**Minnesota Life Insurance Company**
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**St. Paul, MN 55101**

March 25, 2005

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

Re: Regulation Z; Docket No. R-1217

Dear Ms. Johnson:

This letter is submitted in response to the Board of Governors' request for comment on open-end credit rules set forth in Regulation Z. Minnesota Life Insurance Company is a provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements to our clients. We also are a loan forms provider to our credit union clients, and as such, provide closed-end and open-end consumer and home equity loan forms to approximately 300 credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

**Q1. 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?**
The Board could review Section 226.5a, the credit card rules, with virtually no impact on other open-end credit rules. However, 226.6, 226.7, 226.8, sections of 226.9, 226.10, 226.11and 226.13 also apply to open-end home equity lines of credit. The home equity lines of credit rules, primarily 226.5b, are very specialized. The Board should be cautious with any changes to the non-home-secured rules so that the home equity rules are not affected in any incongruous, burdensome, or inconsistent way. The Board should be cognizant at all times as to the potential impact on the home equity line of credit rules.

Additionally, as set out in the response to Q13 and throughout this letter, the Board might consider determining whether a complete overhaul of the finance charge and APR sections of Reg Z might be feasible and desirable, so that all fees and charges are excluded from the finance charge. Consumers don't understand, and don't care, which fees are and are not finance charges. Simplifying the rules might be the single most important factor in protecting consumers, while at the same time simplifying it for the industry. While a complete overhaul might be a huge undertaking, it is respectfully requested that the Board consider whether such an undertaking would be a better use of the Board's time in the coming years.

**Q2. 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 formatting and disclosure rules seem to be effective and efficient in this regard. The credit card rules already mandate the "Schumer Box" and in that sense, key disclosures are already "grouped together". Requiring disclosures to appear on the same page is an arcane and outdated concept, as contract law and case law regarding Reg Z has long recognized the integrated-document concept, where multiple pages and indeed multiple documents can be used to disclose key information and set forth the entire contract. The concept of "the same page" has also become somewhat blurred and outdated with the event of websites and electronic disclosures, and adhering this requirement to current realities would be difficult. Finally, minimum type-size requirements already exist, both generally and specifically. The Board has already mandated 18-point type for the APR, and many states impose minimum type size requirements for certain disclosures. And if the type size were too small, it would arguably violate the existing "clear and conspicuous" standard. Increasing font size would increase the number of pages a consumer receives, and might encourage creditors to "skimp" on details in order to save on space and cost. It would be more beneficial to a consumer to have clearly articulated disclosures and contractual provisions, rather than versions that were edited in order to comply with arbitrary font-size requirements.

**Q3. 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.**

Probably not. See also answer to Q2. Most creditors and forms providers already utilize common drafting and writing styles or tools such as using Plain-English, setting forth information in a logical order, dividing by paragraphs with clearly-delineated captions, use of "bold" lettering, etc. Mandating such requirements would be difficult due to the wide variety of open-end products, varying operating practices and procedures of many different types of creditors, etc. Creditors do have an interest in having their consumers understand the products they are using, and there appears to be no evidence that creditors are using "fine print" or other formatting or drafting techniques to circumvent the Reg Z disclosure requirements. At the same time, consumers must also take responsibility to keep their disclosures and credit agreements, to read them, and to understand them.

Periodic Statements

**Q4. Format rules could require certain disclosures to be grouped together or appear on the same page where it would aid consumers' 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.**

Disclosing two due dates is generally not done and would only lead to confusion, and could actually be construed as purposefully misleading the consumer. Most consumers understand that the "please pay by date" or "due date" is the date by which a minimum payment must be received in order to avoid late charges. Fewer consumers understand the concept of grace periods to avoid finance charges. Additionally, in the example that the Board cites, if the member were to pay off the existing balance by the please pay by date, theoretically finance charges would be avoided as well.

Any requirements to "group together" certain disclosures should be approached with caution. This is not closed-end lending where one set of static numbers, calculations and disclosures can be set forth in

one Fed Box. Additionally, grouped together requirements are not necessary for a couple reasons. First, common sense organization already takes care of much of this. For example, consumers can easily see their transactions listed in one section of the statement so they can review their transactions. Generally below that is a section to list the APRs for purchases, cash advances, balance transfers, etc. Second, grouping together disclosures may be problematic because periodic statements traditionally use a chronological format – it discloses the transactions and fees incurred by date, and there is no evidence to suggest that this format is ineffective for consumers.

Finally, programming and reprogramming of periodic statements is extremely expensive and time-consuming for creditors and their data processors, and a creditor is limited by what their systems can and cannot do. Any major change to the requirements for periodic statements would be an industry-wide issue. Unless there is evidence that the formatting and/or content of periodic statements is unduly burdensome to the majority of consumers, such changes would be an arbitrary imposition on creditors that could actually result in increasing the cost of credit to consumers.

**Q5. 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?**

Grouping together the fees on a periodic statement would be redundant and probably not effective. All transactions, including the imposition of fees, are disclosed chronologically. The effective grouping occurs when a consumer can see each transaction – whether it is a purchase, a payment, a late fee, etc.

Benefit probably could be gained if less emphasis were placed on how fees are labeled. As will be discussed in subsequent Q&As, consumers have virtually no concept of whether a fee is a finance charge or not. As long as the fee is clearly labeled so that the consumer knows what it is, that should be sufficient.

**Q6. How could the use of formatting tools or other navigational aids make the disclosures on periodic statements more effective for consumers?**

There does not appear to be evidence that periodic statements are difficult for consumers to understand. As already mentioned, concepts of logical placement and chronological order seem to make the statements readable. While it is true that some periodic statements may be easier to read than others, it would be difficult to mandate to every creditor the same exact format. Unless the creditor is actually using format to circumvent the disclosure rules, formatting should be left to the creditor. If a specific creditor's statements are particularly difficult to read or understand, hopefully the consumers would contact that creditor and the creditor would take strides to improve the statement.

**Q7. Is the Schumer Box effective as currently designed? Are there format issues the Board should consider? If so, provide suggestions.**

The Schumer Box is very effective as currently designed. Additional disclosures that may be beneficial are a very short Minimum Payment Requirement box, and a short Allocation of Payment box regarding higher- or lower-APR balances first. For example

> <u>Minimum Monthly Payment</u>: 3% of Average Daily Balance, minimum $20.
> <u>Allocation of Payments</u>: Payments will be applied to balances with (higher)(lower) APRs first.

These two disclosures in a uniform manner and easy-to-find place would seem to be the final two pieces to allow a consumer to affectively comparison shop, especially with the advent of introductory and balance-transfer programs.

**Q8. Balance Transfer fees and cash advance fees may be disclosed inside the Schumer Box or clearly and conspicuously elsewhere on or with the application. Should balance transfer fees be included in the Schumer Box?**

Balance Transfer fees and cash advance fees seem to be included in the Schumer Box more often than not. It would seem to be reasonable and place no significant burden on creditors if this were to become a requirement.

**Q9. 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.**

No. Reg Z already provides enough requirements in this regard under 226.9(b). If the feature is added within 30 days, no disclosures are required, since it is assumed that the initial disclosures were provided recently enough for the consumer to remember the information. If it's added after 30 days, a cross-reference to the original terms must be included. If the finance charge terms vary from the original terms, then those new finance charge terms need to be disclosed. This would seem to protect consumers adequately.

Model forms and clauses.

**Q10. Should existing clauses and forms be revised to improve their effectiveness? If so, provide suggestions.**

**Q11. 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?**

**Q12. 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?**

Revisions or additions to the Board's model forms and clauses would be a more helpful solution than requiring additional disclosures. To the extent that these revisions or additions would help clarify requirements, they would be welcomed.

One additional model form or clause that the Board might consider is the disclosure of APRs when risk-based pricing is involved. The standard practice seems to be to list all available APRs, with a notation that the actual APR received will be based on the consumer's creditworthiness. This is a valiant attempt to disclose as much information the creditor has at the time of application (since there is no way of knowing which exact APR the consumer would qualify for until the application is received and reviewed). Some creditors will also disclose the credit score range associated with each tier. However, some creditors simply list a range of rates, and there seems to be increasing confusion by regulators, creditors and consumers alike, as Reg Z has not been updated to take into consideration the advent and prevalence of risk-based pricing.

