National **Retail** Federation
The Voice of Retail Worldwide

Before the
Governors of the Federal Reserve System
Washington, D.C. 20551

COMMENTS OF THE NATIONAL RETAIL FEDERATION

Regulation Z
Docket No. R-1217

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March 28, 2005

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Consumer Disclosures under Regulation Z

Comments of the National Retail Federation

The National Retail Federation ("NRF") is the world's largest retail trade association, with membership that comprises all retail formats and channels of distribution including department, specialty, discount, catalog, Internet and independent stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.4 million U.S. retail establishments, more than 23 million employees - about one in five American workers - and 2004 sales of $4.1 trillion. As the industry umbrella group, NRF also represents more than 100 state, national and international retail associations. Many of NRF's members make credit available to their customers directly, through financial services affiliates, and through third party credit providers. Typically, these are open-end (revolving) credit plans with a fixed or promotional interest rate.

Retailers have long championed consumer credit. Used wisely it can be a valuable tool that allows consumers to meet their needs in a timely and economical fashion. But consumers must understand the consequences of its use. Disclosure is one means by which the Federal Reserve Board ("Board") can convey important information about the use of credit that might not otherwise be appreciated or known. For example, do consumers realize how much late payments cost them, not only at the time they are late, but in consequential future costs as well? Do consumers know that the interchange fees associated with their use of third party credit (and increasingly debit) cards raises the price of most of the merchandise they buy? Rather than simply requiring that every charge, fee, or expense be uniformly disclosed, the Board can play an important educational role by highlighting those terms and conditions of account usage that have the greatest practical consequences.

By way of analogy, in everyday life informing someone that he is overpaying by four percent for the daily newspaper (by perhaps a couple of cents a day) may not be nearly so important as alerting him to a continuing two percent overcharge for rent. Too

great a reliance on a consistent metric or approach, without discrimination or context, can undermine the value of consumer disclosure.

It is for this reason that NRF is supportive of the Board's decision to revisit the Regulation Z disclosures. Over time, some disclosures have become so lengthy and complex that a fair question may be raised as to whether consumers truly appreciate important differences among credit options. In reviewing the terms and conditions associated with various account disclosures from a consumer's perspective it is apparent that while some terms are designed to quietly heighten credit availability, others are primarily designed quietly to heighten issuer income. While both may be desirable, the goal of government mandated disclosure should be to help those given a choice of credit options select the products with the greatest consumer benefit. This encourages competition - competition driven by informed choice. In our view, regulations should highlight those factors that will have the greatest real world consequence for informed consumer decision-making. NRF encourages the Board to consider this factor in advancing to the next round of comments.

Traditional Retail Credit versus Third Party Credit

The retail industry essentially invented what is known today as consumer credit. In the beginning main-street retailers (often dry goods or supply stores) offered credit to trustworthy customers, many of whom paid their bills on an irregular basis, such as after the harvest came in. Retailers relied on this special relationship with their customers, offering simple terms in exchange for the promise to pay sometime in the future. This relationship was beneficial to both consumers and shopkeepers in a pre-industrial society.

Today, we live in a much more fast-paced world, where main street has been replaced by shopping malls and "trustworthiness" is measured, in part, by a consumer's credit report or FICO score. However, retailers have worked hard to maintain their special relationship with consumers in order to build customer loyalty and brand recognition. Many retailers have also worked hard *not* to complicate the terms of the credit relationship. As a result, retail credit often looks much different than general-purpose bank issued cards.

Typically, proprietary retail credit cards are only accepted by the retail concern that issued them (or by other retail stores in the corporate family). As a partial result, retail credit card balances tend to be substantially lower than general-purpose credit cards (indeed, many of our members report average balances below $500). Even though nominal finance charge rates may be higher on average than nominal bankcard rates, the actual dollar cost to consumers is low due to these smaller balances. Further, retailers are more likely to offer special low-rate or zero percent promotions on major purchases such as appliances, furniture and home services. In addition, we have found that proprietary retail cards are less likely to aggressively default to penalty rates. When combined with typical retail card balances, these factors enhance the real world likelihood of continuingly manageable payments.

Retail cards also tend to charge fewer fees than general-purpose credit cards. For example, annual fees are rare and over limit fees are generally not assessed. Additionally, consumers tend to receive more uniform terms, such as a consistent finance charge rate. Average daily balances on retail credit cards tend to be based on a single cycle (with new purchases) rather than two-cycle billing, further restraining finance charges, unlike the case with many general-purpose cards. Finally, the grace period is more likely to be a full billing cycle.

