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Via E-Mail

October 12,2007

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

Re: Docket No. R-1286; Proposed Rule Revising Regulation Z Credit Card Provisions

Dear Ms. Johnson:

United Services Automobile Association ("USAA") is pleased to submit this comment letter in response to the Proposed Rule pertaining to the open-end provisions of Regulation Z ("Proposal") published by the Board of Governors of the Federal Reserve ("Board") in the ***Federal Register*** on June 14,2007. We appreciate the opportunity to comment on the Proposal.

About USAA

USAA is a member-owned company that provides financial services to members of the United States military and their families. Our credit card and service is routinely considered to be one of the best in the country by consumer groups and by independent third parties for good reason: we provide great service and some of the best terms in the industry. Our recent awards include the following:

Consumer Reports: No. 1 credit card in reader survey scoring 95 out of 100. (2007)
Business Week: Rated No. 1 for outstanding customer service, earning recognition as "Customer Service Champs" (2007)

- Forrester Research: Highest scoring financial services firm in customer advocacy ratings for four years in a row. (2004-07)

USAA's credit card terms are extremely fair to consumers:

One low APR on purchases, balance transfers, and cash advances;

- No transaction fees on balance transfers or convenience checks;
- Delinquency APR is triggered only if an account becomes two payments past due and the increase is just 6% over the regular APR.
  The delinquency APR can be cured by making just three consecutive minimum payments on time.
- No over-the-limit fees

- No universal default.
- Change terms a total of four times in our entire twenty plus years in the credit card business;
- Never increased a non-delinquency APR through a change in terms.

Comments

USAA applauds the Board on its extensive and thorough review of regulation Z and in developing the proposed revisions to Regulation Z. Much of the Proposal addresses the practices of some card issuers that have caused consumer complaints over the years.[1] USAA agrees with the Board that the best way to address these practices is through better and clearer disclosure of terms when they will adversely affect consumers.

USAA is pleased to provide the following comments regarding the proposed changes.

A. Effects on Issuers with Favorable Terms.

USAA is very much concerned about the effect of some proposed changes on card issuers who, like USAA, do not engage in the criticized practices and who provide consumers with low-priced alternatives. Because many of the proposals will increase compliance costs, these issuers may be forced to pass the costs onto consumers through higher rates and fees. Additionally, they made need to alter some consumer-friendly practices to ease compliance burdens.

The Board should consider easing requirements on accounts with terms deeded to be favorable to consumers. By reducing the costs of compliance with the regulation, the Board could encourage issuers to provide better terms.

A few examples illustrate the point:

- The Proposal would add a new disclosure with convenience checks mailed more than thirty days after account opening if the issuer offers a promotional APR. The new disclosure would include the APR that will apply after the promotional rate expires (the "Go-To APR") and the amount of any transaction fee. Card issuers, therefore, would be required segment convenience check mailings by the Go-To APRs. For issuers that charge a transaction fee and a high cash advance Go-To APR on convenience checks, the income earned by the issuers may pay for the costs of the disclosures. However, USAA has only one Go-To APR for all promotional APRs since it only has one regular account APR. We do not charge a transaction fee on convenience checks. Therefore, disclosing

[1] For example, many card issuers have imposed terms that result in automatic APR increases due to a default on the account or, in some instances, a default on an account with another creditor. Such APR increases can be over 30%. Consumers have complained that they were baited with a low rate and then the rate was suddenly increased by two or three times without any prior notice. Sometimes transaction fees have made otherwise attractive advertised rates misleadingly high.

the Go-To APR and the transaction fees will be meaningless to our members. However, the cost to USAA to provide convenience checks that vary by Go-To APR will be signficant. Because we charge so little on convenience checks, we would have to seriously consider increasing our rates or fees to cover the increased expenses. **We suggest that the Board not require convenience check disclosures to card issuers who have a Go-To APR that is no higher than the APR on purchases.**

- The Proposal would require a 45-day advance notice before an APR could be increased to a penalty APR that has been disclosed in the application/solicitation disclosures and in the account-opening disclosures. Many issuers impose a penalty APR for many default events, including a late payment, exceeding the credit-limit, or defaulting on other credit cards. These same issuers frequently charge a penalty APR over 30%. Many also provide limited or no cure once the penalty APR is triggered. At USAA, we only increase the APR by *6%* after an account becomes two payments past due. (A consumer could be late every month and never have the APR increased—the account must reach two payments past due).[2] After just three consecutive on-time payments, the regular account APR is restored. If we were required to give 45-days advance notice, a cardholder could be one payment away from curing. Effectively, we would only be able to charge the delinquency APR for one billing cycle. **We recommend that the Board not require advance notice of a penalty APR if a cardholder can cure and return to the regular account APR within a six month period.**

- In our response to the Board's advance notice of proposed rule making regarding the open-end rules of regulation Z, we commented that when consumers open a credit card account by phone, they should be allowed to use the account without having to wait for written disclosures. The Proposal provides only retailers with the ability to offer consumers this option. However, retailers have some of the worst terms and highest rates in the credit card industry. Indeed, their rates usually exceed 20% and come with very high fees. Low-priced issuers like USAA do not have the ability to offer consumers who apply by phone the immediate use of the new account. Not only is this unfortunate for issuers, but also for consumers who need a new card to make a purchase. Their only choice will be to apply for and use a retailer's card. **We strongly urge the Board to give lower-priced issuers the ability to provide consumers with oral disclosures of key terms and to follow up with written disclosures as soon as reasonably practicable thereafter.**

The Board should consider the impact of new requirements on issuers like USAA who have fair terms for consumers. Regulations should not cause issuers to have to consider increasing rates or fees, or making unfavorable changes in terms for consumers to cover the costs of compliance.

- The Proposal would require USAA to describe its delinquency APR as a penalty APR. We believe that this is somewhat unfair since it puts us in the same category as other issuers who increase APRs for many different things including defaults on other accounts.

