American Financial Services Association

Protecting Credit Since 1916

March 5, 2012

Research, Markets & Regulations Division
Bureau of Consumer Financial Protection
1500 Pennsylvania Avenue, NW
(Attn: 1801 L Street, NW)
Washington, DC 20220

Re: Streamlining Inherited Regulations (Docket No. CFPB-2011-0039)

To whom it may concern:

The American Financial Services Association ("AFSA") welcomes the opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB") notice of streamlining project ("Notice") requesting suggestions for streamlining regulations the CFPB recently inherited from other federal agencies. AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

Executive Summary

AFSA agrees with the CFPB that there may be opportunities to streamline the regulations implementing the fourteen consumer laws[1] that the CFPB recently inherited from other federal agencies ("inherited regulations") by updating, modifying, or eliminating outdated, unduly burdensome, or unnecessary provisions. We appreciate that the CFPB has recognized that some provisions of regulations may have become overly complex and unnecessarily difficult to understand and comply with, be less necessary or no longer needed, inhibit innovation, unnecessarily restrict consumer choice, or be more stringent than necessary.

AFSA believes that the CFPB should review each of the inherited regulations, one at a time, allowing plenty of time for opportunity to comment on each one. We are wary of recommending a "highest priority," but do offer several suggestions for changes to the inherited regulations that we ask the CFPB to consider (including an appendix detailing ways to clarify, update, modify, or eliminate specific provisions of regulations affecting credit cards). We also propose some modifications for disclosures and suggestions for testing disclosures.

[1] These fourteen laws are: The Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to Section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to Sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act, Sections 502 through 509 of the Gramm-Leach-Bliley Act (except for Section 505 as it applies to Section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, Section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

We urge the CFPB to carefully examine the efforts undertaken previously and to update prior studies before launching pilots, field tests, or demonstrations to assess benefits and costs of potential revisions to regulations. Additionally, we ask that the CFPB give the industry sufficient time to comply with, or ask questions about, new regulations or programs.

We appreciate the CFPB's recognition of the fact that several of the inherited regulations define key terms differently, but advise caution before changing the definitions. We emphatically believe that there should be an exception from the requirement to provide an annual privacy notice where the provider's privacy practices have not changed since the last notice. We strongly suggest that the CFPB change Regulation Z requirements for credit card issuers to assess the individual borrower's ability to repay the loan to allow individuals, especially non-working spouses, to obtain credit that they are capable of repaying. We also stress that in light of the pervasive usage of the internet and email, there are many opportunities to streamline regulations by permitting issuers to provide disclosures electronically without regard to the requirements of the Electronic Signatures in Global and National Commerce Act ("E-Sign Act").

> Question #1 – *What approach should the CFPB take and why? In what order should the CFPB review the inherited regulations and why?*

We believe that this is the most important question the CFPB asks in the Notice. Deciding on the approach to streamlining the regulations is imperative. The inherited regulations are complex, often highly interconnected, and always important. The wrong approach would be disastrous for both businesses and consumers. Thus, our comments focus on the approach the CFPB should take toward streamlining, rather than which regulations should be changed in what ways. To examine each of the inherited regulations for the potential benefits and costs of the regulatory change for consumers and covered entities, the likelihood the CFPB would be able to achieve the benefits consistent with the underlying statue, the speed with which the public would realize the benefits, the governmental and private resources it would take to realize the benefits, and the state of the evidence with which to judge these factors is a monumental task – one that needs much more time than provided for in the Notice.

AFSA recommends that the CFPB examine each of the inherited regulation one at a time, taking plenty of time to thoroughly review each one. A change to one of the inherited regulations that may seem perfunctory, might actually have substantive consequences and potentially serious ramifications. A seemingly small regulatory change might mean a large number of system or systems changes for a lender. A failure to recognize the interconnectedness of the existing regulations can result in what may appear to be a good change in one place causing severe collateral damage in another place. Since lenders are in the best position to identify the consequences of regulatory changes, we ask that the CFPB publish the changes to each inherited regulation one at a time and allow plenty of time for comment. The inherited regulations took much more than thirty or sixty days to put in place, so it is appropriate to take a suitable amount of time to make changes to them. In addition to a lengthy comment period, the CFPB could establish some form of stakeholder council or advisory committee to assist it in its streamlining process.

As well as gathering input from lenders, we urge the CFPB to do a cost-benefit analysis with the changes to each inherited regulation. AFSA also urges the CFPB to take into account the impact of any proposed change to small businesses. Additionally, we ask that the CFPB review the large body of law that surrounds each of the inherited regulations and the historical context of the inherited regulations. By reviewing the historical context, CFPB staff can verify that it is not revisiting issues that have already been resolved.

