



October 26, 2005

Requests for Comments on Bankruptcy Act Amendments to the Truth in Lending Act

(MAJOR PROPOSAL)

EXECUTIVE SUMMARY

- The Federal Reserve Board (Fed) has issued a second advance notice of proposed rulemaking (ANPR) requesting comments on possible changes to the open-end credit rules under Regulation Z, specifically the rules applying to credit cards and merchant-specific credit plans. Fed will review the comments received and then consider issuing specific proposals for amending these rules.
- This second notice requests comments on how the Fed should implement provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Bankruptcy Act) that amend the Truth in Lending Act (TILA). These amendments include new disclosures for periodic statements and for credit card applications and solicitations. These provisions will not be effective until October 20, 2006, at the earliest.
- In December 2004, the Fed issued its initial request for comments on possible changes to the open-end credit rules under Regulation Z, specifically the format and content of the open-end credit disclosures. The Fed intends to incorporate this second request for comments as it reviews these open-end credit rules as part of its overall review of Regulation Z, which will take place in stages over the next few years.
- If you are submitting comments directly to the Fed, the comment letter should refer to Docket No. R-1217. The proposal requests responses to specific questions that are numbered. Responses to these questions should refer to the appropriate number. Comment letters may be e-mailed directly to the Fed at regs.comments@federalreserve.gov and should include the docket number in the subject line.

Comments on the proposal are due by December 16, 2005. Please submit your comments to CUNA by December 8, 2005. Please feel free to fax your responses to CUNA at 202-638-7052; e-mail them to Senior Vice President and Associate General Counsel Mary Dunn at mdunn@cuna.com or to Assistant General Counsel Jeff Bloch at jbloch@cuna.com; or mail them to Mary or Jeff in c/o CUNA's Regulatory Advocacy Department, 601 Pennsylvania Avenue, NW, South Building, 6th Floor, Washington, DC 20004. You may also contact us if you would like a copy of the proposal or you may access it [here](#).

BACKGROUND

TILA is intended to promote the informed use of consumer credit by providing for disclosures about its terms and cost. TILA requires lenders to disclose the cost of credit as a dollar amount and as an annual percentage rate (APR) in a uniform manner. This uniformity is intended to assist consumers in comparison-shopping for credit. Regulation Z implements TILA, which contains official staff commentary that interprets the regulation and provides guidance in applying the regulation to specific transactions.

In December 2004, the Fed issued an initial ANPR to review the open-end credit rules under Regulation Z, which differ somewhat from the rules that apply to closed-end, or installment loans. Open-end credit generally refers to a revolving line of credit, such as a credit card account in which repeated transactions are expected, the available credit is replenished as unpaid balances are repaid, and finance charges are assessed on unpaid balances. This also includes "charge cards" that typically require balances to be paid in full at the end of each billing cycle.

The Fed has now issued a second ANPR requesting comments on how the Fed should implement the provisions of the Bankruptcy Act that amend the open-end credit provisions of TILA. These amendments include new disclosures for periodic statements and for credit card applications and solicitations.

The Fed plans to review Regulation Z in its entirety in stages over the next few years. These two ANPRs focusing on the open-end credit rules comprise the first stage of this review. The next stage of this review will focus on the rules that apply to closed-end loans, such as automobile and mortgage loans.

DESCRIPTION OF THE REGULATION Z REVIEW

The Fed has requested comment on numerous issues in the form of specific questions. The Fed has numbered these questions, beginning with Question 59, which follows the 58 questions outlined in the first ANPR. These new questions

are grouped within the following categories that describe the new TILA provisions of the Bankruptcy Act:

Minimum Payment Disclosures

The Bankruptcy Act requires creditors that extend open-end credit to provide clear and conspicuous disclosures on the front of each periodic statement in a prominent location that describe the effects of making minimum payments. The Bankruptcy Act requires the Fed to provide model disclosures, which will include:

