged focus groups to test alternative disclosure formats. Their feedback contributed to development of our proposed Fact Sheet. The consumers liked an approach that uses understandable terms and a clear format. They liked formats that made the practices transparent, and clearly set forth rules and consequences, which they saw as a valuable tool for decision-making and comparing offers.

Question 13. How could the Board provide greater clarity on characterizing fees as finance charges or "other charges" imposed as part of the credit plan? Under Regulation Z, finance charges include fees imposed as a condition of the credit as well as fees imposed "incident to" the credit. This includes "service, transaction, activity, and carrying charges." 12 CFR § 226.4(b)(2). What types of fees imposed in connection with open-end accounts should be excluded from the finance charge, and why? How would these fees be disclosed to provide uniformity in creditors' disclosures and facilitate compliance?

The Board's proposed revision of Regulation Z is a welcome opportunity to provide greater clarity on the subject of the "finance charge" and what fees or charges to include in it or exclude from it, a subject that has proved vexatious as the Board and lenders have wrestled with it for some years in the context of disclosing the finance charge and other fees on the periodic statement.

We believe that the following is a reasonable and clear way to group, identify, and disclose interest and fees:

1. Interest charges (dollar amount and as APR) (will be proportional to the amount outstanding except where the minimum finance charge is significant);

2. Account membership or usage fees: Membership fees, balance transfer fees, cash advance fees;

3. Default fees: past-due fees, overlimit fees, returned-check fees;

4. Other fees for optional functionality, such as payment by phone.

In this disclosure regime, fees generally would be excluded from the finance charge:

- Membership fees
- Cash advance fees
- Balance transfer fees
- Any per-transaction fees
- Default fees, such as:
    - Past-due fees
    - Overlimit fees
    - Returned-check fees

The approach to fees and charges outlined above involves substantial simplification of the concept of "finance charge," because we think such simplification will bring greater clarity for consumers. Our guiding principle is that, for open-end credit, the finance charge should generally be the amount that varies in proportion to the amount of debt outstanding. We believe that this is the meaning that is the natural one and most easily communicable to consumers. The APR as initially disclosed will be the APR that continues to be disclosed on a periodic basis, subject to a change in terms, customer default, or variation based on an underlying index.

As a corollary to that general principle, fees should not be treated as finance charges in the calculation of APRs. When such fees are amortized over a single billing period, inclusion of them in the finance charge causes the APR to vary materially in a way that can be confusing and unhelpful to consumers. We believe that these variations are likely to lead to worse understanding, rather than better understanding, on the part of customers as to what is happening in their accounts, and hence, that they may simply ignore the effective-APR information. In the disclosure framework outlined above, fees would be disclosed – clearly and prominently – but not as part of the finance charge, and would be easy to compare across different lenders.

Question 14. How do consumers learn about the fees that will be imposed in connection with services related to an open-end account, and any changes in the applicable fees?

Current practice is typically to disclose these fees in or directly below the "Schumer box" on applications and solicitations. Some fees may be disclosed in association with other contract terms. In our proposed Fact Sheet, we disclose all relevant fees in the top box, "Pricing and Fees," providing an at-a-glace list of basic terms.

Question 15. What significance do consumers attach to the label "finance charge," as opposed to "fee" or "charge"?

As described above (Question 13), we doubt that the current disclosure regime has given rise to any clear understanding of the concept of "finance charge." We recommend that Regulation Z reflect the concept that the "finance charge" is equivalent to the commonly understood and easily disclosed notion of "interest" – the amount determined by applying the previously-disclosed APR to the customer's account balance.

Question 16. Some industry representatives have suggested a rule that would classify fees as finance charges only if payment of the fee is required to obtain credit. How would creditors determine if a particular fee was optional? Would costs for certain account features be excluded from the finance charge provided that the consumer was also offered a credit plan without that feature? Would such a rule result in useful disclosures for consumers? Would consumers be able to compare the cost of the different plans? Would such a rule be practicable for creditors?

We do not recommend a rule that would classify fees as finance charges if payment of the fee is required to obtain credit, because it would require a change in the current disclosure regime moving away from, rather than aligning more closely with, the simple and commonly understood approach that we describe above (Question 13). Therefore, such a rule would likely cause more consumer confusion than it would alleviate. A leading example is the account membership fee, which must be paid in order to access the account but which is not related to outstanding balances and currently is clearly and conspicuously disclosed, but not as part of the finance charge.

We think it is especially important that fees imposed for violations in terms of the account – notably including past-due fees, overlimit fees, and returned-check fees – be specifically excluded from the finance charge. They are not a condition of obtaining credit, but rather are fees that compensate creditors for the additional cost risk imposed by the customer's behavior.

Question 17. Some industry representatives have suggested a rule that would classify a fee as a finance charge based on whether the fee affects the amount of credit available or the material terms of the credit. How would such a standard operate in practice? For example, how would creditors distinguish finance charges from "other charges"? What terms of a credit plan would be considered material?

A rule that would classify a fee as a finance charge based on whether the fee affects the amount of credit available or the material terms of the credit would not, in our view, add needed clarity to the concept of finance charge, because we believe the rule would not provide unambiguous guidance in specific cases. We do not recommend such a rule.