Reviewing the inherited regulations by market sector, as opposed to reviewing each of the fourteen regulations one at a time, or focusing only on the regulations the CFPB determines to be high priorities, will cause mistakes. Changes in one regulation may impact another regulation, and the best way to catch these changes is to go methodically through each inherited regulation.

AFSA understands that one of the CFPB's main goals seems to be simplification of disclosures, regulations, etc. While simplification is often a laudable goal, simplification of regulations can be problematic. Complex regulations are long for a reason. The complexity adds necessary guidance for companies implementing the regulation. Additionally, some of the inherited regulations, particularly Regulation Z, have a long Staff Commentary attached to them. Staff Commentary provides useful and necessary guidance for the regulation, and so we ask that the CFPB not remove the Staff Commentary.

> Question #2 – *Commenters are invited to offer their highest priorities for updating, modifying, or eliminating specific provisions of regulations that are outdated, unduly burdensome, or unnecessary. Commenters are asked to single out their top priority.*

As noted in our response to Question #1, we are wary of taking the "highest priority" approach to streamlining. We recommend that the CFPB begin its effort by taking an inventory of the required disclosures for each market/loan type and the timing of each disclosure, examining the disclosure requirements for each phase of loan origination and servicing (pre-application to post-origination) and evaluating whether the CFPB can align either the content or timing of the disclosures. This inventory should then be followed by publishing the revised regulations one at a time, allowing plenty of time to comment on each regulation.

Although we are not singling out a top priority, we do have some specific suggestions that we would like the CFPB to consider when reviewing the inherited regulations.

- First, we believe the CFPB could provide guidance to the Fair Credit Reporting Act ("FCRA") and the Fair Debt Collection Practices Act ("FDCPA"), neither of which have regulations implementing them. Without regulations, lenders were forced to make their own interpretations and to put in place compliance policies and procedures that they were unsure complied until they were sued. This often resulted in two courts deciding the issue differently, leaving lenders without clear guidance. Additionally, we believe that the CFPB should review the FDCPA with a view toward modernizing the law.

- Second, we suggest that the CFPB reconcile the adverse action requirements of Regulation B and the FCRA. Regulation B requires the adverse action notice to go to only one applicant (ideally the primary), but the FCRA requires that the notice be given to all applicants. The CFPB should also clarify whether adverse action notices under FCRA are required for non-lending products.

- Third, AFSA believes that it would be beneficial for lenders and consumers for the CFPB to work with states to streamline the federal and state requirements. As part of this coordination, the CFPB should compare the content and timing of federally-required disclosures with similar disclosures required by the states. The CFPB could also consider the creation of an exemption or safe harbor if a lender has to provide the same information in a state notice.

- Fourth, the CFPB should specifically address what it intends to do with guidance regarding the inherited regulations that has not been codified in regulation. The CFPB needs to provide explicit guidance on how it will treat supervisory and interpretive materials that are not currently in the Code of Federal Regulations. An example of this is the staff letters from the Federal Trade Commission.

- Fifth, the CFPB should clarify its jurisdiction over credit under the Equal Credit Opportunity Act ("ECOA"), which includes consumer and commercial credit, since Congress limited CFPB's jurisdiction to governing consumer financial products and services.

- Sixth, we have a number of suggestions for clarifying, updating, modifying, or eliminating specific provisions of regulations affecting credit cards that are outdated, unduly burdensome, or unnecessary. These detailed suggestions are listed in the appendix to this letter.

- Seventh, we ask that the CFPB permit consumers to rely on household income to obtain credit. Regulation Z's ability to pay rule for credit cards requires issuers to consider only an applicant's independent ability to pay, regardless of the applicant's age. This rule is inconsistent with the requirements of the Credit Card Accountability Responsibility and Disclosure Act ("CARD Act") and has limited the ability of certain consumers, in particular stay-at-home spouses who do not have independent income, to obtain credit. We therefore strongly recommend that the CFPB modify the ability to pay requirements of Regulation Z to permit consumers over the age of 21 to rely on household income.

On a separate note, we agree with the five factors (the size, likelihood, and speed of potential gains from streamlining; the sources needed to achieve the gains; and the strength of the evidence with which to judge these factors) that the CFPB plans to consider to set its priorities.

> Question #3: *The Bureau is in the midst of testing new mortgage disclosures under the Truth in Lending Act and Real Estate Settlement Procedures Act. Are there other required disclosures that available evidence suggests should be considered for modification or removal?*

AFSA believes that the CFPB should consider modifying the risk-based pricing rules, which are complex, complicated, repetitive, and likely unclear for consumers.