- A warning statement indicating that making only the minimum payment will increase the interest the consumer pays and the time it takes to repay the balance.
- A hypothetical example of how long it will take to pay off a specified balance if only minimum payments are made. There is one example in the Bankruptcy Act to be used if the minimum payment is four percent or less, in which the balance is \$1000 and the “typical” minimum payment is two percent, and another if the payment exceeds five percent, in which the balance is \$300 and the “typical” minimum payment is five percent. Both examples assume an APR of 17 percent and also assume the following:
 - The balance calculation method is the previous-balance method in which finance charges are based on the beginning balance for the cycle.
 - No grace period applies, since it is assumed that the consumer is revolving or carrying over a balance and grace periods do not generally apply in these situations.
 - There is no residual finance charge, which means when the balance is less than the minimum payment, the receipt of this payment will completely pay off the balance with no additional finance charge.
- A toll-free telephone number that consumers may call to obtain an estimate of how long it will take to repay their actual account balance if only minimum payments are made.

The Fed must prepare tables outlining the number of months it will take to repay a balance if only minimum payments are made, which must incorporate a significant number of different APRs, account balances, and minimum payment amounts. These tables may be used by the operators of the toll-free telephone numbers when providing the repayment period estimates to consumers.

The Fed must also maintain the toll-free telephone number for financial institutions with assets of \$250 million or less and is considering the following three approaches in calculating the estimated repayment periods:

- Requesting consumers to provide an account balance, minimum payment amount, and the APR. The Fed may need to require additional disclosures on the periodic statements if this information is not available to the consumer, such as the formula for calculating the minimum payments or what portion of each payment is subject to each APR that may apply, although the Fed is

concerned that disclosure of the formula may be too complex for the consumer. Another approach would be for the Fed to make assumptions for a “typical” account. For example, many creditors are now requiring payments of one percent of the balance, in addition to the finance charges.

- Providing another option in which creditors would be allowed to provide information from their own systems.
- Requiring creditors to provide the additional information with regard to the formula for calculating minimum payments and the portion of each payment that is subject to each APR that may apply. This would not only increase burden but may not result in the actual repayment period since other assumptions would be used.

Creditors may use the toll-free number to provide the actual number of months it will take for the consumer to repay his or her outstanding balance, instead of providing an estimate based on the Fed’s table. In this case, the creditor would not have to provide a hypothetical example on the periodic statements.

Question 59 – Are there certain types of transactions or accounts for which minimum payment disclosures are not appropriate? An example may be those in which there is a fixed repayment period, such as with home equity lines of credit (HELOCs), since consumers will already be aware of the length of time they have to repay the debt. For these types of products, should there still be a warning indicating that making minimum payments will increase the amount of interest that is paid? Another example may be reverse mortgages in which the time to repay cannot be estimated since it depends on when the home is sold or the owner dies.

Question 60 – Should creditors be able to omit these minimum payment disclosures for certain accountholders, such as those who do not revolve balances or those who make monthly payments that regularly exceed the minimum?

Question 61 – Some credit unions and retailers offer open-end plans that also extend credit with fixed payment periods and payment amounts that are used to purchase “big ticket” items. How should the minimum payment disclosures be implemented for these types of credit plans?

Question 62 – The two hypothetical examples use a 17 percent APR, and the Fed has the authority adjust this APR. Currently, data shows that the average APR for credit plans is about 13% for all credit plans and about 15% for accounts in which interest is assessed. Should the Fed change the 17 percent APR based on this data? If so, what should the APR be?

Question 63 – Should the account balance, APR, or “typical” payment used in the hypothetical examples be used for open-end credit that are not credit card

accounts, such as HELOCs, reverse mortgages, and other types of credit lines? If not, what information should be used?

Question 64 – The term “typical” payment may be perceived by consumers as the industry norm that they should use to compare to their own accounts, as opposed to being merely an example. Should the term “typical” be changed? If so, how can this be described as an example that does not represent the actual account term?

Question 65 – The Fed must develop a formula to generate the required tables. Should the Fed use the same assumptions that are used for the hypothetical examples with regard to the balance calculation method, grace period, and the assumption that there is no residual finance charge? For example, should one of the assumptions be the average daily balance method that is commonly used by creditors?

