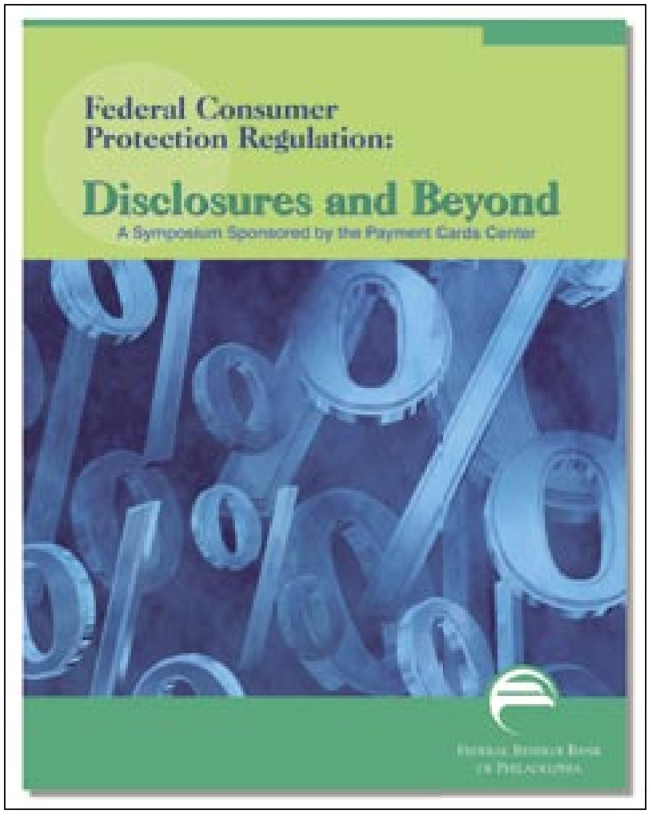
CONFERENCE SUMMARY



Federal Consumer Protection Regulation:

Disclosures and Beyond

June 10, 2005

PAYMENT CARDS Center

FEDERAL RESERVE BANK OF PHILADELPHIA

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Mark Furletti

Summary

On June 10, 2005, the Payment Cards Center hosted a symposium entitled "Federal Consumer Protection Regulation: Disclosures and Beyond." The symposium brought together credit card industry leaders, legal scholars, consumer advocates, economists, and federal regulators to discuss standardized credit card disclosures and other means of protecting credit card consumers. This paper summarizes the day's discussion and details the recommendations of symposium participants. In general, these recommendations involve (1) making specific changes to current credit card disclosures, (2) improving the processes by which disclosures are implemented, (3) increasing reliance on technology for the purposes of making disclosures more useful and educating consumers, and (4) changing the "mix" of regulatory intervention in the industry. The paper concludes that while many participants do not expect significant improvements to existing federal consumer protections, there is evidence that standardized credit disclosures, when coupled with other regulatory tools, serve a segment of credit-card-using consumers well and could incrementally benefit from modification.

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I. Introduction

Since the end of 2004, federal policies that aim to protect consumers of credit card products have been a principal focus of regulators and lawmakers. In December 2004, the Board of Governors of the Federal Reserve System announced a comprehensive review of the federally mandated disclosures provided to credit card and other open-end credit consumers. The goal of the Board's review is to improve the effectiveness and usefulness of such disclosures.[1] Early in 2005, the Office of the Comptroller of the Currency, through its supervisory processes, effected an increase in the monthly minimum credit card payments charged to customers of national banks. The comptroller explained that this move would help consumers by shortening the time needed to pay down card debt and reducing consumer exposure to "unmanageable debt loads."[2] Finally, in April 2005, President Bush signed into law the Bankruptcy Abuse and Consumer Protection Act of 2005. Among other things, the act requires credit card issuers to include "minimum payment warnings" in consumers' monthly statements in order to inform them of the consequences of making minimum payments on their credit card loans for extended periods.[3]

This recent spate of federal involvement in protecting credit card consumers has sparked even broader debate over the effectiveness of disclosures as a form of consumer protection[4] and the federal government's use of other consumer protection tools, such as consumer education and regulatory guidance.[5]

[1] Advance Notice of Proposed Rulemaking: Truth in Lending, Docket No. R-1217, Dec. 3, 2004.

[2] Statement of Julie L. Williams, Acting Comptroller, Office of the Comptroller of the Currency, Committee on Senate Banking, Housing and Urban Affairs, May 17, 2005.

[3] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 § 1301 (2005).

[4] See, for example, Duncan MacDonald, "Time for the Fed to Make Card Disclosures Clear," *American Banker*, March 24, 2005, p. 7. ("Here's the truth: Truth-in-Lending and Reg Z are failures. The obtuse disclosures they impose make borrowers apathetic, enable creditors to be devious, and breed cynicism about bank regulators. They do little to edify consumers but much to enrich lawyers. They need radical surgery.")

[5] See, for example, Damian Paletta, "Next Up: Credit Card Reform; Fed weighs in through broad Reg Z review," *American Banker*, April 11, 2005, p. 1. ("Russell W. Schrader, an assistant general counsel at Visa U.S.A., said the company would like to see the Fed start an informational campaign for the public rather than focus on reforming industry practices. It 'should seriously consider a significant long-term commitment to educating consumers about consumer credit,' he wrote.")

In an effort to inform this debate, the Payment Cards Center of the Federal Reserve Bank of Philadelphia hosted a symposium entitled "Federal Consumer Protection Regulation: Disclosures and Beyond."[6] The one-day event brought together economists, legal scholars, industry experts, consumer advocates, and federal regulators to discuss the merits of standardized consumer credit disclosures and other tools that federal regulators use to protect credit card consumers.

This paper summarizes the day's discussion and is organized as follows: Section II provides background on the Truth in Lending Act of 1968 (TILA), the legislation that marked the beginning of the federal government's involvement in protecting credit card consumers by way of disclosure, and Regulation Z, the regulation established by the Board to implement TILA. This section also discusses the strengths and weaknesses of current credit card disclosures. Section III details the recommendations of symposium participants as related to disclosures and other means of consumer protection. In general, these recommendations involve (1) making specific changes to current credit card disclosures, (2) improving the processes by which disclosures are implemented, (3) increasing reliance on technology for the purposes of making disclosures more useful and educating consumers, and (4) changing the "mix" of regulatory intervention in the industry. Section IV concludes that while many participants do not expect significant improvements to existing federal consumer protections, there is evidence that standardized credit disclosures, when coupled with other regulatory tools, serve a segment of credit-card-using consumers well and could incrementally benefit from modification.

II. Background on Truth in Lending

Thomas A. Durkin, a senior economist at the Board of Governors and the author of a forthcoming book on consumer credit disclosure,[7] opened the symposium with a description of the Truth in Lending Act (TILA). He examined the act's legislative history, sources of influence, and original goals. In addition, he

[6] Appendix A includes a symposium agenda and Appendix B lists the institutions represented at the symposium.

[7] Durkin's book, *Financial Economics of Information Disclosure: Applications of Truth-In-Lending*, is due out later this year.

and other participants reflected on the law's successes and failures.

