First Set of Comments

to the

Bureau of Consumer Financial Protection

Docket No. CFPB-2015-0007
80 Fed. Reg. 14,365

Request for Information Regarding the Credit Card Market

Submitted by the

National Consumer Law Center

on behalf of its low-income clients

May 18, 2015

The National Consumer Law Center[1] is pleased to submit the following comments on behalf of our low-income clients to the CFPB's Request for Information Regarding the Credit Card Market. The CFPB's request for information is pursuant to the Credit Card Accountability, Responsibility and Disclosure (CARD) Act of 2009. The Credit CARD Act has been an enormous benefit to consumers and to responsible credit card issuers. However, there are still abuses and problems in the credit card marketplace that the CFPB should address. In particular, we believe the CFPB should:

- Ban deferred interest products.
- Re-promulgate the provision applying the 25% fee-harvester cap to pre-account opening fees using its new, greater Truth in Lending Act (TILA) authority to establish "additional requirements" or its authority to prevent unfair, deceptive or abusive acts or practices.
- Establish stricter ability-to-pay standards by basing them on a five-year amortization and requiring a residual income analysis that includes household expenses.
- Improve the cost of credit disclosures in credit cards by
    - mandating an Annual Percentage Rate (APR) disclosure that includes the impact of fees on the cost of credit.
    - requiring disclosure of specific APRs, not ranges of APRs or multiple APRs, at least in in pre-screened offers and whenever else possible.
- Protect the rights and ability of consumers to receive paper statements.
- Regulate when issuers can revoke credit card rewards as a penalty.
- Establish guidelines that mandate simple, consistent grace periods and rules for when interest accrues that do not lead to unexpected interest charges.

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[1] The National Consumer Law Center (www.nclc.org) is a nonprofit organization specializing in consumer issues affecting of low-income and elderly people. NCLC publishes twenty practice treatises, most of which are updated annually and which describe the law currently applicable to all types of consumer transactions. These comments are filed on behalf of our low-income clients and written by NCLC attorneys Chi Chi Wu, Lauren Saunders, and Carolyn Carter. Jean Ann Fox and Tom Feltner of Consumer Federation of America assisted with the examples in Section 4.

1. Deferred Interest Products (Request (j))

The CFPB asks about the impact of deferred interest products. As the Bureau knows, deferred interest credit cards promise no interest in the promotional period but contain a hidden trap: If the consumer does not pay off the entire balance by the end of the period, she will be hit with a huge retroactive interest charge for the entire balance, including amounts that have been paid. We once again urge the Bureau to ban these deferred interest products, because they are inherently unfair, deceptive and abusive. The consumers who fall into the trap of getting hit with deferred interest can end up paying hundreds more than they had simply used a mainstream credit card. For an example of such a consumer, see Exhibit A. This consumer ending up being charged $1,760 on a $6,000 purchase based on a 29.99% APR. If he or she had used a mainstream credit card with a 13% APR, s/he would have been charged less than $800.

We recognize that the CFPB's October 2013 study found that majority of consumers obtain interest-free financing through these programs. But like so many of the abuses by the Credit CARD Act (e.g., balance transfers & payment allocation; back-end pricing), it may be a minority who are harmed, while a majority benefit. But this minority consists of the most vulnerable, economically challenged members of our society. As the CFPB's October 2013 study noted, 43% of consumers with subprime credit scores ended up being charged retroactive, lump sum deferred interest, while only 12% of superprime consumers were similarly charged.[2] Thus, the majority who benefit are the wealthier, better off segments of society. In short, the poor subsidize the well-off. The CFPB should not hesitate to act just because more consumers benefit than are harmed, because the harm can put a low-income family into financial distress.

A discussion of the evolution of the rules for deferred interest products is instructive. It is especially important to note that in January 29, 2009, ***federal regulators actually banned deferred interest products because of their abuses***. The Federal Reserve Board (FRB), Office of Thrift Supervision, and NCUA decided to ban deferred interest plans as part of their credit card rulemaking pursuant their powers under the Federal Trade Commission Act. Specifically, the Commentary to Regulation AA, 12 C.F.R. 24(b)(1)-1.iii states that the prohibition against contingent retroactive rate increases would ban deferred interest plans. In doing so, the FRB, OTS and NCUA stated:

> [Assessment of deferred interest] is precisely the type of surprise increase in the cost of completed transactions that §__.24 is intended to prevent. As noted by the commenters, the assessment of accrued interest causes substantial injury to consumers. In addition, for the same reasons that consumers cannot, as a general matter, reasonably avoid rate increases as a result of a violation of the account terms, consumers cannot, as a general matter, reasonably avoid assessment of deferred interest as a result of a violation of the account terms or the failure to pay the balance in full prior to expiration of the deferred interest period. For example, just as illness or unemployment may reasonably prevent some consumers from paying on time, these conditions may reasonably prevent some consumers from paying the deferred interest balance in full prior to expiration. ***In addition, as noted by the commenters, disclosure may not provide an effective means for consumers to avoid the harm caused by these plans.***
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> Finally, although deferred interest plans provide some consumers with substantial benefits in the form of an interest-free advance if the balance is paid in full prior to expiration, the Agencies conclude that these benefits do not outweigh the substantial injury to consumers. As discussed above, deferred interest plans are typically marketed as ''interest free'' products but many consumers fail to receive that benefit and are instead charged interest retroactively. Accordingly,

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[2] Consumer Financial Protection Bureau, CARD Act Report: A review of the impact of the CARD Act on the consumer credit card market, Oct. 1, 2013, at 80, available at http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

> as with the prohibitions on other repricing practices discussed above, prohibiting the assessment of deferred interest will improve transparency and enable consumers to make more informed decisions regarding the cost of using credit. Accordingly, the Agencies conclude that an exception to the general prohibition on rate increases is not warranted for the assessment of deferred interest.
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> 74 Fed. Reg., 5498, 5528 (January 9, 2009). [emphasis added]

However, a few months later, the regulators reversed themselves, and permitted deferred interest plans. They did so after pressure from retailers. They substituted disclosures instead, even though they previously recognized that disclosures many not effectively prevent the abuses of these plans.[3]

Shortly after that, Congress passed the Credit CARD Act, which among many other provisions, adds Section 164(b)(2) to TILA, 15 U.S.C. § 1666c(b)(2). Section 164(b)(2) provides with respect to payment allocation that:

> "CLARIFICATION RELATING TO CERTAIN DEFERRED INTEREST ARRANGEMENTS - A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding the expiration of the period during which interest is deferred."

The FRB took the position that this provision specifically permitted deferred interest.[4] However, this provision is merely a clarification that if deferred interest should exist, there is an exception to the payment allocation rules in such cases. It does not explicitly mandate authorizing deferred interest.

Moreover, even if Section 164 implicitly authorizes deferred interest plans, it does not expressly state what *kind* of deferred interest plan is permissible, and certainly does not permit unfair, deceptive, and abusive features in these plans. In particular, Section 164 does not specify deferred interest plans that permit retroactive imposition of interest all the way back to the transaction date for the entire balance are permissible. Section 164's reference could be to plans that are structured to defer interest during the deferred interest period, and then retroactively impose interest only on any remaining unpaid balance. For example, a deferred interest plan could provide that if a consumer makes a $1,000 purchase and pays off $800, then the creditor can impose accrued deferred interest only for the remaining $200.