Questions 66 & 67 – Should the Fed use a “typical” minimum payment formula. What should this formula be? Should one percent of balance in addition to the finance charge be considered “typical?” Are there other approaches that should be considered? What is the typical formula for other types of accounts, such as HELOCs?

Question 68 - When maintaining their own toll-free numbers, should creditors have the option or be required to use their actual minimum payment formula, instead of the “typical” formula used by the Fed? Would the improved accuracy of the repayment estimate be outweighed by the burden of requiring the actual payment formula?

Question 69 – If the Fed uses a typical formula that does not result in negative amortization, such as one percent of the balance in addition to the finance charges, should the Fed allow or require that creditors use a different formula if their actual formulas result in negative amortization? What guidance should the Fed provide on how to disclose repayment periods when there is negative amortization?

Question 70 – What portion of credit card accounts accrue finance charges at more than one periodic rate? Are balances typically distributed in a particular manner? For example, is a greater portion of the balance accruing finance charges at the higher or lower rate?

Questions 71 & 72 – The hypothetical examples assume a single APR. Would this be appropriate for accounts that have multiple APRs and, if so, what should the APR be? Should the Fed instead adopt a formula that uses multiple APRs and incorporates assumptions about how those APRs should be weighed? Should the consumer receive both an estimated repayment period using the

lowest APR and another period using the highest APR? Are there other ways to account for multiple APRs in estimating the repayment period?

Question 73 – One approach for multiple APRs may be to require creditors to disclose on the periodic statements the portion of the ending balance that is subject to each APR so consumers may provide this information when using the toll-free telephone number. What would be the compliance cost if creditors were required to provide this information?

Question 74 – As an alternative to disclosing this information on the periodic statement, creditors could program their systems to calculate the repayment period based on the APRs applicable to the consumer's balance. Should this be an option or should it be required? What would be the compliance cost if this was required and would this cost be outweighed by the benefit of improving the accuracy of the repayment estimates?

Question 75 – Assumptions would also have to be made as to how payments are allocated to different balances. Should it be assumed for purposes of the toll-free telephone number that payments are always allocated first to the portion of the balance with the lowest APR?

Question 76 – Consumers may need to be aware of certain assumptions with regard to the repayment estimates, such as that the estimate is based on the assumption that there are no new transactions, late payments, changes to the APR, and that only minimum payments are made. Which of these, if any, should be disclosed to the consumer? Should they be disclosed on the periodic statements or when the consumer uses the toll-free telephone number? Should the Fed provide model clauses for these disclosures?

Question 77 – If the creditor elects to provide the actual number of months to repay the balance, instead of an estimate, what standards should be used in determining whether the creditor has accurately provided the actual number of months? Should the creditor be considered to have provided the actual number of months if the calculation is based on certain terms identified by the Fed, such as the actual balance calculation method, payment allocation method, all applicable APRs, and the creditor's actual minimum payment formula? With respect to other terms affecting the repayment calculation, should creditors be permitted to use the assumptions specified by the Fed, even if they do not match the terms of the consumer's account?

Question 78 – Should the Fed adopt a tolerance for error in disclosing the actual repayment periods? What should that tolerance be?

Question 79 – Is information about the actual number of months to repay readily available to creditors based on current accounting systems, or would new

systems have to be developed? What would be the cost if new systems had to be developed?

Question 80 – The Fed is considering three approaches in calculating the estimated repayment periods, which are described above, and generally require the consumer or creditor to provide information that may not currently be included in the periodic statements. Are there any other approaches that should be considered? Do you have suggestions for the calculation formula that the Fed should use in implementing the toll-free telephone system?

Question 81 – Do you offer or are aware of a web-based calculation tool that allows consumers to obtain estimates of repayment periods? How are they structured, what information is requested, and what assumptions are made in estimating the repayment period?

Question 82 – Are there other alternatives to providing the repayment periods other than the toll-free telephone numbers? Should the Fed encourage creditors to place the estimated or actual repayment period on the periodic statements by exempting them from maintaining the toll-free telephone numbers? What difficulties would there be in providing this information on the periodic statements?