B. Solicitation and Application Disclosures

Generally, USAA supports the proposed changes to the Solicitation and Application disclosures. For the most part, the proposed revisions simplify the disclosures and make them more readable. However, we believe additional revisions should be made to reduce the amount of information in the table by removing duplication wherever possible. We believe that repetition clutters the table and makes it less useful to consumers. We also suggest that the Board clarify some of the proposed new requirements, particularly as they relate to disclosures that are required for the table.

1. Electronic Delivery [D]

The Proposal indicates that to retain the requirement that if an electronic link to the application/solicitation disclosures is used, the consumer must not be able to bypass the link. We do not agree with this rule. So long as the link is clear and conspicuous and the linked disclosures are readily accessible, that should suffice. Issuers are not responsible for ensuring that consumers open and read disclosures that are mailed to them; likewise, issuers should not be required to confirm that consumers open and read online disclosures.

2. Rules Concerning What Must, May, or Cannot Be In Table.

The Proposal would require or permit certain disclosures to be located within the table and would prohibit all others from being there. The Proposal, however, does not consider all the possible variations that card issuers could have to pricing. A strict rule prohibiting any disclosures other than those required or permitted by the regulation may cause card issuers to inadvertently violate the rule or to become subject to challenges based on alleged violations. The final regulation must provide enough flexibility to allow reasonable discretion by issuers to add information with required disclosures needed to avoid misleading consumers and to make the terms fair and accurate. For example:

- **Disclosure of Time Period and other Limitations on Introductory APRs.** Under the proposal, if a creditor discloses a discounted initial APR within the table, it must also state, among other things, the time period during which the discounted APR will apply (e.g. "0% Intro APR through your September 2009 billing statement"). Frequently creditors have two relevant time periods that affect introductory rates: (1) a "use by" date (e.g. only transactions made within 60 or 90 days of account opening will receive the discounted rate); and (2) the time period during which those transactions will continue to receive the discounted APR (e.g. 12 months). Other limitations could also apply to introductory rate offers. The regulation should indicate what, if anything, a creditor must disclose when such other limitations apply to the initial discounted APR, and whether any such disclosure should appear inside the table or elsewhere. The regulation should be flexible enough to allow for new variations of offers that may be developed in the future

3. Duplicative Disclosures.

Under the proposed changes, many disclosures in the table would have to be repeated unnecessarily. For example, USAA would be required to disclose:

The same APR three times (once under each heading of the following headings: "Annual Percentage Rate (APR) Purchases," "APR for Balance Transfers," and "APR for Cash Advances.");

Four times that "This APR will vary with the market based on the Prime Rate," (once with each of the three references to the regular variable APR as well as with the variable Penalty APR);

- Whether transaction fees apply three times (once under the Balance Transfer APR under Cash Advance APR and in the Fee section);

The following lengthy application of payments information twice (once under the Balance Transfer APR and again under the Cash Advance APR):

> **Notice Regarding Interest Charges:** Your introductory APR applies only to balance transfers and convenience checks, not to purchases. During the introductory period, we will apply your payments to transferred balances and convenience checks before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances and convenience checks.

USAA believes the required duplication should be eliminated as much as possible and makes the following suggestions:

(a) APR Disclosures. When APRs differ by feature, separating them out may be helpful to consumers. However, when the same rate applies to one or more features, as with USAA's accounts, repeating the same rate makes the disclosures unnecessarily long. Instead of three separate headings, USAA proposes one heading: either "Account Annual Percentage Rate (APR)" or "Annual Percentage Rate (APR) for Purchases, Balance Transfers, and Cash Advances." By making this change, the three APR sections could be reduced to the following:

Annual Percentage Rate (APR) for Purchases, Balance Transfers, and Cash Advances	7.75% This APR will vary with the market based on the Prime Rate Cash advance fees may apply to cash advances (See fees section below). There are no balance transfer fees.

(b) Introductory APR disclosures.

- **Separate Heading for Introductory APRs Should Be Required.** The proposed regulation permits, but does not require, an issuer to disclose in the table any reduced initial APR that may apply. Consumers shop heavily for introductory-rates, and whether

or not there is an introductory APR and its terms are frequently important factors in a consumer's decision to apply for a credit card. USAA believes the table should include a separate heading for an introductory APR. If the application or solicitation does not include an introductory APR, then the table should state "none" next to the introductory-APR heading. Additionally, putting the introductory rate in a separate heading when the rate applies to cash advances and balance transfers will allow creditors to insert one "Notice Regarding Interest Charges" instead of two, which will significantly reduce the length of the table.

- **Notice Regarding Interest Charges/Payment Allocation Disclosure** Under the proposal, whenever a card issuer offers a discounted initial interest rate on balance transfers or convenience checks that is lower than the rate on purchases subject to a grace period, and the issuer allocates payments to the lower-rate balance first, then the issuer must state the following: (1) the initial discounted rate applies to balance transfers or cash advances (as applicable) and not to purchases; (2) payments will be allocated to the balance transfers or cash advances (as applicable) before being allocated to any purchase balance during the time the discounted initial rate is in effect; and **(3)** the consumer will be charged interest on all purchases until the entire account balance is paid off, including the transferred balance or cash advance balance (as applicable)." The model form uses the following language to make the required disclosure:

Notice Regarding Interest Charges: Your introductory **APR** applies only to balance transfers, not to purchases. During the introductory period, we will apply your payments to transferred balances before we apply them to any purchases you make. You will be charged interest on all purchases until your entire balance has been paid off completely, including transferred balances.