Question 18. TILA requires the identification of other charges that are not finance charges and may be imposed as part of the plan. The staff commentary interprets the rule as applying to "significant charges" related to the plan. Has that interpretation been effective in furthering the purposes of the statute? Would another interpretation be more effective? Criteria that have been suggested as relevant to determining whether the Board should identify a charge as an "other charge" include: the amount of the charge; the frequency with which a consumer is likely to incur the charge; the proportion of consumers likely to incur the charge; and when and how creditors disclose the charge, if at all. Are those factors relevant? Are there other relevant factors?

The interpretation that charges must be "significant" to be disclosed as "other charges" does not provide sufficient guidance to market participants. As an alternative to providing a somewhat subjective standard of that nature for issuers to apply, we suggest that the Board simply provide examples, and include them in model forms. Our Fact Sheet includes the fees we believe should be disclosed in the solicitation.

Question 19. What other issues should the Board consider as it addresses these questions? For instance, in classifying fees for open-end plans generally, do home equity lines of credit present unique issues?

Home equity lines of credit should be considered separately to determine whether any of the general open-end credit rules should be modified with respect to them.

Question 20. How important is it that the rules used to classify fees for open-end accounts mirror the classification rules for closed-end loans? For example, the approach of excluding certain finance charges from the effective APR for open-end accounts is not consistent with the approach recommended by the Board for closed-end loans. In a 1998 report to the Congress concerning reform of closed-end mortgage disclosures, the Board endorsed an approach that would include "all required fees" in the finance charge and APR.

Closed-end loans and open-end credit are fundamentally different products with different value propositions. Closed-end products provide the certainty of a fixed schedule for paying down the amount borrowed, while open-end products provide flexibility in future borrowing. It is this characteristic of open-ended lending that renders problematic the inclusion of fees in the finance charge, because it subjects consumers to potentially bizarre fluctuations in a key information point they receive about their indebtedness. It is not important that the fee classification rules be the same between open-end and closed-end lending. It is more important that the Board make clear which rules apply to which products, and tailor the rules in a way that makes sense to each product.

Question 21. The staff commentary to Regulation Z provides guidance on when a fee is properly excluded from the finance charge as a bona fide late payment charge, and when it is not. See Comment 4(c)(2)-1. Is there a need for similar guidance with respect to fees imposed for exceeding a credit limit, for example, where the creditor does not require the consumer to bring the account balance below the originally established credit limit, but imposes an over-the-credit-limit fee each month on a continuing basis?

As we stated above (Question 13), we think that clarity and simplicity of disclosure require that fees not be included in the finance charge on APR. Therefore, we believe that providing guidance on inclusion of overlimit fees in finance charges would not be useful.

Question 22. Because of technical limitations or other practical concerns, credit card transactions may be authorized in circumstances that do not allow the merchant or creditor to determine at the moment of the transaction whether the transaction will cause the consumer to exceed the previously established credit limit. How do card issuers explain to consumers their practice of approving transactions that might result in the consumer's exceeding the previously established credit limit for the account and being charged an over-the-credit-limit fee? When are over-the credit-limit fees imposed; at the time of an approved transaction, or later such as at the end of the billing cycle? The Board specifically requests comments on whether additional disclosures are needed regarding the circumstances in which over-the-credit-limit fees will be imposed.

Capital One's current practice is to explain in its customer agreement that some authorized transactions may exceed the credit limit and be assessed an overlimit fee. The overlimit fee is assessed at the time of the transaction; however, only one overlimit fee per period will be assessed. Capital One customers who do not want Capital One to approve overlimit transactions can call us and ask us not to, and as a result most of those transactions will be declined at point of sale; however, for operational reasons, a number of classes of transactions, small in overall number, continue to be processed and will be assessed an overlimit fee if they send the account over the credit limit. These exceptions are explained to customers who opt out of authorization of overlimit transactions.

Question 23. Have changes in the market and in consumers' use of open-end credit since the adoption of TILA affected the usefulness of the historical APR disclosure? If so, how? The Board seeks data relevant to determining the extent to which consumers understand and use the historical APR disclosed on periodic statements. Is there data on how disclosure of the historical APR affects consumer behavior? Is it useful to consumers to include in the historical APR transaction charges such as cash advance fees and fees to transfer balances from other accounts?

We believe that consumers may not understand the effective APR required to be disclosed on periodic statements. It is unrealistic and confusing to amortize fees over a 30-day period on credit that is not required to be paid in 30 days. Consequently, we believe that inclusion of fees in the effective APR actually devalues the APR as an informative statement about the customer's account. We believe that the confusion inherent in the "effective APR" concept as currently administered can be avoided by clear disclosure of the various categories of fees and charges as we recommend above (Question 13). While, as the Board has pointed out in the Advance Notice of Proposed Rulemaking, some may advocate disclosure of an artificially inflated APR for the purpose of "shock value," we believe that a clearly informed consumer should be the desired objective of Regulation Z disclosures.