Although AFSA has always supported clarity in disclosures dating back to our Association's support of the Truth in Lending Simplification and Reform Act of 1980, we believe that consumers may be better served if the CFPB considers alternatives to the credit card agreement prototype proposed in December. For example, we recommend that instead of encouraging credit card agreements to be written in a CFPB-designed format that employs CFPB-approved language, the CFPB continue to encourage card issuers to simplify card agreements and enhance their understandability. Meanwhile, the CFPB could develop a short, educational document, similar to the proposed prototype, that would be available on-line and provide clear information about the key costs and features.

Using a short, educational document, similar to the proposed credit card agreement prototype, instead of replacing credit card agreements with the proposed prototype, will benefit both consumers and issuers. A short, educational document that is available on-line could help consumers to understand credit card agreements. However, replacing credit card agreements with the proposed prototype is problematic for many reasons: (1) The prototype is inconsistent with the requirements of Regulation Z; (2) Several items are not included in the prototype; (3) The cardholder-issuer relationship should not be oversimplified; (4) The prototype may not by contractually enforceable; (5) The prototype does not account for differences in issuers' practices; and (6) The prototype is really not as simple as proposed since it includes a multi-page glossary and possibly a "user's manual." The costs of using the prototype in place of the current card agreements used by issuers would be substantial. For instance, providers would face litigation by using a form that is not consistent with regulatory requirements. (For more information on the prototype, see our letter that was submitted to the CFPB on February 16, 2012.)

> Question #4: *For each suggestion in response to questions 2 and 3, commenters are asked to describe and, where possible, quantify the potential benefits and costs to consumers and providers of changing the regulation as recommended.*

Our response to Questions #2 and #3 are intended to benefit providers, by making compliance easier, and consumers, by having greater consistency between providers. Simplifying compliance for providers leads to lower costs for consumers.

> Question #5: *For each suggestion, commenters are asked to submit or identify empirical models, data, research, case studies, or other evidence the Bureau could use to analyze and, if possible, to quantify or describe the potential costs and benefits of the changes the commenter advocates.*

At this point, we do not have empirical models, data, research, case studies, or other evidence the CFPB could use to analyze, quantify, or describe the potential costs and benefits of the changes advocated.

However, we take this opportunity to note that consumer testing of disclosures should be thorough and robust. Testing disclosures on fewer than a dozen consumers, for example, would not comprise a representative sample and so would not be sufficient. Additionally, disclosures should be tested in real-world scenarios. Testing one disclosure in isolation ignores the fact that consumers are not devoting their undivided attention to the particular disclosure.

Testing disclosures on-line is also not sufficient. We appreciate the fact that the CFPB has posted draft mortgage disclosures and the credit card agreement prototype on the CFPB's website for comment before issuing a proposed rule, but we note real-world testing is necessary. In the case of the credit card prototype, we realize that the CFPB is working with the Pentagon Federal Credit Union to test the form as well. We respectfully request that the CFPB publish the results of that testing.

> Question #6: *Are there pilots, field tests, or demonstrations that the Bureau could launch to better assess benefits and costs of potential revisions to regulations?*

Excluding earlier wartime controls on consumer credit volume for economic stabilization purposes, federal regulation of consumer credit began in 1968 with passage of the Truth in Lending Act ("TILA"), and federal agency evaluation of the impact began immediately.[2] Since that time, federal regulation of consumer financial services has expanded dramatically to include the inherited regulations. In the years since passage of these statutes, the agencies have undertaken many additional studies of the impact of federal legislative and regulatory actions.

Rather than immediately launching without context "pilots, field tests, or demonstrations" (76 *FR* 233, 75827), the CFPB should first carefully review the efforts undertaken previously. Carefully updating prior studies permits these new studies to have context and perspective. It is not automatic that new legislation or regulation has favorable effects. This is an empirical question, and the best way of determining impacts is to compare present with past conditions through updating relevant past work.

In 1992, the Federal Financial Institutions Examination Council writing about banks pointed out in a report to Congress, "Such solutions [regulatory proposals and compromises] tend to overlook the truism that although people enjoy all the benefits of legislation and regulation, they also pay all the costs. Whether the costs are paid by bank customers or by stockholders (including mutual and pension funds on which many people depend for their savings and retirement), they accrue ultimately to people."[3] This truism suggests clearly the reason why there should be consideration of both costs and benefits of past and proposed legislation and regulations, not just claimed benefits. There are many places to begin a reexamination of these issues and past studies. The following references provide four summaries in chronological order over four decades. All of these sources should be carefully consulted before proceeding to needed updates:

[2] See Board of Governors of the Federal Reserve System, *Annual Report on Truth in Lending for the Year 1969.* Washington: Board of Governors of the Federal Reserve System, 1970. This report contains results of a before-after consumer survey study of the initial impact of Truth in Lending.