Prior to the passage of TILA in 1968, consumer protection regulation as it applied to credit products derived primarily from state law. Federal law, to the extent to which it pertained to banking and credit, was primarily concerned with avoiding a Great Depression type of collapse. In 1960, however, U.S. Senator Paul Douglas, a Ph.D. economist and former president of the American Economic Association, advocated passage of a federal law aimed at informing consumers of credit terms in a standardized manner. Apparently he believed that such a bill would enhance the efficiency of the consumer credit market and reduce information asymmetries between lenders and borrowers. While the bill was not passed until two years after Douglas left the Senate, Durkin believes that Douglas's economic training significantly influenced the structure and basic approach of TILA. The act's preamble, Durkin noted, sounds as if it were written by an economist with these views in mind: "The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions…would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the costs thereof by consumers."[8]

While TILA's information-based protections may have been the vision of an economist chiefly concerned with market efficiency, Durkin asserted that the act and its amendments have also been shaped by other constituencies with other interests. The act was developed by political figures who took more of a behavioral approach, concerning themselves with the actions of individual consumers. The act was also "forged in the politics of compromise," as Congress, in crafting the legislation, attempted to balance the needs of all of those with an interest in the consumer credit market. Then it was further engineered and tested in the courts by attorneys trained to represent the interests of their clients. Federal regulators have had a difficult time exercising leadership with respect to TILA. In Durkin's view, they have been "whipsawed" by various market participants.

Durkin explained that Congress ultimately enacted TILA as Title I of the Consumer Credit Protection Act.[9] The act charged the Board of Governors of the Federal Reserve with creating and enforcing the specific rules needed to implement the legislation. TILA rules are embodied in the Board's Regulation Z. As it applies to credit cards (a form of what the act terms "open-end credit"), TILA is primarily disclosure focused. The act is silent about the number, amount, variety, or frequency of fees and credit-related charges that banks can impose. The act does not impose interest-rate ceilings, price controls, or limits for any charges. Instead, it requires banks to inform potential customers about specific loan pricing terms at specific times.

For many reasons, Durkin noted, information-based protections, such as those included in TILA, are more appealing to policymakers and economists than "direct" regulation. First, information-based regulation is compatible with market forces, requiring product information to be made available in a standardized fashion without dictating how the product should be priced. Second, disclosure-focused regulation can provide consumers information that may otherwise be missing or unclear based on product advertisement, helping them avoid unsound credit decisions. Third, disclosure regulation is unlikely to interfere with product innovation, as it does not regulate any specific product attributes. Fourth, information-based protections are easily layered on top of existing regulatory regimes, such as state interest-rate or fee caps, because they do not generally create compliance conflicts. Finally, policymakers perceive information-based protections as less costly than direct regulation. Durkin admitted that this last point, however, is open to debate, as many lenders claim that disclosures are expensive and more costly than other forms of regulation.

When TILA was first passed, the disclosures required by the act for open-end credit products, such as credit cards, were relatively simple. Before opening a credit card account, lenders were required to disclose when finance charges could be assessed, the method of determining balances subject to finance charges, the method used to determine finance charges, the rates

8 Truth in Lending Act § 102(a) (1968).

9 TILA marked the start of a decade of government involvement in protecting consumer borrowers. After TILA's passage in 1968, the Fair Credit Billing Act and Equal Credit Opportunity Act were passed in 1974, the Home Mortgage Disclosure Act was passed in 1975, and the Community Reinvestment Act was passed in 1977.

used to calculate finance charges, when other charges might be assessed, and when a lender could take a security interest in any property purchased with the extension of credit. In addition, the act required that lenders supply consumers with specific balance, finance charge, APR, and transaction information on monthly statements.[10]

Since 1968, the requirements of TILA and its implementing regulation have been modified in response to the increasing complexity of credit card pricing.[11] As a result, the section of the act addressing credit card disclosures (§ 127) has increased in length from 762 words to 6452 words. In addition to requiring that more pricing elements be disclosed both before an account is opened and on monthly statements, the act now mandates giving consumers a series of disclosures in a particular format at the time they are solicited for a credit card account. These solicitation disclosures, a result of the Fair Credit and Charge Card Disclosure Act (FCCCDA) of 1988, must be displayed in a table popularly referred to as the "Schumer box."[12] A table listing the pricing elements that at present must be disclosed to a consumer (1) upon solicitation, (2) before the account is opened (or used), and (3) on periodic statements can be found in Appendix C. An example of a Schumer box solicitation disclosure can be found in Appendix D.

Since the passage of the 1988 amendments to TILA, the disclosures mandated by the act and its implementing regulation (i.e., Regulation Z) have been modified but not substantially changed. In general, the Board and Congress have simply required that more elements be disclosed. In 1998, for example, the Board required that so-called "penalty APRs" (i.e., APRs charged as a result of a consumer's default) be included in solicitation disclosures.[13] And in 2005, Congress modified TILA to require an additional periodic statement disclosure and certain introductory rate disclosures.[14] One of the few format or display-type changes that have been implemented in recent times occurred in 2000, when the Board required that the APR applicable to purchases be displayed in at least 18-point type (i.e., a type size larger than that of other information) in solicitation disclosures.[15] Beyond adding more elements or making minor format changes, neither Congress nor the Board has undertaken a comprehensive review of credit disclosures for well over two decades.

In December 2004, citing the amount of time that had passed since the last thorough review of disclosure rules and the increasing complexity of credit product pricing, the Board announced that it would begin evaluating whether and how the present disclosure rules can be improved. To this end, the agency issued an advance notice of proposed rulemaking (ANPR), requesting feedback on the disclosure requirements from all of those with an interest in revolving credit products.[16] The ANPR posed 58 questions regarding the scope of the Board's review, the format and content of current disclosures, the substantive protections of the act (e.g., fraud liability caps and billing error resolution), the need for congressional intervention (in the form of statutory changes),[17] and the use of "nonregulatory" approaches to consumer protection.

At the symposium, Durkin and others responded to the open invitation to review the merits of Truth in Lending disclosures by analyzing how they have succeeded and failed. In Durkin's opinion, whether TILA disclosures have been successful depends on what one believes is the purpose of the act. In his research, he has found that since the act's passage, various interested parties have noted at least 38 different reasons for having TILA (see Appendix E for

[10] See Truth in Lending Act § 127 (1968).

[11] For a detailed discussion of how credit card pricing has changed over the past decade and how TILA disclosure requirements have accommodated these changes, see Mark Furletti, "Credit Card Pricing Developments and Their Disclosure," Federal Reserve Bank of Philadelphia Payment Cards Center Discussion Paper, January 2003 (available at www.philadelphiafed.org/ pcc/discussion/ CreditCardPricing_012003.pdf).

[12] Then-Congressman Schumer was a sponsor of the FCCCDA.

[13] See 63 Fed. Reg. 16,669-16,678, Apr. 6, 1998, Revisions to official staff commentary on open-end plans and other matters.

[14] Issuers will be required to include "minimum payment warnings" on statements that warn consumers that paying the minimum payment amount will result in lengthy loan payoff periods.

[15] See 65 Fed. Reg. 58,903-58,911, Oct. 3, 2000.

[16] TILA also mandates specific disclosures for installment (i.e., closed-end) loans such as mortgages and automobile loans. The Board plans to review these disclosures after reviewing the open-end loan disclosures.

[17] The Federal Reserve Board has the authority to write the rules that implement the Truth in Lending Act but does not have the authority to make changes to the text of the act itself. It does, however, have the authority to make certain exceptions and exemptions to the act's requirements as needed. As a result, any potential *fundamental* changes that require an amendment to the act would require congressional action and the President's approval.

his list). Cited goals include enhancing card market competition, enabling consumers to decide between using credit and delaying consumption, and enhancing the stability of the overall economy. "Because the act is perceived to have so many goals," Durkin remarked, "some people will say the act has worked and others will say it has not. Depending on how you define success, both can be right."