Furthermore, the Credit CARD Act also added Section 127(j) to TILA, 15 U.S.C. § 1637(j), which states:

> a creditor may not impose any finance charge on a credit card account under an open end consumer credit plan as a result of the loss of any time period provided by the creditor within which the obligor may repay any portion of the credit extended without incurring a finance charge, with respect to— (A) any balances for days in billing cycles that precede the most recent billing cycle

This is the prohibition against double-cycle billing. But this language also literally and specifically prohibits deferred interest plans, because they impose a finance charge based on balances from prior billing cycles if the consumer does not repay the entire balance within the specified time period (which

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[3] 74 Fed. Reg. 20804 (May 5, 2009).

[4] 74 Fed. Reg. 36,077 (July 22, 2009)(noting in the Supplementary Information that the FRB had determined that the Credit CARD Act permits deferred interest plans).

would qualify as "the loss of any time period within which the consumer may repay a balance without incurring a finance charge").

Thus, the CFPB clearly has authority to ban deferred interest under the Credit CARD Act/TILA. Alternatively, the CFPB could ban deferred interest plans under its UDAAP authority, much as the federal banking regulators originally did in their Regulation AA rulemaking in 2009.

2. Fee-Harvester Cards (Request (i))

The CFPB has asked for information about fee-harvester practices, particularly with respect to account opening fees. As the Bureau knows, the biggest loophole to the CARD Act's protections against excessive fees is the issuer's ability to charge pre-account opening fees without regard to the Act's limit on fees to 25% of the credit line. In 2013, the CFPB withdrew the rule that required pre-account opening fees to be included in the calculation of fees for purposes of the 25% cap. Thus, credit card lenders such as First Premier are permitted to charge a "processing fee" of $95 in addition to a $75 annual fee on a credit line of $300. We know of at least one other subprime credit card, the Total Visa from Mid America Bank & Trust Co., that charges an $89 pre-account opening "processing" fee on top of a $75 annual fee for a $300 credit line.[5]

We recognize that the CPFB withdrew the rule regarding pre-account opening fees after the adverse decision in *First Premier Bank v. United States Consumer Fin. Prot. Bureau*, 819 F.Supp.2d 906 (D.S.D. 2011). However, we urge the Bureau to re-issue the rule using the CFPB's own authority under TILA and, if necessary, its UDAAP authority. A re-promulgated rule should be more resistant to legal challenge given that the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) actually expanded the CFPB's authority to issue TILA regulations.

Section 1100A(4) of Dodd-Frank added the words "additional requirements" to the authority in Section 105(a) of TILA, *i.e.*, the revised text reads:

> The Bureau shall prescribe regulations to carry out the purposes of this subchapter. Except with respect to the provisions of section 1639 that apply to a mortgage referred to in section 1602(aa), such regulations may contain such *additional requirements*, classifications, differentiations, or other provisions,...
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> 15 U.S.C. § 1604(a)(emphasis added).

Thus, Dodd-Frank added even greater authority for the CFPB to issue regulations, in that it can now do so by creating new requirements not explicitly provided for in TILA. This new authority should entitle the CFPB to even greater deference than the FRB in issuing TILA regulations that establish new mandates on creditors. The CFPB should re-promulgate the provision applying the 25% cap to pre-account opening fees using this new, greater TILA authority to establish "additional requirements."

Another avenue is to re-promulgate the current rule using the CFPB's authority under Section 1031 of Dodd-Frank, 12 U.S.C. § 5531, which permits the CFPB to write rules to prevent unfair, deceptive, or abusive acts or practices (UDAAP authority) in connection with a consumer financial product or service. The CFPB could decree it to be an unfair or abusive practice to attempt to evade the fee harvester provision's 25% cap, and to distort the APR and the amount of net credit provided, by charging fees prior to account opening.

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[5] See https://totalcardvisa.com/pdf/M12_rates_fees_costs_and_limitations.pdf.

Indeed, there is ample precedent for the use of such authority to rein in abusive fees. In January 2009, the FRB and other bank regulators banned fees that exceeded 50% of the credit limit using their authority under the Federal Trade Commission Act, 15 U.S.C. § 57a(f), to prohibit unfair or deceptive acts or practices.

The CFPB could even justify prohibiting pre-account opening fees altogether. For instance, the Federal Trade Commission Telemarketing Sales Rule prohibits telemarketers from receiving an advance fee before credit is obtained for the consumer. 16 C.F.R. § 310.4(a)(4). The FTC Telemarketing Sales Rule does not apply to banks because the FTC does not have authority over banks, but the CFPB does not have the same limitation in its authority, and also does not need to tie the rule to telemarketing.

Furthermore, in its role as a supervisor, the CFPB should examine fee-harvester card issuers under its jurisdiction for violations of the ability-to-pay requirements of the CARD Act, as well as for potential deceptive, abusive, or unfair practices. The Bureau should urge the relevant regulators for those fee-harvester issuers not under CFPB supervision to examine their supervisees for the same. Given that 40% to 50% of First Premier Bank's cardholders default,[6] there are serious questions as to that bank's compliance with the ability-to-pay requirements.

The CFPB and other regulators should also scrutinize fee harvester card issuers for other unfair, deceptive or abusive practices. For example, while the Credit CARD Act only limits fees in the first year, that does not mean that it is not a deceptive bait-and-switch practice to radically increase fees the second year. We suspect that many consumers do not realize that their fees will be significantly increasing the next year, and overlook the minimal disclosures they receive.

3. Ability to Pay (Request (l))

The CFPB asks for information on how issuers are handling determinations of ability to pay (ATP), including credit line increases. The Bureau also asks how ATP standards have affected consumer access to credit and consumer outcomes.

With respect to credit line increases, issuers appear to be aggressively seeking ATP information. For example, issuers have been asking cardholders for updated income information when they log-in to their online portals (see Exhibit B). In fact, these requests do not explicitly inform consumer as to why this information is requested, *i.e.*, to grant a credit line increase, and could be arguably deceptive by failing to clearly disclose the purpose of the request.

There appears to be no need to weaken the ATP requirements for credit line increases, as issuers have found a way to fulfill them. Given the importance of the ATP requirements, and the dangers posed by granting credit line increases that consumers cannot repay, such a weakening would present significant harms to consumers.

As for consumer outcomes, unfortunately the ATP requirements do not appear to have alleviated one of the biggest remaining problems with credit cards - unmanageable debt. One of the most seductive aspects

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[6] The CEO of First Premier disclosed under oath that 40% of the fees, charges, and interest owed to First Premier are never paid. See Affidavit of Miles K. Beacom, CEO of Premier Bankcard, First Premier Bank v. United States Consumer Fin. Prot. Bureau, Case No. 4:11-cv-04103 (D.S.D. Aug 4, 2011). An industry insider calculated that the full default rate is over 50%. See Andrew Kahr, "CFPB Replaces Fed's Illegal Regulation with Its Own Illegal Regulation," American Banker (Apr. 16, 2012), available at /www.americanbanker.com/bankthink/CFPB-Card-Act-First-Premier-Fed-1048401-1.html.

of credit cards is their small payments and long repayment period. It can take a consumer 20 years or longer to pay off credit card debt if the minimum payment is made each month. Regular payments do little to chip away at the debt. Most of the payments go to cover interest, so that in the end the consumer will have paid vastly more in interest than the original debt. Even after the Credit CARD Act, it is still too easy to take on high debt and too hard to get out.