Question 24. Are there ways to improve consumers' understanding of the effective APR, such as by providing additional context for the disclosure? For example, should consumers be informed that the effective APR includes fees as well as interest, and that it assumes the fees relate to credit that was extended only for a single billing period?

As we describe above, we believe that the principles of clarity and simplicity in disclosure require that the finance charge and APR not include fees, which should be disclosed separately. We do not think it is feasible or desirable to attempt to improve consumers' understanding of the current concept.

Question 25. Are there alternative frameworks for disclosing the costs of credit on periodic statements that might be more effective than disclosing individual fees and the effective APR? For example, would consumers benefit from a disclosure of the total dollar amount of all account-related fees assessed during the billing cycle, or the total dollar amount of fees by type? Would a cumulative year-to-date total for certain fees be useful for consumers?

Consumers would benefit from consistent disclosure on the periodic statement of all fees incurred during the period. To restate the disclosure regime we propose above (Question 13), we recommend that charges be clearly identified and disclosed as follows:

1. Interest charges (dollar amount and as APR);
2. Account membership or usage fees: membership fees, balance transfer fees, cash advance fees

3. Default fees (past-due fees, overlimit fees, returned-check fees);
4. Other fees for optional functionality (e.g., payment by phone).

The total of all fees for the period would be useful if it were presented as a fee total instead of including the fees in the effective APR; however, we believe that fees for violating account rules should be separately identified, to assist customers in modifying their behavior. Presenting the total of fees by type annually will be useful if types of fees are standardized across the industry, as we propose in our Fact Sheet.

Question 26. Is mailing a notice 15 days before the effective date of a change in interest rates adequate to provide timely notice to consumers?

We believe that 30 days would be a more consumer-friendly advance-notice period than 15 days for rate changes (other than those that result from a delinquency or other default – see Question 27 – or a variable rate feature appropriately disclosed at account opening). In today's market there are many credit options appropriate to a consumer's creditworthiness, but applying, qualifying, and transferring a balance may take longer than 15 days. Capital One currently offers 30 days advance notice of its intent to change interest rates and offers customers the option of declining an interest rate change, ceasing to use their accounts, and paying off the outstanding balance at the former interest rate.

Question 27. How are account-holders alerted to increased interest rates due to consumers' default on this account or another credit account? Are existing disclosure rules for increases to interest rates and other finance charges adequate to enable consumers to make timely decisions about how to manage their accounts? If not, provide suggestions.

Under currently prevailing industry practice, consumers are typically informed of the consequences of delinquency or default on their account in advance, in the disclosures at account opening. Normally the customer receives notice that the trigger has actually occurred when the following periodic statement arrives, showing the new rate triggered by the delinquency or default. Sometimes there is a specific message on the periodic statement explaining that the rate has changed and why.

To facilitate comparison among competing offers from different issuers, consumers would benefit from a standardized format or model language to identify the particular issuer's grounds for repricing (*i.e.*, which violations of account terms trigger repricing), and the consequences of default. The disclosure should also include the consumer behavior, if any, that will result in the rate being lowered again. Our proposed Fact Sheet shows a way in which this could be done.

Question 28. How significantly does the balance calculation method affect the cost of credit given typical account use patterns?

The balance calculation method can affect the cost of credit for typical consumers. As between the one-cycle and two-cycle average daily balance methods, the effect is most significant for consumers who, after paying the account in full each month, cease to do so and instead pay less than the full amount. An assessment of the average impact of this effect may be difficult to obtain because many unpredictable variables, including size and timing of payments, impact the calculation. Capital One uses the one-cycle average daily balance method. An analysis of a segment of Capital One's portfolio showed that two-cycle billing would have moderately increased the customers' finance charge.

Question 29. Do consumers understand that different balance calculation methods affect the cost of credit, and do they understand which balance calculation methods are more or less favorable for consumers? Would additional disclosures at account-opening assist consumers and, if so, what type of disclosures would be useful?

Balance calculation methods for open-end credit, by their inherent nature, are complex. Successfully crafting additional disclosures that are clear, concise, and meaningful to most consumers probably cannot be done. We believe that disclosures should be accurate and concise, for the benefit of consumers who wish to pursue the subject further (see Question 30), and that the Board should satisfy itself that the balance calculation methods that are the subject of those disclosures are fair.

Question 30. Explanations of balance calculation methods are complex and may include contractual terms such as rounding rules. Precise explanations are required on account-opening disclosures and on periodic statements. Should the Board permit more abbreviated descriptions on periodic statements, along with a reference to where consumers can obtain further information about the calculation method, such as the credit agreement or a toll-free telephone number?

For the reasons described above (Question 29), we support a provision to allow standardized abbreviated descriptions at account-opening and on periodic statements with a clear reference to another source for further information. The longer descriptions are likely to cause information overload if included in disclosures.

Question 31. Is it appropriate for the Board to consider whether Regulation Z should be amended to require: (1) periodic statement disclosures about the effects of making only the minimum payment (such as, disclosing the amortization period for their actual account balance assuming that the consumer makes only the minimum payment, or disclosing when making the minimum payment will result in a penalty fee for exceeding the credit limit); (2) account-opening disclosures showing the total of payments when the credit plan is specifically established to finance purchases that are equal or nearly equal to the credit limit (assuming only minimum payments are made)? Would such disclosures benefit consumers?