Durkin's remark proved predictive. Symposium participants expressed a wide range of views on the success of TILA disclosures that largely depended on their view of the act's goals. Some thought that the disclosures work exceptionally well, and others thought that they are "total failures." From an economic perspective, Durkin himself believes that the disclosures have spurred competition among credit card issuers: "TILA has likely played a central role in enhancing competition by forcing card issuers to do battle over annual percentage rates."

Clint Walker, general counsel of Juniper Bank, agreed with Durkin and asserted that credit card solicitation disclosures are working well. "People point to nutritional labels as a model of good disclosure practices. Card disclosures, however, are far more effective. When presented with two or more card offers, consumers consistently choose the offer that costs them the least and benefits them the most. If consumers were presented with three cereal box nutrition labels, I'm not sure that they could easily choose the healthiest cereal of the three." In Walker's opinion, TILA card solicitation disclosures have resulted in two positive outcomes: (1) consumers are better able to match products to their needs, and (2) consumer sophistication has increased over time.

Others at the symposium were less enthusiastic about current TILA disclosures. Rick Fischer, a partner at Morrison & Foerster, for example, noted that the disclosures have become increasingly ineffective as policymakers and regulators have added to the list of terms that must be disclosed. "We started out in the right place," Fischer argued, "disclosing a few key terms in an easy-to-read format. But because we have not been able to agree on the appropriate level of disclosure, we have destroyed the primary utility of this protection." The expanded disclosures, in Fischer's view, make it far more difficult to meet the goal of simplifying information processing for consumers.

Todd Zywicki, a law professor at George Mason University, criticized current TILA disclosures as making it more difficult for certain groups of credit card consumers to find relevant information. "TILA requires issuers to provide me with pages of information on topics that, because I am a nonrevolver, I do not care about. If issuers were not constrained by TILA, they could create far more useful disclosures for consumers like me." Zywicki also suggested that if issuers had more freedom, they could target information to different kinds of consumers who revolve. "Unfortunately, TILA prohibits issuers from meeting the unique information needs of different consumers," he explained.

Despite differing views on the successes and failures of TILA, participants generally agreed that federal regulators and policymakers could make TILA disclosures more useful. The remaining portion of this summary describes the suggestions of symposium participants with respect to TILA disclosures and other forms of federal consumer protection regulation.

III. Recommendations of Symposium Participants

As described in the introduction, the symposium set out to answer two basic questions: How can regulators and policymakers improve the current set of regulatory disclosures? What other tools should regulators and policymakers consider using to protect consumers? This section details how symposium panelists and attendees responded to these two questions. It is organized around four suggestions regarding (1) the content and delivery of disclosures, (2) the process by which disclosures are to be revised, (3) the use of technology in aiding disclosure and consumer education, and (4) the current "mix" of regulation.

1. Improve current disclosures by reducing the number of elements disclosed, making the disclosures easier to read, and offering the disclosures at times when they are most useful

Symposium participants almost unanimously agreed that current regulatory disclosures are bloated and, therefore, could be improved. As Durkin noted in his talk, "There is a point at which more information makes disclosures less informative." Many believed that the current scheme goes beyond this point by requiring that firms disclose a long list of price-related terms that vary in their relevance and impact. To remedy this, people suggested specific revisions to solicitation disclosures, statement disclosures, change-in-term disclosures, and nonregulatory disclosures.

With respect to solicitation disclosures, which currently must be displayed in the Schumer box, there was support among participants to limit disclosures to the most important pricing terms. “Solicitation disclosures should help consumers learn more about a specific offer’s key pricing terms and comparison shop for the best credit card deal,” explained Walker. To this end, some suggested removing two prominently displayed Schumer box elements: method of computing the balance for purchases and minimum finance charge. Walker asserted that very few consumers are affected by finance charge minimums and that consumers do not understand how balance computation methods affect their cost of credit. “Disclosure of the minimum finance charge and balance calculation method, in my opinion, only serves to detract from the disclosure of more important credit terms.” In lieu of these disclosures, Walker and others advocated disclosing in the Schumer box reasons why an issuer could increase a consumer’s APR.

Scott Hildebrand, a vice president of marketing at Capital One, agreed with Walker that current solicitation disclosures are cluttered with unhelpful information and missing some important pricing elements. Hildebrand, however, proposed a complete overhaul of solicitation disclosures. “Only the consumer can determine what works well in terms of solicitation disclosures,” he explained, “so we asked our customers what information they want when they receive a credit card offer.” Customers indicated that when shopping for credit, the three terms that are of chief importance are rates and fees, the credit line, and the circumstances under which an APR can go up. Armed with this information, Capital One’s graphic design team set out to create disclosure prototypes. Guiding the team, Hildebrand explained, were four principles: disclosures should be comparable, permitting consumers to easily shop for credit; disclosures should be clear, using descriptors and terms that consumers understand; disclosures should be simple, not containing more information than necessary; and disclosures should be specific, noting the exact circumstances under which terms can change.

Ultimately, Capital One’s graphics team generated six disclosure designs, which were presented to a series of focus groups. After much editing and nearly 100 revisions, the design that consumers ultimately found the most helpful included color, bold lettering, shading, and three distinct sections that detail interest rates and fees, the reasons why a consumer’s interest rates may change, and other relevant information such as payment allocation methods. “An important feature of this prototype,” explained Hildebrand, “is that it has no asterisks, crosses, legends, or references to other pages. All the information the consumer needs is in one place.” A copy of Capital One’s proposed solicitation disclosure submitted in response to the ANPR, which the issuer calls its credit card fact sheet, can be found in Appendix F.

While Capital One hopes that its credit card fact sheet can be a starting point for solicitation disclosure reform, Hildebrand asserted that the process of creating the fact sheet taught his company many valuable lessons about disclosures in general. First, to be effective, disclosures need to be visually appealing. Color, boxes, shading, and graphics can make a disclosure more useful and easier to read. Second, in deciding what to include, those creating disclosures should adhere to the rule of “less is more.” Third, the information in a disclosure should be displayed such that related information is logically grouped. Fourth, disclosures should be as specific as possible. “Consumers want to understand the consequences of their actions,” asserted Hildebrand, “and good disclosures are sufficiently specific so as to help consumers understand the major costs they will face based on their own usage patterns.” Finally, disclosures should not include “euphemisms” or warnings, as consumers find them condescending.

Travis Plunkett, legislative director of the Consumer Federation of America, agreed with Walker that the Schumer box needs streamlining and thought that Capital One’s visually appealing fact sheet could be helpful to consumers. Plunkett disagreed, however, with Walker and Hildebrand about adding rate-change information to solicitation disclosures. In his opinion, the practices that underlie these disclosures should be disallowed for public policy reasons. In order to decide what terms should be disclosed, Plunkett proposed that regulators be mindful of two considerations: First, practices that are predatory or abusive cannot be remedied by being well disclosed. As such, policymakers and regulators should concentrate on banning certain practices instead of figuring out how to appropriately explain them to consumers. Second, disclosures are useful only if they permit consumers “to make meaningful choices.” “When every card contract includes a universal default clause, disclosing this fact is not an appropriate protection because there is nothing a consumer can do about it other than not use credit cards," explained Plunkett.

While much discussion focused on card solicitations, participants also examined how to improve disclosures in other consumer communications, such as statements. Some participants from the card industry argued that the APR they are required to print on periodic statements is misleading. This so-called historical or effective APR is roughly the result of dividing the sum of monthly interest charges and certain fees,[18] such as balance transfer fees and cash advance fees, by the balance on the account and annualizing the result. Because the fee portion of this calculation is not amortized, the effective APR can be much higher than the APR used to calculate interest charges. Consider, for example, an account with a $1000 revolving balance and a 12 percent interest rate. If no fees are assessed, the effective APR for this account is 12 percent.[19] If, however, the same account is assessed a $20 cash-advance fee during the month, the effective APR jumps to approximately 36 percent.[20] Card issuers contend that the effective APR causes consumer confusion and increases customer service expense. "Requiring the inclusion of effective APRs on statements," explained Walker, "is an indirect way of regulating card borrowing. Those who support this inaccurate measure simply want to shock or scare consumers into not using credit."