Questions 83 & 84 – What guidance should the Fed provide regarding the location or format of the minimum payment disclosures that will be required on periodic statements? Should there be a minimum type size requirement? What model forms or clauses should the Fed consider?

Introductory Rate Disclosures

The Bankruptcy Act amends TILA by requiring additional disclosures for credit card applications and solicitations sent by mail or provided over the Internet that offer a “temporary” APR. “Temporary” is defined as a rate for an introductory period of less than one year if that rate is less than an APR that was in effect within 60 days before the application or solicitation was sent.

The Bankruptcy Act requires credit card issuers to use the term “introductory” clearly and conspicuously in “immediate proximity” to each mention of the temporary APR that is in the applications, solicitations, and in all accompanying promotional materials. Credit card issuers must also disclose the date this rate will expire and the rate that will apply after expiration in a prominent location “closely proximate” to the first mention of the introductory APR. If the rate applying after expiration is a variable one, then the rate disclosed must be one that was in effect within 60 days before the application or solicitation was sent.

Credit card issuers must also disclose clearly and conspicuously in a prominent location on or with the application or solicitation a general description of the

circumstances that may result in the revocation of the introductory rate, other than the expiration date itself, and the APR that will apply if the introductory rate is revoked. Again, if the rate applying after revocation is a variable one, then the rate disclosed must be one that was in effect within 60 days before the application or solicitation was sent.

Question 85 – The Fed is required to issue model disclosures and standards that provide guidance on satisfying the requirement that the introductory rate disclosures be “clear and conspicuous,” which is defined as “reasonably understandable and designed to call attention to the nature and significance of the information.” What guidance should the Fed provide? Should there be format requirements, such as a minimum type size? Are there other requirements the Fed should consider? What model disclosures should the Fed issue?

Question 86 – The term “introductory” must be in “immediate proximity” to each mention of the introductory APR. What guidance should the Fed provide in interpreting this requirement? Is it sufficient that the term “introductory” immediately precede or follow the APR, such as “Introductory APR 3.9%” or “3.9% APR introductory rate?”

Question 87 – The expiration date and the APR that will then apply must be closely proximate to the first mention of the introductory APR, although the introductory APR may appear several times. What standards should the Fed use to identify the first mention? Should it be the APR with the largest font size or the one located highest on the page?

Question 88 – For direct mail offers that include several documents, should the Fed identify one document that contains the first mention of the introductory APR or should this disclosure be included in each document that mentions the introductory APR?

Question 89 – The expiration date of the introductory APR and the rate that will apply after expiration must be in a “prominent location” that is “closely proximate” to the introductory APR. What guidance should the Fed provide for this requirement?

Question 90 – What guidance should the Fed provide in disclosing the rate that applies after the introductory rate when a creditor uses risk-based pricing? Should all the possible rates be disclosed or should a range of rates be permitted, indicating that the actual rate will be determined based on creditworthiness?

Question 91 – The Bankruptcy Act requires a general description of the circumstances that may result in revocation of the introductory rate, which must be disclosed “in a prominent manner” on the application or solicitation. What

additional rules or guidance should be provided on what constitutes this “general description?”

Question 92 – The introductory rate disclosures apply to applications and solicitations that are sent by direct mail or provided electronically. Should the Fed’s guidance for direct mail differ from the guidance for disclosures that are sent electronically?

Internet Based Credit Card Solicitations

The Bankruptcy Act further amends TILA to require that the same disclosures made for applications or solicitation sent by direct mail must also be made for solicitations to open a credit card account using the Internet or other interactive computer service. Disclosures provided on the Internet must be “readily accessible to consumers in close proximity to the solicitation” and must also be “updated regularly to reflect current policies, terms, and fee amounts.”

Question 93 – These Bankruptcy Act provisions concerning Internet offers refer only to solicitations, in which no application is required, although this may be interpreted to also include applications. Is there a reason that Internet applications should be treated differently than Internet solicitations?

Question 94 – What guidance should the Fed provide on how these solicitation (and application) disclosures may be made clearly and conspicuously on the Internet? What model disclosures, if any, should the Fed provide?