Historical APR

Few if any legal disclosures are truly simple, and simplification of the disclosures required upon account opening across the board would be useful. However, in part due to the reasons given above, retailers believe that consumers are somewhat less likely to be confused by the terms of retail card accounts in actual practice both because the terms tend to be more straightforward and because there tend to be fewer “moving parts” than with some other revolving accounts (i.e. beyond relatively moderate late fees, proprietary retail cards come with fewer complex “finance charges” than many

general purpose cards). [1] Nevertheless, we question whether the current historical APR disclosure is a sufficiently clear concept as to meaningfully convey information consumers are likely to rely on in determining their credit card use.

Minimum Payment Disclosures

The ANPR asks several specific questions about disclosing the effects of making only minimum payments. The Senate-passed S.256, the bankruptcy reform bill, includes several substantive changes relating to minimum payment disclosures. Title XIII of the bill deals specifically with consumer credit disclosures, including a required disclosure in Section 1301 that is a "minimum payment warning." As we propose to the Board, the disclosures in the bill reflect real world differences between many retail and bankcard accounts. Pursuant to S. 256, creditors would also be required to provide a toll-free number for cardholders to call to get an estimate of how long it would take to repay the debt owed by the cardholder. The estimates would be based on information provided by the FRB and the provisions would take effect 18 months after the date of enactment. It would be NRF's preference that the FRB allow these TILA changes take effect before further such disclosures are required.

Prompt Crediting of Accounts

The issue of prompt crediting of payments and payment due dates/times may be more complicated in the retail environment than for other types of creditors simply due to the fact that retailers offer more portals for payment than do other cards. Retailers use common methods such as mail-in payment stubs, telephone payment and electronic bill pay. However, as part of the special relationship between retailers and their customers, some retail credit departments have continued to accept in-store payments either at point of sale or in the customer service department or at credit departments located within stores. Further, some retailers still use in-store customer convenience "drop boxes" which are generally emptied once a day. As a result, "cut off

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[1] As the FRB studies the issue of fee disclosure and its relation to the historic APR, it is important to point out that specific TILA changes, such as late payment deadlines and penalty disclosures, are already included in Title XIII of S.256, the bankruptcy reform legislation that is expected to pass the House expeditiously and be signed in to law in the coming weeks. We expect these new disclosures, to be included on the monthly billing statement, will add appropriate clarifications for consumers.

hours" may vary widely depending on which method the customer uses to pay bills. These hours vary from posted store hours for point of sale payment, to the business hours of the credit office, to the approximate time a given "drop box" is emptied each day. Further, timing may differ for electronic payments and payments received by phone versus payments received by mail. We in the retail industry would not like see our customers' options diminished for the sake of "uniformity" on a factor that is likely to have relatively modest consequences on the regular use of their accounts. We believe customers clearly understand the benefits and potential drawbacks of each payment portal.

Interchange

Unaddressed in the current disclosure scheme is the practical effect on consumers of ever increasing interchange fees on credit transactions. In a matter of days (April 1, 2005) these surreptitious fees will yet again be hiked significantly, adding to the already substantial drain they place on consumer spending power. Interchange is the escalating fee banks bury into the cost of goods and services purchased with third party/bank credit cards. Consumers are unaware of the consequences of its cost. Tied, as it is, to a percentage of the price of goods purchased, the dollar impact of interchange grows not only as the actual percentage increases, but also is compounded by its forced inclusion in the price of the goods and services it affects. As a practical matter, retailers are prohibited from disclosing these fees to their customers.[2] Since it is not known in advance which consumers will use a method of payment not subject to interchange (such as cash, check, or a proprietary retail credit card), and which will unwittingly subject their purchases to interchange, the price of virtually all goods and services is increased.

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[2] In the few cases where it is allowed to be revealed, such as the "convenience fee," largely composed of interchange fees that state taxing authorities impose for tax payments made by credit card, its significance can begin to be glimpsed. The fee could exceed $100 for the convenience of paying a yearly property tax bill, a figure that represents only a fraction of the hidden fees a family might pay as a consequence of the use of their bankcards each year.

Conclusion

Within the past several years, the terms, fees and costs associated with some payment types have not only become more complicated, in many cases they have become much more expensive as well. The disclosure modalities on which the Board has historically relied may not do as good a job of adequately informing consumers of the true costs of their account usage, as was the case when they were first adopted.

Other significant expenses may not be appreciated or even properly disclosed to the consumers who ultimately pay them. As the NRF indicated in its filing last July (and the Board subsequently revealed) existing disclosure mechanisms may not adequately advise consumers in advance either of the imposition of PIN debit card usage fees nor the actual source of the charges. The credit world appears likely to suffer from similar deficiencies.

We would encourage the Board not merely to review existing disclosures for clarity, but rather to examine the practical consequences of what is, and is not, disclosed. Terms and conditions should be examined for their quantitative economic effect on typical consumers. Armed with that data, the relative significance, and manner of disclosures should be modified so as to have the market-driving effects for which they were initially adopted.

We appreciate the opportunity to file these comments for your consideration.