Plunkett disagreed and countered, "An effective APR disclosure on a statement provides an accurate and complete assessment of the credit card's price." In addition to keeping cash-advance fees and balance transfer fees in the calculation of effective APRs, he advocated the addition to the calculation of more commonly charged fees, such as late fees and over-limit fees. Inclusion of these fees, he explained, would be more congruent with Congress's intention when it passed TILA. If such fees were included, effective APRs would significantly increase. For example, if the account with the $1000 balance described in the previous paragraph were assessed a $29 late fee and a $29 over-limit fee in addition to the $20 cash advance fee and $10 interest charge, the accounts effective APR would be in excess of 100 percent.[21]

Plunkett suggested that some of the standardized disclosure ideas discussed by participants might successfully be applied to an area of disclosure that is not substantially regulated by TILA: change-in-term notices. In general, issuers send consumers change-in-term notices whenever the issuers amend their agreements with cardholders. Among other things, such notices are used to implement price increases, change fee structures, and modify arbitration agreements. A standardized format for such disclosures, asserted Plunkett, would make it easier for consumers to understand term changes.

Symposium participants also discussed some of the problems that afflict all types of disclosures, including those that are not directly governed by TILA. Michael Bylsma, director of community and consumer law for the Office of the Comptroller of the Currency, asked panelists about the extent to which litigation affects how issuers craft disclosures. Morrison & Foerster's Fischer responded to this question: "Unfortunately, when courts make decisions that involve consumer credit issues, attorneys for the issuers typically must respond defensively by adding additional sentences to their already lengthy disclosures." So while participants agreed that Capital One's consumer-focused approach to disclosure crafting is superior to an approach driven by attorneys, there was concern that customer-focused disclosures could potentially expose issuers to more litigation.

Participants also recognized the need to align the information provided in disclosures with consumers' information needs at the point when the disclosure is provided. "When is the best 'teaching moment'?" asked Ralph Rohner, a law professor at Catholic Uni-

18 Whether a fee is included in the calculation of the effective APR depends on whether it meets the definition of a "finance charge" under Regulation Z. As defined in the regulation, a finance charge is "the cost of consumer credit…includ[ing] any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to…the extension of credit." 12 C.F.R. § 226.4(a). In general, late fees, over-limit fees, and annual fees are not considered "finance charges," while balance transfer and cash-advance fees are.

19 The effective interest rate, however, may actually be slightly higher than 12 percent because most issuers compound interest daily.

20 Thirty-six percent is the sum of a $10 monthly interest charge and a $20 cash-advance fee multiplied by 12 (to annualize) and divided by the $1000.

21 For example, 105 percent is the sum of a $10 monthly interest charge, a $29 late fee, a $29 over-limit fee, and a $20 cash-advance fee multiplied by 12 (to annualize) and divided by the $1000.

versity and the author of books and articles on TILA. Using a car-shopping analogy, Rohner explained that consumers' information needs change during the course of a relationship with a service provider. "When you begin shopping for a car," he explained, "the sticker gives you the high-level details you need, such as price, gas mileage, and features. It would be inappropriate to supply consumers with an owner's manual at this point in the car-buying process." In the same way, the delivery of credit card information needs to be coordinated with consumers' information needs at specific points in time. While Rohner thought the solicitation disclosures may be delivered at an appropriate time, he questioned whether change-in-term notices and the cardholder agreement they modify can be accessed when consumers need them. "There may be other times, beyond when a consumer receives a change-in-term notice in the mail, when he or she wants to access all of her card term information. Unless the consumer is a meticulous record keeper, it is unlikely that she will have access to the account term information exactly when she needs it."

The broad principle most frequently mentioned and generally supported throughout the symposium involved disclosure length. Durkin expressed this principle as "more information makes disclosures less informative." Hildebrand expressed it as "less is more." Other conference participants talked about it in terms of "information overload" and "disclosure clutter." Overall, issuers, consumer advocates, and scholars agreed that disclosures must be simple in order to be useful. Unfortunately, this principle may prove challenging for regulators to follow. In a recent study of responses to the Regulation Z ANPR, Durkin counted 41 disclosure suggestions (see Appendix G for a list). Given these 41 suggestions and participants' feelings about the current disclosures, including too many price terms, many difficult decisions about how to set priorities for reform lie ahead.

Ultimately, history may prove a useful guide to those implementing reform. As Rohner pointed out, policymakers grappled with the similar disclosure-related issues 25 years ago in the context of closed-end credit when they passed the Truth in Lending Simplification Act. In April 1979, the Senate report for the simplification bill explained the problem at the time as follows:

> Despite the [Truth in Lending] act's clear successes…there is a growing belief among consumers and creditors alike that the act could be substantially improved. There is considerable evidence, for example, that disclosure forms given consumers are too lengthy and difficult to understand…The task of simplifying the disclosures given to consumers is a difficult one. It requires balancing the competing considerations of complete disclosure so the consumer is fully informed and the need to avoid providing so much information that the consumer is discouraged from studying it.[22]

Back then, to simplify TILA's requirements with respect to installment loans, Congress reduced the number of required disclosures, aggregated certain pieces of information, improved the description of disclosed terms, and required that disclosures be made in a format that used the printing and form technology of the time.

2. *Improve the process by which disclosures are created and revised by seeking the input of marketers, researchers, and consumers*

While participants had a variety of substantive suggestions as to how to improve current disclosures, they also discussed their ideas regarding the process of deciding exactly what to disclose and how. Overall, participants were confident that the process could be improved. "The card industry spent $2 billion on advertising last year and $10 billion on direct mail," commented Hildebrand, "while the Schumer box was probably developed on a budget of just a few hundred dollars. Given the importance of disclosures, we should probably spend some money on analysis and testing to find something that works well." Three recommendations emerged, each emphasizing the importance of consumer feedback and testing.

The first suggestion involved focus groups. In its advance notice of proposed rulemaking (ANPR), the Board of Governors indicated that it plans to use focus groups to help guide changes to the current disclosures. Those who commented on the ANPR generally viewed these efforts favorably and encouraged the Board to gather as much consumer feedback on disclo-

[22] Senate Report No. 96-73 on Depository Institutions Deregulation and Monetary Control Act of 1980, April 24, 1979.

sure amendments as practicable.[23] In addition, Capital One's Hildebrand noted that focus groups were of significant assistance in designing his company's proposed credit card fact sheet: They helped Capital One choose from among six different designs and contributed a number of helpful suggestions.