A suggested model clause may be:

| | Platinum | Gold | Classic |
|---|---|---|---|
| **Annual Percentage Rate For Purchases:** | Tier A ( 700 +): 8.99%<br>Tier B (680-699): 10.99%<br>Tier B (650-679): 12.99% | Tier A( xxx-xxx): 10.99%<br>Tier B (xxx-xxx): 12.99%<br>Tier B (xxx-xxx): 14.99% | Tier A ( xxx-xxx): 13.99%<br>Tier B (xxx-xxx): 15.99%<br>Tier B (xxx-xxx): 17.99% |
| The actual APR that you will receive is based on your creditworthiness and will be disclosed to you at the time credit is extended. | | | |

A disclosure of this sort, coupled with the coming ability of a consumer to obtain his credit score under the FACT Act, would be sufficient to inform the consumer of the rates available and the rate he is likely to receive.

Can the rules for classifying and labeling fees as "finance charges" and "other charges" be improved?

**Q13. How could the board provide greater clarity on characterizing fees as finance charges or "other charges" imposed as part of the credit plan? 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?**

Clarifying the wide-spread confusion as to what constitutes a finance charge, what does not, and how to disclose both, could be the single-biggest stride the Board and the industry could take to improve consumers' understanding of the cost of credit. It cannot be stressed enough that this subject needs to be simplified for creditors, regulators, and consumers alike. In fact, if the Board changed strategy to undertake a full-scale review and revision of the finance charge rules, for all types of credit - rather than a section-by-section revision of Reg Z - regulators, creditors, and consumers alike would be well-served. It is suggested that all fees could be excluded from the APR, so that the only component of the APR would be the rate of interest charged – the only component that is truly uniform and consistent among all creditors. Such a revision would have significant impact on many areas of Reg Z, including 226.4, 226.14, 226.22, Appendix F, and potentially any provision that deals with, or mentions, finance charges and/or other charges, as well as the Reimbursement Rules. However, the Board might consider whether this process would be, in terms of time, money, and clarification, preferable to, and more advantageous than, a section-by-section review of each type of lending under Reg Z in the years to come.

The Problem.

(1) Reg Z's rules regarding finance charges appear arbitrary, complicated, and disjointed. For example, section 226.4 is a very lengthy section that begins with an attempted definition of the term based on "the cost of credit", and sets out a long laundry list of examples of finance charges. However, the section then proceeds to set out an even lengthier list of charges excluded from the finance charge (with much overlapping). What does, and does not, constitute a finance charge seems to have no rhyme or reason. Exceptions are made for application fees (but only if they are applied to all applicants); late fees, over-the-limit fees, and default fees; real estate-related fees; mortgage closing agent fees (but not mortgage broker fees); fees for optional products such as credit insurance and debt

protection, but only if certain disclosures (including the cost) are provided, etc. Such arbitrary classifications also make the term, “other charges” virtually meaningless. Also, oddly there is also a debatable third category of fees that are neither “finance charges” nor “other charges” (such as a returned check fee), that supposedly need not be disclosed initially. However, one could argue that an NSF fee of $29.00 could be just as “significant” as a $29 late fee, especially when the two fees are often times incurred together, and it would be beneficial for the consumer to know about such a fee initially.

(2) Skewing the APR - when to include a finance charge in the APR, and when not to. Reg Z recognizes that including a fee in the APR will skew that APR unreasonably (this same issue exists in closed-end credit as well), but it carves out only a very narrow exception to avoid this skewing: on the periodic statement, fees for opening, continuing, or renewing an account that are not tied to an outstanding balance are included in the finance charge, but shall not be included in the calculation of the APR. 226.14, n. 33. In fact, the Board in its commentary directly acknowledges the skewing of the APR that would result:

> Inclusion of these charges in the annual percentage rate calculation results in significant distortions of the annual percentage rate and delivery of a possibly misleading disclosure to consumers. 226.14(c), Comment 7.

So, while a very small percentage of fees may be excluded from the APR because it would unreasonably skew the APR, all other finance charges that would have the same effect cannot be excluded.

(3) Consumers don’t understand a skewed APR and don’t understand, or care, which fees are finance charges, and which are not. Skewing the APR only confuses consumers and complicates the understanding of the cost of credit. When a finance charge on a periodic statement is included in the calculation of the APR, the APR can increase wildly. The consumer reasonably believes that the creditor has increased the interest rate that the consumer initially applied for, and it appears to be punitive. And it is nearly impossible to explain the concept to a consumer if he calls to inquire or complain.

Consumers appear to understand, and care about, two concepts of the cost of credit: what interest rate they are receiving; and what fees they are being charged. The goal of disclosures and consumer protection in this regard is that the consumer understand what fees may be imposed, the amount of those fees, and the circumstances under which the fee will be imposed; not some convoluted categorization of the fees and whether they are or are not “finance charges” and whether they are or not included in the APR.

The Solution - Lessons learned from real estate lending. The exclusion of real-estate-related fees from the finance charge seems to both acknowledge the reality that consumers don’t care which fees are classified as finance charges and which are not, and acknowledges that disclosures can be effective without the arbitrary classifications. In real estate lending, especially in open-end home equity lines of credit, the APR rarely includes charges other than interest (and in fact whether it does or doesn’t is a required disclosure). This, coupled with an estimate of fees at the time of application and a subsequent itemization of fees at closing, provides a very clear understanding and disclosure of the cost to the consumer for that loan. Consumers and creditors would be well served if a similar standard could be adopted for open-end consumer loans, as well as closed-end consumer loans.

Open-end consumer credit seems to be half way down the road to this result for several reasons. First, the majority of fees for which a consumer would associate with the "cost of credit", such as late fees, over-the-limit fees, overdraft fees, annual maintenance fees, etc. are already excluded from the finance charge. It doesn't seem to make sense to exclude those fees, and at the same time to include fees such as balance transfer and cash advance fees, ATM fees, foreign transaction fees, copy fees, and fees for optional functionality such as pay-by-phone, etc. Second, a two-prong approach of disclosing fees is already used: the major fees that may be imposed are disclosed in the initial disclosures; and the fees actually imposed are disclosed on the periodic statement at the time they are imposed. By labeling these fees as finance charges and skewing the APR on the periodic statement serves only to confuse and bewilder consumers, and opens creditors to unreasonable litigation and scrutiny over technical violations of Reg Z.

So, simplified logic would suggest the following strategy when disclosing the rates and fees associated with open-end consumer lending:

1. Disclose the initial APR but include only interest, no other costs (the Board could even take the bold step of changing the definition to be the Annual Percentage Rate <u>of interest</u>, since the term APR is well known, but not understood).
2. Exclude all fees from the finance charge and APR.
3. Review the rules regarding disclosure of fees to ensure that consumers understand the fees that may be imposed, the circumstances under which the fees may be imposed, and, when actual fees are imposed, the nature and timing of the fee. It would not seem that much change to existing rules or practices would need to be made.
4. Review the rules regarding change-in-terms notice for the APR and fees to ensure that the consumer knows when interest rates and/or fees may increase or when new fees may be added.

<u>Uniformity in creditors' disclosures and facilitating compliance</u>. Interest is the only component of the cost of credit that can be truly said to be imposed by all creditors all the time. Fees vary in type, amount, and frequency of application. Creditors too are often times confused as to whether a fee is a finance charge, and whether the fee needs to be disclosed; some may err on the side of disclosure, while others may not. Additionally, unless the consumer knows which fees have been included in the APR by that particular creditor, and unless another creditor includes those same fees, the consumer cannot know whether he is comparing apples to apples, or apples to oranges. So, the best approach to allow a consumer to truly comparison shop would be to disclose the interest rate, along with a clear explanation and itemization of fees associated with the credit. If all fees were to be excluded from the finance charge and APR, it is recognized that a clear and uniform manner of disclosing such fees would be crucial to providing consumers with meaningful information with which to comparison shop. The following are suggestions for the Initial Disclosures and the Periodic Statement:

<u>Initial Disclosures</u>. As mentioned, it appears that creditors already do a good job of disclosing major or significant fees on initial disclosures. Some benefit may be had by categorizing such fees for better clarity and uniformity. For example, categories may include:

- Account Membership or carrying fees (e.g., Annual Fees, other fees to open an account);
- Transaction fees (cash advance fees; balance transfer fees; foreign transaction fees)
- Penalty fees (late fees, overlimit fees, returned check fees)

- Fees for optional functionality (pay-by-phone, etc.)
- Fees for optional products to protect the account (credit insurance, debt protection, identity theft monitoring, etc.) (on the initial disclosures, this category could be disclosed apart from the other fees, as is currently the case, since additional disclosures, applications, etc. may be involved; and the cost would be required to be disclosed).