[3] Federal Financial Institutions Examination Council, *Study on Regulatory Burden*, Washington: FFIEC, 1992, p. II-12.

- National Commission on Consumer Finance, *Consumer Credit in the United States: The Report of the National Commission on Consumer Finance*, Washington: Government Printing Office, 1972.

- Federal Financial Institutions Examination Council, *Study on Regulatory Burden*, Washington: FFIEC, 1992.

- Gregory E. Elliehausen, *The Cost of Banking Regulation: A Review of the Evidence*, Washington: Board of Governors of the Federal Reserve System, Staff Study 171, 1998.

- Thomas A. Durkin and Gregory Elliehausen, *Truth in Lending: Theory, History, and a Way Forward*, Oxford and New York: Oxford University Press, 2011.

> Question #7: *Are there systematic ways the Bureau could improve guidance about how to comply with regulations? Are there ways the Bureau could make it easier for financial institutions to obtain answers to specific compliance questions they may have?*

AFSA believes that one of the best ways the CFPB could improve guidance about how to comply with regulations and make it easier for financial institutions to obtain answers to specific compliance questions is to give the industry sufficient time to comply with, or ask questions about, new regulations or programs. For example, when the CFPB began taking complaints on vehicle loans and consumer loans, it would have been helpful if companies offering such loans had been notified at least several weeks in advance.

Additionally, while we commend the CFPB for the recent changes to the website, especially the addition of the "Regulation" section, we recommend that the CFPB release important information, such as new model disclosures, as press releases, not just blog entries. Alternatively, the CFPB could consider adding a "News Now" section that would include, in order of their release: all recent final rules, proposed rules, and notices published in the Federal Register; new blog entries; new press releases; new speeches; new testimony; new Op-eds, etc. Having all of these in an easy to find list would be very helpful.

> Question #8: *The Bureau also is interested in identifying practical measures it could take to promote, or remove obstacles to, responsible innovation in consumer financial services markets.*

One practical measure that the CFPB could take to promote responsible innovation in consumer finance services markets is to change the regulations to make it easier for financial services companies to offer mobile applications.

Another measure the CFPB could take would be to issue clear guidance. The current uncertain regulatory environment makes companies afraid to offer new, innovative products. One of the biggest uncertainties for financial services companies is the lack of a definition of "abusive." To help eliminate uncertainty, the CFPB could put in place a written procedure to get specific questions asked (such as official interpretations), could periodically update the commentary accompanying regulations, or could issue periodic FAQ sheets. Basically, the CFPB could take a running list of questions from the industry and periodically issue some guidance for the most frequently asked questions. This would be particularly helpful when the CFPB re-issues the regulations governing mortgages.

Consistent and Sufficient Definitions

AFSA appreciates the CFPB's recognition of the fact that several of the inherited regulations define key terms differently. Although we agree that sometimes those differences may be unnecessary, we urge the CFPB to examine the effects of changing a definition carefully. Even though a change may appear to be simple, it could still require lengthy and complicated systems changes. This is particularly true in the definition of "business day." Changing the definition of "business day" would mean massive reprogramming for covered entities. Before the CFPB makes changes to definitions, it is important for the CFPB to understand why those definitions were written the way they were. Sometimes the commentary to a regulation provides such reasons, or, in the case of a lack of a definition, why the term was not defined. Some terms were left without definitions for a reason. Also, the CFPB needs to ensure that if a definition is changed, it is changed in every part of the relevant regulation or regulations.

Because of the possible ramifications of a change, we ask the CFPB to only make changes to definitions that are sources of obvious confusion. The definitions of "mortgage," "residential mortgage," etc. are such a source of confusion and so we recommend that the CFPB review those definitions and try to bring some consistency to them. We also recommend that the CFPB clarify the definition of "credit," given the different definitions under TILA and ECOA.

Annual Privacy Notices

We emphatically believe that there should be an exception from the requirement to provide an annual privacy notice where the provider's privacy practices have not changed since the last notice. Sending annual notices is extremely expensive and there seems little point to doing so if the provider's practices have not changed. Consumers can always access a provider's practices on-line or by contacting the provider and requesting a copy.

ATM Fee Disclosures

We have no comment on this section.

Coverage/Scope of Regulation C (Home Mortgage Disclosure)

We have no comment on this section.

Coverage/Scope of Regulation B (Equal Credit Opportunity)

AFSA believes that with regard to data collection requirements, Regulation B should have the same exemptions for depository institutions and other mortgage lending institutions as Regulation C currently has. Data collection under either Regulation B or C requires significant time and expense, and it is not warranted for the purposes of either Regulation B or C for financial institutions that do not meet the thresholds for having to collect and report as currently required in Regulation C.