Symposium participants cautioned the Board, however, about the limitations of focus groups as a research tool. "Focus groups will not tell you what to do," asserted Hildebrand, "but they can be excellent editors." For Capital One, the groups were helpful only after the issuer had detailed disclosures that they could present to the groups for reaction. Others at the symposium questioned the value of focus groups. "Focus groups," argued Walker, "are conducted under unnatural conditions. People generally don't make decisions about financial products while seated with eight strangers in a windowless room with a two-way mirror and a moderator." This unnatural setting leads to biased reactions. Walker also pointed to the research of Gerald Zaltman, a professor of business administration at the Harvard Business School, who contends that 95 percent of thinking is unconscious and that the remaining 5 percent is not easily expressed in words, particularly in a group setting. As a result, Zaltman concludes that focus groups are good for studying human biases, but little else.[24]

In lieu of focus groups, Walker encouraged the Board to consider using more quantitative research tools. "At Juniper, we use conjoint analysis to help us design our credit card products," he explained, "and the results are more robust and accurate than those we have gotten from focus groups." Conjoint analysis is a research methodology that helps companies understand the extent to which consumers prefer certain product attributes over others. While focus groups generally rely on visceral reactions elicited from "eight strangers in a windowless room," conjoint analysis relies on decisions consumers make, typically in private, regarding the superiority of one product over another product with slightly different attributes. Based on these decisions, conjoint analysis can determine the relative value consumers attach to different product attributes. Historically, car manufacturers used conjoint analysis to bundle and price the various options available on a car. Today, conjoint analysis is used by a variety of service providers, including hotels, cable providers, banks, and web sites. Card issuers, for example, might use conjoint analysis to determine whether a certain segment of consumers would value a low interest rate card that earns one airline mile per dollar spent over a higher interest rate card that pays 2 percent cash back. Walker suggested that conjoint analysis could be used by policymakers to better understand how consumers value particular pieces of disclosed information and how those pieces of information could be optimally bundled.

A third suggestion of symposium participants was to incorporate lessons from the field of communication theory into the disclosure creation process. Communication theory is essentially the study of how information is transmitted from one person to another. With respect to the structure and stylistic elements of a message, the theory proposes several best practices: (1) organize information such that the most important points are first, the second most important points are second, and so on; (2) aggregate information into manageable sections highlighted by subheadings; (3) establish visual hierarchies of information by using color, bold, and italics to draw attention to the most important points; (4) use the present tense; (5) use left justification; and (6) use numbered lists, bulleted lists, and icons.[25] Hildebrand of Capital One explained that communications theory helped guide Capital One's creation of the fact sheet and suggested that the theory could be applied by policymakers to develop other types of standardized disclosures.

While participants did not come to an agreement over how to best craft new disclosures, they unanimously agreed on one constituency that should be left out of the process—lawyers. "If we are ever to make disclosures useful," explained one attendee, "we need to get the lawyers out of the process and get

[23] See, e.g., the responses to the ANPR of the Office of the Comptroller of the Currency and Bank of America

[24] Kirsten D. Sandberg, "Sharpening the Focus of Focus Groups," Harvard Management Communication Letter, July 8, 2002, available at http://hbswk.hbs.edu/item.jhtml?id=3004&t=marketing

[25] These best practices, derived from communications research, are summarized in *Guidelines for Developing and Evaluating Communication Tools/Efforts*, a publication of the Environmental Education & Training Partnership (EETAP). EETAP is funded by the U.S. Environmental Protection Agency and its publication is available at http://www.eetap.org/media/pdf/ChecklistTools.pdf.

more consumers involved." Participants also agreed that comprehensive reviews of credit card disclosures should occur more frequently. "An almost 20-year gap between disclosure reviews is too long," explained one participant, "particularly in an industry where there has been so much product innovation."

3. *Use technology to improve the accessibility and reliability of disclosures and to educate consumers about the use of credit*

Nearly all those attending the symposium agreed that technology should play a more prominent role in the delivery of disclosures and other credit information. Durkin noted that, over the past 1000 years, there have been just a handful of major developments affecting information delivery: Gutenberg invented the printing press in about 1450, enabling the mass circulation of written work; daily newspapers emerged in the early 1700s, significantly improving the speed of news delivery; and the modern-day Internet came about in the 1990s, providing for the interactive transmission of information. "Why is handing a person a piece of paper, a method of communication that is 555 years old, the cornerstone of TILA?," Durkin asked rhetorically. "It's time to use more than technology from the 1400s to disclose present-day credit pricing terms," he asserted. Ultimately, Durkin and others discussed the potential of the Internet to improve disclosures, provide consumers with more customized information, and teach people about using credit responsibility.

"The Internet could solve many of the problems associated with consumers' not being able to access their account terms when they need them," suggested Rohner. For example, he thought that card issuers could create an online archive of terms and pricing information for each customer. "Such an archive would be functionally equivalent to a car's glove box," Rohner stated, "storing information in an easy-to-access location until it is needed." Durkin agreed with Rohner and suggested that such a solution could solve the problems associated with change-in-term notices. "Instead of having to collect lots of pieces of paper that amend the agreement you have with your bank," explained Durkin, "issuers could store the information online and highlight any changes they make." Overall, an electronic glove box could free consumers from having to retain account records and manually keep track of changes.

Participants also discussed how the Internet could be used to provide consumers with real-time, customized information. Rohner, for example, envisions card issuers' replacing their paper statements with real-time account snapshots available on demand. "The primary reason we give people statements," he explained, "is so that consumers can easily reconcile their accounts." There may not be a need to send such statements by mail, he suggested, if consumers can review up-to-date statement information whenever they want online. Beyond delivering terms and statements, Durkin sees the Internet giving consumers more control over their borrowing. "Many consumers want to understand, for example, how making payments of different sizes will affect other loan terms, including the amount of time to payoff," asserted Durkin. "An Internet-based tool that calculates these amounts based on applicable interest rates and fees and different balance and payment scenarios would be quite helpful." Other customized information that attendees suggested could be delivered via the Internet included the time needed to pay down an account balance based on different monthly payment amounts and interest payment calculators.

In contrast, Plunkett viewed Internet-based disclosures and tools as having serious limitations. "It's way too early to exclusively deliver information to consumers over the Internet," he explained. Consumers who need disclosures and account information the most—including borrowers who pay high interest rates and have little education—do not have access to the Internet. "For now," he stated, "these consumers need multiple layers of paper disclosures that include more details as the card application process progresses." Until the vast majority of those who use credit have access to the Internet, Plunkett believes any issuer efforts in this area should be voluntary and supplementary to paper-based disclosures.

Participants also saw technology as potentially supporting what they see as a key role of the federal government—consumer education. Oliver Ireland, a partner of Fischer's at Morrison & Foerster, asserted that the government should play a role in improving consumers' financial literacy. "Financial education has many positive externalities," he explained, "including more responsible credit use on the part of consumers and more competition among credit issuers." Because of these benefits and because responsible credit use aids providers of all types of consumer credit, Ireland believes the public sector should play a central role in consumer education initiatives. He also stated that the Internet is likely the best channel for delivering such education. Russell Schrader of Visa USA agreed with Ireland that the federal government's role needs to expand in this area. "The Federal Reserve, for example, could sponsor a web site that supplements any required credit card disclosures with a glossary of credit terms, explanations of pricing elements, and calculation examples," suggested Schrader. For consumers who do not have access to the Internet, he proposed printed educational materials. Schrader explained, however, that the Fed should not be acting alone: "We should have a private- and public-sector partnership that seeks to educate people." Schrader pointed to Visa's "Practical Money Skills for Life" web site as an example of how the private sector is fulfilling the educational needs of children and adults. Ultimately, he hopes to see the Fed build on private-sector web initiatives and increase consumers' awareness of private and public educational resources.

