

Federated

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RE: Docket Number R-1217

To the Board of Governors of the Federal Reserve System:

This letter is in response to your advance notice of proposed rulemaking for Regulation Z, which implements the Truth-in-Lending Act. Thank you very much for reaching out to the industry and the public to obtain feedback on Regulation Z as it impacts open-end credit. Hopefully, you will receive valuable experiential information as well as creative suggestions to enhance the Regulation with an eye toward improving consumer comprehension when they apply for and utilize open-end credit accounts.

FDS Bank is the issuer of proprietary and general-purpose credit cards for the retail divisions of Federated Department Stores. As such, we have limited our responses to those questions for which our industry experience has given us some insight into the impact of the Regulation¹. In formulating our responses, we held roundtable discussions including members of our Compliance, Customer Service, Marketing, Audit and Legal departments. We hope this feedback will be of value as you perform your review of Regulation Z.

Q2. We suggest that a hybrid “disclosure box/table of contents” be devised and placed at the beginning of an account agreement. The disclosure box would contain what we identified as the most important contractual information in the agreement from the consumer’s perspective. In those situations where an explanation of a specific term would be too voluminous for the disclosure box, then a reference would be made to the

¹ We have not responded to questions 1, 19, 20, 38 – 41, 44, 45, 52, 55, 57 and 58.

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section of the agreement that explains the term. We further suggest that except for obligatory contractual language at the beginning of the agreement, the terms specifically identified in the hybrid disclosure box/table of contents appear first in the account agreement.

The account agreement is only sent to those applicants who have been approved for a credit account; it is not a sales tool. As such, a minimum type-size is unnecessary for the hybrid disclosure box/table of contents as this is mainly a reference document. If anything, the font size of the text in the hybrid disclosure box/table of contents should be no less than 8 point.

The following is a sample of our suggested hybrid disclosure box/table of contents for the account agreement:

ANNUAL PERCENTAGE RATE	XX.X%
OTHER APRs	Late Payment APR XX.X%* Cash Advance APR XX.X%
MINIMUM FINANCE CHARGE	\$X.00
GRACE PERIOD FOR REPAYMENT OF THE BALANCE	25 Days
MINIMUM PAYMENT CALCULATION	See Section A
TRANSACTION FEE FOR INTERNATIONAL PURCHASES	1% of transaction in U.S. Dollars
LATE PAYMENT FEE	\$XX.00
OTHER FEES	See Section B

Method for computing the balance for purchases: Average daily balance (including new purchases), see Section C

* If at any time you fail to pay the Minimum Payment Due by the Payment Due Date for two consecutive billing cycles or twice in any six month period, the APR will increase to XX.X%.

Q3: Lenders typically have numbered sections in their account agreements as well as bolded section headers at the beginning of each section. We believe that adding a comprehensive table of contents for the document is redundant to the section headers and would not add value to the account agreement. These documents often include a corporate privacy policy (as mandated by GLBA) as well as terms for a debt cancellation

product. The document becomes increasingly overwhelming to the average consumer as it increases in size. It also becomes increasingly expensive for the lender to produce and deliver it. We believe our hybrid disclosure box/table of contents used in conjunction with the existing section headers benefits the consumer without adding significant bulk to the account agreement.

Q4: We do not believe it is desirable to create requirements regarding grace periods and payment due dates on periodic statements. We are not aware of consumer confusion regarding this topic. In your example, it could be argued that the customer actually benefits from the discrepancy between the published payment due date and the actual grace period. The earlier payment due date may reduce the chance that the customer will make a payment late and incur additional finance charges and fees, particularly when mail delivery can be impacted by many external factors such as the weather.

We discourage any requirement to group disclosures or require that they appear on the same page. Since all the required data is present on the periodic statement, such requirements have little benefit to a consumer. However, they would create a significant hardship and expense to lenders in the layout, modification and printing of periodic statements.

Q5: We recommend no modification to the manner in which fees are presented on a periodic statement. Currently, fees appear in the transaction detail on the date that the fee was applied. If the fee is a Finance Charge, it is labeled as such. Grouping them, for example, at the end of the transaction detail would be contrary to another objective of Regulation Z concerning the periodic statement, which is that the consumer should be able to validate their periodic finance charge for any billing period. If the fees are removed from the transaction detail or grouped, for example, at the bottom of the detail, it would be extremely complicated for consumers to calculate their average daily balance. The average daily balance is often used in calculating periodic finance charges on open-ended accounts.