For uniformity and the ability to comparison shop, the Board could impose the "using that term" standard, within reason. For example, creditors could be required to use and organize fees by the categories mandated, using those terms; a short descriptor could be used as well. Another requirement may be to state, "none" when that is the case. Finally, the description of the fees within the categories could have a required standard such as "can reasonably identify" the meaning of the term. The "Fees" section could be included at the end of the Schumer Box, as many are now. A Model Clause may be:

**Fees Associated with the Account:**

**Account Membership or Carrying Fees** (periodic fees required to maintain your account)**:**

Annual Fee: $30.00

**Transaction Fees** (fees will be incurred if you use these features)**:**

| | |
|---|---|
| Cash Advance Fee: | 1% of amount advanced or $20, whichever is less |
| Balance Transfer Fee: | 1% of amount transferred or $50, whichever is less |
| Foreign Transaction Fee: | 1% (in U.S. Dollars) of amount converted to US dollars |

**Penalty Fees** (fees will be incurred under the following circumstances)**:**

| | |
|---|---|
| Late Fee: | $20 if your payment is not received on or prior to the due date |
| Overlimit Fee: | $20 if you exceed your credit limit |
| NSF Fee: | $20 if your check is returned for nonpayment or insufficient funds |

**Fees for Optional Functionality** (Fees will be incurred if you choose to use the following services)**:**

Pay-by-phone: $5 per transaction

On the periodic statement, the categories would not need to be used, but the terminology used for the particular fee should be used on the periodic statement, e.g., Overlimit Fee, Balance Transfer Fee. The chronological order used on the periodic statement would remain, and the actual fees incurred would not need to be grouped together. Other fees that may occur sporadically or under special circumstances (such as copying fees) may be included in an "Other" category or perhaps left to the credit agreement's contractual provisions.

**Q14. 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?**

Fees are typically disclosed at the bottom of the Schumer Box or directly below; some fees may be included in the contractual provisions of the credit agreement.

**Q15. What significance do consumers attach to the label "finance charge," as opposed to "fee" or "charge"?**

None. See response to Q13. If any significance is attached to the term, “finance charge”, it is usually thought of as the interest rate or amount of interest accruing. The terms “fee” and “charge” are synonymous and are used interchangeably.

**Q16. 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?**

Such a rule would appear to be another example of the arbitrary scheme outlined in the response to Q13, and your question hits upon an inherent flaw in such a system. The terms “required” and “optional” can be interpreted in many different ways and to varying degrees. For example, we know an Annual Fee or Application Fee would be “required”. But what if the creditor allowed an account to be opened with no fee, but to maintain the account without an Annual Fee, a minimum number of transactions would need to be made? Would that fee then become a finance charge? This scheme would also include in the finance charge fees that are currently excluded, such as annual fees and application fees. Offering an alternative plan without the feature is not practical for creditors and would be an arbitrary and overly burdensome requirement (they would simply offer 1 plan and impose the fee). Offering additional products increases costs to the creditor, which could easily be passed on to the consumer by increasing the overall cost of credit. A rule that would classify fees required to obtain credit, and then requiring the creditor to offer alternative programs to exclude that fee, is unnecessarily convoluted and serves no purpose to the consumer or creditor.

**Q17. 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 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?**
This would seem to be a nonsensical rule. All fees arguably affect the amount of credit available because of the replenishing nature of open-end credit. “Material” has always been a red-flag term in legal and regulatory realms as there is no definition and it can be interpreted in wildly differing ways. If such a rule would be adopted, there would be chaos within the industry, and consumers would be the ultimate victim.

The suggestions posed in Q16 and Q17 illustrate the randomness and arbitrary nature of the finance charge rules and support the complete overhaul suggested in the response to Q13 as a valid alternative that should be seriously considered. The industry, regulators and consumer groups could argue for a century on how to categorize “finance charges” and “other charges” and still no consensus would come. If it’s a fee, it should be called a fee. We should try not to over-think this.

**Q18. 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? Criteria that have been suggested as relevant to determining whether the Board should identify a charge as an “other charge” include: 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 term, "significant," is not particularly troubling as it seems that some sort of consensus can or has been reached within the industry and among consumers. But this is probably because of standards of practice rather than any terminology or criteria used. For example, standard fees incurred include late fees, overlimit fees, cash advance fees, balance transfer fees, etc. Some are incurred more frequently than others, and the amount of the charges could vary widely. Imposing some sort of reasonable standard and improving the Board's guidance is important, however. The most relevant factor would seem to be the proportion of consumers likely to incur the charge. For example, the standard fees mentioned above seem to be "standard" because those are the most likely fees to be incurred by the most number of consumers. However, charges for copying and obtaining an additional statement would seem to be fairly infrequent and not necessarily important to a consumer at the time he applies for an account. On the other hand, a high fee incurred even once would be significant to a consumer. For example, a consumer who is never out of the country would never incur a currency conversion fee. But if that consumer went on her once-in-a-lifetime dream trip as a month-long tour through Europe, even a 1% fee on every transaction made in that month could be significant. The Board has already set forth examples in section 226.6(b) and there does not seem to be confusion as to what charges should or should not be disclosed. Perhaps doing nothing in this regard would be best.

**Q19. 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?**

Fees for home equity lines of credit are already treated differently under Reg Z. For example, under 226.5b(7) and (8), home equity fees are distinguished between "fees imposed by the creditor" and "fees imposed by third parties". This serves creditors and consumers well because it recognizes the different natures of home equity and consumer lending. In consumer lending, it is far less likely that a third party would be imposing fees. The nature of the fees can be quite different as well (e.g., appraisal and flood evaluation fees), as Reg Z has already recognized by singling out "real estate related" fees in several different sections. Finally, the way the fees are disclosed are different as well, with good faith estimates being used in home equity lending, followed by a complete itemization of all fees incurred at closing. It does not appear that confusion or discrepancy is created by the interaction of 226.6 and 226.5b(7) and (8). It would be best to keep it that way.

The Board should be very careful when discussing fees not to interfere with the current way home equity fees are handled. As mentioned in the response to Q13, the exclusion from the finance charge of most of the home equity fees could be used as a learning tool as to what can be done to improve disclosure of fees for consumer lending. The Board should not do anything to morph home equity fees into the current consumer/226.6 system any more than they already are.

**Q20. How important is it that the rules used to classify fees for open-end credit mirror the classification rules for closed-end credit? 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 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.**

It is not important for the classifications to be consistent between open-end and closed-end credit. Because of the different nature of the types of credit, fees can be different.

Also, as noted in previous responses, the very attempt to classify fees is what is likely causing the confusion for consumers (and creditors!). Also noted in a previous response is the danger in defining "required" fees (is a balance transfer fee "required", since you only incur the fee if you voluntarily choose to transfer a balance?) Attempting this definition and then requiring all such fees to be included in the finance charge and APR would be nothing short of chaotic, for several different reasons. First, the concept of what a reasonable "APR" would be skewed horrendously and consumers would have no idea what to make of it. For example, an APR of 10.9% for a credit card is considered very good right now. If all "required" fees were to be included in that APR, it could skyrocket to an unprecedented number which would have no meaning to a consumer. Even more troubling is that such an all-inclusive rule would actually make comparison shopping impossible, because there would be no way of analyzing the different types, nature, and amounts of fees included in the APR between creditors. For example, a creditor who errs on the side of disclosure might include the balance transfer fee in the APR, while another creditor may determine that such a fee is not "required", and therefore the APRs would differ for no apparent, or meaningful, reason. Also, what if one creditor imposes a flat fee for the balance transfer, and another imposes a fee based on percentage of balance? One can calculate the fee ahead of time and include it in the APR, the other cannot. But the percentage can actually cost the consumer more. In such a system, a consumer would not be able to tell if one APR contains everything including the kitchen sink, and another contains virtually nothing.

This again illustrates and supports the proposal under the response to Q13. If the Board is suggesting an "all or nothing" system of including fees in the Finance Charge and APR, then it should be "nothing". If it is mandated that the APR only include interest, that is probably as crystal-clear as one can get on the subject. That would allow a consumer to compare the rate of interest he would receive between creditors. This, coupled with a clear itemization and disclosure of fees imposed, would give the consumer all the information he needs to choose the best product for himself. Not only would it tell the consumer the difference between the amount of interest that may be accruing each month or year, it would itemize fees so that the consumer can choose the features that are most important to him. For example, if the consumer knows that he takes a lot of cash advances, then those fees and APRs would be important to him and he could compare those fees among the creditors. If a consumer knows he's not very good at making payments on time, he may shop by late fees. Again, consumers are concerned with two things: what interest rate am I getting? And what are my fees?