4. *Change the current "mix" of card industry regulation, modifying the extent to which disclosure requirements, self-regulation, market-based regulation, direct regulation, and agency-based regulation are used*

The most divergent views expressed during the symposium involved the extent to which the government should be involved in regulating the market for consumer credit. Consumer Federation's Plunkett criticized current efforts that focus on disclosure and implored policymakers and regulators to explicitly disallow a variety of common industry practices. "Disclosures are not sufficient to protect consumers," he explained, "particularly in a market where consumers lack adequate information and equal bargaining power and competition among issuers is superficial." To remedy the market failures Plunkett perceives, he proposes a variety of substantive regulations to supplement TILA's protections. First, issuers should not be permitted to "retroactively" increase a consumer's APRs. Consider, for example, a card issuer that proposes to increase from 10 percent to 20 percent the APR of a consumer who has a $1000 credit card balance. To avoid "retroactive" application of the increase, Plunkett believes that the issuer should honor the 10 percent APR on the $1000 balance for as long as it exists and apply the 20 percent APR prospectively to any new balances.[26] Plunkett's proposal would reduce the potency of a variety of pricing practices popular with issuers, including penalty pricing, universal default pricing, and ad hoc APR increases.[27] Second, Plunkett favored substantive regulation to prohibit the low-to-high method of payment allocation, a strategy that forces consumers to pay off less expensive revolving balances before more expensive ones.[28] Finally, Plunkett argued that the federal government should disallow the expansive change-in-term provisions that card issuers include in contracts with consumers. "Permitting issuers to change consumers' contractual terms whenever issuers want renders meaningless consumers' efforts to shop for and find a good credit card," he explained.

James Brown, a professor at the University of Wisconsin and payment system law expert, agreed with Plunkett that some substantive regulation may be necessary in this market. He likened credit cards to tobacco and automobiles in that they are now subject to statutory warnings regarding potential adverse consequences from misuse. He asserted, however, that "credit cards, unlike tobacco, but like automobiles, have tremendous social utility, and because of this utility, public policy considerations direct that we have an obligation to make them safely available." Brown suggested restricting retroactive term changes and limiting at-will changes to issuers' contracts with consumers.

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[26] One attendee at the symposium pointed out that some issuers implement pricing changes such as this using a "just say no" policy. Such a policy gives a consumer the option to reject the price increase. If he exercises this option, his account is closed to further purchases while he pays down his balance at the original APR.

[27] Penalty pricing permits issuers to increase a consumer's annual percentage rate when the consumer becomes riskier. Such increases are usually triggered by late payments or a purchase that takes a consumer's account over its credit limit. Universal default pricing permits issuers to increase a consumer's annual percentage rate upon learning that the consumer missed a payment on a debt owed to another lender. For more information about credit card pricing strategies, see Mark Furletti, "Credit Card Pricing Developments and Their Disclosure," Payment Cards Center of the Federal Reserve Bank of Philadelphia Discussion Paper, January 2003 (available at www.philadelphiafed.org/pcc/discussion/CreditCardPricing_012003.pdf).

[28] In most instances, issuers will apply the payments consumers make on their accounts to balances revolving at lower APRs first. This results in consumers' paying off their least expensive debt before their most expensive.

In sharp contrast to the view that the government should play a larger role in regulating the consumer credit market was Todd Zywicki's view that the government should essentially play no role at all. Zywicki, a law professor at George Mason University who recently directed policy planning at the Federal Trade Commission, described substantive regulation (e.g., interest-rate ceilings) as a "dismal failure" and disclosure regulation (e.g., TILA) as ineffective and stifling innovation. In lieu of these approaches, he proposed allowing market forces to solve most of the consumer protection problems discussed at the symposium. "There are actually two markets that today's discussions sometimes confuse: the market for consumer credit and the market for information about consumer credit," he explained. Truth in Lending disclosures may actually interfere with this second market and discourage other forms of information dissemination. "I'm not sure what failure we are curing with disclosures," Zywicki remarked, "but asymmetric information problems in other consumer markets are often solved by service providers themselves with brand names and advertising, and by third parties, such as consumer organizations, informational web sites, and newspapers."

Zywicki also questioned the logical underpinnings of TILA's mandatory disclosures. "Without a coherent theory of the credit card market and the market failure we are seeking to cure, how do we know whether TILA's regulatory intervention will actually work?" he asked. He also cautioned against misusing credit disclosures: "Disclosure regulation is often a back door for substantive regulation, with proponents of new disclosures often reasoning, 'If people knew how much this product really costs them, they wouldn't use it.'" Despite Zywicki's assessment that disclosure-based regulation offers minimal tangible benefit, he ultimately concluded that the welfare costs associated with such regulation are relatively low when compared to the alternative of substantive regulation.

Many from the industry agreed with the thrust of Zywicki's comments. Morrison & Foerster's Ireland agreed with Zywicki's assessment of TILA, describing the statute as an "inefficient tool for improving transparency." In Ireland's view, TILA forces creditors to disclose terms that may not be relevant to those in the market for a credit card. Mandatory credit disclosures may also have unintended consequences, potentially encouraging consumers to be lazy shoppers. "Consumers may wrongly believe," he explained, "that the only terms of credit they should worry about are those the government forces creditors to put in the box." Matt Neels, MBNA's corporate compliance officer, also sees the market as potentially providing better protection than what can be achieved through disclosure or substantive regulation. "Neither summary disclosures nor issuer compliance requirements will solve most of the problems we discussed today," he explained, "but consumers will be well protected when they deal with issuers who strive to satisfy them and keep their business."

While many found Zywicki's arguments about market forces appealing, Brown reminded participants that macroeconomic efficiency is not, nor should be, the only goal of government regulation. "Permitting creditors to break the legs of people who fall behind on their debts would undoubtedly lead to fewer defaults and a more efficient credit market," quipped Brown, "but we need to be concerned about other principles that are at least as important." Plunkett challenged Zywicki's theory that TILA contributes to a lack of third-party information. "There is nothing comparable to Morningstar or Consumer Reports in this market, and it is unlikely that such a service would succeed," he explained, "given that there is no big, up-front expenditure for credit, as there is for mutual funds or automobiles."

At the center of the debate over whether market forces or government regulations should be the primary method of protecting consumers were different views on consumer sophistication. Industry participants favored a more market-driven approach, in part, because they believe most consumers understand the intricacies of credit card pricing and are capable of finding good deals on their own. "Our models consistently show that consumers are sophisticated," explained one issuer representative. "They know when to transfer their balances; they figure out how to ensure favorable payment allocations; and they respond to rebate and reward ceilings." Brown conceded that a segment of consumers, particularly those who do not revolve balances, are sophisticated and can fend for themselves. He and others countered, however, that protections beyond those provided by the market are necessary for two reasons: First, many borrowers are not as sophisticated as those whom the issuers observe "gaming" the system. Second, not all issuers have the same regard for their reputation as the issuers represented at the symposium. "Those who most need protection are not those with high incomes and lots of education that rate surf or earn lots of rewards," Brown asserted, "but those who are less educated and less wealthy and targeted by less reputable card issuers. Moreover, disclosure may be of more limited utility to these consumers, given their typically lesser amounts of education and presumed lesser associated ability to use the information so disclosed. And even if you could make all of these people financially literate, you would still have problems that are not effectively addressed by market forces or disclosure."

Although participants could not fully agree on whether the market- or substantive-regulation-based approach was better or whether consumers are sophisticated, they were able to agree that education is an important component of consumer protection that should be further explored. "Because of positive externalities, you do not need to educate every last person to have all consumers benefit from education," explained Zywicki. Once a certain percentage of the population is well informed, issuers have an incentive to design products and marketing materials that meet the needs of this segment of the population and a disincentive to design products that would appeal to the less educated. Essentially, the less well-informed can "free ride" off of the benefits of having an informed population. Brown agreed and added that education initiatives do not have to be "all or nothing." "Learning is a cumulative, lifelong process," he explained, and education initiatives should not be abandoned simply because they cannot effect immediate and universal changes in consumer behavior. "We shouldn't let the better be the enemy of the good when it comes to educating and informing consumers."