In order to prevent this, the ability to pay requirements should be tightened. Currently, Regulation Z does not mandate any particular ATP analysis but simply requires the issuer to select amongst several methods: (1) debt to income ratio; (2) debt to assets ratio; or (3) income after debt repayment. Furthermore, Regulation Z does not specify a minimum ratio for any of these methods. Finally, and perhaps most importantly, the issuer is only required to analyze the consumer's ability to repay the minimum payment, which leads to the trap of endless debt.

To avoid this trap, the CFPB should base ATP on a five year amortization of the credit card debt, *i.e.*, ATP should be assessed based on payments that result in the debt being repaid in no more than five years. That is the period that banking regulators have long used for credit card workout programs.

Furthermore, the CFPB should require a residual income analysis to determine ability to pay, *i.e.*, an analysis that involves examination of income remaining after both debt service and payment of household expenses. Currently, Regulation Z does not require consideration of obligations not reflected in a consumer report,[7] which would include most household expenses. Without consideration of household expenses, a consumer could have an acceptable debt-to-income ratio but still not have enough income at the end of the month to pay the credit card bill. This is especially true in high cost areas of the country, where expenses such as rent, childcare, transportation, and groceries (none of which are reflected on a consumer report) can consume almost all the consumer's income.

Finally, the CFPB should monitor default rates for the issuers under its supervision to determine whether they are satisfying the ATP requirements of the CARD Act. If a credit card program has unusually high default rates in comparison to a cohort of similar programs, the CFPB should find that the issuer has violated the ATP requirements.

4. The Effectiveness of Disclosure of the Cost of Credit for Credit Card Plans (Request (b))

The CFPB asks how effective are the current required disclosures of rates, fees, and other costs terms in conveying to consumers the costs of a credit card plan. Many of the disclosure rules for credit card plans were greatly improved by the FRB's wholesale revamping of TILA disclosures for credit cards, which became effective July 2010. However, a few of the FRB's changes weakened the robustness of the disclosures, especially the ability of the Annual Percentage Rate (APR) to adequately convey the true cost of credit for credit card accounts. In particular, the FRB:

- Eliminated the APR disclosure that includes the impact of fees on the cost of credit.
- Gave issuers the ability to disclose multiple APRs or a range of APRs, for "pre-approved" credit card solicitations.

These changes seriously undermined the effectiveness of APR disclosures for credit card accounts, and the CFPB should reverse them.

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[7] See Official Interpretations to Regulation Z, 12 C.F.R. § 1026.51(a)(1)(i)-7 (allowing issuers to consider consumer's obligations based on a consumer report).

Restore a Fee Inclusive APR Price Tag for Credit Cards

The CFPB should mandate an APR disclosure that includes the impact of fees on the cost of credit. Currently, the only APR disclosure required for credit cards and other open-end credit under Regulation Z is an APR consisting solely of periodic interest. 12 C.F.R. § 1026.14(b). This APR does not include the impact of any fees, whether they be finance charges or not, on the cost of credit for a credit card.

The exclusion of fees from the APR for open-end credit is a result of changes to Regulation Z's credit card disclosures made by the FRB effective July 2010. While most of these changes were positive, the FRB made one change that consumer advocates vehemently objected to – eliminating the fee-inclusive or "effective" APR required by TILA at 15 U.S.C. § 1606.

Eliminating the effective APR abandoned a core principle of the Truth in Lending Act. It was contrary to one of the fundamental reasons that Congress enacted TILA, *i.e.*, to create a standard disclosure of the cost of credit that would promote informed shopping. The effective APR was the only disclosure in open-end credit that reflected the price imposed by fees and non-periodic interest finance charges. Its existence and calculation are specifically mandated by TILA for open-end credit. By eliminating it, the FRB contravened the explicit requirements of TILA.

The FRB eliminated the effective APR because its focus group testing found that consumers were confused by it and did not understand it. But if consumers were confused by the effective APR, the proper response would have been to improve the disclosure, not eliminate it.[8] The solution should have been to improve the price tag, not tear it off. Indeed, in the October 2013 study, the CFPB developed a measure somewhat similar to the effective APR for its own research purposes, a "Total Cost of Credit."[9] This measure attempts to capture an "all-in cost of credit." A similar measure could be developed for credit card disclosures.

For example, the CFPB could require an effective APR for periodic statements that consists of a rolling 12-month average of the calculation in 15 U.S.C. § 1606(a)(2). A rolling average would address the phenomenon of a high effective APR in the month that a fee is imposed, which is what sometimes led to consumer confusion. For a credit card that was been opened for less than 12 months, this rolling effective APR could be pro-rated.

The CFPB should also explore a fee-inclusive APR for applications and solicitations, such as a "typical APR" that consists of an average of historical effective APRs for a certain time period in a certain credit card portfolio. Or it could develop an "Energy Star" type rating that is similarly based on the average of historical effective APRs. The CFPB could limit the requirement for a "typical APR" to certain categories of credit cards, such as those requiring the special fee-harvester disclosure in their applications and solicitations per 12 C.F.R. § 1026.60(b)(14).

Restoring the effective APR would make TILA disclosures more meaningful and truthful for high-cost fee-harvester credit cards. For example, the effective APR could include the $95 pre-account opening fee

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[8] Indeed, it is no wonder that consumers were confused by the effective APR – in its comments to the Board's 2005 Advanced Notice of Proposed Rulemaking, the Center for Responsible Lending noted the confusion generated by inconsistent terminology around both the rate-only APR (the "corresponding" or "nominal APR or "corresponding nominal APR") and the fee-inclusive APR, which could also be labeled with different adjectives, such as "effective APR" or "historic APR" or "actual APR."

[9] Consumer Financial Protection Bureau, CARD Act Report: A review of the impact of the CARD Act on the consumer credit card market, Oct. 1, 2013, at 19, 32-33, *available at* http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

charged by First Premier, which would be 416% as calculated under 15 U.S.C. § 1606(a)(2) based full use of the $300 credit line and the 36% periodic APR.[10]

Restoring the effective APR would also remove incentives for payday lenders and other high cost lenders to convert their predatory loan products into open-end credit. It would require a more meaningful and truthful APR disclosure for products such as:

- Payday lender Advance America attempted to offer an open-end line of credit in Pennsylvania that carried a "participation fee" of $149.95 per month for a credit limit of $500 and a 5.98% periodic APR. This translated into an effective APR of over 350%.[11]
- First Virginia Financial Services offers a line of credit in Virginia which discloses a 264% APR.[12] However, this APR does not include the extra 20% processing fee imposed on each advance after the first one. If combined, the monthly cost of a $100 cash advance would be $42 or an effective APR of over 500% for a one-month billing cycle.
- Allied Cash Advance Line of Credit Agreement and Plan in Virginia displays a 360% APR. However, that does not include the $50 monthly participation fee.[13] For a credit line of $360, assuming full utilization, that translates into an effective APR of 527%.
- Enova CashNetUSA.com offers an Online Line of Credit in several states. In Utah, CashNetUSA discloses an APR of 299%.[14] However, this does not include the $25 per $100 "Transaction Fee" imposed each time a borrower obtains a cash advance. Combining the Transaction Fee with the periodic interest translated into an effective APR of 599% for a $100 advance.