USAA has several comments with regard to this proposed disclosure:

1. **Discounted Initial APR applies to Both Balance Transfers and Cash Advances.** When a creditor offers a discounted initial APR on more than one type of transaction **(e.g.** on balance transfers and cash advances), the model forms appear to indicate that the "Notice Regarding Interest Charges" must be repeated. Since the disclosure is rather long (particularly for a table), USAA believes repeating it will distract **from** the other more meaningful disclosures without adding any significant value. USAA prefers that the disclosure be given only once. **USAA's** suggested approach to adding a new "Introductory A P R heading will resolve this issue. However, if the Board does not accept USAA's suggestion, then USAA recommends that the Board allow this disclosure to be given one time with the first reference to the introductory APR.
2. **Discounted Initial APR applies Only to Purchases.** Sometimes an introductory APR applies only to Purchases. If the issuer applies payments entirely to lower-rate balances, then the higher-rate balances will not be paid down, and the consumer will not receive a grace period on new purchases, until the introductory balances are paid off in full. The reason for limiting the proposed Notice Regarding Interest Charges to introductory rates that apply to balance transfers and convenience checks is not clear to USAA.

3. **Discounted Initial APR applies to Purchases and to Balance Transfers and/or Cash Advances.** According to the proposed rule, a card issuer must make the required disclosure if, among other things, the discounted initial rate on a balance transfer or cash advance is lower than the rate on purchases. However, if the same or lower APR applies to Purchases, then the disclosure would not be required. The Board should clarify that if the same (or lower) introductory APR applies to purchases as to balance transfers and/or cash advances, then the disclosure would not be triggered. Otherwise, the Proposal could be read to mean that the disclosure is triggered whenever the introductory rate is lower than the regular purchase APR. We do not believe this is the intent of the Proposal.
4. **Statement that consumer will be charged interest until entire balance paid may be incorrect.** Card issuers can have different payment allocation systems and different grace period options. Some cards may have a grace period on purchases so long as the purchase balance is paid in full (as opposed to the entire account balance). If payments are allocated to new purchases first and then to lower-rate balances, a grace period on all purchases will exist so long as the consumer pays the new purchases each month. If the issuer allocates payments to the lowest rate first, or to the lowest rate first and then to purchases, then, at the end of the introductory period, the consumer would not be required to pay off the entire account balance to begin receiving a grace period on purchases. The Board should consider different grace period and payment allocation issues before finalizing the requirements for this disclosure.

(c) [illegible] between [illegible] and Fees When Both Apply to Balance Transfers or Cash Advances

If both a rate and a fee apply to a balance transfer or cash advance, under the proposal a card issuer must disclose that a fee also applies when disclosing the rate and provide a cross-reference to the fee (referred to herein as the "Rate-Fee Cross Reference"). USAA commends the Board for adding this new disclosure to the Table since consumers frequently do not realize that a fee applies to transactions. There are, however, several clarifications that USAA requests the Board include in the final regulations:

(1) **0% APRs.** In order to trigger the Rate-Fee Cross Reference, there must be a rate and a fee that apply to the same transaction. If a cash advance or balance transfer is not subject to periodic interest (e.g. 0% APR is disclosed in the table), the Rate-Fee Cross Reference requirement would not apply even though there may be a transaction fee. USAA believes the Rate-Fee Cross Reference should apply to 0% APRs since a 0% APR with a high transaction fee may be easily missed by consumers. This is particularly true if the 0% APR is a temporary rate. The Board should clarify whether a 0% APR requires the Rate-Fee Cross Reference or does not.

(2) Transaction Fees on Purchases. The transaction fee disclosure only applies to balance transfers and cash advances. If a creditor charges a transaction fee on purchases,

the Rate-Fee Disclosure is not required under the proposal. USAA believes the Board should re-consider this exception. Since a transaction fee on a purchase is extremely rare, consumers probably need more--not less--notice of such a fee.

(3) No Transaction Fees. If a creditor like USAA does not impose a transaction fee on certain transactions (such as balance transfers or convenience checks), the creditor should be permitted to indicate in the table that there is no transaction fee. The information would be helpful to a consumer when comparing offers. Additionally, it provides some incentive to creditors to not charge transaction fees.

(4) Transaction Fee on Some Cash Advances or Some Balance Transfers. USAA generally does not charge transaction fees on balance transfers, convenience checks, or fund transfers to another USAA account. The regulation should indicate that exceptions to the fees may be provided with the transaction fee disclosure. For example, USAA proposes that the following would be a permitted disclosure: "Cash advance fees will apply to cash advances except for convenience checks and fund transfers to other accounts with us. (See fees section below)."

(d) "Penalty APR" disclosures.

(1) Use of the term "Penalty APR" The proposed regulation requires the disclosure on any increased default rate with the heading "Penalty APR." USAA is concerned that using the term "penalty" could lead to litigation. It is well established under contract law that penalties are unenforceable. Describing a default rate as a penalty may trigger lawsuits challenging the validity of the increased APRs. Moreover, USAA believes that requiring the use of the term "Penalty A P R when it is triggered by only one type of default is inappropriate and potentially confusing to consumers. In this circumstance, we believe it would be more helpful to consumers to call the APR by what causes the increase. For example, at USAA an account must be two payments past due before the APR will be increased. We believe the rate is appropriately referred to as a "Delinquency APR" since it best describes what triggers the event and makes it easier for consumers to understand.

(2) Cross-Reference with Fees. When an event that can trigger the Penalty APR also results in a fee, the proposed regulation requires a cross-reference to the Penalty APR with the disclosure of the fee. The proposal makes no distinction between a creditor who imposed the Penalty APR after one late payment versus one who requires two or more late payments. USAA believes the cross reference should not be required if one late payment cannot cause the APR to increase. Alternatively, we recommend that the conditions be disclosed with the cross-reference. For example, "If two consecutive payments are late, your APRs may also be increased; see Penalty APR section above."