Similarly, if just a sum of each type of fee were provided then it would be difficult for a consumer to verify that the correct fee amount was charged. For example, a cash advance fee is often determined by calculating a percentage of the amount advanced. Since this is not a consistent figure, if a consumer made three cash advances in the billing period, it would be more difficult for them to ascertain that the correct fee was charged. We are not aware of consumer dissatisfaction regarding this topic.

Q6: We believe that the only way to simplify a periodic statement would be to eliminate some of the required disclosures. Barring that event, it is to the issuer's advantage to make their periodic statement as clear as possible for the consumer. The periodic statement is the tool that lenders use to inform consumers of activity on their account and payments that are required. No issuer would purposely make a statement unnecessarily

complicated or confusing because such an action would decrease payment rates and increase collection and customer service expenses. We do not believe there is a need for regulation in this area.

Q7: Our only suggestion is to remove the “Balance Computation Method” (in its current form) from inside the Schumer Box and move it to the area below the Schumer Box. (See our response to question 29 regarding possible modifications for this disclosure.) Our experience indicates that average consumers do not understand this information or the implication of this information on a credit account. In its current format, the Balance Computation Method adds clutter to the Schumer Box and detracts from other credit terms that are more meaningful to the average consumer.

Q8: We believe that certain fees, including balance transfer fees and cash advance fees, are extremely relevant to applicants given the manner in which open-ended credit accounts are currently used by consumers. As such, we believe that these fees should appear inside the Schumer Box. We encourage the use of one section for all required fee disclosures rather than separate boxes for each fee. However, the title that accompanies such a disclosure should not imply that the Schumer Box contains an all-inclusive list of fees that apply to the account. Some fees, such as fees for discretionary services, are not and should not be disclosed in the Schumer Box.

Q9: Lenders need some flexibility in this area so that they may format their materials in ways that make sense in relation to their terms. We are not aware of customer confusion or the dissatisfaction of regulators, and we do not believe there is a need for regulation in this area.

Q10: Many lenders use both the Long-Form Billing-Error Rights Model Form and the Alternative Billing-Error Rights Model Form. The Alternative Form often appears on the back of periodic statements where we believe it would more likely be referenced by a consumer. We suggest that the same information appear in both disclosures because, for example, there are differences in the “Special Rule” sections that may be confusing for consumers.

Q11: We suggest that model language be developed in two situations and we will discuss these in greater detail later in this document. However, we suggest that model language be proposed to explain the historic APR. We also suggest that model language be developed to explain payment allocation methods. Such language would appear on the back of the periodic statement.

Q12: Our experience indicates that bolding text or capitalizing all letters should be used discriminately. If too much information is required in these formats then it loses all effectiveness. We recommend that the Board allow lenders to use formatting conventions effectively in the context of their account agreements.

Regulatory auditors could be asked to review the effectiveness of formatting conventions. Bold headers are very effective in an account agreement. Differentiation in style of font (italicizing, for example) can also be very effective. We suggest that the Board continue to indicate when a disclosure should be “clear and conspicuous,” but we believe it is unnecessary to define what constitutes “clear and conspicuous” as it would differ for each type of disclosure.

Q13: Our experience indicates that consumers do not understand the concept of fees as a Finance Charge. Consumers do not understand why a certain fee is considered a Finance Charge while others are not, and they do not understand that the Federal government dictates this decision as opposed to the whimsy of a lender. We suspect that the consumer would most benefit from an all or nothing stance on whether a fee qualifies as a Finance Charge.

The impact of penalty rates on credit accounts is diminished from a consumer’s viewpoint when the lender is required to disclose an astronomical historic APR. For example, if a consumer’s periodic rate is increased from 7.24% to 29.24%, the importance of that change is muted when the statement also includes a historic APR of 150% due to cash advance fees. Activation of a penalty rate, in itself, does not increase the historic APR above the periodic rate for the account.