The CFPB Should Require Disclosure of Specific APRs, Not Ranges of APRs or Multiple APRs, in At Least Pre-Screened Offers and Whenever Else Possible

One of the fundamental problems with credit card disclosures is that they simply do not provide adequate information about the APR for consumers who are comparison shopping. The CFPB itself has noted the difficulties that consumers experience in comparing prices across credit card products or evaluating the competitiveness of a particular offer, noting that "[m]ost issuers' websites, for example, display APRs in broad ranges (e.g., from 12.99 percent to 20.99 percent) based on credit quality segments. Thus, a consumer is left to guess what the ultimate price might be."[15]

However, it is not just websites that display broad ranges of APRs – many credit card application and solicitations also display broad ranges of APRs. While disclosure of a broad range of APRs might be unavoidable for advertisements of a general nature, it can certainly be addressed when applications are sent by direct mail to a consumer, especially if prescreening is involved. Similarly, if a consumer receives an online or email advertisement as a result of an analysis of the consumer's individualized data,

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[10] It would be even higher if the effective APR included the $75 annual fee, which is currently not considered a finance charge under Regulation Z. If the $75 were to be included, the effective APR for the month in which the account was opened would be 955%.

[11] Pa. Dept. of Banking v. NCAS of Del., LLC, 948 A.2d 752 (Pa. 2008).

[12] www.firstvirginialoans.com/loan-options.

[13] Based on a 2011 contract, on file with the authors.

[14] https://www.cashnetusa.com/rates-and-terms.html.

[15] Consumer Financial Protection Bureau, Semi-Annual Report of the Consumer Financial Protection Bureau July 21 - December 31, 2011, at 44 (Jan. 20, 2012), available at http://files.consumerfinance.gov/f/2012/01/Congressional_Report_Jan2012.pdf.

it may be possible to offer a more precise APR. We urge the CFPB to address this problem by requiring the disclosure of the actual APR being offered to the consumer whenever possible.

Ironically, this problem with disclosure of broad ranges of APRs was caused by the FRB's own revisions to Regulation Z. In its revisions effective July 2010, the FRB amended the APR disclosures in credit card applications and solicitations to permit issuers to disclose a range of APRs or multiple APRs, so that they can make a post-application review to assign an APR. Issuers are permitted to delay disclosure of the actual APR that they are offering until the consumer receives the account opening disclosures (often along with the credit card itself).

However, allowing issuers to disclose a range of APRs has deprived the consumer of critical information in shopping for credit. For example, one of the CFPB's own model disclosures for credit card applications (Model Form G-10(B)) discloses an APR of 8.99% to 19.99%. This simply does not tell the consumer what he or she is applying for, as there is an 11% spread in these rates, which is a huge difference. On balance of just $1,000, that is an annual difference of over $100 in interest.

Permitting creditors to disclose a range of APRs is especially problematic for balance transfers. The FRB permitted creditors to disclose a range of APRs, then assign the real APR *after* the consumer has initiated the balance transfer, so long as the creditor provides the APR in time for the consumer to cancel the transfer (usually 10 days).[16] With balance transfers, consumers often move balances of hundreds or thousands of dollars, thus committing themselves to significant liability under the terms of the account. Consumers should not be forced to make the decision to transfer hundreds or thousands of dollars in debt blindly. A 10-day period to cancel the balance transfer is not adequate, since some consumers may be absent during that period, overlook the account opening disclosures, or simply fail to cancel the transfer due to default effects.

Thus, we encourage the CFPB to require disclosure of a single APR, not a range of APRs or multiple APRs, when it is feasible to do so. We recognize in some cases, such as Internet or "take one" solicitations made available to the general public, offering a specific APR would not be possible. However, issuers should be required to offer a specific APR in direct mail solicitations where the issuer has "pre-screened" the consumer, *i.e.*, the issuer has obtained the consumer's credit score pursuant to its ability to do so under the Fair Credit Reporting Act to make a "firm offer of credit."

For applications over the Internet or mobile applications, issuers should be required to provide a pop-up after the consumer submits his or her personal information, but before the application is approved, that provides APR information, *i.e.*, a pop-up that says: "Your APR will be 19.9%. Do you wish to accept this offer?" Moreover, any Internet or mobile offers that are made based on the individualized creditworthiness data of the particular consumer should also disclose a specific APR.

5. <u>Impact of the Credit CARD Act on Cost and Availability of Credit (Request (d))</u>

The CFPB asks whether implementation of the Credit CARD Act has affected the cost and availability of credit, particular with respect to non-prime borrowers. We believe it has not. The American Banker reported that 1.7 million new subprime credit cards were issued in the first quarter of 2014, representing a 62% growth.[17] Clearly, this recent growth in subprime credit cards indicates that the Great Recession was more responsible for the decline in subprime cards in the last few years than was the Credit CARD Act. And the CFPB's own October 2013 study found that the Credit CARD Act did not result in any reduction

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[16] Official Interpretations to Regulation Z, 12 C.F.R. § 1026.5(b)(1)(i)-5.

[17] Kevin Wack, Subprime Credit Cards Are Making a Comeback: ABA, American Banker, Sept. 30, 2014.

to access to credit,[18] as did a study from economists at several academic institutions and the Office of Comptroller of Currency.[19]

Furthermore, as discussed in our comments to the CFPB's Request for Information leading up to the October 2013 study, it is important not to assume that tighter access to credit is necessarily a bad thing. For many consumers, bad credit is worse than no credit. To the extent that ability-to-pay requirements and prohibitions on deceptive and abusive practices pushed bad credit out of the market, the CARD Act fulfilled its intent. After all, Congress was driven to reform the credit card market in part because of the realization that millions of consumers had been lured into incurring excessive credit card debts far above their means with no way to escape short of bankruptcy.

Restricting the ability to incur unaffordable debt is the far better choice than blindly preserving "access to credit," including dangerous or unaffordable credit. Credit is not a sustainable method to bridge the gap when a consumer does not have enough income to meet expenses. Consumers with restricted access to credit use a variety of methods to deal with a mismatch between income and expenses, including saving, budgeting, doing without, selling or pawning items, and borrowing from friends or family.[20] Those methods are usually safer in the long run, and are more beneficial for our society than using credit mask the hole in family budgets created by stagnant wages and rising housing and healthcare costs.

The same is true of young consumers. Some of the most heart-wrenching stories came from students who gobbled up gifts and easy credit only to find themselves way over their heads. Congress appropriately decided that credit card issuers should not be pushing credit card on vulnerable young people unless the student, or someone else responsible for the bill, has the means to pay. It may well be that access to credit for young consumers has been restricted. That is a good thing and a purpose of the Act.