AFSA does not believe it is necessary to amend 12 CFR Section 202.9(a) to exempt smaller creditors from the requirement of timely notifying applicants of the action taken on an application. Consumers are accustomed to receiving this notification, and would often times not be likely to understand why some creditors would be required to provide a notification and others would not be required.

We also believe that both regulations should allow for electronic noticing.

Coverage/Scope of Regulation Z (Truth in Lending)

Regulation Z does not need to cover a lender that extends consumer credit for less than twenty-five times in the past calendar year (or more than five times, for transactions secured by a dwelling) because there is less risk with very few transactions.

Ability to Pay Credit Card Debt

Again, we strongly suggest that the CFPB change Regulation Z requirements for credit card issuers to assess the individual borrower's ability to repay the loan. This requirement precludes some individuals, especially non-working spouses, from obtaining credit that they are capable of repaying. In a December 5, 2011 letter to then-acting head of the CFPB Raj Date, Rep. Carolyn Maloney (D-NY), Rep. Barney Frank (D-MA), and other members of the House of Representatives wrote:

> We understand from some issuers that there may have already been a negative impact on the ability of stay-at-home spouses to secure a line of credit. One issuer has seen a greater decline in the size of the average line of credit assigned to women as opposed to men across all approved applicants. In addition, approval rates have declined significantly for women in certain age groups, especially for those 62 and over, who may be particularly likely to rely on the income of other household members (for example, a spouse's retirement income).

Rep. Maloney and Rep. Louise Slaughter (D-NY), who were among the principal authors of the Credit Card Accountability, Responsibility, and Disclosure Act ("CARD Act"), have said that the rule "goes beyond the intent" of the law and that it "represents a serious risk for women in abusive domestic partnerships." In a letter to the Federal Reserve, Rep. Maloney and Rep. Slaughter wrote, "Women trapped in abusive marriages may be unable to work due to a controlling spouse, a hallmark of relationships characterized by domestic violence. The availability of an independent credit card may represent her best chance at establishing independence and a path out of a dangerous relationship."

For these reasons, we urge the CFPB to change the requirements as soon as possible.

Electronic Disclosures

We believe that in light of the pervasive usage of the internet and email, there are many opportunities to streamline regulations by permitting issuers to provide disclosures electronically, without regard to the requirements of the E-Sign Act, especially when the transaction to which the disclosure relates is being conducted by the consumer electronically. In such instances, the consumer's decision to engage in that transaction online should be deemed the functional equivalent of consent to electronic disclosures. For example, when a consumer applies online for a card, an issuer should be permitted to deliver the account-opening disclosures, if the customer is approved, or the adverse action notice, if the consumer is declined, electronically, without regard to the E-Sign Act requirements. Moreover, consumers who wish to take advantage of a promotional rate for a credit card online, such as by transferring a balance, should be permitted to do so, provided the promotional rate disclosures are delivered electronically without regard to the E-Sign Act. Similarly, card issuers should be permitted to electronically provide consumers who have provided their email addresses with cardholder agreements and billing statements, even without regard to the requirements of the E-Sign Act. Requiring these disclosures to be provided in writing or electronically only if the E-Sign Act requirements are met only serves to prevent the disclosures from being provided in a timely manner and inhibits the ability of a consumer to use the features and benefits of the consumer's account.

However, we do not believe that the CFPB needs to consider allowing certain disclosures to be provided by text messaging since text messages present practical and security concerns.

Interstate Land Sales Full Disclosure

We have no comment on this section.

Conclusion

We look forward to working with the CFPB to resolve the concerns expressed in our letter. Please contact me by phone, 202-466-8616 ext. 616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,

Bill Himpler
Executive Vice President
American Financial Services Association

APPENDIX

Below are a number of suggestions for updating, modifying, or eliminating specific provisions of regulations affecting credit cards that are outdated, unduly burdensome, or unnecessary.

- *Create a De Minimis Line Increase Exception to Regulation Z's Ability to Pay Requirements*: Consumers often request credit line increases to address emergency situations, such as when they experience a federal or state disaster or need immediate access to additional credit. The current ability to pay requirements do not provide issuers with the flexibility needed to accommodate these requests, as issuers are required to update income and obligation information prior to processing any credit line increase request, regardless of the dollar amount. In order to ensure issuers can assist distressed consumers, the CFPB should permit issuers to grant a consumer a de minimis line increase of $500 or less, at the consumer's request, without determining a consumer's ability to pay for that increased amount. In order to ensure this exception is not abused, we would support limiting this exception to not more than one emergency credit line increase within a 12 month period.