We note that minimum-payment disclosure is a subject of the bankruptcy reform bill currently pending before Congress. We expect that bill to be enacted. It will mandate the inclusion of standard illustrative examples on periodic statements, combined with a toll-free number that customers could call to receive disclosures specific to the facts of their accounts. When the bankruptcy bill becomes law, of course all credit card issuers will comply with it.

Capital One's belief is that minimum-payment amortization disclosures of this kind are not useful to the majority of customers, who in fact pay more than the minimum payment required on their statements and substantially pay down their balances (adjusted for new purchases) over the course of a year. These disclosures might be useful to the small number of customers who make only the minimum required payment for an extended period. The disclosures that will be mandated by the bankruptcy bill meet that need, but are over-inclusive.

If making only the minimum payment required on the customer's periodic statement would not be sufficient to avoid a default fee, that fact should be disclosed on the periodic statement in conjunction with the minimum payment due. Capital One calculates its minimum payment required on the periodic statement so that payment of that amount is sufficient to avoid any further default fee.

Question 32. Is information about the amortization period for an account readily available to creditors based on current accounting systems, or would new systems need to be developed? What would be the costs of implementing such a rule?

Account-specific amortization information is not readily available to creditors. New systems would have to be built. For Capital One, building and running a system to generate minimum-payment duration disclosures for all customers, tailored to customers' actual outstandings and interest rates, would cost about $8 million in the first year, over $2 million per year thereafter. The requirements of the bankruptcy bill, described above (Question 31) will probably cost less.

Question 33. Is there data on the percentage of consumers, credit cardholders in particular, that regularly or continually make only the minimum payments on open-end credit plans?

Such data are available, but would pose comparison challenges across the industry. Different institutions use different minimum-payment standards; and the numbers would look quite different depending on how many payment cycles an institution assumes to be "regular or continual." We recommend that the Board provide the specific criteria that it would find meaningful, in order to promote comparability of the data that it receives.

Question 34. What are the common methods of payment allocation and how much do they affect the cost of credit for the typical consumer?

The prevailing method of payment allocation in the industry, which Capital One uses for most of its customers, allocates payments first to finance charges and fees, then to outstanding principal balances in order of increasing APRs. Other methods, which Capital One has used from time to time, include pro-rata allocation in proportion to the balances in the segments, or payment allocations in which different segments (such as cash, purchase, and transfer) are always paid in a predetermined order.

The effect of lowest-rate-first payment allocation, over time, is to shift balances from lower-rate payment categories to higher-rate payment categories, and to increase the blended interest rate paid on the aggregate outstanding balance as compared with pro rata payment allocation. However, the actual cost impact of payment allocation methods is dependent on the variance in rate among segments, the presence of balances in multiple segments, and the transactions executed over time in each segment and size of payments made by the customer. Therefore no quantitative generalization is possible.

Question 35. Do creditors typically disclose their allocation methods, and if so, how?

Payment allocation is a subject that is generally disclosed throughout the industry, but which, applying the principles of clarity and comparability described above, would benefit from greater standardization. Creditors frequently disclose payment allocation methods in application and solicitation materials for introductory-rate products or in the account agreement. The creditor generally discloses what the method is, or that the creditor will use the method most favorable to it. Capital One generally discloses its actual payment allocation methods in its marketing materials. We recommend that payment allocation be disclosed in a standardized way, such as shown in our proposed Fact Sheet.

Question 36. Is it appropriate for the Board to consider whether Regulation Z should be amended to require disclosure of the payment allocation method on the periodic statement? Would such a disclosure materially benefit consumers? Some creditors offer a low promotional rate, such as a 0% APR for cash advances for a limited time and a higher APR for purchases. Creditors typically do not allocate any payments to purchases until the entire cash advance is paid off. Are additional disclosures needed to avoid consumer confusion or misunderstanding? What would the cost be to creditors of providing such a disclosure? What level of detail would provide useful information while avoiding information overload?

The Board should require a brief, standardized disclosure of the payment allocation method in the initial disclosures (when the consumer is choosing among products) and on the periodic statements. Minimal detail is required for this particular disclosure (example: "we apply your payments to the lowest-interest segment of your account first"). An example is given in Capital One's proposed Fact Sheet.

(As a point of fact, we are unaware of 0% introductory rates being offered on cash advances, as the Board describes, and we do not offer them. Low introductory rates are more commonly offered on balance transfers and on purchases.)

Question 37. What tolerances should the Board consider adopting pursuant to this provision? Should the Board expressly permit an overstatement of the finance charge on open-end credit? Would that adequately address concerns over proper disclosure of fees? How narrow should any tolerance be to ensure TILA's goal of uniformity is preserved?

In open-end credit, fees are disclosed as they are actually incurred or collected; they are not estimated and compiled in advance as on a closed-end loan. Therefore, the concept of tolerance is less important to open-end credit than to closed-end credit, and we do not recommend changing the existing tolerance provisions.