(e) Accuracy of Variable APRs

The proposed regulation would provide different timeframes for determining if a variable APR is accurate based on the delivery channel. A variable APR is considered accurate if the rate is in effect within the following timeframes:

- Direct Mail: 60 days before mailing;
- Electronic Delivery: 30 days before sent to an email address or viewed by the general public
- Telephone: when given.
- Alternative Telephone: If, in lieu of making oral disclosures for telephone applications or solicitations, a card issuer provides alternative written disclosures, the written must be accurate as of the time they are mailed or delivered or are in effect as of a specified date provided the rate is updated no less than monthly.

USAA believes all variable APR accuracy standards should be simplified to allow for disclosures to be modified every 60 days. Creditors should be able to follow a simple standard for APR disclosures no matter how they are delivered to ease the burden of compliance: a variable APR should be deemed accurate if it was in effect within 60 days prior to the disclosure being mailed (direct mail), sent (email), made available to the general public (website), given (telephone), or printed (applications available to the general public). Moreover, consumers may be confused if they receive different APRs for the same offer.

Creditors often mail a solicitation for a credit card to a consumer and post the same offer on a website or email it to the consumer. If the rate mailed is 60 days old and the offer on the website is 30 days old, the disclosures for the same offer could be different. The difference for the same offer could lead to consumer confusion. Additionally, creditors should be permitted to mail an offer to a consumer, and also to email or post on a website the same direct mail materials reproduced electronically. Having to create changes to the direct mail documents for offers delivered electronically is inefficient and costly. Yet this could be the result if a different accuracy standard is used for direct mail versus electronic solicitations/applications.

The standard for oral disclosures could potentially require a creditor to update rates on a daily basis. We believe this is an unnecessary burden on creditors and provides little value to consumers since the rates do not generally vary by much from one day to the next.

(f) Balance Computation Methods.

Creditors disclose the name of the balance computation method if it appears in the regulation; otherwise they must describe the method. Neither the current nor the proposed regulation contains the name of one of the most common balance computation methods—the daily balance method. Instead the Board has allowed card issuers to refer to the method as an

average daily balance method. We believe the Board should add the daily balance method since it is one of the most common methods used by card issuers. By referring to the daily balance method by name, consumers will begin to recognize that there is a difference between the average daily balance and the daily balance methods.

C. Account-Opening Disclosures

The Board proposes to change account-opening disclosures in two fundamental ways:

- The new rule would require a tabular summary of key terms; and
- The timing and writing requirement would be modified for the disclosures of certain less important charges that are imposed as part of the plan.

1. New Tabular Format Reauirement

USAA commends the Board on its proposal to implement a table for the account-opening disclosures. The table should help consumers better understand the basic terms that apply to credit card accounts. Furthermore, USAA strongly supports the proposal to allow the creditors to substitute the account-opening table for the table used in the application and solicitation disclosures. In this regard, we note that while the two tables are almost identical, there are some minor differences. We urge the Board to remove any differences so that both tables are identical. Our view is that they should be the same so that all consumers will be able to compare and become familiar with the same basic formats whenever they view a table. We believe this will be valuable to consumers who are comparing existing account terms with a new solicitation. Additionally, it will reduce the compliance burden on card issuers.

USAA's comments to the application and solicitation table apply equally to the account opening disclosures and will not be repeated here with one exception: the accuracy standard for a variable APR. We believe the accuracy standard for variable APRs in all the required disclosures, including the account-openingdisclosures, should be the same 60-day standard discussed above.

2. Timing and Writing R

The Board proposes to modify the rules governing disclosure of charges before they are imposed. Under the proposed changes, all charges must continue to be disclosed before they are imposed, however only specific "important costs" would be required to be disclosed in writing. All other charges could be disclosed orally at any time prior to the consumer becoming obligated to pay the charge. In order to ease the burden of compliance, the Board proposes to list all of the important charges that must be disclosed in writing in the revised commentary to the regulation. USAA urges the Board to provide such a complete list of important costs and to provide a safe harbor for creditors who do not disclose a charge that is not on the list.

While USAA strongly supports the Board's proposal to allow oral disclosures, in our view the proposal does not go far enough. We cannot over emphasize to the Board the importance of

having an option that would allow consumers who apply by phone the ability to use an account immediately upon its approval. As with the current regulation, the proposal will continue to require consumers to wait for written disclosures several days after the account is opened before an account can be used. For USAA, this is a critical issue.

Many of our members are on active duty in the armed forces. Frequently, they need credit to take care of important personal or family needs before leaving for deployment to serve this country in Iraq, Afghanistan or elsewhere. They simply do not have the luxury of waiting for written disclosures before making necessary or desired purchases. The urgent need for a credit card is not limited to our active duty members. Frequently members have family members who are suddenly ill or who have passed away. They may need a credit card to pay for medical necessities that are not covered by medical plans or to book a flight to attend a funeral of a loved one. The ability of consumers to obtain and use a card immediately should not be limited to emergencies. The purpose of regulation Z is to promote the informed use of credit, not to make it difficult for consumers to use the credit they want.

The irony to USAA is that the proposal gives retailers the ability to provide immediate use of accounts by delivering account-opening disclosures as soon as reasonably practicable after the first transaction. Yet retailers' credit cards are among the most costly to consumers with APRs well over 20%. USAA, on the other hand, has very low interest rates and excellent consumer-friendly terms. Under the proposal, a consumer who wants or needs to make an immediate purchase with a new credit card at a retailer would have to use a retailer's card. They should be able to use lower cost cards issued by USAA or other creditors.

For accounts issued by retailers, the Proposal allows written disclosures to be delayed provided retailers allow consumers to return any goods or services purchased with the card for a full refund. For third party creditors who obviously cannot force merchants to take back goods or services purchased, the proposed requirement will not work. Instead, card issuers should be permitted, with the consent of the consumer, to orally disclose key terms that will apply to the account and to allow written disclosures to be made within a reasonable period thereafter.