6. Online Disclosures (Request (e))

The CFPB has noted that some consumers who make online payments do not access their monthly statements and instead use online information which does not contain certain important disclosures. The Bureau asks how to ensure that consumers using different channels receive effective disclosures.

Online account portals are normally set up in a way that discourages consumers from accessing their actual statements. While it is possible to open the pdf of the statement, the more prominent link is to recent transaction history, which also typically loads faster than a pdf document and is more functional, with sorting functions by date, merchant, and amount. Many consumers would have no reason to think about accessing the pdf statement itself, when they can see all of their transactions for the billing cycle in the transaction history.

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[18] Consumer Financial Protection Bureau, CARD Act Report: A review of the impact of the CARD Act on the consumer credit card market, Oct. 1, 2013, at 61, *available at* http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf ("Except as noted below [i.e., younger consumers], nothing in the evidence reviewed suggests that the CARD Act was responsible for the reduction in credit access – which largely preceded the Act's enactment – or that the CARD Act has retarded the pace of the recovery.")

[19] Sumit Agarwal, Souphala Chomsisengphet, Neale Mahoney, & Johanenes Stroubel, Regulating Consumer Financial Products: Evidence from Credit Cards, 130 Quarterly Journal of Economics 111, 115 (2015)("we estimate that the CARD Act had a precise zero effect on credit limits and ADB [average daily balances]. We also estimate a zero effect on the number of new accounts.").

[20] See The Pew Charitable Trusts, Who Borrows, Where They Borrow, and Why at 16 (July 19, 2012), available at http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Payday_Lending_Report.pdf.

However, when consumers access their account history in that fashion, they miss the important disclosures required to be on periodic statements. The answer is to require that online information contain the same disclosures as monthly statements. The online portals should be required to be formatted similarly to periodic statements required under TILA. However, there are certain changes required because of the format of the electronic account history. In particular, it is important that the total of fees and interest for the period be prominently displayed at the *top,* before the list of transactions. This is because some consumers will simply access the most recent transactions and not the transactions for a complete statement period. However, items like the opening and closing balance would be less relevant. In addition, the table of the year-to-date totals required on the statement should also be prominently displayed.

Another option is to require a click-through of certain important elements of an electronic statement before a consumer can pay online. Again, measures to ensure that the consumer must see the fees and interest incurred are especially important, as well as the minimum payment warning.

Both the amount and the APR for cash advance and other high rate balances should be easily seen whenever a consumer looks at account histories. Similarly, deferred interest or promotional rate balances that must be paid by a certain date in order to avoid interest should also be prominently displayed along with the end of the deferred or promotional period.

In addition, both online and paper statements should do a better job of displaying payment options for making progress on a deferred interest balances. (However, as discussed above, deferred interest should be banned. It is extremely complex to explain to a consumer the options for making progress on a deferred interest balance and the consequences of doing so or not doing so. Our suggestions below are not fully satisfactory. These are additional reasons to simply ban the practice.)

The CARD Act mandates the default rules: payments in excess of the minimum should be allocated to the highest rate balance, except in the last two months before the end of a deferred interest period. For a consumer who is attempting to minimize interest charges and does not expect to have difficulty paying off a deferred balance before the end of the period, those are the appropriate defaults.

However, consumers at risk of being hit with retroactive deferred interest might actually pay less interest if they paid off their deferred interest balances earlier, even though they will pay more interest in the short run on their other balance. Even if the consumer understands when the deferred period ends, she might not have the available funds in the last two months to pay off that balance.

When logging online onto a payment page, the consumer should see each of the balances, the rate that applies to each, and the end date of any promotional/deferred period. She should have the option of paying off each balance separately and also of making an extra payment above the minimum. When paying more than the minimum, but less than last statement total, there should be a pop-up page informing the consumer where the above-the-minimum payment will be allocated and asking the consumer if she wishes to allocate it to a different balance, with a short and simple explanation of the consequences of different allocations.

While paper statements are not as interactive as online account histories, they can also be improved to help consumers pay off different balances. The statement should contain a prominent warning about the consequences of not paying off a deferred interest balance and a phone number that the consumer can call if she wishes to allocate a partial payment above the minimum to a deferred interest balance.

Another important step that the CFPB can take is to ensure that consumers always have the right to free paper statements, as is their right under TILA, so that they can access their monthly statements easily without having to go online. The CFPB should clarify that financial institutions cannot charge a fee for written statements when such statements are required by federal law, such as TILA's requirement for periodic statements for open-end credit accounts.

Financial institutions should not, and indeed we would argue cannot legally cannot, charge a fee for providing something they are mandated by law to provide. Yet some credit card lenders have charged for paper statements, in order to coerce consumers into opting in to electronic statements.[21] Also, as the CFPB knows of course, Continental Finance automatically charged $4.95 per month for paper statements, a practice that the Bureau cited in its February 2015 enforcement action against that lender.[22]

The CFPB also needs to take steps to prevent lenders from engaging in unfair or deceptive practices when soliciting consumers to opt in to electronic statements. Lenders are making overly aggressive efforts to get consumers to opt into electronic statements, arguably crossing the line into misleading or unfair tactics. For example, Chase has been using a pop-up when consumers log into their accounts online that solicits them to opt into electronic statements. This solicitation is misleading because it states "Action Required." As the Bureau knows, there is absolutely no action required of cardholders if they want to continue to receive their statements in paper as required by TILA. Furthermore, the pop-up only has only buttons for "Accept" and "Manage my Preferences." There is no button for "Decline." A copy of this pop-up solicitation is attached as Exhibit C to this comment.

It is important for the CFPB to protect the right of consumers to paper statements, to ensure that they receive and view the mandatory disclosures required by TILA. Paper statements can be more easily accessed by certain consumers than electronic statements in a number of ways. For one thing, consumers experience more "friction" or barriers when they review their statements electronically. It takes more effort for consumers to locate their statements on a website, remember their passwords, and have access to a computer and time on their hands when they are thinking about it. Even when online, currently consumers may see a list of transactions but not the full periodic statement, because that takes several additional "clicks." This is exactly the problem noted by the CFPB in its October 2013 study.

It is much easier to be prompted when the mail arrives to simply open the envelope and review the document. There is a serious danger that pushing everyone into electronic statements as the default method will have the end result of ensuring that fewer people get the information they need.

Furthermore, even when consumers *pay* bills online, they prefer to *receive* those bills in the mail. A study by the U.S. Post Office found that despite a preference to pay bills online, 91 percent of customers prefer receiving their bills by mail.[23] The study concluded that consumer prefer to have a physical document as a reminder to pay and as a record-keeping tool.

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[21] At one point, World Financial Network Bank (now known as Comenity Bank) imposed paper statement fees for their store-branded cards. http://consumerist.com/2010/01/13/whole-bunch-of-store-credit-cards-add-1-paper-statement-fee/.

[22] Consent Order, In the Matter of Continental Finance, L.L.C., File No. 2015-CFPB-0003 (C.F.P.B. Feb. 4, 2015), available at http://files.consumerfinance.gov/f/201502_cfpb_consent-order_continental-finance.pdf.