Question 38. In considering changes to the disclosures required by Regulation Z, the Board seeks data relevant to the costs and benefits of the proposed revisions. Accordingly, commenters proposing revisions to the disclosure requirements are requested to provide data estimating the cost difference in complying with the existing rules compared to any proposed alternatives, including any one-time costs to implement the changes.

Except where otherwise noted, we have not estimated the cost of implementing our proposed disclosure regime across the entire company. However, we believe that the proposals we have made in this letter are feasible and affordable, and will provide significant benefit to consumers in improved clarity and comparability of terms. Some disclosure changes may be more expensive than others, for example those that require increased customization of the periodic statement.

Question 39. Are there particular types of open-end credit accounts, such as subprime or secured credit card accounts, that warrant special disclosure rules to ensure that consumers have adequate information about these products?

All accounts should have simple and clear disclosures, including a clear disclosure of the available credit limit or, in initial solicitations, the range of credit limits that will be available. If such disclosures are in place for all accounts, then subprime accounts (which tend to have lower credit lines) do not warrant special rules.

For secured cards, certain elements deserve standardized disclosure. These include: actual available open-to-buy in cases in which the deposit is not a money amount paid by the consumer but is instead charged to the card at account-opening; whether interest will be paid on the deposit; and the issuer's policy, if any, regarding upgrading the customer to an unsecured card.

Question 40. Are there additional issues the Board should consider in reviewing the content of open-end disclosures? For example, in 2000, the Board revised the requirements for disclosures that accompany credit card applications and solicitations. 65 FR 58903, October 3, 2000. Is the information currently provided with credit card applications and solicitations adequate and effective to assist consumers in deciding whether or not to apply for an account?

We believe that the disclosure revisions that the Board made in 2000 added valuable clarity and comparability for the benefit of consumers. We think, however, that enhancements can be made, especially to facilitate comparability among competing products, and we have made suggestions to that end throughout this letter. In particular, as we have discussed, greater standardization of content and placement of disclosure of repricing triggers would be desirable, and so would narrowing the concept of finance charge so that it does not include fees that are better disclosed separately. Our proposals are embodied in the Fact Sheet and in our response to Question 13.

Question 41. Are there classes of transactions for which the Board should exercise its exemption authority under 15 U.S.C. 1604(a) to effectuate TILA's purpose, facilitate compliance or prevent circumvention or evasion, or under 15 U.S.C. 1604(f) because coverage does not provide a meaningful benefit to consumers in the form of useful information or protection? If so, please address the factors that the Board is required to consider under the statute.

The current exemptions are reasonable.

Question 42. Should the Board exercise its authority under 15 U.S.C. 1604(g) to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?

The current exemptions are reasonable.

Question 43. The Board solicits comments on whether there is a need to revise the provisions implementing TILA's substantive protections for open-end credit accounts. For example, are the existing rules adequate, and if not, why not? Are creditors' responsibilities under the rules clear? Do the existing rules need to be updated to address particular types of accounts or practices, or to address technological changes?

Capital One's comments on certain of the substantive protections are included in our responses to other Board questions below.

Question 44. Information is requested on whether industry has developed, or is developing, open-end credit plans that allow consumers to conduct transactions using only account numbers and do not involve the issuance of physical devices traditionally considered to be credit cards. If such plans exist, what policies do such creditors have for resolving accountholder claims when disputes arise?

Capital One does not offer any open-end credit plans in which only an account number is issued. Therefore we have not addressed the question that the Board asks about processes for resolving accountholder claims.

Capital One does make account numbers available for use before the card can be sent in some circumstances (on-line applications), and of course Capital One cardholders can engage in card-not-present transactions, such as telephone purchases. The existing rules and customer protections are sufficient to cover those situations.

Question 45. Have consumers experienced problems with convenience checks relating to unauthorized use or merchant disputes, for example? Should the Board consider extending any of TILA's protections for credit card transactions to other extensions on credit card accounts and, in particular, convenience checks?

Capital One has not experienced any special problems with unauthorized use or consumer disputes on convenience checks. We provide the same protection for unauthorized use for convenience checks as we do for card transactions, and we support extension of the Regulation Z unauthorized-use protections to convenience checks issued in connection with a credit card account. But we do not support extension of the merchant-dispute provisions of Regulation Z to convenience checks, because convenience checks are not processed through the card associations' networks and therefore the card issuer does not have the ability to charge transactions back to the merchant.

Question 46. Should the Board consider revising Regulation Z to allow creditors to issue additional credit cards on an existing account at any time, even when there is no renewal or substitution of a previously issued card? If so, what conditions or limitations should apply? For example, should the Board require that the additional cards be sent unactivated? If activation is required, should the Board allow issuers to use alternative security measures in lieu of activation, such as providing advance written notice to consumers that additional cards will be sent?