Another alternative to credit disclosures discussed by attendees was the use of the federal unfair and deceptive acts and practices (UDAP) statute. Section 5(a) of the Federal Trade Commission Act (FTC Act) prohibits "unfair or deceptive acts or practices in or affecting commerce," and it applies to all persons engaged in commerce, including banks. In general, the statute makes it a violation of federal law to engage in UDAP, which may include, for example, misleading consumers in advertisements or operating a "bait and switch." While the Federal Trade Commission (FTC) is the regulatory agency primarily empowered to enforce the provisions of the FTC Act, the agency's powers do not extend to banks. Federal banking regulators have asserted, however, that they have the authority to apply the FTC Act's provisions to the entities they regulate. Despite this assertion, the regulator that has the authority to adopt rules prohibiting specific acts or practices with respect to banks (i.e., the Federal Reserve Board) has not yet done so.[29] In the absence of rules tailored to the banking industry, individual bank regulators, such as the OCC and FDIC, have issued supplemental guidance that instructs banks on how they may potentially interpret the UDAP statutes and how to steer clear of UDAP violations.

At the symposium, some participants called on the Board to issue UDAP regulations and suggested that federal banking regulators continue to use their UDAP enforcement powers in cases where such action is necessary. "We need UDAP regulations," explained Ireland, "because they can be an effective tool for controlling very specific problems." Brown agreed and tried to assuage concerns that UDAP rules will create more uncertainty: "Industry lawyers are nervous about a relatively amorphous UDAP standard, but I've personally seen UDAP standards created for and applied to other industries that have become relatively clear and well understood over time and, as a result, are capable of being complied with by the industry."

The enforcement action was the final federal consumer protection mechanism discussed at the symposium. A bank regulator typically takes an enforcement action against a financial institution if it violates a law or regulation or breaches a fiduciary duty. The action may, for example, take the form of a cease-and-desist order that stops a bank from engaging in a practice or an agreement that requires a bank to follow certain policies and procedures. Neels of MBNA saw enforcement actions as an efficient regulatory tool. "Enforcement actions can have a widespread and significant effect," he explained, "as they have recently when banks with lax money laundering policies ran into trouble." An enforcement action that puts nontar-

[29] In a May 2002 letter to then-Congressman John LaFalce, Federal Reserve Chairman Alan Greenspan explained why the Fed had not exercised this authority: "[B]ecause a determination of unfairness or deception depends heavily on the facts of each individual case, the Board believes it is effective for the banking agencies to approach compliance issues on a case-by-case basis [rather than adopting a comprehensive rule that sets forth principles for defining unfair or deceptive behavior and that provides specific examples of unlawful practices]." See letter from Chairman Greenspan to the Hon. John J. LaFalce (May 30, 2002).

get banks on notice can often result in industry-wide reformation.

Throughout the day, those from outside the industry wondered why card issuers do not do a better job of policing themselves. "Just because you have the legal right to change the terms of someone's account whenever you want, from a business perspective, should you?" asked Rohner. Zywicki expanded on Rohner's question: "Public trust in our credit card companies is very low. While the terms of credit card accounts are technically legal, the industry should think about the effect of some of these pricing practices on public perception. In the end, is it worth it?" Brown agreed and pointed to statistics from the Better Business Bureau that ranked credit cards third on the list of products about which people most frequently complain. While representatives of the industry did not directly comment on these observations, one participant pointed to a product recently launched by Capital One that has no punitive fees and no APR, and that simply requires borrowers to pay a fixed amount for each $1000 they borrow. "This may be a sign," explained one attendee, "that card issuers can use the confusion and complexity of most card offers to their competitive advantage."

IV. Conclusion

Overall, symposium attendees were not optimistic that the current review of Truth in Lending disclosures will result in substantial reform. First, the Board's ability to change the requirements of Truth in Lending is limited. The agency may modify TILA's implementing regulation, Regulation Z, but it cannot change the fundamental statutory requirements that underlie the regulation. For this reason, certain disclosure requirements rooted in the act itself cannot be modified by the Board unless Congress passes a law allowing such modification. Second, as Durkin explained, a substantial overhaul of Truth in Lending would require the leadership of the administration or Congress. Given that the public does not appear to be clamoring for an overhaul of credit disclosure laws, it is not likely that such leadership will emerge. Finally, in the opinion of some, the quality of the recommendations put forth in response to the Board's advance notice of proposed rulemaking offers little to regulators in the way of usable ideas. As Durkin explained, "There is a lot less there than meets the eye."

Despite a lack of optimism regarding substantial reform, most symposium participants believed that the current system, even with its imperfections, still benefits consumers. It encourages issuers to compete on the basis of price, as measured by APRs, and provides consumers with a standardized starting point from which to begin understanding credit card price terms. Those in attendance also agreed that incremental improvements were attainable if the Board considered simplifying current disclosures, improving the process by which disclosures are created and updated, leveraging technology to improve consumer understanding of credit terms, and relying on other nondisclosure tools to achieve consumer protection goals. To improve the system further, most agreed that policymakers need to arm themselves with more information and go back to "first principles." "What's missing from this field," explained economist Robert Hunt of the Federal Reserve Bank of Philadelphia, "is more research." Over the past 10 years, very little empirical work has been done with respect to credit disclosure, and the literature with respect to credit card disclosures is nearly nonexistent. Participants also believed that significant strides toward improvement will require Congress and other policymakers to more precisely state TILA's goals. Whittling Durkin's list of 38 TILA goals down to a more manageable number will increase the likelihood that the act will accomplish its intended purpose.

APPENDIX A
Symposium Agenda

Friday, June 10, 2005

Welcome

Anthony M. Santomero, *President, Federal Reserve Bank of Philadelphia*

Peter Burns, *Director, Payment Cards Center*

Economics and Credit Disclosure

Thomas A. Durkin, *Board of Governors*

What Can Be Achieved with Standardized Disclosures?

Moderator:	L. Richard Fischer, *Morrison & Foerster*
Panelists:	Clinton Walker, *Juniper Bank*
	Travis Plunkett, *Consumer Federation of America*
	Ralph Rohner, *Catholic University*
	Scott Hildebrand, *Capital One*
	Thomas Durkin, *Board of Governors*

Regulating Consumer Credit: Alternatives to Disclosure

Todd Zywicki, *George Mason University School of Law*

What Problems Are Best Solved with Alternatives to Disclosure?

Moderator:	Oliver Ireland, *Morrison & Foerster*
Panelists:	James Brown, *University of Wisconsin*
	Russell Schrader, *Visa*
	Matthew Neels, *MBNA*
	Todd Zywicki, *George Mason University School of Law*

APPENDIX B
Institutions Represented at the Syposium

American Express

Bank of America

Capital One

Catholic University of America Columbus School of Law

Chase

Consumer Federation of America

Federal Deposit Insurance Corporation

Federal Reserve Bank of Philadelphia

Federal Reserve Board

Federal Trade Commission

George Mason University School of Law

Independent Community Bankers of America

Juniper Bank

MBNA

Morrison & Foerster

Office of the Comptroller of the Currency

University of Wisconsin-Milwaukee

Visa USA

APPENDIX C
Key Truth in Lending Disclosure Provisions for Credit Card Accounts*

Timing	Terms Disclosed
Upon Application or Solicitation	• Annual percentage rate (including penalty rates) for purchases, cash advances, and balance transfers • Fees for issuance or availability (e.g., annual fees) • Minimum finance charge • Grace period • Balance computation method • Statement on charge card payments • Cash advance fee • Late payment fee • Over-limit fee • Balance transfer fee
Before First Use	• Grace period • Periodic rates used to calculate finance charges and corresponding annual percentage rates • Balance computation method • Finance charges not due to periodic rates • The amount of any significant charge, other than a finance charge, that may be imposed as part of the plan, or an explanation of how the charge will be determined (e.g., late fees, over-limit fees, statement copy fees, annual fees, account closure fees) • Any applicable security interest • Consumers' billing rights
On Periodic Statements	• Previous balance • Identification of transactions • Credits • Periodic rates • "Effective" annual percentage rate • Balance on which finance charge is computed • Amount of finance charge itemized by type • Other charges • Closing date of billing cycle • Free-ride period • Address for notice of billing errors

Source: Regulation Z

* Recent bankruptcy legislation contains amendments to TILA that will affect card solicitations and periodic statements. The disclosures required by these amendments are not detailed in this table.