- *Clarify and Re-establish that Modeled Estimated Income is an Acceptable Means for Establishing Ability to Pay Under Regulation Z*: Regulation Z commentary permits issuers to use either "stated income" or "modeled income" that reasonably estimates a consumer's income when considering a consumer's ability to pay. Income models must meet Regulation Z requirements that they are empirically derived, demonstrably and statistically sound. The Office of the Comptroller of the Currency ("OCC") has questioned whether such model estimates are reasonable and have ordered some issuers to stop using modeled income, even though the authority to enforce Regulation Z has been transferred to the CFPB. Model estimates of income compare favorably to stated income and have been shown to more accurately predict a consumer's ability to pay. CFPB guidance is requested immediately to clarify the standard of reasonableness established in the guidelines to avoid continued regulatory uncertainty. Regulatory focus should be on assessing the probability of an incorrect decision or issuing a line of credit to a consumer who cannot afford to pay for it. Avoiding an incorrect decision is a function of the accuracy of the model and how the model is being used. For example, a smaller line of credit requires a smaller amount of income to support than a larger line. Examiners should also understand that income estimation is used in conjunction with careful underwriting for risk of default, thereby obviating any safety and soundness concerns over use of income estimates.

- *Limit the Timeframe for Reevaluation of Rate Increases*: Regulation Z requires issuers to review accounts for which an Annual Percentage Rate ("APR") has been increased since January 1, 2009 and for which 45 days' advance written notice is required, in perpetuity, until the rate is reduced to the rate that applied to the account prior to the increase. This requirement has placed undue burdens on issuers with no resulting benefit to consumers. Issuers are already restricted from increasing rates on existing balances except under limited circumstances. Accordingly, most rate increases that an issuer is reviewing apply only to new transactions with prior notice to the cardholder. However, issuers must apply any rate decrease to the entire existing balance to which the increased APR applied. Given the limited opportunity for issuers to increase the rate on that existing balance if risk factors change, the CFPB should limit the time period required for issuers to reevaluate accounts. We believe the appropriate amount of time is one year. This will ensure that cardholders whose rates were increased due to default will have ample opportunity to rehabilitate themselves. For accounts whose rates were increased for factors other than default, a one-year time limit will ensure that these accounts have been reviewed at least twice to determine if they qualify for a lower rate based on the issuer's new account criteria.

- *Changing rates from fixed to variable or visa versa should not be deemed a rate increase*: Regulation Z currently provides that if an issuer changes a rate from fixed to variable or visa versa, that such a change is deemed an "increase" and triggers the requirement to review that account every six months to determine whether the rate should be decreased. This is true even if the new fixed or variable rate is equal to or lower than the old rate at the time of the change. We strongly urge the CFPB to revise Regulation Z to clarify that changes in rate type are not deemed a rate increase. Categorizing a change in rate type as an increase results in an undue burden for issuers to continuously review those rates based on fluctuations in the Prime Rate.

- *Create Additional Exceptions to Increasing Rates on Existing Balances*: Regulation Z prohibits rate increases during the first year after account opening and with respect to existing balances unless an account is 60 days' past due and has been provided 45 days' advance written notice of the increase. The current rule leaves little room for issuers to deter late payments, especially in light of restrictions on late fees as, at 105 days' past due, the collectability of an account significantly decreases. The rule has resulted in a reduction in the availability of promotional rates and overall credit availability and increased prices for all cardholders. In order to increase the availability of credit, and in particular promotional rate offers, we encourage the CFPB to permit issuers to increase rates on existing promotional balances to the standard, non-promotional rate, if a cardholder is 30 days' past due.

- *Revise Safe Harbor for Balance Transfers*: Regulation Z requires issuers to provide the account-opening disclosures to consumers before the first transaction is made on the account. Where the first transaction is a balance transfer, issuers comply with this section if they do not process the balance transfer until ten days after mailing the account-opening disclosures and permit consumers to cancel their balance transfer request over the phone. The ten-day delay in processing balance transfers is an unnecessary inconvenience to customers who wish to take advantage of a lower promotional APR offer as soon as possible. We recommend that the CFPB shorten the safe harbor to seven days or less based on typical mail times (e.g., most first class mail is received within three to five business days).