We support the Board's proposal to revise Regulation Z to allow creditors to issue additional credit cards on an existing account at any time, in addition to the currently allowed instances of renewal or substitution. There may be a number of instances in which the ability to issue such cards would be valuable, for example, in enabling lenders to issue "mini-cards" to their existing customers, small credit cards that can be carried on a key chain, which could provide substantial additional functionality and convenience to some customers who do not want to always carry a purse or wallet.

We think the Regulation should allow issuers flexibility to employ security measures that are effective and feasible in the context of the issuers' particular systems and processes, which could include sending the new cards deactivated, sending advance notice, or employment of other security measures.

Question 47. What are the cut-off hours used by most issuers for receiving payments? How do issuers determine the cut-off hours?

Capital One's payment cut-off time is 3:00 pm for payments received by all channels except telephone, for which the cut-off time is 6:00 pm.

Payment posting is a complex, multi-hour process. Capital One sets payment cut-off times such that all or nearly all conforming payments received by the cut-off time can be posted the same day without backdating them.

The cut-off hours must accommodate systems time, requirements set by the card associations, and the impact of personnel shifts and mail volume. Despite modern technology, payment processing still requires substantial human intervention and a great deal of time.

By setting a cut-off time of 3:00 pm for the great majority of payments, Capital One can post about 95% of incoming payments received by the cut-off time the same day. The remaining payments are mostly non-conforming in some way, often requiring research to establish which accounts they apply to, and are required to be backdated if they are to be posted as of the date received. All conforming payments received by the cut-off time are posted as of that day, even if in some small number of cases the payments must be backdated to achieve that.

Question 48. Do card issuers' payment instructions and cut-off hours differ according to whether the consumer makes the payment by check or electronic fund transfer, or by using the telephone or Internet? What is the proportion of consumers who make payments by mail as opposed to using expedited methods, such as electronic payments?

See response to Question 47 above.

Capital One receives approximately 65% of payments by check and 35% electronically or by phone. The percentage of electronic payments has been increasing by about 3% per year.

Question 49. Do the existing rules and creditors' current disclosure practices clearly inform cardholders of the date and time by which card issuers must receive payment to avoid additional fees? If not, how might disclosure requirements be improved?

Capital One discloses the mail cut-off time on the back of the remittance slip, along with instructions on where and how to submit the payment and an admonition to allow at least five business days for mail delivery. Customers who pay by phone are advised of the cut-off time during the telephone call by the customer service representative who handles the phone payment. Customers who pay on-line are advised of the cut-off time on the page of our web-site at which they make the on-line payment.

In light of the practices described above, we believe our disclosures are clear and helpful to customers, and we do not see a need for further regulatory disclosure requirements.

Question 50. Do the operating hours of third-party processors differ from those of creditors, and if so, how? Do creditors treat payments received by a third-party processor as if the payment was received by the creditor? What guidance, if any, is needed concerning creditors' obligation in posting and crediting payments when third-party processors are used?

Capital One treats a payment delivered to a third-party processor as if it were delivered to Capital One at that time. We believe that is the common practice in the industry.

Question 51. Should the Board issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time?

The Board should not issue a rule requiring issuers to credit payments as of the day they are received regardless of the time. Because of the many systems and operational issues mentioned above (Question 47), it is impossible to process all payments for posting to their accounts on the day they are received. Consequently, under a rule such as the Board suggests, a large quantity of payments would have to be backdated.

This poses a serious problem for accounts whose statement cycle ends on the day that the payment is received – a common situation at Capital One, which sets payment due dates to coincide with statement closing dates in order to give customers the maximum time in which to make their payments. If the payment cannot be processed that day, but must be backdated, and the account incurs a late fee, that fee will be reflected on the billing statement that is cut as of midnight that day. When the payment is posted that day after being backdated, a credit must be made to the account, which the customer would not see until the next billing cycle. Substantial customer confusion would result. Setting an earlier payment due date would mitigate this problem, but is obviously detrimental to customers and should not be compelled by the Board.

Capital One believes that the rule change the Board suggests does not justify such a cumbersome system and resulting confusion, and hence should not be made. No regulatory action is required as long as the cut-off times that card issuers commonly use are reasonable, in that they reflect actual processing times and enable conforming payments that arrive by the cut-off time to be processed the same day, and are clearly disclosed to the customer.

Credit cards do not differ from other bank products and services in requiring a cut-off time to allow for processing of items. For example, Regulation CC under the Expedited Funds Availability Act recognizes deposit cut-off times as early as 2:00 p.m. (12 C.F.R. § 229.19(a)(5)(ii)), as does Uniform Commercial Code § 4-108(a) for bank processing of items generally.

Question 52. <u>Providing guidance not expressly addressed in existing rules</u>. Board staff is asked to provide informal oral advice on an ongoing basis about how Truth in Lending rules may apply to new products and circumstances not expressly addressed in Regulation Z and its official staff commentary. The Board invites the public to identify issues where they believe staff's informal advice should be formalized or addressed anew. Should such changes be adopted after notice and public comment, they would apply prospectively and compliance would become mandatory after an appropriate implementation period.

We have no comments at this time.