[23] Office of the Inspector General, United States Postal Service, Will the Check Be in the Mail? An Examination of Paper and Electronic Transactional Mail, Report Number RARC-WP-15-006, Feb. 9. 2015, available at www.uspsoig.gov/sites/default/files/document-library-files/2015/rarc-wp-15-006.pdf.

7. Rewards Products (Request (f))

As the CFPB's prior October 2013 study noted, credit card lenders now often compete on the basis of reward programs instead of the pricing of credit on an account.[24] This trend may be on the upswing after the Credit CARD Act. Requirements such as a minimum six-month period for promotional rates and allocation of payments to the highest rate balance have limited the ability of lenders to engage in bait & switch tactics such as offering a low or 0% APRs, then suddenly increasing the APR or using payment allocation to reduce the value of the promotional rate.

Despite the fact that consumers now select credit cards on the basis of rewards, rewards are not governed by the Credit CARD Act or Regulation Z, with limited exceptions.[25] Thus, Regulation Z does not prohibit lenders from engaging in practices such as revoking rewards worth hundreds of dollars for minor infractions such as being a day late, or for no reason at all – whereas similar practices would be prohibited if they involved the APR or other covered pricing terms. Thus, issuers are permitted to freeze or hold rewards for being late a single time, as Wells Fargo does.[26] They are permitted to cancels rewards from being late twice in a row, with no opportunity for reinstatement, as in the case of the Sam's Club MasterCard.[27] American Express, Citibank and other issuers eliminate reward points for months when the consumer pays late.[28] Issuers also reserve the right to cancel rewards if they close an account, which their agreements permit them to do for any reason or no reason at all.

The CFPB asks what further improvements in disclosures regarding reward programs would benefit consumers. However, we think simply requiring improved disclosures is not adequate to protect consumers with respect to practices involving reward programs. Rewards should be regulated as a term of the credit card account, much like any other pricing term. For example, a revocation of a reward should be treated much in the same way as a retroactive rate increase. Issuers should not be permitted to revoke the rewards accumulated over several months simply because the consumer is a few days late on a single payment. Alternatively, a revocation of rewards should be treated as a penalty fee. Thus, the value of any revoked reward should be included in Regulation Z's caps on penalty fees.

8. Grace Periods (Request (g))

The CFPB has noted that disclosing the complex rules governing the availability of a grace period is quite challenging. It asks what improvements in disclosures would benefit consumers.

Most consumers understand that if they pay their credit card balances in full each month, they will not be assessed any interest. The Credit CARD Act stopped certain confusing practices that deprived consumers of grace periods. However, credit card issuers still engage in practices that can deprive consumers of their grace periods or subject them to unexpected interest charges when they pay in full. For example:

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[24] Consumer Financial Protection Bureau, CARD Act Report: A review of the impact of the CARD Act on the consumer credit card market, Oct. 1, 2013, at 82, available at http://files.consumerfinance.gov/f/201309_cfpb_card-act-report.pdf.

[25] These exceptions include (1) the protection against terminating benefits for paying late if a billing statement is not sent 21 days before the due date, and (2) the protection against cessation of waivers or rebates, which applies to cash rewards that can be applied to the account as credits, if they are promoted as such. *See* National Consumer Law Center, Truth in Lending §§ 6.7.2.2.3, 7.2.3.2.5 (8th ed. 2012).

[26] https://www.wellsfargo.com/credit-cards/rewards/terms/.

[27] http://www.samsclub.com/sams/images/MasterCard_CashBack.pdf.

[28] https://secure.cmax.americanexpress.com/Internet/UDAP/CardMemberAgreementsOnline/US_en/CMADetailsPage/PersonalCards/BlueCash/BlueCashAECB.pdf; Citibank, CITI® Double Cash Card Reward Program Information, undated.

1. Consumers who take out cash advances on their credit cards, or use their cards for other cash-like transactions, may be surprised to learn that those advances accrue interest immediately, with no grace period.
2. Issuers entice consumers into certain programs that cause consumers to lose their grace period, and incur interest from the date of purchase, even if they paid their previous bill in full. For example, the consumer will lose the grace period for purchases if she uses a balance transfer or convenience check, unless she pays off the entire transferred amount or check amount by the first payment due date after the transfer or advance. [29]
3. If a consumer who has been carrying a balance then pays it in full, most credit cards will surprise the consumer with "trailing interest" on the next statement (covering the time between the statement date and the payment date) after the consumer thinks the slate is wiped clean. In some cases, new interest charges will continue for months even after repeated attempts to pay the balance in full.

We recognize that the CFPB has mandated a new disclosure for the second situation above. However, a disclosure is simply not sufficient to prevent consumer confusion with respect to these issues. Like payment allocation practices, it is simply too complex and difficult to explain to consumers the problems with these grace period practices.

Credit cards should have simple, consistent grace periods and rules for when interest accrues that do not lead to unexpected interest charges.

- *No differing grace periods.* Credit cards should have the same grace period rules for all types of transactions.
- *No complicated rules for obtaining or losing grace periods.* Grace periods should not be granted or eliminated unexpectedly for purchases– either the consumer has one or she does not.
- *No trailing interest the next month.* Once the consumer pays the balance in full, there should be no further interest charges the next month.

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[29] *See, e.g.* Murr v. Capital One, 28 F. Supp.2d 575 (E.D. Va. 2014) (permitting fraud, breach of contract, TILA and UDAP claims to proceed). The court in Murr also noted that Capital One knew of the problem of consumer confusion regarding this issue, as evidence by "[d]ocuments uncovered in discovery revealed that defendant was aware of a steady stream of complaints from consumers who lost their grace periods after accepting the Offer despite paying off their purchase balances in full," and that customer service representatives and their managers "indicate[d] that defendant adopted a less-than-forthcoming approach to obvious consumer confusion." Id. at 581, 586. In fact, one Capital One employee wrote "I think we would be stupid to tell customers[about the loss of the grace period] without them asking about it. Clearly we wouldn't want to lie, but I don't think we need to be overt about it." *Id.*

EXHIBIT A

[redacted]/GECRB

GE Capital Retail Bank

Cardholder Name: [redacted]
Account Number : XXXX XXXX XXXX[redacted]
Statement Closing Date: 06/02/2014

Summary of Account Activity

Previous Balance	$1,994.00
+ New Purchases	$0.00
- Payments	$500.00
+/- Credits, Fees & Adjustments (net)	$0.00
+/- Interest Charge (net)	$1,760.45
New Balance	**$3,254.45**
Credit Limit	$8,000.00
Available Credit	$4,245.00
Days in Billing Period	**31**

Pay online for free at: gogecapital.com
For GE Capital Retail Bank customer service or to report your card lost or stolen, call 1-866-747-1867.

Best times to call are Wednesday - Friday.

Payment Information

New Balance	**$3,254.45**
Total Minimum Payment Due	**$123.00**
Payment Due Date	**06/25/2014**

PAYMENT DUE BY 5 P.M. EASTERN ON THE DUE DATE.
We may convert your payment into an electronic debit. See reverse side.

Late Payment Warning: If we do not receive your Total Minimum Payment Due by the Payment Due Date listed above, you may have to pay a late fee up to $35.00.

