

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. • SUITE 500

WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

M E M O R A N D U M

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To Our Clients and Friends

Re: Federal Reserve Implementation of Bankruptcy Act of 2005

The Federal Reserve Board (the “Board”) has issued an advance notice of proposed rulemaking (“ANPR”) to implement amendments to the Truth in Lending Act (“TILA”) made by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“Bankruptcy Act”) regarding open-end credit accounts. In order to implement the changes as part of the Board’s periodic review of Regulation Z, any revised requirements would not take effect until at least 12 months after the Board issues final regulations. Comments are due December 15, 2005.

MINIMUM PAYMENT DISCLOSURES

The Bankruptcy Act requires creditors to provide disclosure on periodic statements about the effects of making only minimum payments, including a statement that doing so may increase the interest and time necessary to repay the loan, a hypothetical example and a toll-free number the consumer may call to obtain an estimate of the time it would take to repay his account balance. The Board and Federal Trade Commission also are required to provide a toll-free number and estimates of time to repay account balances for two years for use by customers of smaller depository institutions. The Board requests comment on:

- Whether certain accounts should be exempt from the disclosures
- Standards for developing the hypothetical example
- Assumptions and inputs that may be used by creditors or the Board to estimate the repayment period
- How the minimum payment disclosures can be made “clear and conspicuous”

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INTRODUCTORY RATE DISCLOSURES

The Bankruptcy Act requires additional disclosures for credit card applications and solicitations sent by direct mail or provided over the Internet that offer a “temporary” APR, including using the term “introductory” clearly and conspicuously in immediate proximity to each mention of the temporary APR in applications, solicitations and all accompanying material. The time period after which the introductory APR expires and the APR that will apply thereafter also must be disclosed in a prominent location, closely proximate to the first mention. The issuer also must disclose the circumstances that may cause revocation of the introductory rate and the APR that will apply thereafter. Other disclosure requirements apply to variable rate APR offers. The Board requests comment on:

- Model disclosures and rules defining “clear and conspicuous,” “immediate proximity,” the “first mention,” and a “prominent location” that is “closely proximate” to the temporary APR
- Disclosure of the permanent APR when it is based on risk-based pricing methods
- Circumstances that may result in revocation of the temporary APR
- The extent to which guidance for applications and solicitations provided by direct mail or electronically should differ

INTERNET BASED CREDIT CARD SOLICITATIONS

The Bankruptcy Act requires that the same disclosures be made for applications or solicitations sent by direct mail as for solicitations to open a credit account via the Internet. The Board requests comment on:

- Whether the Act should be interpreted to also include Internet applications, as opposed to only Internet solicitations
- How disclosures can be made clearly and conspicuously over the Internet and any model disclosures the Board should provide
- What constitutes disclosures readily accessible to consumers in close proximity to a solicitation made on the Internet
- What constitutes regular updates to the disclosures as required by the Act

DISCLOSURES RELATED TO PAYMENT DEADLINES AND LATE PAYMENT PENALTIES

TILA is amended by the Bankruptcy Act to require creditors offering open-end credit plans to provide additional disclosures on periodic statements if a late payment fee will be imposed, including clearly and conspicuously disclosing the date on which the payment is due, or if different, the earliest date on which a late payment fee may be charged and the amount. The Board requests comment on:

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- Circumstances under which the date on which the payment is due would be different from the earliest date on which a payment may be charged
- The standard for what constitutes “clear and conspicuous” disclosure
- Whether the cut-off hour should be disclosed if the Board continues to allow creditors to establish reasonable cut-off hours for crediting payments
- Whether any increased rate that would apply to outstanding balances should be required to accompany the late payment fee disclosure

PROHIBITION ON TERMINATING ACCOUNTS FOR FAILURE TO INCUR FINANCE CHARGES

The Bankruptcy Act amends TILA to prohibit a creditor from terminating an open-end credit account before its expiration date solely because the consumer has not incurred finance charges on the account, although a creditor may terminate an account for inactivity in three or more consecutive months. The Board requests comment on:

- When an account “expires” for these purposes
- Issues applicable to open-end accounts other than credit card accounts
- Whether the Board should provide guidance on what constitutes “inactivity”

The Board also requests comment on disclosures required by the Bankruptcy Act for home-secured loans that exceed the fair market value of the dwelling.

A copy of the ANPR can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.