- *Update Regulations to Provide Additional Guidance and Flexibility for New Technology*: Consumers are increasingly using the Internet, tablets, and mobile phones to apply for credit, make purchases, and payments. Many of the regulations have failed to keep pace with these emerging technologies. Issuers' ability to innovate and bring new products and services to the marketplace is inhibited by the inflexible standards in many of the regulations. For example, Regulation Z requires the application disclosures to be provided in 10-point font and the purchase APR to be in 16-point font. However this may not be practical when the application is being presented on a mobile phone or other small device. In addition, Regulation Z limits the ability of a cardholder to assert claims or defenses against an issuer if the disputed transaction did not occur within 100 miles of the cardholder's current address. It is not clear how the 100-mile restriction applies to internet and phone transactions. We therefore encourage the CFPB to review the existing regulations to ensure that they are flexible enough to accommodate existing and new technology. This will provide issuers with much-needed clarity and permit them to serve the needs of their customers.

- *Eliminate Requirement to Report Authorized Buyers*: Regulation B requires issuers to report authorized buyers who are spouses to the credit bureaus. However, many authorized buyer spouses do not wish to have these accounts reported in their name. Accordingly, the CFPB should eliminate this requirement.

- *Promotional Disclosures*: Regulation Z requires card issuers to provide cardholders with certain disclosures, including the APR or fee that would apply after the expiration of a promotion, prior to the start of the promotional period. To ease the burden on card issuers (while retaining the effectiveness for consumers), we suggest the following changes:

    - Disclosure of an "up to" APR or fee should be permitted instead of the cardholder's actual go-to APR or fee or in the alternative a generic reference to the cardholder's standard rate or fee applicable to the type of transaction.

    - The "writing" requirement for the disclosure should be eliminated, e.g., electronic disclosure should be permitted without eConsent.

    - A creditor should have an opportunity to "cure" in situations where it failed to provide the disclosure, by sending a notice to the customer after the transaction occurs offering the customer a right to cancel the transaction and return the goods.

    - In response to a customer request, creditors should be permitted to change or add a promotion relating to a transaction previously made by the customer, even if the required disclosures were not previously provided. If necessary, such disclosures could be provided after the addition or change is made.

- *Hardship Plans*: Regulation Z requires card issuers to increase an APR at the end of hardship plan only if, among other things, the creditor provided the consumer, prior to commencement of the plan, with a disclosure of terms of the plan, including the minimum payment and APR that will apply after the plan ends. This disclosure requirement makes the offering of hardship plans more cumbersome and is a disincentive for creditors to offer such plans. The regulations should be revised to either (1) eliminate the disclosure requirement, or (2) permit the disclosure to be provided at any time before the hardship plan ends.

- *Preemption*: The inherited regulations should be modified to help clarify some of the preemption-related confusion resulting from the Dodd-Frank Wall-Street Reform and Consumer Protection Act. For example, Regulation Z should explicitly state that any state-required disclosures relating to credit card accounts are preempted.

We suggest that the following credit card disclosure should be modified or removed.

- *Renewal Notices*: Regulation Z requires issuers to provide a renewal notice to cardholders prior to renewal of a credit card, even when an annual or other periodic fee is not assessed, if an issuer changed any term required to be disclosed under Section 1026.6(b)(1) and (b)(2) since the last renewal that has not been previously disclosed. The rule requires issuers to provide the renewal disclosures even when the only changes made since the last renewal involved a reduction of any component of a finance or other charge, or the extension of a grace period. This requirement unreasonably burdens issuers and consumers alike. It contributes to information overload by requiring notice of a relatively insignificant change to an account the consumer may cancel at any time without forfeiting a renewal fee because there is none. Moreover, even when an annual fee is charged, the current requirement to re-disclose application disclosures, even when they have not changed or the consumer has previously been notified of such changes, serves no useful purpose to consumers. We therefore recommend that the renewal disclosure notice requirements be simplified to only require disclosure of the amount of the annual fee, when it is being assessed, and how the consumer can avoid the fee.

- *Change in Terms Tabular Summary*: Regulation Z requires issuers to present changes to terms required to be disclosed under Section 1026.6(b)(1), (2) and (4) in a tabular summary containing only those changes. As issuers are prohibited from including additional information in the table, such as other changes that are not required to be disclosed under Section 1026.6(b)(1), (2) or (4), the table is confusing and potentially misleading to consumers as they may believe that these are the only changes the issuer is making. The tabular summary should therefore either be eliminated or issuers should be permitted to include other changes in the summary, other than just changes to terms required to be disclosed under Section 1026.6(b)(1), (2) or (4).

- *Clear and Conspicuous Standard:* Regulation Z requires that certain disclosures be made clearly and conspicuously. Disclosures required to be provided in a tabular format are deemed clear and conspicuous if they are in 10-point font. The minimum font size requirement puts issuers at risk of non-compliance over a technicality without regard to whether, in the context of the entire presentation of the disclosure, the disclosure is still “clear and conspicuous.” In order to provide issuers with more flexibility in meeting the clear and conspicuous standard, including when providing such disclosures using new technologies, such as the Internet, mobile phone applications, etc., the clear and conspicuous standard should not require specific font sizes but instead should be determined based on the overall presentation of the disclosure. For example, disclosures presented in a tabular format on pages containing checks or the front page of any statement should be deemed to meet the clear and conspicuous standard without regard to a minimum font size.