Finally, this proposal of including all required fees in the finance charge and APR could wreak havoc with open-end home equity lines of credit. The APRs as we currently know them would skyrocket, and would look disproportionately high compared to closed-end mortgage products and consumer loans (which would not have the same requirements, at least until the Board got to their review of closed-end credit). The ability to shop between a HELOC, a closed-end mortgage, and a consumer loan would become impossible.

**Over-the-credit-limit Fees. Penalty fees such as over-the-credit-limit fees have increased in recent years and adequate disclosure may be of particular importance to consumers who have low-limit credit card accounts. The Pfenning case last year upheld the Board's regulation of excluding such fees from the finance charge. Concerns have been raised about some card issuers' practices of allowing consumers to remain over their credit limit for multiple billing cycles. The card issuer may impose an over-the-limit fee on a continuing basis for each month the consumer carries a balance in excess of the original credit limit.**

**Q21. The staff commentary 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. Is there need for similar guidance with respect to over-the-limit fees?**

This would appear to be a subject more appropriate for unfair trade practices laws rather than a disclosure rule. Additionally, whether a late fee is being charged as a finance charge or not probably does not deter the consumer from continuing to be late on the account, nor would it probably encourage the consumer to bring the account current. If the consumer believed the continuing charge of the fee to be unfair or unreasonable, he would be arguing that it shouldn't be charged, not that it should be charged as a finance charge. The same would hold true if the fee in question was an over-the-limit fee.

Again, the solution would seem to not be in the classification of the charge, but proper disclosure and contractual provisions so the consumer understands, and agrees, how and when the charge would be imposed. Logic would seem that, as long as the consumer is over the limit, the creditor would be justified in charging the fee. That the creditor "allowed" the consumer to remain over the limit would seem immaterial. The only solution would be to cut off the credit at the point of purchase or use, which would inconvenience and possibly embarrass the consumer (and often times the creditor has no way of making the cut-off). And if the purchase was for a necessity such as groceries, car repair, or prescriptions, the cut-off could have potentially dire effect.

To give the consumer the best information so as to use the account in the most informed, and desired, manner as possible, the Board may be able to include a required disclosure in this regard. It would be a statement as to when and how the fee would be imposed and could be included directly with the over-the-limit fee. For example:

> **Over-the-limit Fee:** $29.00 for each billing cycle in which the credit limit remains exceeded – OR –
>
> **Over-the-limit Fee:** $29.00. This fee will be charged for each and every billing cycle in which the credit limit remains exceeded. To stop the fee from being charged, you must make a payment in an amount sufficient to reduce the balance to below the credit limit.

This would be much simpler for the creditor to manage, and very straightforward for the consumer. It would be much more desirable, and meaningful, than a random, convoluted classification of when an over-the-limit fee is, and is not, a finance charge.

**Q22. 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 credit limit. How do card issuers explain to consumers their practice of approving such transactions and charging the fee? The Board specifically requests comments on whether additional disclosures are needed regarding the circumstances in which over-the-limit fees will be imposed.**

See response to Q21. Also, practices vary among card issuers. When the fee is imposed (at the time of transaction or at the end of the billing cycle) has virtually no importance to the consumer.

Also, consumers seem to have a clear understanding that they are not supposed to exceed their credit limit, and if they do, they will be charged a fee. The consumer agrees to these terms and conditions when she obtains and uses the card. Some consumers would prefer that their card be rejected at the time of transaction; others prefer that the transaction go through. Card issuers cannot police consumers and consumers must take reasonable responsibility for their actions. All the disclosures in the world would not stop a consumer who would repeatedly exceed his credit limit, and not all transactions can be rejected. No additional disclosures other than the one suggested in Q21 would be meaningful or desirable.

**How do consumers use the "effective" or "historical" annual percentage rate disclosed on periodic statements? Under TILA the finance charge is also disclosed as an annualized rate, the APR. The APR is based on the periodic rate (interest) for purposes of credit card solicitations and applications, account-opening disclosures, and advertisements for open-end plans. But for periodic statements, creditors must also disclose an "effective" or "historical" APR that includes any finance charges other than interest imposed during the billing cycle (such as cash advance fees). TILA requires non-interest finance charges to be amortized over one billing cycle for purposes of calculating the APR, and as a result, such fees can result in a high double-digit (or sometimes, triple-digit) effective APR on periodic statements. That is why under the regulation and staff commentary, non-recurring loan fees, points, or similar finance charges related to the opening, renewing, or continuing of an open-end account are currently excluded from the effective APR that is disclosed for a particular billing cycle.**

**The utility of disclosing the effective APR, which is mandated by the statute, is controversial. The legislative history of TILA suggest that Congress adopted the effective APR for open-end credit to ensure that the cost of credit in the form of transaction charges or minimum or fixed finance charges was fully and uniformly disclosed. The history also indicates that Congress was aware that the effective APR would vary from the nominal APR, possibly substantially, when such charges were imposed. Moreover, in at least one hearing Congress heard testimony that an effective APR would not be useful to consumers, and might confuse them.**

**Consumer advocates believe the effective APR is a key disclosure. They contend that a sharp rise in the APR caused by the imposition of a fee makes consumer more likely to notice the fee and, therefore, to understand that their action triggering the fee increased the overall cost of credit. Consumer advocates have also stated that the effective APR should be used by consumers in evaluating their credit options and how they might avoid such charges in the future. Consumer advocates sometime refer to this theory as the "shock value" of the APR.**

**Over the years, industry representatives have provided comments questioning the value to consumers of disclosing the effective APR on periodic statements. They believe the effective APR could be eliminated without diminishing consumer protections because in their view it confuses consumers who do not understand how it differs from the APR based on the periodic interest rate. Industry representatives also assert that the effective APR overstates the cost of cash advances because it is based on amortizing the fees over one billing cycle even though some consumers may carry the advance for a longer period.**

**Q23. 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? Is it useful to consumers to include in the historical APR transaction charges such as cash advance fees and fees to transfer balances?**

**Q24. 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?**

**Q25. 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?**

While the credit card companies could surely provide hard data, it is safe to say that the number and type of credit cards and open-end lending has increased dramatically since TILA's adoption. Additionally, we have seen credit unions' use of multi-featured open-end plans increase significantly in the years since the Benion case was decided. This makes it more important than ever for regulators to issue coherent rules; for creditors to understand the requirements; and for consumers to be able to compare, in a uniform manner, the cost of credit among product types and creditors.

As already mentioned, the effective APR versus historical APR only confuses consumers and probably does not affect the consumers' behavior. There is no doubt that the "shock value" of the effective APR mentioned above does exist. However, it does not draw the consumer's attention to the fee; it merely draws the attention to the shocking APR. The consumer, however, does not understand why the APR appears to have skyrocketed and it is extremely difficult to effectively explain it to the consumer. The Board could utilize consumer focus groups, surveys, and studies devoted to these issues so that consumers themselves can tell the Board that their focus is on interest rates and fees, not effective APRs, historical APRs, and finance charges.

NOTE: Not only does the inclusion of fees skew the APR, but the inclusion of the minimum finance charge does as well. This issue needs to be addressed as well. The minimum finance charge could probably be disclosed only as the dollar amount (rather than including it in the APR) with perhaps a footnote stating that the dollar amount reflects the minimum finance charge required under the terms of the contract.

Additionally, the effective APR has no value to a consumer because there is no way to compare it to other creditors or other products. There is no way to recreate the circumstances which led to the effective APR, and no way to "crunch numbers" prior to incurring the fee or minimum finance charge. As such, consumer behavior could not be affected by disclosure, or non-disclosure, of the effective APR.

Additional disclosures such as that the effective APR includes costs other than interest would not increase a consumer's understanding of the concepts. The alternative solution, as mentioned in response to Q13 and others, is a comprehensive listing in the initial disclosures of the fees that may be incurred, and a comprehensive listing on the periodic statement of the fees actually incurred. This is the information with which consumers comparison shop, and how consumers gauge the cost of credit.

Additional information may be useful to the consumer as the Board suggests; however, the information is already available to consumers and they are free to track and total the amounts themselves. A cumulative year-to-date total would need to be done in a way that would be useful and cost-effective.

Categorization and labeling of fees would have to be uniform, and the per-transaction fee (which may have changed during the year) would probably need to be disclosed, in addition to the total, and this could be cumbersome. For example, if a consumer has a year-end report that says that, on Card #1 she incurred $174 dollars in cash advance fees, and for Card #2 she incurred $144 in cash advance fees, a truly valid comparison could not be done. It might be misleading because it appears that Card #2 was less expensive. However, on Card #1, she took 6 cash advances at $29.00 each, but on Card #2, she made 4 cash advances at $36.00. With the itemization, she would know that, if she wanted to save on cash advances for the coming year, she would use Card #1 because of the lower per-transaction cost. The Board should be cautious in the practical application of such a requirement– such a report would be an expensive programming change to the creditors' technology systems when the information is already available to consumers, and the consumer already had an opportunity to comparison shop the Schumer boxes when applying for the cards.