3. Revisions to Statement of Billing Rights

The Board proposes changes to the model statement of billing rights forms. USAA has significant concerns with the proposed changes to the revised language related to the claim or defense provisions of the Truth in Lending Act ("TILA") and regulation Z. Under the proposed changes, the language sates if the consumer is "dissatisfied" with a credit card purchase, the charge can be disputed. However, this is not true. Under TILA and regulation Z, a consumer may only assert claims or defenses that the consumer has against he seller of the goods or services. Mere dissatisfaction is not enough to trigger any claim or defense rights. By inserting such language in the model forms, the Board will mislead and confuse consumers. It will also cause consumers to assert that they have a right to withhold payment when they are not legally entitled to do so. We strongly urge the Board to remove this confusing and incorrect language and to

ensure that the model forms accurately reflect the provisions in sections 226.12(c) and (d) and 226.13.

D. Statements

1. Format Requirements

Under the Proposal, the format changes are substantial. They would include:

- Grouping transactions and credits by type;
- Grouping fees in close proximity to transactions;
- Itemizing finance charges by type under the heading "Interest Charged;"
- Grouping fees other than interest together under the heading "Fees" and identified consistent with the feature or type (and further identified as a "Transaction fee" or a "Fixed fee" depending on whether or not the fee relates to a specific transaction);
- Providing total finance charges and fees for the statement and year-to-date;
- Locating the due date on the front of the first page; and,
- In close proximity to the due date, disclosing the cut-off time, amount of the late fee and penalty APR that could be imposed if payment is received after the due date, the amount of the ending balance, and the minimum payment disclosure.

USAA has significant concerns with these proposed format requirements for several reasons:

- The costs for creditors to implement the requirements are extremely high. Our third-party credit card processor has estimated that the changes will require between 60,000 to 100,000 hours in programming alone. Additionally, USAA will have to make changes to its internal systems to provide the statements online to those members who have requested electronic delivery. The cost for USAA to comply with the statement changes would be in the many millions of dollars.
- Consumers have not complained about the current statement formats. For the most part the statement disclosures are well understood. While the proposed format requirements may provide some slight benefit to some consumers, the high costs of the changes cannot be justified for the small improvements that may be realized. If creditors pass on the costs to consumers, one may question whether the changes are a benefit at all to consumers.
- There is no requirement in TILA to have format requirements for statements and USAA strongly opposes imposing them through regulation.

For these reasons, USAA opposes imposing format requirements on statements beyond the clear and conspicuous standard that applies today.

2. Effective APR Disclosures.

The Board has proposed two alternative approaches to address concerns regarding the effective APR:

- First Alternative: retain the effective APR with modifications to the rules for computing and disclosing it; and
- Second Alternative: eliminate the effective APR completely.

USAA strongly favors elimination of the effective APR. For the reasons stated by the Board in its proposal, the effective APR is not a meaningful disclosure to consumers. Indeed, in USAA's experience, the more we have attempted to explain an effective APR to our members, the more they have become confused. We have tried explaining that the effective APR includes fees as well as interest. Most consumers do not understand and believe they are somehow being overcharged. We believe calling the effective APR a "Fee-Inclusive A P R will only add to this confusion.

Consumer groups try to justify keeping the effective APR for its "shock value." USAA does not understand this argument. USAA charges the same APR for all types of transactions—purchases, cash advances, and balance transfers. For highly qualified members, the rate is currently 7.75%. Some cash advance transactions are subject to a 3% transaction fee. We believe these are extremely good terms for a cash advance since most members will take at least one or two years to repay cash advances. By disclosing an effective APR that is potentially over 40%, members may not only be "shocked," they may also be misled into borrowing somewhere else at a higher cost.

Under the Proposal, the result would be made worse under alternative 1 since all fees that relate to a specific transaction would be included in the effective APR. USAA passes on a 1% currency conversion fee on both credit cards and debit cards that VISA, MasterCard, or American Express charges. Under the regulation, a comparable cash transaction is excluded from the finance charge. We believe a debit card transaction is a comparable cash transaction to a credit card transaction; a fee that applies equally to both should not be a finance charge and should not be included in an effective APR. The disclosure would incorrectly lead consumers to believe they are being charged a higher interest rate on foreign transactions and that it would be less costly to use a debit card than a credit card. However, the cost is exactly the same for both. Worse yet, an effective APR disclosure could lead consumers to choose to exchange currency at a retail establishment rather than using a credit card. Such a choice would cost consumers more in currency conversion costs since the card associations obtain a wholesale rate that most consumers cannot obtain.

3. Minimum Payment Disclosures.

The proposal would implement the minimum payment disclosures that are required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "Bankruptcy Act"). Under the Bankruptcy Act, creditors must provide standardized disclosures on each periodic statement regarding the effects of making only minimum payments. The Bankruptcy Act provides two options for creditors, each requiring a minimum payment warning, and either an example of how long it will take to repay an assumed account (e.g. 17% APR, $1,000 balance)

and a toll-free number to obtain generic repayment estimates, or no example and a toll-free number to obtain repayment estimates based on actual account information.

(a) Actual Repayment Option. In addition to implementing the disclosure options under the Bankruptcy Act, the Board proposes to allow card issuers an option to provide actual repayment disclosures on the statements. The actual repayment disclosures would be based on the consumer's account balance, interest rate, and minimum payment requirements. **A** creditor selecting this option would not be required to provide the minimum payment warning or a toll-free number for additional information.

USAA supports providing card issuers with the proposed actual repayment option as long as it is not required.

The Board solicits comments on whether the Board can take other steps to provide incentives to card issuers to use this approach. In addition to removing the requirement to provide the minimum payment warning and to provide a toll-free number, **USAA** believes it is essential to provide card issuers with protection from liability for alleged incorrect estimates. The Board should provide a method for calculating the disclosures and should provide a safe harbor for card issuers who follow the method.