Question 53. <u>Adjusting exceptions based on de minimis amounts</u>. To facilitate compliance, the Board has provided a number of exceptions based on de minimus dollar amounts. For example, TILA's open-end rules require creditors to transmit periodic statements at the end of billing cycles in which there is an outstanding balance or a finance charge is imposed; the regulation relieves creditors of that duty if the outstanding debit or credit balance is $1 or less (and no finance charge is imposed). 15 U.S.C. 1637(b); 12 CFR § 226.5(b)(2)(i). Similarly, the Board provides for a simplified way to calculate the effective APR on periodic statements when a minimum finance charge is assessed and is 50 cents or less. 12 CFR § 226.14(c)(4). Should de minimis amounts such as these be adjusted, and if so, to what extent?

We do not endorse a change to the *de minimis* amounts. Our systems are designed around the current de minimis amounts, and changing the systems would entail a cost that we deem unnecessary. No tangible benefit to customers would result.

Question 54. <u>Improving plain language and organization; identifying technical revisions</u>. The Board is required to use "plain language" in all proposed and final rules published after January 1, 2000. 12 U.S.C. 4809. The Board invites comments on whether the existing rules are clearly stated and effectively organized, and how, in the upcoming review of Regulation Z, the Board might consider making the text of

Regulation Z and its official staff commentary easier to understand. Are there technical revisions to the regulation or commentary that should be addressed?

Based on comments set forth in this letter, as well as the proposed Fact Sheet, we believe that certain revisions to Regulation Z and the Commentary will be necessary. In order to provide the Board with an easy reference guide, we have prepared a chart that outlines the following: 1) the substantive issue involved; 2) the relevant section of TILA (if any) impacted by the suggested change; 3) the relevant section of the Regulation; and 4) the relevant section of the Commentary. That chart is attached as Exhibit 1. This chart provides a summary of the relevant sections; however, it is likely that additional revisions would be necessary depending on how the Regulation and Commentary are actually revised. We would be pleased to work with the Board in reviewing our suggested revisions, including by providing proposed language.

Question 55. <u>Deleting obsolete rules or guidance</u>. A goal of the Regulation Z review is to delete provisions that have become obsolete due to technological or other developments. Are there any such provisions?

Please see our answer to question number 54.

Question 56. <u>Recommendations for legislative changes</u>. Are there any legislative changes to TILA the Board should consider recommending to the Congress? For example, where a rule is based on a dollar amount established by the statute, the Board seeks comment on whether to recommend adjustments of those dollar amounts to the Congress, and if so, the amount of such adjustments.

Based on comments set forth in this letter, as well as the proposed Fact Sheet, we believe that two statutory changes may be required:

- Amend the statute so that use of the term "grace period" is no longer required. In common parlance that term often refers to the amount of time after the due date that an amount can be paid without incurring a late fee; and that is what some consumers in our focus groups thought "grace period" meant. The statute should use a more specific term such as "interest free period." (Statute: 122(c)(2)(c); 122(a); 127(c)(1)(A)(iii)).
- Amend the statute to eliminate the requirement to disclose the balance computation method with solicitation disclosures. Balance computation methods and their effects on the cost of credit are too complicated to disclose in a meaningful way in solicitation disclosures. (Statute: 127(c)(1)(A)(iv)).

These statutory changes are also noted on our chart attached as Exhibit 1 to this letter. We recognize that changing TILA would be a substantial undertaking. We would be delighted to work with the Board to modify our proposals as necessary to achieve the disclosure objectives within the framework of the existing statute.

Question 57. <u>Recommendations for nonregulatory approaches</u>. In addition to requesting comment on suggestions for regulatory or statutory changes, the Board seeks comment on nonregulatory approaches that may further the Board's goal of improving the effectiveness of TILA's disclosures and substantive protections. Such approaches could include guidance in the form of best practices or consumer education efforts. For example, calculation tools are widely available on the Internet. How might the availability of those tools be used to address concerns that consumers need better information about the effects of making only minimum payments on their account? Are there any data that indicate the extent to which consumers access calculation tools that are publicly available?

We strongly endorse consumer education efforts. As one example of how consumer education can be helpful, we believe calculation tools for minimum payments such as may be found at http://www.bankrate.com/kip/calc/MinPayment.asp are valuable when provided by disinterested third parties who can explain that the tools have made certain assumptions. Other consumer credit issues for which educational tools could be provided include balance calculation methods, payment allocation methods, and the effect of interest-free periods. The recently added consumer information on the Board's website about checks is an outstanding example.

We do not endorse the publication of "best practices." As a practical matter, the publication of "best practices" by a regulator is equivalent to the publication of binding regulations, but without the benefit of public notice and comment. The Board should express rules of conduct for the industry by means of the Regulations, the Commentary and the model rules and clauses, so that creditors can use the practices the Board announces with the safe harbor that those channels provide. As we urged above, the Board should state clearly that any changes are prospective only.

Question 58. <u>Review other aspects of Regulation Z</u>. Although the Board is proposing to focus the review primarily on the rules for open-end credit, are there other areas or particular sections of Regulation Z that should be included in this initial stage of the review?