**<u>Disclosures about rate changes</u>. Under Reg Z, some changes to the terms of an open-end plan require additional notice. The general rule is that 15 days' advance notice is required to increase the finance charge (including the interest rate), or an annual fee. However, advance notice is not required in all cases. . . Consumer advocates have expressed concerns that consumers who have triggered certain penalty rates may not be aware of the possibility of the increase, and thus are unable to shop for alternative financing before the increased rate takes effect.**

**Q26. Is mailing a notice 15 days before the effective date of a change in interest rates adequate to provide timely notice to consumers?**

**Q27. How are account-holders alerted to increased interest rates due to consumers' default on this or another 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?**

Consumers should be aware of the possibility of the increase because it is now required to be disclosed in the Schumer Box. Under the existing change-in-terms rules, a 15-day notice is not required because the penalty rate and the circumstances under which it would be imposed would have already been clearly set forth in the disclosures and the contract. The increased rate appears on the periodic statement. An additional "warning" between the time the consumer's actions have triggered the penalty rate and the time at which the rate goes into effect seems unnecessarily redundant. Again, it is not the creditors' responsibility to police consumers' actions; their primary obligation is to clearly disclose the terms and rates of the card so that they do not unfairly impose hidden or unreasonable charges. It is also not the creditors' responsibility to allow the consumer to close out an account or to protect the consumers from charges they incurred through their own acts. If a creditor fails to properly disclose the fee or treats the consumer in an unfair or deceptive manner, existing laws would allow the proper remedies. No additional requirements in this regard would appear necessary.

**<u>Do consumers need additional information about other factors that affect the cost of credit?</u>**
**In addition to rates and fees, the cost of credit can also be affected by the creditor's method of calculating the outstanding credit balance; the size of the consumer's monthly payment; and the creditor's allocation of that payment among different charges and transactions. As explained below, the Board seeks comment on the need for regulatory revisions to enhance consumers' understanding of the effect of these factors on the cost of credit.**

**<u>Balance calculation methods</u>. Under TILA and Reg Z, consumers receive information on how account balances are calculated for open-end accounts although TILA does not govern which calculation methods creditors must use. Creditors may identify common balance calculation methods by name on credit card application disclosures. The method is described in more detail in account-opening disclosures and on periodic statements. The balance calculation method used by a creditor can affect the cost of credit. For example, for purposes of assessing finance charges on unpaid balances, some creditors include balances from the previous cycle, although some do not. Others may include purchases made during the current cycle, although not all do.**

**Q28. How significantly does the balance calculation method affect the cost of credit given typical account use patterns?**

**Q29. Do consumers understand that difference 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?**

**Q30. 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?**

How significantly a balance calculation method affects the cost of credit is difficult to determine because of the many factors involved. Consumers do not understand that different methods affect the cost of credit, and certainly do not understand which methods are more or less favorable. As the Board states, the calculations are complex and no additional disclosures will change that. Simplifying the account-opening and periodic statement disclosures with a clear cross-reference to the account agreement would be a welcome change. This is not a disclosure which a consumer uses to comparison shop. Balance calculation disclosures should be precise in the account agreement, and creditors should follow the method that they use and disclose. Additional language or disclosures are not necessary nor would they be beneficial.

**<u>Disclosing the effects of making only minimum payments.</u> Subject to any required minimum payment, consumers are free to decide each billing period how much to pay on outstanding balances. The consumer's payment amount each period affects the overall cost of credit, and can result in negative amortization if the payments are insufficient to cover the accrued interest charges. Furthermore, if a consumer's account balance exceeds the credit limit and the payment is not large enough to bring the balance below the limit, an over-the-limit fee might be assessed even if the minimum payment amount is satisfied.**

**TILA and Reg Z do not require disclosures associated with payment amounts, except if the minimum required payment increases. Minimum-payment amounts are set by agreement and disclosed in the periodic statement. In recent years, consumer advocates have raised concerns about whether consumers understand the effects of making only minimum payments on their open-end accounts.**

**Consumer advocates have also expressed concerns about open-end accounts that are specifically established to finance a single purchase that is equal to or nearly equal to the credit limit,**

**because consumers do not receive disclosures about the total payment amount and the time it takes to repay the debt based on the minimum payment. But industry representatives have noted that requiring separate disclosures at account opening in such cases would unfairly disadvantage merchants' credit plans because issuers of general purpose credit cards would not provide such disclosures at the point of sale for an identical transaction.**

**Q31. Is it appropriate for the Board to consider whether Reg Z should be amended to require: (1) periodic statement disclosures about the effects of making only the minimum payment; (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. Would such disclosures benefit consumers?**

Minimum Payment Requirements. The US Senate's passage of SB 256 provides for minimum payment disclosures (section 1301). If passed by the House and signed into law, the Board's hands will unfortunately be tied, at least to a certain extent. If the bill does not become law, it would be appropriate for the Board to consider the issue. Under the current provisions of SB 256, it appears to have an "either/or" approach for creditors: either provide the language set forth in 1301(a), which does not appear to require calculations by the creditor; or provide a toll-free number which a consumer can call to find out "the actual number of months that it will take to repay the customer's outstanding balance". There is also provision for the Board to establish a detailed table illustrating the approximate repayment period based on several different APRs, account balances, and minimum payment amounts, and to promulgate regulations that provide instructional guidance regarding the manner that this table should be used in responding to the request of a borrower. The provision also calls for the Board and the FTC to establish a toll-free number which the consumer can call as well.

Any clarification the Board could provide should these provisions become law would be appreciated. It doesn't seem to make sense to require a disclosure that doesn't require the creditor to make its own calculation, but then instructs the Board to provide a table of examples, and additionally, if the creditor chooses to provide a toll-free number, it must provide actual number of months, which would require actual calculations (and apparently the assumption that the consumer would never take another advance). Also, what is required under a multi-featured open-end plan, under which several different lines of credit with different APRs and minimum payment requirements may be imposed? Can only one example be provided?

If the bill does not become law, but the Board wishes to impose such a requirement, the preference would probably be to provide the disclosure that does not require actual calculations, such as a disclosure provided by the Board or use of the Table described that a creditor could use to select the disclosures most appropriate for its terms Alternatively, a disclosure that the minimum payment calculations can be provided if the toll-free number is contacted may be acceptable.

Credit plans specifically established to finance a single purchase – Total of Payments. This is a quizzical question, since the 7th Circuit case of Benion v. Bank One, Dayton, N.A., 144 F.3d 1056 (7th Cir. 1998), clearly established that such a credit plan would not meet the definition of open-end credit. The Court was troubled, however, that the credit plan in question technically met the requirements because there was just enough left on the credit limit to allow the consumer to go back to the store to purchase inexpensive parts and accessories related to the original purchase. This demonstrates the difference between the replenishing nature of the credit line, versus the creditor's reasonable contemplation of repeated transactions. The difficulty, and the objection, is not to the fact that the credit limit established is close to the purchase price of the item, but rather to the fact that repeated

transactions could not be reasonably contemplated. The Board also addressed the issues raised in that case in 1998 by amending Reg Z's commentary to section 226.2(a)(20). Specifically, in Comment 3ii, the Board gave this example:

> It would be more reasonable for a financial institution to make advances from a line of credit for the purchase of an automobile than for an automobile dealer to sell a car under an open-end credit plan.

When the Board requested comment and promulgated the final rules, it recognized that times had changed in the consumer lending industry. Consumer demands for convenience and the advent of electronic and remote lending required the industry to become more nimble and flexible. The Board recognized that "big ticket items" and other consumer goods could be purchased through the use of a multi-featured open-end plan (under which traditional open-end subaccounts such as lines of credit, would be joined by the more traditional closed-end lending subaccounts such as for automobiles, to form one overall lending plan), as long as the Reg Z definition of "open-end credit" was followed.

