



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

**COMMENTS OF THE
NATIONAL RETAIL FEDERATION**

**Regulation Z
Docket No. R-1286
And
Regulation AA
Docket No. R-1314**

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On behalf of the National Retail Federation (NRF), we would like to file the following comments on the proposed clarifications to the amendments to Regulations AA and Z regarding open-end credit that were finalized on December 18, 2008 and published in the Federal Register on January 29, 2009. By way of background, 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, independent stores, chain restaurants, drug stores and grocery stores as well as the industry's key trading partners of retail goods and services. NRF represents an industry with more than 1.6 million U.S. retail establishments, more than 24 million employees - about one in five American workers - and 2008 sales of \$4.6 trillion. Many of NRF's members offer retail credit to their customers, either directly through proprietary retail credit programs, or through private label and co-branded programs in conjunction with financial institutions. The availability and flexibility of retail credit are among the reasons these programs are so desired by consumers. We very much appreciate the opportunity to address the proposed clarifications, especially as they pertain to deferred or waived interest credit plans – a vital part of retailers' credit offerings to millions of consumers. We should note that in preparing these comments, NRF gave particular emphasis to the views of its mid-sized and smaller, often regional, members. Nevertheless, NRF members of all sizes support these comments.

Introduction

We want to say at the outset that NRF members were very pleased to read the proposed clarifications. They resolve many of the questions not directly answered in the original rules. Rather than declaring that no set of disclosures were adequate to protect consumers who were offered programs that effectively mitigated finance charges for the majority of participating consumers, as many read the original rules to suggest, the clarifications demonstrate the Board's broader consideration and greater depth. It is notable that the Board has shown that more robust disclosure *when combined with the other consumer protections adopted elsewhere in the rules*

provide both enhanced consumer protection and the flexibility necessary to make programs both retailers and their customers value, viable. Many in the retail industry greet the clarifications with great relief. With the few exceptions below, NRF fully supports them. What follows are either responses to questions posed by the Board, or points primarily of concern to smaller and regional retail operations.

Deferred or Waived Interest Offers

Consumers want and appreciate deferred or waived interest offers. They are often the impetus for consumers both establishing and maintaining beneficial long-term relationships with retailers.¹ Among retailers these programs are most often one of two types. They are offered by retailers as either promotional plans (where the deferred interest period typically lasts several months or longer) or are sometimes offered as a customer accommodation (where shorter, typically 90-day, timeframes may apply). The more commonly known promotional plans are most often used by consumers to purchase high-ticket items (such as major electronics, jewelry, and large appliances). Retailers typically offer these programs in connection with their private label cards. These programs provide consumers with the ability to make planned payments for expensive items over an extended period, while potentially avoiding regular finance charges. As such, promotional plans and accommodation plans can be valuable planning or budgeting tools. They are especially desired by consumers who must make unexpected, emergency replacement of critical appliances (such as a new cook top or freezer).

Some retailers offer shorter accommodation plans. In a typical accommodation plan, once a customer purchases more than a few hundred dollars in merchandise on the retailer's proprietary card, the customer is given the option of

¹ Some plans offered by retailers are even more generous than the deferred or waived interest programs contemplated here. Under them, retailers offer "no interest" or "zero interest" plans and interest does not accrue on the balance until after the stated period ends. Some plans require no payments during the duration of the no-interest period, while others require minimum monthly payments over that time. They almost could be viewed as extended grace periods.

paying a substantial portion of the monthly balance due on his or her account each month (e.g. the greater of 1/3 of the total outstanding balance above a set dollar minimum, such as \$90) in return for having finance charges waived.² Again these plans are extremely popular among the customers of retailers who offer these programs. We request clarification from the Board and the Agencies that the principals set forth in the clarifications that apply to promotional plans would, to the extent applicable, also govern these often shorter-term accommodation plans.

Periodic statements and payments allocation

We agree with the Board (Reg. Z §226.7) that it is appropriate to include a special disclosure on a consumer's periodic statement for two billing cycles immediately preceding the date on which the deferred or waived interest transactions must be paid in full in order to avoid the imposition of interest charges.

We further believe that the required payment allocations methods as discussed in Reg. AA § .23 are reasonable. Under the rule, institutions must automatically allocate excess payments first to deferred or waived interest balances during the last two billing cycles of the promotional period. We also believe that harmonizing this period with the special disclosure required under Reg. Z § 226.7 will be very helpful to consumers.

² In the parenthetical accommodation plan example, where the customer pays each month a minimum of 1/3 of her total outstanding balance, a singular purchase would be paid in full, without finance charges being collected, in approximately 3 to 4 months, depending on the statement date. On the other hand, were the customer to add to her outstanding balance by, for example, making an additional \$400 merchandise purchase during the second month; so long as she paid the greater of the set (\$90) minimum or one third of the new total amount due on the next monthly statement and thereafter, interest would continue to be waived.

Thus under an accommodation plan, a customer purchasing \$300 in merchandise in January, would be obligated to make a payment of at least 1/3 that amount - \$100 – by her February statement due date, ordinarily resulting in a remaining balance due of \$200 on her next (March) statement. However, if during February she purchased an additional \$400 in merchandise, her March statement would show an outstanding principal balance of six hundred dollars: the remaining two hundred of the original purchase plus the newly charged four hundred dollars. So long as she paid 1/3 of that new \$600 balance (i.e. \$200) by her March due date (and so forth thereafter), finance charges would continue to be waived. Thus, by virtue of subsequent overlapping purchases, such an accommodation plan could offer significantly more than its nominal 3 months of waived interest.