Minimum Payment Warning: Making only the Total Minimum Payment Due will increase the amount of interest you pay and the time it takes to repay your balance. For example:

If you make no additional charges using this card and each month you pay ...	You will pay off the balance shown on this statement in about ...	And you will end up paying an estimated total of ...
Only the minimum payment	16 years	$9,801.00
$138.00	3 years	$4,973.00 (Savings = $4,828.00)

If you would like information about credit counseling services, call 1-877-302-8797.

Promotional Purchase Summary

Promotional Expiration Date	Promotional Balance	Billed Interest Charge	Tran Date	Description	Initial Purchase Amount
EXPIRED	$3,254.45	$1,760.45	05/14/2013	Deferred Interest/No Interest If Paid In Full	$6,000.00

A summary of your promotional purchase is provided above. If you have a DEFERRED INTEREST/NO INTEREST IF PAID IN FULL promotion: To avoid paying Deferred Interest Charges on these promotion(s), you must pay the entire applicable Promotional Balance by the Promotional Expiration Date.

To make more than one payment see Make Payment To address or pay online at gogecapital.com.

Transaction Summary

Tran Date	Post Date	Reference Number	Description	Amount
05/24/2014	05/24/2014	[redacted]	PAYMENT - THANK YOU	$500.00 CR
			FEES	
			TOTAL FEES FOR THIS PERIOD	**$0.00**
			INTEREST CHARGED	
06/02/2014	06/02/2014		INTEREST CHARGE ON PURCHASES	$1,760.45
			TOTAL INTEREST FOR THIS PERIOD	**$1,760.45**

2014 Totals Year-to-Date	
Total Fees Charged in 2014	$0.00
Total Interest Charged in 2014	$1,760.45
Total Interest Paid in 2014	$0.00

* NOTICE: See reverse side and additional pages (if any) for important information concerning your account.

[illegible] CMR 1 7 2 140602 PAGE 1 of 3 [redacted]

Pay online at gogecapital.com or enclose this coupon with your check. Please use blue or black ink.

Total Minimum Payment Due	Payment Due Date	New Balance	Account Number
$123.00	06/25/2014	$3,254.45	XXXX XXXX XXXX[redacted]

Payment Enclosed : $ ☐☐☐☐☐.☐☐

☐ **New address or e-mail? Check the box at left and print changes on back**

[redacted]

Make Payment to: GE CAPITAL RETAIL BANK
PO BOX 960061
ORLANDO, FL 32896-0061

Interest Charge Calculation

Type of Balance	Expiration Date	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	NA	29.99%	$0.00	$0.00
Deferred Interest/No Interest If Paid In Full	EXPIRED	29.99%	$3,547.70	$1,760.45

New Promotional Financing Plans

This notice is to let you know about some promotional financing plans that may be available for you when you use your card for **future** purchases. This is only a summary of key terms. At times, we may offer you other promotional financing plans for certain purchases. Details of available promotions will be provided to you at the time of your transactions. Not all plans or all plan periods will be available at every retailer. For purposes of this notification, your **Purchase Annual Percentage Rate ("APR")** is **29.99%**. See the Interest Charge Calculation section of this billing statement to determine if this APR is variable. If a (v) is shown next to your APR, this APR will vary with the market based on the prime rate. Subject to credit approval. Regular account terms apply to non-promotional purchases and, after promotion ends, to promotional purchase.

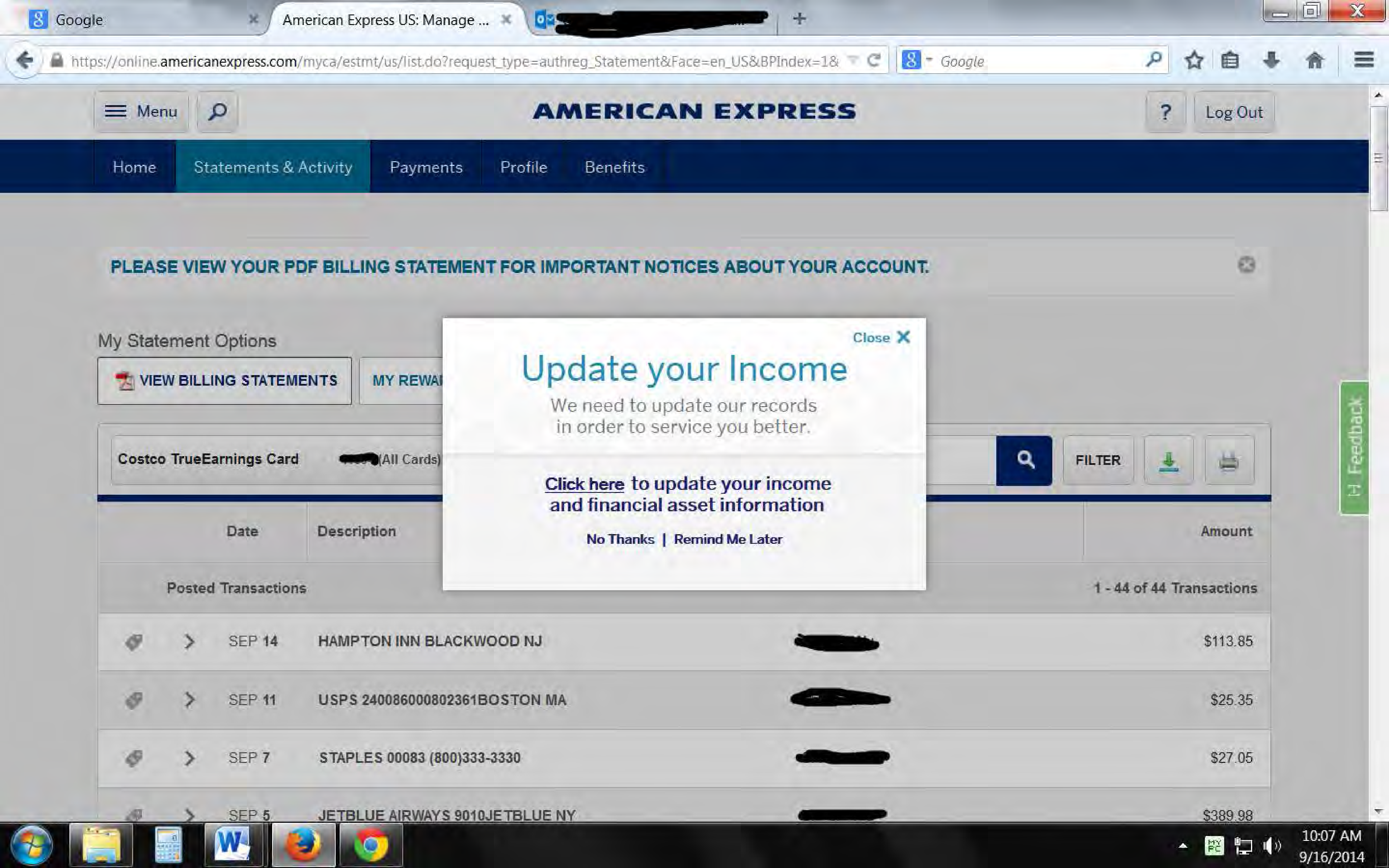
No Interest if Paid Within Promotional Period
These can be advertised as Deferred Interest promotions)
Under this promotion, no Interest Charges will be assessed if the promotional purchase balance is paid in full within the promotional period. If the promotional purchase balance is not paid in full by the end of the promotional period, interest will be imposed from the date of purchase at the **Purchase APR** stated above. Minimum monthly payments are required. This promotion may be offered for periods of **6, 9, 12, 18 or 24 months.**

Please keep this for your records. If you have any questions, please call us at the Customer Service number shown on your statement.