If a merchant is providing a revolving credit card **specifically to finance a single purchase**, then that does not meet Reg Z's definition of open-end credit and the creditor is merely circumventing the closed-end disclosure rules. Reg Z and other consumer protection laws are already in place to combat that. However, it is difficult to determine whether the account is established "specifically to finance a single purchase". As in Benion, the Court conceded that there still was room left on the card to make repeated, albeit minor, purchases. Additionally, because of the revolving nature of the account, a consumer would be able to purchase additional items as the balance decreased. For example, a consumer may go to a furniture store to buy an $800 couch. A credit card account is established to purchase the couch, and perhaps a $900 credit limit is established. The consumer could still come back and buy a $50 lamp. Six months later when the credit available has increased to perhaps $200, the consumer could buy a $200 table. Even if the credit limit was established exactly at the cost of the item, once some payments are made and credit becomes available, the consumer would be free to use the account again. On the other hand, the same furniture store could establish a $3000 credit line, and the only purchase that that particular consumer may ever make was that initial $800 couch. In the wake of Benion, the Board was careful to note that the standard of "reasonably contemplating repeated transactions" is based on the creditor's total experience, not the particular situation. The Board also added the safeguard that that standard must be based on, and supported by, objective analysis. For example, we can contrast this to an auto dealer, who opens a credit card account for a consumer to purchase a $25,000 vehicle. While it may be true that some consumers will repeatedly return to the same dealer over the years to purchase additional vehicles, the number of consumers that do this would be far fewer, and the amount of time that passes between purchases would be far greater, than a merchant who sells furniture, sporting goods, etc. For the auto dealer and their finance companies, closed-end paper and disclosures are more appropriate, and are indeed used in the industry. In the same vein, an eye clinic that provides Lasik surgery, or an aluminum siding or roofing company, could not reasonably contemplate repeat transactions, so closed-end paper and disclosures would be required and any open-end lending used would be spurious. If the consumer groups are aware of any auto dealers, lasik clinics, roofing companies or similar creditors establishing credit cards or revolving credit plans to finance those purchases, the more appropriate remedy would be a lawsuit or action by the state attorney general or the FTC for Reg Z violations and unfair trade practice violations. The existing Reg Z rules should not be changed.

Total of Payments. The Board should keep in mind that the definitions and rules between open-end and closed-end credit have already been revised after careful analysis stemming from the real-life

example of Benion. The Board should be careful to remember those rules and examples that it very effectively set out in 1998. Open-end plans can legitimately be set up if repeated transactions are reasonably contemplated. Because of the replenishing and repeating nature of the plan, a Total of Payments cannot be calculated for legitimate open-end accounts. Even if a creditor could assume that the first purchase is the only purchase, such a requirement would only place additional burden on legitimate, law-abiding creditors. It would not combat the problem of unscrupulous lenders deliberately circumventing the closed-end disclosure rules. It would, however, confuse the issues and defeat the purpose of open-end lending. Legitimate and responsible lenders know when they need to provide closed-end disclosures, and when they can provide open-end disclosures. The rules should be left alone.

**Q32. Is information about the amortization period of 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?**

Amortization tables for a "period of time it would take to pay off an advance if only the minimum payment was made" are not generally available for consumer open-end credit, and systems would need to be developed. A Total of Payments calculation is impossible under open-end credit and would be futile to try to develop systems to make such a calculation. See also response to Q31.

**Q33. 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?** We do not track such data.

**Payment allocation. Some accounts that have multiple features apply different periodic rates to particular features such as purchases, cash advances, and balance transfers. How a consumer's payment is allocated to the balance for each feature affects the consumer's cost of credit. A creditor's method for allocating payment may be included in the credit contract, but neither TILA nor Reg Z requires a creditor to use a particular payment allocation method or to disclose the method it uses. Indeed, the staff commentary expressly indicates that disclosure of the allocation of payments is not required.**

**Q34. What are the common methods of payment allocation and how much do they affect the cost of credit for the typical consumer?**

**Q35. Do creditors typically disclose their allocation methods, and if so, how?**

**Q36. Is it appropriate for the Board to consider whether Reg Z should be amended to require disclosure of the payment allocation method on the periodic statement? Would such a disclosure materially benefit consumers? 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 typical method of allocation appears to be first to finance charges, then to late fees and other fees and optional products, then to principal. Allocation among APRs seems to be in order of increasing APRs. Creditors do typically disclose the allocation method, usually in the credit contract, but increasingly in the application & solicitation disclosures.

Payment allocation seems to be an issue primarily with credit cards and introductory or balance-transfer offers with solicitations, rather than open-end credit in general. Most consumers do not realize, when shopping for a balance transfer option, that the higher-rate purchase or cash advance balances would not be paid until the lower-rate balance transfer was paid, thus costing the consumer more. This could minimize the cost-savings the consumer was hoping for and, without the realization, the consumer may actually forego an opportunity to obtain a card that might pay the higher APRs first. The most appropriate place for a disclosure would seem to be the Schumer Box, rather than the periodic statement. As noted in Q7, a brief, uniform Allocation of Payments disclosure would allow a consumer to know the card issuer's policy prior to applying for the card, and they can better comparison shop. A very brief disclosure might state:

Allocation of Payments: Payments will be applied to balances with *(higher balances first.)/(lower APRs first. This means that higher APR balances will not be paid until the lower-APR balance is paid in full).*

The Board should keep in mind that the method of allocation is neither good nor evil; even if allocation is to lower APRs first, the consumer could still save money if the balance transfer rate is better than the consumer's current rate with another card. All that is required is for the consumer to understand how the particular card issuer is allocating the payment, and what it means to the consumer.

Note: this issue has less impact on personal lines of credit or home equity lines of credit. These types of credit tend not to have different balances on which different APRs apply; and home equity lines of credit tend to have a component of amortization which will pay off the balance in an allotted amount of time. Therefore, if allocation of payment disclosures would become required, it should be done by revising 226.5a, not 226.6 or 226.7.

**Tolerances. TILA authorizes the Board to permit tolerances for numerical disclosures other than the APR. Such tolerances are required to be narrow enough to prevent the tolerance from resulting in misleading disclosures that circumvent the purposes of TILA.**

**Q37. 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 not estimated as in closed-end credit; rather, they are disclosed on the periodic statement (or settlement statement in the case of home equity lines) when incurred. Therefore, the concept of tolerances is less important in open-end credit. Additionally, the reimbursement rules associated with tolerances are already complex. Additional changes requiring creditors to learn the new rules would have marginal affect in protecting the consumer. A better way to protect the consumer would be to adopt the full-scale revision to the finance charge rules set out in the response to Q13, with a clear itemization of fees.

**Other questions regarding the content of disclosures**.

**Q38. In considering changes to the disclosures required by Reg 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.**
Cost analysis at this point is not yet available and could vary depending on the revision proposed and the creditor affected. The revisions proposed in this letter appear to be feasible and cost-effective. The Board should keep in mind that all changes affecting the periodic statements impacts creditors' technology systems (both consumer systems and home equity systems, which are often separate), and any changes requiring new calculations are particularly expensive and complex. Additionally, creditors are often at the mercy of their outside data processors when it comes to cost and time to implement such changes. Creditors should have at least a year to implement any changes required.

**Q39. Are there particular types of open-end credit accounts, such as subprime or secured credit card accounts, that warrant special disclosure rules to ensure the consumers have adequate information about these products?**
It is probably not feasible nor desirable to single out subprime credit card accounts. Different disclosures mean additional cost to the creditors, with limited benefit to the consumer. Basically the only thing different from a consumer's standpoint would presumably be a higher APR or lower credit limit. These are already clearly set forth to the consumer. Also, the FACT Act's new requirement to provide credit scores to consumers will enable a consumer to more readily know and understand his credit score and will increase the consumer's ability to ask for a better APR or to shop for a better APR if he improves his credit score.

Secured credit cards may warrant some additional standardized disclosures. For example, a clear indication that the card is indeed secured, and whether or when the deposit can or will be applied against the credit used; whether interest will be paid on the deposit; and the criteria needed to upgrade the consumer to an unsecured card and whether the deposit will be credited to the account or refunded to the consumer; the circumstances under which the consumer may be downgraded back to a secured card or the account suspended or closed.

**Q40. 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 the disclosures that accompany credit card applications and solicitations. Is the information currently provided adequate and effective to assist consumers in deciding whether or not to apply for an account?**

Besides those suggestions set forth throughout this letter, the Schumer Box disclosures are very effective in allowing consumers to comparison shop. One additional provision may be a reminder to the consumers to keep a copy of the Schumer Box for their records.

**Q41. Are there classes of transactions for which the Board should exercise its exemption authority under 15 USC 1604(a) or 1604(f)?**

**Q42. Should the Board exercise its authority under 15 USC 1604(g) to provide a waiver for certain borrowers whose income and assets exceed the specified amounts?**
The current exemptions appear reasonable.