(b) Exemption for Non-credit card Products. The Board proposes to exempt home equity lines of credit ("HELOCs"), open-end reverse mortgages, and unsecured lines of credit from the minimum payment disclosures. **USAA** agrees with the Board that all non-credit card products should be exempted. The intent of the legislation was to cover credit cards and not other products. HELOCs are particularly problematic since they frequently require interest-only payments for a specified draw period, and then are subject to repayment within a fixed period. The minimum payment disclosures are estimates that would conflict with the disclosed fixed period. Moreover, during the draw period, the interest-only payments could lead to a disclosure that indicates the balance will never be paid off. Clearly such a disclosure would be counterproductive to consumers.

(c) Exemption where cardholders have paid their accounts in full for two consecutive months. The Board proposes an exemption from the minimum payment disclosures for cardholders who pay their balance in full for two consecutive billing cycles.

USAA commends the Board for recognizing the minimum payment disclosures should not be required for consumers who simply do not need them based on their payment histories. However, under the proposal, a consumer who makes payments above the minimum payment but less than the full balance would receive the disclosures. We believe that cardholders who make more than the minimum payment do not need to be warned about making only minimum payments. The fact that these cardholders pay more than the minimum reflects their understanding regarding the effects of making only minimum payments.

Under the proposal, the minimum payment disclosures are required by looking at just two consecutive payments. USAA believes this is much too short of a period. Cardholders frequently pay the minimum for a short period and then resume making larger payments. Therefore, USAA suggests that the minimum payment disclosure should be required when a cardholder pays only the minimum payment for three months or more.

4. Other Disclosures.

In addition to the changes discussed above, the proposal would implement some other changes to the statement disclosures. USAA provides the following comments to these content changes:

We support the elimination of the monthly periodic rates;

The proposed changes would require the disclosure of each APR that may be used to compute the interest. We believe the commentary to the regulation should clarify that Penalty APRs need not be disclosed unless they are actually in effect.

We support providing an alternative that permits a card issuer who uses one of the balance calculation methods listed in Section 226.5a(g) to avoid providing an explanation of the method on every statement. We do not believe, however, that a card issuer should be required to provide a toll-free number where consumers may obtain more information about how the balance is computed and resulting finance charges are determined. Instead, we believe a card issuer should have the following options for referring cardholders for additional information about the balance computation method: (1) provide a toll-free number; (2) provide the Board's website address that will be provided in the application/solicitation and account-opening disclosures; or (3) provide the card issuer's website address. We believe that a website can better provide accurate, clear and consistent information about balance calculation methods. Additionally, it can greatly reduce the delivery of inaccurate information by customer service representative who themselves may not fully understand how balance calculation methods work.

- As indicated in the account-opening disclosures discussion above and under the Statement of Billing Rights discussion below, USAA is concerned about the proposed changes to the model billing rights statements because they imply that consumers have claim and defense rights when they are merely dissatisfied with a purchase.

E. Subsequent Disclosure Requirements

1. Statement of Billing Rights

As described in the Account-Opening and Periodic Statement sections above, the model Billing Rights Notice incorrectly implies that consumers may assert claims and defenses when they are merely dissatisfied with a purchase. It is important that the Board write the model clauses in a way that they do not inaccurately describe consumers' credit card rights.

2. Disclosures on Convenience Checks

The Board is proposing to create a new requirement to disclose the following information each time convenience checks are mailed to cardholders more than 30 days following delivery of the account-opening disclosures:

- Any discounted APR and when it will expire, if applicable;
- The type of rate that will apply to the checks thereafter (e.g. purchase or cash rate) and the applicable APR;
- Any transaction fees that will apply; and
- Whether a grace period will apply and, if not, that interest will be charged immediately.

USAA strongly opposes having to disclose the APR that will apply after a discounted APR ends. At USAA, only one APR applies to all features (purchase, cash, and balance transfers). The APR is disclosed in the account opening or initial disclosures as well as on every statement. Therefore, our cardholders are not likely to be confused about the rate that will apply after a discounted APR. Re-disclosing the account APR on convenience checks will require customization by pricing plan. Since the number of convenience check mailings sent out by USAA pales in comparison to large card issuers, USAA will not be able to obtain any efficiencies of scale if custornization is required. The cost to USAA on a per account basis would be much higher than for large issuers. Moreover, since USAA does not impose any transaction fees on convenience checks, USAA must keep its costs low if it is to continue offering low-priced convenience checks to its members. The Board should be careful not to propose disclosures that will drive costs up thereby causing card issuers to consider increasing rates or fees that consumers must pay.

3. Change in Terms Notices

The Board proposes the following revisions to the change in terms provisions: (a) change the advance notice period from 15 days to 45 days; (b) require advance notice for changes to late fees, over-the-limit fees (other than a reduction), or before imposition of an over-the-limit fee or penalty APR due to a reduction in a credit limit; (c) oral notices would be permitted for changes to fees that would no longer be required in the account-opening disclosures; and (d) new format and content requirements would be imposed.

USAA supports most of the Board's proposed revisions to the change-in-terms notices. We believe they will give consumers needed notice of terms that are being changed. However, USAA has the following concerns with the proposed CIT notices:

> **(a) Penalty APR Advance Notice Requirements.** The Proposal would require card issuers to provide 45-days advance notice to cardholders when a Penalty APR is triggered. Effectively the penalty pricing would be treated the same as a change in terms

notwithstanding the fact that the penalty pricing formula would be described in the application/solicitation disclosures and in the account-opening disclosures.

USAA strongly opposes any requirement for it to provide advance notice before an APR can be increased to its previously-disclosed delinquency APR. At USAA, we only impose a delinquency APR when an account becomes two payments past due. The delinquency APR is only 6% higher than the account's regular APR. Moreover, a consumer's account can easily be returned to the regular account APR upon making three consecutive on-time payments. These terms are clearly and conspicuously set forth in the Application/Solicitation disclosures and in the Account Opening Disclosures.