Because it has been so long since Regulation Z open-end provisions were last comprehensively revised, and the marketplace has evolved in the meantime, we urge the Board to move forward with the open-end revisions expeditiously and reserve other aspects of Regulation Z for later review.

* * *

Capital One appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking and commends the Board for undertaking this ambitious project. If you have any questions about this matter and our comments, please call me at (703) 720-2265.

Sincerely,

Frank R. Borchert III
Senior Vice President and
Deputy General Counsel

CTC/slv
Enclosure
Exhibit 1

Proposed Change	**TILA**	**Reg. Z**	**Commentary**
Solicitation Disclosure – Permit the proposed Fact Sheet format to replace the current Schumer Box format.	No change.	Amend 226.5a(a)(2); and (form) Appendix G-10(A), (B).	Amend 5a(a)(2) -2, -3, -5, -7.
Initial Disclosure—The disclosure of periodic rates is not a critical term for consumers and should not be required in the initial disclosures.	No change.	Amend 226.6(a)(2).	No change.
Solicitation Disclosure— The proposed Fact Sheet (Schumer Box) should indicate what customer behavior will result in the rate being lowered again after a customer has been repriced.	No change.	Amend 226.5a(b)(1).	Amend 226.5a(b)(1)-7 and 226.6(a)(2)-11.
Solicitation Disclosure— Require a brief, standardized disclosure of the payment allocation method in the solicitation disclosures.	No change.	Amend 226.5a(b).	Amend 6(a)(3)-2.
Solicitation Disclosure— Require penalty rate triggers to be included in the proposed Fact Sheet (Schumer Box) to ensure appropriate prominence.	No change.	Amend 226.5a(b)(1).	Amend 5a(b)(1)-7 to remove the requirement to locate the specific trigger event or events outside the table.

Solicitation Disclosure— Require standardized disclosure of balance transfer and cash advance fees in the proposed Fact Sheet (Schumer Box).	No change.	Amend 226.5a(b)(8) & (11); (form) - Appendix G-10(A), (B); amend 226.5a(a)(2)(i) to include these fees and remove fees from 226.5(a)(2)(ii).	Amend 5a(b)(8).
Initial Disclosure— Require additional standardized disclosures for secured card. For example, require disclosure of actual available open-to-buy where the deposit is not paid by the consumer but is instead charged to the card at account-opening, and/or whether interest will be paid on the deposit.	No change.	Amend 226.6(c).	Amend 6(c).
Solicitation Disclosure—Permit more streamlined disclosures about variable rates.	No change.	No change.	Amend 5a(b)(1) -4.
Initial Disclosure—In common parlance, the term "grace period" has other meanings. That term should not be required, and a more specific term such as "interest free period" should be substituted.	The statute would have to be amended: 122(c)(2)(c); 122(a); 127(c)(1)(A)(iii).	Amend 226.5a(a)(2)(iii); 226.5a(b)(5) & 226.6(a)(1); and (form) Appendix G-10(A), (B).	Amend 5a(a)(2)-6; 5a(b)(5); 6(a)(1) – 2.
Solicitation Disclosure—Balance computation methods and their effects on the cost of credit are too complicated to disclose in a meaningful way on solicitation disclosures and should be removed.	The statute would have to be amended to delete 127(c)(1)(A)(iv).	Delete 226.5a(b)(6) and 226.5a(g).	Delete 226.5a(b)(6) - 1&2.
Periodic Disclosure—Require uniformity between "grace period" and "pay by date".	No change.	Amend 226.7(j).	No change.

Periodic Disclosure —Require disclosure of payment allocation method on the periodic statement.	No change.	Amend 226.7 (add new requirement (m) "payment allocation method"). Suggest model form for periodic statement.	Any new commentary would track regulatory changes.
Periodic Disclosure —Require standardized grouping of fees on the periodic statement.	No change.	Amend in particular 226.7 (h). Suggest model form for periodic statement.	Any new commentary would track regulatory changes.
Periodic Disclosure—Permit the exclusion of all fees from historic APR.	No change.	Amend 226.7 (amend (f)), amend "other charges" (h) as above). Amend 226.14(a); 226.14(c) (particularly (2) and (3)) and n. 33—suggest moving exceptions in n.33 to (c) to be more prominent and expand to include all fees.	May require changes to 7. Any new commentary would track regulatory changes, but consider particularly 14(c) -3, -5, -7, -8, -9.
Subsequent Disclosures—Require issuers to provide customers with 30 days notice of a broad based change in terms rather than 15 days notice.	No change.	Amend 226.9(c)(1) change "15 days" to "30 days".	Amend 9(c)(1) -2; 9(c)(1)-3.

Subsequent Disclosures—Extend unauthorized use protections to convenience checks.	No change.	Amend 226.12(b) and the corresponding footnotes to include a broader term such as "credit device" (the term from 226.9). Consider defining "credit device" in 226.2. Suggest Model Form for convenience check disclosures.	No change.
General Determination of Finance Charge	No change.	Amend 226.4 to add a section that includes credit card fees. 226.4(c) begins: "The following charges are not finance charges." Amend to add credit card fees to (c) or create new list similar to (d).	Any new commentary would track regulatory changes.