**C. Is there a need to modify the rules that implement TILA's substantive protections for open-end accounts? To summarize the rules:**

- **Consumers using an open-end credit plan may assert a billing error, which triggers creditors' duty to investigate within prescribed time limits.**
- **A cardholder may assert a claim or defense for defective goods if the merchant fails to resolve the dispute, if the dispute exceeds $50 for purchases made in the consumer's home state or within 100 miles.**
- **Cardholders' liability for the unauthorized use of a credit card is capped at $50.00 and zero liability for charges after notification that the card has been lost or stolen.**
- **Credit cards may be issued to consumer only upon request.**
- **Payments received from a consumer on an open-end credit plan must be posted promptly to the consumer's account, i.e., on the same day received, unless delay would not result in a finance charge or other charge.**

**Q43. The Board solicits comments on whether there is a need to revise the provisions implementing TILA's substantive protections. Are existing rules adequate? Do they need to be updated?**

Cardholder liability under Visa's and MasterCard's operating rules generally call for zero liability unless the card issuer can prove fraud or negligent use of the card. It would be less confusing if the Reg Z rules would be consistent.

**Accessing credit card accounts. It is increasingly common for consumers to access their credit card plan without presenting the card, e.g., over the internet and via phone. These transactions receive all of TILA's protections.**

**Q44. 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?**

Credit unions use multi-featured open-end credit plans that may be accessed a variety of ways, including by credit or debit card; or via the internet or phone as well as in person. The first step is for the member to sign the loan documents to open the plan. Thereafter, typically the member will request subsequent advances under the plan for a particular subaccount, and either the funds are deposited into the member's share or checking account, or a proceeds check is mailed to a member. Where appropriate, the member may come in to a branch to sign additional paperwork or for a closing. Additionally, an "AutoDraft" may be used in which a pre-approved draft is issued to a member, to be filled out at the dealership. Depending on the type of transaction, the credit union uses its existing policies and procedures to authenticate the identity of the member and to provide security, including use of passwords, encryption, etc. Members receive an Advance Receipt confirming the transaction and instructing the member to contact the credit union immediately if any information contained on the receipt appears to be inaccurate. Such transactions are also reflected on the member's periodic statement and the billing dispute provisions would apply. Credit unions will also typically have policies and procedures or training methods to handle member disputes or questions.

**"Convenience Checks". Credit card issuers also provide account-holders with "convenience checks" that can be used to obtain cash, purchase goods or services, or pay the outstanding balance of another account. They allow a consumer to use their credit card accounts at**

**merchants who do not accept credit cards. Anecdotal evidence also suggests convenience checks are used for large-dollar transactions, such as college tuition payments. Currently, they are not treated as credit cards under Reg Z because it can be used only once and not from time to time. Although the rules for resolving billing errors apply, but rules re: merchant disputes, unauthorized use, and prohibition against unsolicited issuance do not apply. At the October 2003 meeting of the Board's Consumer Advisory Council, some members stated that Reg Z should be revises to apply to all credit extended under a credit card account, and to eliminate the "used from time to time" requirement. Others stated that convenience checks should be treated the same way as a check drawn on a deposit account.**

**Q45. 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 convenience checks?**

There do not seem to be problems with convenience checks relating to unauthorized use or merchant disputes. Creditors generally treat these problems the same as if they had occurred with a card. Extending TILA's protections do not seem necessary. Convenience checks are generally issued some time after the card is issued or plan is opened, and are considered to be additional access devices under which 226.9(b) would apply. Consumers generally seem to be aware that the convenience checks are governed under the same terms as the original card, unless stated otherwise under the 226.9(b) notice. For these same reasons, unsolicited issuance of the checks seems to be reasonable and permissible as well.

**Unsolicited Issuance of Credit Cards. Limitations on issuing unsolicited credit cards were added to TILA in 1970. In 2003, the Board revised the commentary to the relevant provision to allow card issuers to replace an accepted card with more than one card, subject to certain conditions. For example, card issuers can issue credit cards using a new format or technology to existing accountholders, even though the new card is intended to supplement rather than replace the traditional card. Based on public comments, staff stated it planned to recommend that the Board consider amending 226.12(a) to allow the unsolicited issuance of additional cards on an existing account even when the accountholder's existing card is not being replaced, under certain conditions.**

**Q46. Should the Board consider revising Reg 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? What conditions or limitation should apply? E.g., should the Board require that the 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?**

Since the account has already been authorized and agreed to by the cardholder, sending additional unsolicited cards would seem reasonable. Additionally, 226.9(b) regarding disclosures for supplemental and additional features would seem to apply to this situation, so the consumer would receive the required disclosures.

Requiring activation is a smart thing in this day and age, especially with the sensitivity to Identify Theft and in light of various regulations regarding security and authentication. Card issuers already routinely require a simple activation process (even for renewal cards) by the consumer from the consumer's home phone number, which seems the easiest and safest route.

**<u>Prompt Crediting of Payments</u>. Payments received from a consumer on an open-end credit plan must be credited to the account as of the date the payment is received by the creditor. Consumer advocates have raised concerns about the reasonableness of card issuers' cut-off hours. They note that some creditors' service centers are open 24 hours, 7 days a week to receive mail delivery and electronic payments continuously. In addition, questions have arisen concerning creditors' use of third-party payment processors, and whether the receipt of payments by the third-party is deemed to be receipt by the creditor.**

**Q47. What are the cut-off hours used by most issuers for receiving payments? How do issuers determine cut-off hours?**

**Q48. 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?**

Cut-off hours and the reasons that hour is set vary by institution, but typically are set later in the day, such as 3 pm or 5 pm, but can be as early as 1 pm, and payments received on a non-business day are credited on the next business day. Cut-off times are necessary because payments are typically processed in batch-mode at the end of the day. "Stragglers" received after the cut-off time must be processed the next day, when the next batch is processed. To process each and every payment individually as they come in would be overly burdensome and cost-prohibitive. This typically does not change depending on whether the payment is by electronic means; use of EFTs and the internet typically serve to ensure that the payment is sent more quickly, or on a specific date the consumer wishes. For example, if a consumer knows that today is the due date, he can make an EFT or internet payment in the morning, basically ensuring that the payment will be received that day; however, if the consumer is paying bills late at night, the payment may be received that night but will not be processed until the next day, and most consumers reasonably know and understand that. Cut-off times are typically set because of the creditors' operational and processing considerations.

**Q49. 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?**
For purchases, the grace period date is typically the same as the due date for that month; there is typically no grace period for cash advances. These provisions are set out in the credit card agreement and the periodic statement. Cut-off times are generally disclosed in the credit agreement.

**Q50. 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?**
Operating hours can and do differ, and can be effected by time zone differences as well. Creditors typically treat payments received by a third-party processor as if the payment was received by the creditor, and follows what is disclosed to the consumer. Under Visa and MasterCard by-laws, financial institutions are responsible for the actions of all contracted third-party processors, and therefore are expected to carefully monitor service provider compliance with the associations' operating rules. Credit card processing is a very expensive and extremely complex endeavor and therefore is best left to the experts to set and follow the bylaws and operating rules. If the Board were

to impose any additional guidance in this area, it is urged to fully understand those bylaws and operating rules and work with Visa and MasterCard and other card associations in such efforts.

**Q51. Should the Board issue a rule requiring creditors to credit payments as of the date they are received, regardless of the time?**
No. As mentioned in the response to Q48, processing is typically done in batches, once a day, at the end of the day. It is a highly automated and integrated technological process; changes to the creditors' and processors' systems would be extremely expensive and complex. Unless the batch is being run at 11:59 pm, crediting payments as of the same date they are received, regardless of time, would be next to impossible.