Under the Board's proposal, an account at USAA could become over 120 days past due before the Delinquency APR could be imposed.[3] When that occurs, there is a good chance the consumer will make no further payments and USAA probably will receive very little in interest income on these accounts. Alternatively, a member could make two payments after we give the notice of the increased APR. Since only three consecutive payments are required, the member would return to the regular APR by making just one payment after the Delinquency APR goes into effect. The proposed changes to USAA would make our use of the Delinquency APR an ineffective risk-based tool. We would have to consider other options to deal with delinquency pricing.

We believe that the regulation should not require advance notice when a penalty APR can be cured by a consumer within 6 months. Such a requirement would encourage card issuers to provide cure terms for consumers.

(c) Format Requirements. USAA recognizes that when a card issuer changes many or substantially all of the terms of an account, then a table reflecting the new terms would be useful to consumers. However, USAA has concerns with the proposed format requirements for change in terms notices when a card issuer wants to change one or two terms and notify cardholders of the changes through a billing statement. For example, if a card issuer is raising a late fee, the following notice would be required:

[3] The following example illustrates the point: Cardholder purchases goods and services on January 1st for $5,000 at an APR of 7.75%. A statement is sent on February 1st with a payment due date of February 25th, however no payment is received by the next statement on March 1st. The cardholder does not make a payment by the March 25th due date which under terms of the agreement automatically increases the APR to 13.75% on the April 1" statement. Under the proposal, USAA would no longer be able to increase the APR at this time. Instead, we would have to either send a separate change in terms notice or provide a notice on the April 1st statement notifying the cardholder that the APR would increase in 45 days. However, since 45 days later would be in the middle of a billing cycle, the change would effectively have to be delayed until the July 1st statement since our system does not currently allow for mid-cycle APR changes. (If the APR was increased on the June 1" statement, it would apply to the entire billing cycle that begins on May 2nd and ends of June 1st. Since May 2nd is only 31 days from April 1st, we could not implement the APR change by then.)

The following is a summary of changes that are being made to your account terms. You have the right to opt out of these changes by writing to us at theaddress on this statement within 30 days. Otherwise, the effective date of this change is 5110108.

Late Payment Fee	$29

Since statement messages have significant limitations on the format, font, number of lines, and number of characters per line, the proposed disclosures could not be delivered via inexpensive statement messages. Instead significant programming changes would be required. Additionally, the table requirement will increase the number of pages and potentially drive up production and postage costs.

For a simple change in terms such as a change to a late fee, the following statement message would be the best approach:

"The late fee on your account is being increased to $29 effective in 45 days."

(d) Oral and Electronic Delivery of Change in Terms Notices. When a creditor offers a promotional APR, it is not required to provide any notice of the reduction in the APR. However, in order to resume the regular APR, creditors must provide a written change in terms notice. Creditors generally accomplish this by giving a written description of the promotional terms which is sufficient under regulation Z to constitute the change in terms to the standard rate when the promo rate ends. USAA believes that the Board should add a comment clarifying that an oral description of the promotional rate terms is sufficient notice to allow a creditor to resume the regular APR when the promotional rate expires. Alternatively, a creditor should be able to refer the consumer to a website to obtain the disclosures.

The Board has requested comment on whether there are circumstances in which creditors should be permitted to provide cost disclosures in electronic form to consumers who have not affirmatively consented to receive them for the account. As stated in our comment letter on the proposed rules regarding the electronic delivery of disclosures, USAA believes that if a consumer is transacting online, consent to electronic delivery of the related disclosures should be implied. When consumers go online to make a transaction, they expect to receive information about the transaction electronically. Providing disclosures related to an online transaction electronically enables the consumer to have important and complete information immediately and ensures that the member can complete his/her transaction efficiently.

We also believe that in this day and age, it is inappropriate not to allow a consumer to consent orally to the delivery of electronic disclosures, such as the account opening disclosures. If a consumer applies by phone and requests that the account information be provided electronically, an issuer should be able to accommodate that request. Making

the consumer wait several days to receive paper disclosures restricts the consumer's ability to complete financial transactions quickly and efficiently.

F. Special Credit Card Provisions

1. Liability for Unauthorized Use.

Under TILA and Regulation Z, a cardholder's liability is limited to $50 for unauthorized use of a credit card. "Unauthorized use" means use of a credit card by a person who lacks "actual, implied, or apparent authority" to use the credit card. The Commentary to Regulation Z currently provides that whether such authority exists is determined under state or other law.

The Board proposes to add a new comment that would clarify that if a cardholder gives a credit card to another who exceeds the authority given by the cardholder, the cardholder is liable for the other person's transactions until the cardholder has notified the creditor that use of the credit card by that person is no longer authorized. We applaud the Board for adding this comment since it addresses an issue that frequently arises in disputes between cardholders and card issuers and has been the subject of many court cases.

The Board has decided, however, not to add a time-limit in which consumers may assert an unauthorized use claim. USAA believes this is most unfortunate. Consumers can take years (sometimes more than 10 years) to assert that the use of an account was unauthorized. The Board indicates its belief that Congress did not intend to have a time limit because it was not set forth in TILA. However, Congress may have reasonably believed the Board would be best suited to determine an appropriate time-frame. It is clear that Congress intended the Board to fill in the gaps that TILA left. Moreover, Congress clearly envisioned that consumers would have to assert rights under TILA within one year when it enacted a one year statute of limitations for consumers to assert violations of TILA. If Congress only gave consumers one year to assert violations of TILA, it seems inconsistent with Congressional intent to allow more than one year to assert other rights under TILA.

TILA is clearly not intended to allow consumer abuse of the rights granted. Abuse leads to unnecessary costs and unfairness to all. We believe the Board should require consumers to assert claims of unauthorized use within one year or some other reasonable period. A consumer should be required to review credit card statements and notify a card issuer of unauthorized use within a reasonable period. Short of this, the regulation should allow card issuers to use an excessive delay in claiming unauthorized use as proof that the use was authorized. For example, if a person makes $10,000 in charges on an account and over the next twelve months the cardholder makes payments without claiming any unauthorized use, the card issuer should be able to conclude based on the cardholder's behavior that the charges are unauthorized.