In response to the Agencies' request for additional comments in Regulation AA, we are very concerned that the Agencies have not explicitly reserved the right of consumers to allocate payments to the deferred interest (or lower interest) plan any time prior to the final two billing cycle periods, and to that end, does not provide sufficient flexibility for consumers. Today, many retailers make this option available, upon a customer's specific request, and we believe it very important to continue to allow consumers who are trying to pay-down or eliminate certain debts to be able do so. (For example, a customer using a retailer's private label card with multiple lines may make occasional \$150 clothing purchases, subject to a 1.5 percent periodic rate, even while attempting to pay for a \$2,200 carpeting purchase that is offered as a twelve month waived 1.75 percent periodic rate program. From a budgeting perspective the customer may much prefer that all payments in excess of her minimum required to satisfy her clothing purchases be allocated at \$200 per month, every month, toward avoiding finance charges on the major carpet purchase. The proposed rule would preclude her from doing so.) Again, were the flexibility provided by the rule, allocations prior to the final two months would be done solely at the customer's specific request as a personalized service either over the phone or in writing (such as a note inserted with a specific payment stub). While the need for the customer to specifically request the allocation each time it was desired would not be particularly customer-friendly, it would be far preferable to a rule that would prohibit retailers from fulfilling their customers' specific requests.

Advertising

The Board states that advertising and disclosure must be made clear and conspicuous and closely proximate to the "first listing" of a rate or a statement. While this standard is reasonable, NRF seeks clarification as to some retail formats. As the Board may be aware, some waived interest programs are offered to both new and existing cardholders who make a purchase on a certain day (or series of days), over a certain dollar threshold, or who meet certain terms. Those programs may be advertised on prominent signs in relevant portions of the store (e.g. atop the big

screen televisions) but can be requested or accessed at any point of sale register in the store or department store with the customer receiving the same benefits each time her card is used to make a purchase. We would ask the Board to affirm that retailers would not be required to put additional signage at every point of sale register throughout the entire store so long as general promotional store signage meets the “clear and conspicuous” disclosure standard required under the rule.

Account-opening Disclosures

Section 226.6(b)(2)(i) states that, permitting creditors to provide the specific APR information outside of the account-opening table at point of sale, with the expectation that consumers will receive their specific APR properly formatted in the account-opening table at a later time, would strike an appropriate balance between the burden on creditors and the need for disclosure to consumers. The Board also notes that this flexibility would allow creditors to offer multiple credit rates bases on the creditworthiness of the individual applicant, with some consumers receiving lower rates than would be offered under a single-rate plan. However, it is unclear from the clarification whether a full “Schumer Box” statement printed on the customer’s receipt would be required at point of sale – an extremely complicated technology challenge for many smaller retailers - to disclose the actual APR, or if another simpler mechanism would be appropriate? For smaller retailers who may have difficulty complying with a real time printed document, some other form of confirmation would be ideal and give them greater flexibility. This method would, of course, be followed up by written confirmation in the account opening documents or mailed with the credit card.

Default Period

We agree that the 30 day period is the appropriate timeframe before which a customer should be deemed in default on a deferred or waived interest offer. This period will provide additional consumer protection, while appropriately allowing

retailers the ability to manage the risk and expense of their customer portfolios. Some retailers have long offered their customers comparable flexibility. The proposed default period is reasonable.

Implementation Period

NRF has many small to mid-size member companies who have voiced serious concerns about their ability to meet the implementation date. Of particular note are our member companies who offer open-end credit accounts by “holding their own paper” and thus do not use third party finance companies, such as credit cards companies. These companies often offer waived or deferred interest plans for large purchases such as furniture or appliances. Preserving the consumer’s ability to finance such big-ticket purchases is vital for these businesses and the economy as a whole.

To meet the compliance date of July 1, 2010, these companies will have to spend large sums of money to meet the requirements of Amended and Restated Regulation Z. Complete systems overhauls will need to be made; development, testing and implementation of new software programs will be required; and policies and procedures will need to be revised. In addition, compliance programs will need to be developed. After the information systems business requirements are fleshed out (which would certainly consume a large amount of the time remaining for compliance), changes and implementation would certainly take more than year. The task is daunting to say the least.³

³ For example, one NRF member company, operating in a depressed sector, has stated that they literally have no budget for capital expenditures until the current financial crisis abates. Just as ominously, even though they have historically had hundreds of millions of dollars in annual sales, bank loans for this sector are virtually impossible to secure. Other retailers of comparable and smaller size are in similar situations. If they cannot upgrade their existing proprietary systems within the next twelve months, they will stop offering waived interest programs, which will make it even more difficult for them to compete for customers against their larger brethren.

Consequently, on behalf of several of our members, and those similarly situated, we request that the Board allow a longer compliance timeline, or, alternatively, we request a “safe harbor”, for smaller businesses who are taking reasonable and diligent steps to comply, but may not meet the deadline for the reasons stated above.

Additional Comments

The Agencies request comments in the clarification to Regulation AA as to whether institutions establish separate categories of transactions based on factors other than APRs, and if so, for what reasons. The answer is yes. Some retail credit plans establish different minimum payments (both carrying the same APR) for different categories of merchandise purchases. On some retail card programs a large home furnishing purchase may have a 2.5 percent minimum monthly payment due, while a clothing or cosmetics category purchase require a 5 percent minimum to be paid each month. The reason behind this is to allow customers a longer period of time to pay off a larger purchase (such as living room furniture), while not changing the terms of the overall APR. Merchandise may be allocated to a long term or short term category as a customer accommodation.

Thank you for the opportunity to comment on these provisions of the proposed rule. Please feel free to contact us should you have any specific concerns.