**IV. Request for Comment on Additional Issues. In addition to responding to the Board's request for comments on the open-end credit issued identified above, the Board invites the public to discuss other ways that Reg Z might be improved and to provide specific suggestions for implementing those changes, including:**

**Q52. <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. The Board invites the public to identify issues where they believe staff' informal advice should be formalized or addressed anew.**

Two topics appear to fall under this request:

A. <u>Risk-Based Pricing Disclosures.</u> Reg Z's existing disclosure rules pertaining to APRs do not appear adequate in light of the industry's now-prevalent use of risk-based pricing. As the Board is aware, under risk-based pricing, a variety of APRs may apply for the same product, and creditors do not know the exact APR a particular consumer may receive until after an application is processed and the consumer's creditworthiness is evaluated. Opinions vary as to whether every single possible APR must be disclosed, or whether a range of rates available is sufficient. State regulators seem to generally believe that a range is not sufficient, and require each APR for each credit tier to be disclosed. One state regulator has gone so far as to say that multiple APRs <u>cannot</u> be disclosed; rather, that one APR must be disclosed, and that all consumers must apply for that one rate, and for those consumers who do not qualify for that rate, an ECOA/FCRA adverse action notice must be sent or a counter-offer must be presented. This seems convoluted and raises the potential of actually hurting a consumer's credit rating, which defeats the purpose of risk-based lending. On the other hand, a range of rates does not tell a consumer much. Credit card issuers and credit unions using multi-featured open-end plans seem to have adopted the practice of listing each APR according to each credit tier, with a disclosure that the actual APR received will be disclosed to the consumer when the application is approved. For example:

| | **Platinum** | **Gold** | **Classic** |
|---|---|---|---|
| **Annual Percentage Rate For Purchases:** | Tier A ( 700 +): 8.99%<br>Tier B (680-699): 10.99%<br>Tier B (650-679): 12.99% | Tier A ( xxx-xxx): 10.99%<br>Tier B (xxx-xxx): 12.99%<br>Tier B (xxx-xxx): 14.99% | Tier A ( xxx-xxx): 13.99%<br>Tier B (xxx-xxx): 15.99%<br>Tier B (xxx-xxx): 17.99% |

| The actual APR that you receive depends on your creditworthiness and will be disclosed to you at the time credit is extended. |
|---|

Clarification from the Board that the timing requirement of such a process (i.e., the disclosure of the actual rate received after the application has been processed) does not violate any of Reg Z's timing rules is also requested. Finally, clarification as to whether state laws are preempted in this regard is also requested.

B. Debt Cancellation, Debt Suspension, and Credit Insurance provisions. Provisions in Reg Z regarding credit insurance, debt cancellation, and debt suspension do not currently reflect industry practices.

(1). Signature or Initials – telephone lending. 226.4(d)'s requirement of a "signed or initialed" affirmative request does not reflect the telephone lending practices in the industry today. A verbal request should be sufficient as long as the other disclosures are provided verbally and the creditor adequately documents the consumer's verbal request. In this regard, it is suggested that Reg Z be brought into consistency with the OCC Debt Cancellation rules regarding telephone solicitation and disclosures, found at 12 CFR Part 37.

(2) Consistency in terminology & treatment. Currently, the Reg Z references to debt cancellation do not always encompass debt suspension programs; provisions are inconsistent in this regard. For example, in 226.4(d) only debt cancellation is referred to, which can lead to the implication that debt suspension fees cannot be excluded from the finance charge, which would be a nonsensical (and presumably inadvertent) inconsistent application. Likewise, Comment 1 to 226.4(d) states that all references to credit insurance shall also include debt cancellation, but makes no reference to debt suspension. For purposes of Reg Z, the terms debt cancellation and debt suspension should be used interchangeably, and the all-encompassing term "debt protection", might be considered by the Board. It is also recommended that the Board review all provisions referencing debt cancellation and credit insurance, and revise to ensure that all three products – debt cancellation, debt suspension, and credit insurance are treated in the same manner.

(3) "Triggering Events". Currently, Reg Z only refers to debt cancellation contracts as those that protect the consumer "in the event of the loss of life, health or income or in the case of accident", implying that contracts covering other events can never be excluded from the finance charge. However, in the industry debt cancellation contracts can and do offer more triggering events – for example, military leave, hospital stay, divorce, family leave, birth or adoption of a child, etc. While these events may not result in a loss of income, they may have an impact on the borrower's ability to make his loan payments for a short period of time. As such, they are appropriate for coverage under a debt protection contract. Additionally, such triggering events may be bundled into one debt protection plan that also contains protection for death, disability, and involuntary unemployment, all of which is priced at one cost for that plan. In such a case, it is impossible to carve out the fees per triggering event that may and may not be excluded from the finance charge. It is suggested that the triggering events be expanded, perhaps by using language such as, "any triggering event that may impact a consumer's ability to make his loan payments", or "any triggering event contracted for between the consumer and the creditor".

(4) Exclusion from the Finance Charge. As advocated throughout this letter, it is suggested and recommended that the Board consider excluding all fees and charges from the Finance Charge. It is

also recognized that the disclosures required in order for credit insurance and debt protection fees to be excluded from the finance charge are sound consumer protection practices. If the Board were to revise Reg Z to exclude all fees and charges from the finance charge, the Board could incorporate the three disclosures set forth in 226.4(d) directly into the closed-end and open-end rules, 226.5, 226.6, 226.17 and 226.18 and revise those provisions accordingly.

**Q53. Adjusting exceptions based on de minimis amounts. To facilitate compliance, the Board has provided a number of exceptions based on de minimis dollar amounts. Should de minimis amounts be adjusted, and if so, to what extent?**
There appear to be no need to adjust the de minimis amounts. Additionally, requiring changes in these amounts would probably require expensive re-programming and changes in procedures that don't appear necessary at this time.

**Q54. Improving plain language and organization; identifying technical revisions. The Board is required to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the existing rules are clearly stated and effectively organized, and how the Board might consider making the text of Reg Z and its official staff commentary easier to understand. Are there technical revisions to the regulation or commentary that should be addressed?**

Other than those revisions suggested for debt suspension contracts (response to Q52), there appear to be no such revisions necessary. The Reg seems well organized in relatively plain language. Industry lawyers and compliance officers are familiar with the layout and language of the Regs as currently set forth and it is recommended that no major changes be made.

**Q55. Deleting obsolete rules or guidance. A goal of the Reg Z review is to delete provisions that have become obsolete due to technological or other developments. Are there any such provisions?**
No provisions appear to be obsolete.

**Q56. Recommendations for legislative changes. Are there any legislative changes to TILA the Board should consider recommending to Congress? For example, where a rule is based on a dollar amount established by statute, the Board seeks comment on whether to recommend adjustments of those dollar amounts and the amounts thereof to Congress.**

It is recommended that the Board use its rule-making authority whenever possible and deference is given to the Board's determination of that authority. The Board has the expertise and the cooperative processes in place via its rulemaking procedures to best implement change in a manner most favorable both to the industry and to consumers. Congress has created ambiguous and unclear language in recently-passed bills such as the FACT Act and the pending Bankruptcy Reform Act, that has created, and will create, considerable confusion within the industry, at times without giving the Board adequate, or any, rulemaking authority. To the extent that any Reg Z changes require legislative action, it is strongly urged that the Board be extremely proactive and detailed in its recommendations to Congress in order to avoid the confusion created when no regard was given to the practical application and implementation of such legislatively-mandated requirements.

**Q57. Recommendation for nonregulatory approaches. In addition to requesting comment or 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 consumer need better information about the effects of making only minimum payments on their accounts?**

Best practices could be helpful if careful thought and industry feedback is provided prior to issuance of best practice policies. Consumer education efforts would be highly recommended. Minimum payment calculators would be a very good example of a useful tool to consumers, but with the passage of the Bankruptcy Reform Act, that issue might be moot (though such calculators would probably still prove helpful). Another example of consumer education efforts that might prove helpful is the explanation of how payments are allocated, what this means when a consumer transfers a balance to a new credit card, etc., e.g., a "how to comparison shop for credit cards and other credit", might be helpful. While the vast majority of creditors strive to fully disclose the terms of their products and to ensure that the consumer understands the product and its terms, creditors are necessarily constrained, to a certain extent, by laws, regulations, and contract drafting. Public educational campaigns can teach consumers the basics of personal financial management and credit tools where disclosures and contract provisions cannot. While perhaps somewhat outside the scope of Reg Z, another timely and helpful consumer education campaign would be to educate the public on credit scores and credit reports – what they are, how they are calculated, what it means in terms of dollars saved or lost for the consumer, how and when a credit report may be provided, etc.

**Q58. Reviewing other aspects of Reg Z. 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 Reg Z that should be included in this initial stage of the review?**

As advocated throughout this letter, the Board should carefully review the finance charge sections and determine whether it would be feasible and advantageous to exclude all fees and charges from the Finance Charge and Annual Percentage Rate.

**(a) Definitions and Rules of Construction. Are changes needed to the definitions or rules of construction? Are there specific terms that are not defined but should be, for example, the definition of "refinancing"?**
We would not be opposed to revisions that would create more uniform application of Reg Z's provisions.

**(b) Exempt Transactions. Do the classes of transactions exempted under 226.3 need to be updated?**
The $25,000 limit on consumer transactions appears to be outmoded with the onset of vehicles costing over $25,000. The industry typically ignores that exemption and follows Reg Z for all vehicle loans, regardless of cost or amount financed. We would not be opposed to raising that limit to $75,000 or $100,000 or removing that limit entirely.

Thank you for the opportunity to provide input in the rulemaking process.

Sincerely,

Catherine Klimek
Associate Counsel