2. Billing Error Rights.

(a) Good-Faith Belief Requirement. A consumer may assert a billing error by writing to a creditor within 60 days after the first statement that reflects the alleged billing error. The consumer must, among other things, **indicate the consumer's belief and the reasons for that belief** that a billing error exits, and the type, date, and amount of the error, to the extent possible. USAA believes that consumers should not be able to use the billing error provisions to attempt to **defraud** creditors. Lately consumers are being solicited by get-out-of-debt groups with promises that their debts can be reduced. Some of these groups include lawyers. The consumer agrees to pay the group a fee in return for the group's services. The group then either sends a billing error notice to creditors (or provides one for the consumers to send) in which the entire account balance is disputed as a billing error. The consumer may have no knowledge about what is being done. At a minimum, the consumer has no genuine belief that a billing error has occurred. When creditors get these letters, they **frequently** do not recognize them as true billing error notices. As a result, they do not follow the billing error resolution procedures. Sometimes the group (through its network of attorneys) files a lawsuit against the creditor for failing to follow the regulation Z requirements. The costs of these cases can be expensive compared to the balances on the account.

USAA strongly recommends that the Board implement a new comment that explains that a billing error notice does not exist unless the consumer has a good-faith belief that a billing error occurred. A consumer should not be permitted to use the billing error procedures simply to avoid paying a valid debt.

(b) Third Party Payment Intermediaries. A billing error is defined to mean one of seven types of errors, questions, or disputes. One of the categories of possible billing errors is "[a] reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer..., or not delivered to the consumer...as agreed." This category is one of the most common types of billing errors received by card issuers because it is the one used by consumers when they have a dispute with a merchant rather than with the card issuer. Frequently these types of billing errors are also claims and defenses under Section **226.12(c).**

The Board proposes to add a new comment that would make the billing error rules applicable when a consumer purchases good or services using a third-party payment intermediary (such as a person-to-person Internet payment service like Pay Pal) that is **funded** with a credit card or open-end account. According to the proposed rule, "the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service." USAA strongly opposes this proposed extension of the billing error rules. We disagree that the extension of credit is not for the payment service. When a consumer cashes a convenience check drawn on a credit card or an access check drawn on another

open-end credit plan, and then uses that cash to pay for goods or services, the credit transaction is the cashing of the check—not the purchase of the goods or services with the cash. When a cardholder goes to an ATM or a bank and takes out a cash advance on a credit card account, the goods or services purchased with the cash are not the credit transaction—the receipt of the cash is. Similarly, when a consumer funds a third-party payment intermediary account with a credit card or open-end account, it is the funding of the account that constitutes the credit transaction—not the purchase of the goods or services with the third-party intermediary account. The creditor posts the transaction and begins charging interest when the funds are transferred out of the open-end account. If the credit transaction has not yet occurred, then what right would creditors have to begin charging interest and billing the consumer? Moreover, what is the effect if the consumer is credited incorrectly by the third-party intermediary but has received the goods or services that were purchased? If the funding of the intermediary is not the credit transaction, then the consumer would have no billing error rights with respect to the funding error. (We would hope that the Board would not make both the funding of the intermediary and the purchase of the goods and services subject to billing error resolution.) Finally, if the consumer funds the intermediary and waits more than 60 days after being billed on the open-end plan before buying any goods or services with the third-party payment intermediary, the consumer would have no billing error rights. In short, USAA urges the Board to change the proposed comment to reflect that the credit transaction is the funding of the third-party intermediary account.

(c) Conclusively Determine Whether Billing Error Occurred. A creditor has two complete billing cycles (not to exceed 90 days) to resolve a billing error. The Board proposed to add a comment regarding the finality of the error-resolution procedure. Specifically, the proposed comment would state that "[a] creditor must complete its investigation and conclusivelv determine whether an error occurred within the [resolution] time period." [Emphasis added.] USAA is concerned with the term "conclusively determine" in this comment. Frequently creditors do not have sufficient information to make a "conclusive" determination as to whether or not a billing error occurred. We are concerned that a when a creditor in good faith determines that no billing error occurred and turns out to be incorrect a consumer could argue the creditor violated TILA because the determination turned out to be not "conclusive." Equally, if a consumer commits fraud that cannot reasonably be discovered by a card issuer until after the error-resolution period has expired, the regulation should not condone such action. Imagine a cardholder calling an issuer the day after the error-resolution period expired and stated he lied about the billing error. The rules would prohibit a card issuer from being able to charge the cardholder. We believe that Congress did not intend to uphold fraudulent behavior by consumers, and we would hope the Board would promulgate rules to prevent such behavior.

We recommend that the comment not use the word "conclusively" and instead focus on the prohibition to charging the account for the amount of an asserted billing error if the creditor has not resolved the dispute within the error-resolution timefrarnes. We also

recommend that there be reasonable exceptions to prevent fraud by cardholders. Finally, we think the Board should consider balancing the time it takes creditors to obtain information from third parties with the time limits for resolution. Creditors are often in a much worse position than are consumers to obtain information from the third parties with whom the consumers transact. We believe the Board should eliminate the two complete billing period timeframe and simplify the rule to allow 90 days for resolution.

G. Advertisements.

Under the proposed revisions, terms stated negatively would become trigger terms for credit card advertisements. Short advertisements such that simply invite a consumer to call to apply for a credit card "with no annual fee" would have to contain APR and other terms. USAA believes this is unnecessary. Credit card issuers have many plans and should be able to advertise generally that they have cards with no annual fee.

Sincerely,

Ronald K. Renaud
Banking Counsel and
Assistant Vice President