Question 95 – What guidance should the Fed provide as to when disclosures are “readily accessible to consumers in close proximity to the solicitation?” In the interim rules issued in 2001, the Fed requires that the consumer must be able to access the disclosures at the time the application or solicitation reply form is made available electronically. Examples in which this requirement can be satisfied include a nonbypassable link on the application or reply form, a reference that the cost information either precedes or follows the electronic application or reply form, or having this information automatically appear on the screen when the application or reply form appears. Is additional or different guidance needed?

Question 96 – What guidance should the Fed provide on what it means for the disclosures to be “updated regularly to reflect current policies, terms, and fee amounts?” Would a 30-day standard be appropriate, which is the standard suggested in the 2001 interim rules?

Disclosures Related to Payment Deadlines and Late Payment Penalties

The Bankruptcy Act amends TILA to require additional disclosures on open-end credit plans if a late payment fee is imposed. The periodic statement will need to

disclose “clearly and conspicuously” the date on which the payment is due, or if different, the earliest date in which a late payment fee may be charged, as well as the amount of the fee.

Question 97 – Under what circumstances is the date in which the payment is due different than the earliest date in which a late payment fee may be charged?

Question 98 – Is additional guidance needed on how these disclosures may be made “clearly and conspicuously?” Should there be specific format requirements, such as requiring the fee to be disclosed in close proximity to the due date? What model disclosures should the Fed provide?

Question 99 – Currently, Regulation Z allows a “cut-off” hour, in which a payment does not have to be credited on the day it is received if received after a certain hour on that day. In the last request for comments on the Regulation Z open-end credit rules, the Fed requested comments on whether cut-off hours should be allowed to continue. If allowed to continue, should the cut-off hour be disclosed on the periodic statement in close proximity to the due date?

Question 100 – Should the Fed require that any increased APR that would apply if a payment is late be disclosed along with the late payment fee disclosure?

Question 101 – Are there any special issues applicable to open-end credit other than credit cards that the Fed should consider with regard to the late payment fee disclosure?

Disclosures for Home-Secured Loans that may Exceed the Home’s Fair Market Value

For home-secured credit, the Bankruptcy Act requires that each advertisement in which the amount of credit extended may exceed the fair market value of the home must “clearly and conspicuously” disclose the following:

- The interest on the portion of the credit greater than the fair market value is not tax-deductible with regard to Federal income taxes.
- The consumer should consult a tax adviser for further information regarding the tax deductibility of interest and other charges.

These disclosures only apply to advertisements appearing in print or on the Internet and not to those on radio or television. These disclosures also have to be made at the time of application.

Question 102 – What guidance should be provided regarding the meaning of when the “amount of credit extended may exceed the fair market value of the home?” Should this apply when the extension exceeds fair market value or when this extension, combined with the existing mortgages, exceeds the fair market value?

Question 103 – When determining if the loan “may exceed” the fair market value, should only the initial amount of the loan and the current property value be considered or should other circumstances be considered, such as a possible increase in the loan amount if the loan terms allow for negative amortization?

Question 104 – What guidance should the Fed provide on how to make these disclosures “clearly and conspicuously?” Should model clauses and forms be provided?

Question 105 – Disclosures for closed-end loans are generally provided within three days of application for home-purchase loans. Is additional guidance needed for these Bankruptcy Act disclosures that must be provided at the time of application in connection with closed-end loans?

Prohibition on Terminating Account for Failure to Incur Finance Charges

The Bankruptcy Act amends TILA to prohibit a creditor from terminating an open-end plan before its expiration date solely because the consumer has not incurred a finance charge. This will not prevent the creditor from terminating the account for inactivity in three or more consecutive months.

Question 106 – What guidance should be provided on when an account expires? Should the expiration date on the credit card be considered the expiration date of the account?

Question 107 – Are there issues with open-end credit accounts other than credit cards that the Fed should consider with regard to these requirements?

Question 108 – Should the Fed provide guidance on the provisions allowing the creditor to terminate the account for inactivity in three or more consecutive months, such as what constitutes “inactivity”?