Cardholder News & Information

Please Note: Effective June 2, 2014, GE Capital Retail Bank ("GECRB") changed its name to Synchrony Bank ("SYNCB"). During the transition you may see communications with either name. For more information please visit gecrb.com/synchronybank

EXHIBIT B



AMERICAN EXPRESS

PLEASE VIEW YOUR PDF BILLING STATEMENT FOR IMPORTANT NOTICES ABOUT YOUR ACCOUNT.

My Statement Options

VIEW BILLING STATEMENTS | MY REWA

Close ✕

Update your Income

We need to update our records
in order to service you better.

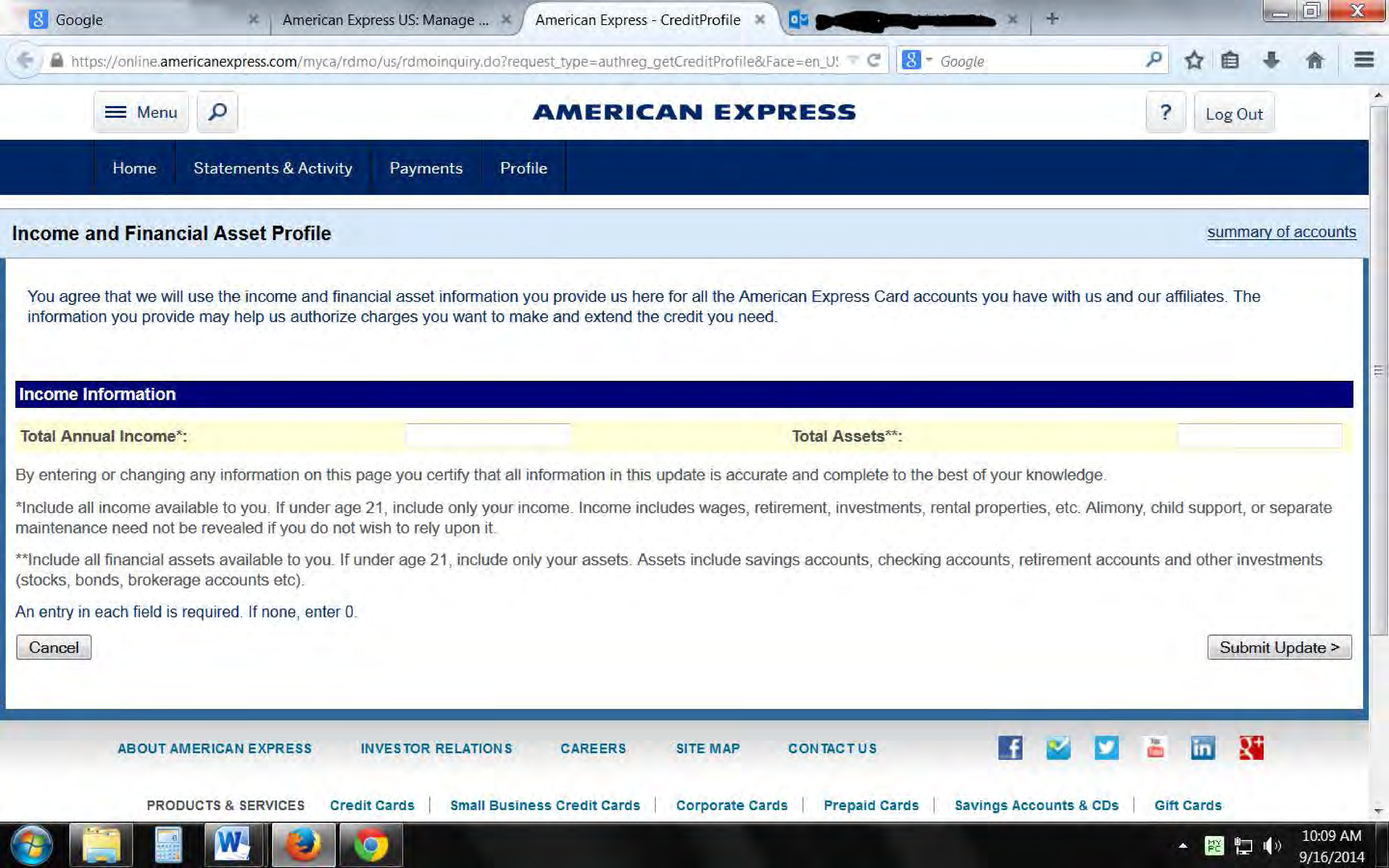
Click here to update your income
and financial asset information

No Thanks | Remind Me Later

Costco TrueEarnings Card [redacted](All Cards)

FILTER

Date	Description		Amount
Posted Transactions			1 - 44 of 44 Transactions
SEP 14	HAMPTON INN BLACKWOOD NJ	[redacted]	$113.85
SEP 11	USPS 240086000802361BOSTON MA	[redacted]	$25.35
SEP 7	STAPLES 00083 (800)333-3330	[redacted]	$27.05
SEP 5	JETBLUE AIRWAYS 9010JETBLUE NY	[redacted]	$389.98



Income and Financial Asset Profile

You agree that we will use the income and financial asset information you provide us here for all the American Express Card accounts you have with us and our affiliates. The information you provide may help us authorize charges you want to make and extend the credit you need.

Income Information

Total Annual Income*:		**Total Assets**:**	

By entering or changing any information on this page you certify that all information in this update is accurate and complete to the best of your knowledge.

*Include all income available to you. If under age 21, include only your income. Income includes wages, retirement, investments, rental properties, etc. Alimony, child support, or separate maintenance need not be revealed if you do not wish to rely upon it.

**Include all financial assets available to you. If under age 21, include only your assets. Assets include savings accounts, checking accounts, retirement accounts and other investments (stocks, bonds, brokerage accounts etc).

An entry in each field is required. If none, enter 0.

EXHIBIT C

CHASE

Chase.com | Contact Us | Privacy Notice | En Español | LOG OFF

Action Required

Please update your statement delivery method for your eligible accounts.

Click **Accept** to update your preferences to paperless statements. You'll receive an email that lets you know when your latest statement is available. You can see or print your statement anytime from the Chase Mobile® app or chase.com. Or click Manage Preferences to update or maintain your settings.

Thanks for being a Chase customer.

Manage Preferences | Accept

By clicking "Accept" you acknowledge that you agree to the terms of the e-Sign Disclosure, you can access the sample PDF, and you consent to receive electronic communications and statements and other notices, as described in the disclosure, for your accounts.

You can view and print card, deposit and mortgage statements from your mobile device.

Your eligible accounts:

CREDIT CARD (...[redacted]

MORTGAGE LOAN (...[redacted]

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