- *Check Disclosures*: Regulation Z requires the following information to be displayed, in a tabular format, on the first page containing checks: any promo rate, the “go to” rate, the use by date, any promo fee, the “go to” fee and when finance charges start to accrue. We believe there is an opportunity to simplify these disclosures as they are extremely long and complicated to follow when both promotional rates and fees are involved. We also recommend that the CFPB clarify whether issuers must use the phrase “use by” when the issuer’s systems require that the check must “post by” a certain date in order for the promotional terms to apply.

- *Advertising Disclosures*: Regulation Z provides that if an advertisement sets forth any term required to be disclosed under section 1026.6(b)(3) either affirmatively or negatively, issuers must disclose the APR, min. finance charge and membership fees. Where no fee required to be disclosed under section 1026.6(b)(3) applies, such as no annual fee, or no cash advance fee, issuers should be permitted to advertise this fact without triggering additional disclosures. Cardholders often shop on the basis of these features and requiring disclosure of unrelated terms leads to customer confusion and information overload. If the CFPB believes additional disclosure is required, we would request that issuers be permitted to include a short phrase on these advertisements, such as “additional rates and fees apply” and refer the consumer to where they can find this additional information, such as online or by mail.

- *Pre-screen Notice*: Issuers are currently required to provide a layered notice on pre-screened solicitations. The first layer of the notice must be included on the front page of the solicitation in at least 12-point font and must advise the consumer where they can find the second layer of the notice. The CFPB should eliminate the first layer of the notice. A layered notice is not required under the Fair and Accurate Credit Transactions Act (“FACT Act”) and the first layer of the notice inappropriately highlights the consumer’s opt-out right to the point of diminishing the importance of other required disclosures, such as those contained in the application table.

- *Alimony, Child Support and Separate Maintenance Income Disclosure*: Regulation B prohibits a creditor from inquiring about whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant’s creditworthiness. The commentary to Regulation B provides that even a general inquiry about the source of income triggers this disclosure as it may lead an applicant to disclose this income. Requiring a creditor to make this disclosure every time it inquires generally into the source of income simply because it "may" lead some consumers to disclose this income is unnecessary and confusing to those consumers who would not interpret such an inquiry in this manner. Accordingly, the commentary should be revised to clarify that general inquiries about the source of income do not trigger this disclosure.

- *Adverse Action Notices For Businesses*: The ECOA and FCRA require creditors to provide adverse action notices in both consumer and business credit transactions. However, these notices provide little benefit to applicants, and create significant operational burdens for creditors, in connection with business credit. In order facilitate the extension of business credit, exemptions from these notice requirements should be provided where the applicant is not an individual and for applicants with annual receipts in excess of $1 million. In addition, the adverse action notice requirements should be required only after a business loan customer submits a written application because of the difficulties in determining when an oral application might occur in the course of preliminary discussions of business loan products with prospective borrowers.

- *Statement Disclosures*: We believe there is a significant opportunity to reduce the amount of disclosures that are currently required on billing statements by either providing alternative methods for delivering these disclosures or creating exceptions to the requirements so that the disclosures are only triggered when they are meaningful. Following are a few examples:

    - *Interest and Fee Totals*: Regulation Z requires issuers to separately itemize interest and fees and provide cycle to date and year to date totals on periodic statements. The additional disclosure requirements make it difficult for consumers to find the information that is most important to them – in particular, the minimum payment due and the payment due date. In order to simplify these disclosures, we recommend that yearly totals only be provided at the end of the year, as opposed to on each billing statement. Alternatively, issuers should be permitted to direct cardholders to online tools that can provide cardholders with this information.

    - *Minimum Payment Warning*: Regulation Z requires issuers to display a minimum payment warning each month on billing statements with few exceptions. We believe the CFPB should create an exception to display the minimum payment warning where a cardholder pays in excess of the required minimum payment for two or more consecutive billing cycles as the warning does not provide useful information to cardholders who pay more than the minimum payment each month.

    - *Billing Error Notice*: Regulation Z requires issuers to either provide the statement of billing rights once a year or to provide an alternative notice on each billing statement. As the billing statement notice is a model form and does not vary by issuer, we recommend that the CFPB take the opportunity to simplify the amount of disclosures on billing statements by permitting issuers to include a short notice on billing statements directing cardholders to where they can obtain the billing rights notice, such as online or by requesting a copy via phone or mail.