APPENDIX D
Example of a Typical "Schumer Box" Disclosure

RATE, FEE AND OTHER COST INFORMATION

Annual Percentage Rate (APR) for purchases (purchases include balance transfers)	0% APR until the first day of the billing cycle that includes 11/01/02. After that, **9.9%**
Other APRs	Cash Advance APR: 19.99% Late Payment APR: Late once during introductory period: 9.9% on purchases. Late twice in any six-month period: 19.99% on all balances. Overdraft Protection APR: 13.99% (overdraft protection APR not available in some states)
Variable rate information	The cash advance APR and 19.99% late payment APR vary monthly. They equal the Prime Rate* plus 15.24% for cash advances and 15.24% on all balances if late twice in six months, but not less than 19.99% and 19.99% respectively.
Grace period for repayment of purchase balances	At least 20 days, but none for balance transfers or convenience checks.
Method of computing the balance for purchases	Two-cycle average daily balance method (including new purchases).
Annual fee	None
Minimum finance charge	$1.00
Transaction fee for certain purchases	Purchase of wire transfers or money orders; purchase of foreign currency and traveler's checks from other than a bank; and use of convenience checks: 3% of the amount of each purchase or check, but not less than $5.00 nor more than $50.00.
Transaction fee for balance transfers	3% of the amount of each balance transfer, but not less than $5.00 nor more than $35.00.
Transaction fees for cash advances	ATM cash advances: 3% of the amount of the advance, but not less than $10.00. All other cash advances: 3% of the amount of the advance, but not less than $15.00.
Other fees	Late Payment Fee: $29.00 Over-the-Credit-Limit Fee: $29.00

* The "Prime Rate" is the highest prime rate published in the Money Rates column of The Wall Street Journal on the 22nd day of each month if a business day; if not, on the next business day. Variable APRs are based on the 4.75% prime rate on 2/05/02.

APPENDIX E
Durkin's List of 38 Truth in Lending Goals

Type of Goal	Goal
Credit Market Goals	1. Enhance Competition in Consumer Credit Markets 2. Improve Understanding of Differences Among Classes of Institutions 3. Drive Out High-Cost Producers 4. Encourage Industry to Reform 5. Improve Credit Market Products 6. Discourage Risk Shifting by Institutions 7. Discourage in Terrorem Boilerplate Clauses in Contracts 8. Provide Vehicle for Legal Reforms 9. Protect Legitimate Businesses from Unethical Competition
Cognitive Goals: Awareness and Understanding	10. Improve Awareness of Credit Costs 11. Improve Consumers' Understanding of the Relationships Among Credit Cost Terms 12. Improve Awareness of Noncost Credit Terms 13. Simplify Information Processing
Attitudinal Goals	14. Improve Consumer Satisfaction 15. Improve Consumer Confidence
Behavioral Goals	16. Reduce Credit Search Costs 17. Show Consumers Where Search Can Be Beneficial 18. Encourage Credit Shopping 19. Improve Consumers' Ability to Make Comparisons 20. Enable Consumers to Match Products and Needs 21. Enable Consumers to Decide Between Using Credit and Using Liquid Assets 22. Enable Consumers to Decide Between Using Credit and Delaying Consumption
General Philosophical and Educational Goals	23. Satisfy Consumers' Right to Know 24. Enhance Consumer Education 25. Enhance Consumers' General Understanding of the Credit Process 26. Promote Long-Term Rise in Consumer Sophistication 27. Promote the Informed Used of Credit 28. Promote Wiser Credit Use
Macroeconomic Goals	29. Enhance Economic Stabilization
Institutional Control Goals	30. Promote Control of Institutions Through Compliance Requirements 31. Improve Consumers' Bargaining Position Relative to Institutions' 32. Provide Defenses for Consumers 33. Provide Leverage for Hard-Pressed Debtors
Behavioral or Market Protection Goals	34. Require Procedures for Resolving Credit Card Billing Errors 35. Provide End-of-Lease Liability Limits for Consumer Leasing 36. Provide "Cooling-Off" Period for Credit Secured by Residence 37. Provide for Limited Liability on Lost or Stolen Credit Cards 38. Eliminate Unsolicited Credit Cards

APPENDIX F
Capital One's Credit Card Fact Sheet

From Capital One Comment Letter to the Federal Reserve 03/28/05
Regulation Z, TILA

PRICING & FEES

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

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

REASONS YOUR RATES MAY CHANGE

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

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

ADDITIONAL INFORMATION ABOUT YOUR ACCOUNT

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

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

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

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

APPENDIX G
Durkin's List of 41 Disclosures Recently Proposed

Where Added	Suggestion
In Schumer Box	1. Similar box in solicitations, applications, initial disclosures, periodic statements, change-in-terms notices 2. "Typical APR" 3. Minimum finance charge 4. Late fee 5. Over-limit fees 6. Cash advance fee 7. Credit limit 8. Security interest 9. Grace period 10. Balance transfer fee 11. Convenience check fee 12. Currency conversion fee 13. Bounced check fee 14. Payment allocation (brief and standardized) 15. Behaviors that will result in repricing (in box) 16. Behaviors that will lower rates after repricing
Following Schumer Box	17. Mathematical description of balance calculation method 18. Rank ordering of balance calculation methods
On Convenience Checks	19. Check use will cause cash advance fee 20. Check use will cause higher rate to accrue immediately
Other	21. Duration of payments to pay in full at minimum payment 22. Total interest (if minimum paid) 23. Total of payments (if minimum paid) 24. Comparisons of open-end credit and closed-end credit under various assumptions 25. Special disclosures for open-end credit on door-to-door sales 26. More disclosures on secured credit cards 27. Daily simple interest (open end and closed end) 28. Limits of loss liability on debit versus credit cards 29. Difference in liability on convenience checks 30. Credit card blocking by hotels 31. Claims and defenses on cards versus convenience checks 32. More disclosures on deferred charges/payment programs 33. More disclosures on foreign uses and foreign merchants 34. Improvement of Internet advertising rules 35. Improvement of electronic disclosure rules 36. Disclosure of universal penalty rate/default rules 37. Compound interest 38. Double-cycle interest 39. Transaction date (rather than posting date) interest 40. Residual interest (in month of payoff) 41. Date of assessing over-limit fee

"The Philadelphia Reserve Bank will be broadly recognized as an important center of central bank knowledge and capability."

Anthony M. Santomero
President

PAYMENT CARDS
Center

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Peter Burns
Vice President and Director

Stan Sienkiewicz
Manager

The Payment Cards Center was established to serve as a source of knowledge and expertise on this important segment of the financial system, which includes credit cards, debit cards, smart cards, stored-value cards, and similar payment vehicles. Consumers' and businesses' evolving use of various types of payment cards to effect transactions in the economy has potential implications for the structure of the financial system, for the way that monetary policy affects the economy, and for the efficiency of the payments system.