We suggest an extremely concise and easily understandable definition for when a fee is considered a Finance Charge. For example, we propose that *only fees that are charged to all customers regardless of how they use the credit account would constitute a Finance Charge*. Thus, an application fee or an annual fee would be considered a Finance Charge. However, an overlimit fee, cash advance fee, international transaction fee or balance transfer fee which is assessed based on an individual consumer’s action or inaction would not constitute a Finance Charge.

Having a straightforward definition for which fees are considered Finance Charges would also be a significant benefit for lenders. It would eliminate much of the confusion associated with attempting to determine whether or not a certain fee constitutes a Finance Charge, and it should reduce the chance that one lender would consider a particular fee a Finance Charge while another lender might not.

Q14: In our experience, while some fees are disclosed in the Schumer Box, all fees are disclosed in the account agreement. If an existing fee is being changed or a new fee is being imposed on the account, the consumer received a written change-in-terms notice prior to the change. Some convenience services, such as pay-by-phone services, have fees that may be disclosed verbally if and when the service is requested. Such services are not mandatory to the use of the credit account, and the consumer elects to use these services and incur the disclosed fee.

Q15: Our experience indicates that consumers believe a Finance Charge is only the amount applicable to the periodic rate on their account. When a historical APR on an account is higher than the periodic APR for that account, we regularly get telephone calls from panicked and confused customers claiming that we have violated state usury rate laws. The consumers believe everything else on their account is either a fee or a charge.

Q16: Please review our suggestion regarding fees as Finance Charges in our response to question 13.

Whether or not a fee is considered a Finance Charge under Regulation Z does not help a consumer compare the cost of different plans. The disclosures are only valuable to consumers to the extent that there is significant consistency among lenders.

Q17: We again direct the Board to our suggestion regarding fees as Finance Charges in our response to question 13.

As a group of insiders, we had a difficult time interpreting what the Board was suggesting in this question. As such, we believe that it does not benefit the consumer to create another concept that is so convoluted that even lenders cannot determine what is and is not a Finance Charge.

Q18: We suggest that all fees applied due to the use of a credit account, as well as any late payment fee, should be disclosed in the Schumer Box. The current interpretation forces lenders to be judgmental on what qualifies as “significant” so there may not be consistent disclosures for a particular product among various lenders. Consistent disclosures are necessary for beneficial credit shopping. Furthermore, this suggestion may require a lender to monitor their portfolio to determine whether a particular fee meets the threshold to be included as an “other fee.” Fees could potentially move in and out of that definition.

Q21: We strongly oppose such a concept in connection with over-the-credit-limit fees. During any particular billing cycle, the balance on a consumer’s account may move above and below the credit limit any number of times based on their usage of the account. If a fee were applied in that situation, would it be considered a Finance Charge?

We recommend that overlimit amounts be added to the minimum payment due calculation. We recognize that the consumer may not be able to afford what may be a rather large payment and may then be subject to ongoing late fees. However, we feel it is important that the consumer remain with the credit limit assigned by the lender. Credit counseling services are available to help legitimate consumers who are having a financial crisis.

Consumers should accept some responsibility for their usage of the account. The consumer has it within their control not to exceed their credit limit. We would support a rule that prohibited the imposition of an overlimit fee in the situation where the credit limit was exceeded due to Finance Charges and fees.

Q22: The Board correctly indicated that in some circumstances it is not technically feasible for a lender to monitor whether a particular purchase would exceed a credit limit. In fact, in some circumstances, the merchant does not even go to the lender to determine whether credit is available. Authorization practices are extremely complicated concepts and would not easily be explained to the average consumer. In addition, this type of information could compromise the safety and soundness of a lender if readily available to a fraudster. Whether or not the lender is authorizing a transaction, the consumer has some responsibility for staying within their disclosed credit limit.

We believe that in the industry it is not traditionally disclosed whether an over-the-credit-limit fee is triggered at the time a customer exceeds their credit limit or at the end of a billing period if their balance exceeds their credit limit at that time. The regulations should not mandate disclosures that encourage consumers to violate the terms of their account agreement. It is the consumer's responsibility to know their credit limit and to have some sense of whether they are making purchases in excess of that credit limit. Requiring additional disclosures about when an over-the-credit-limit fee is charged may encourage some consumers to violate their account agreement, knowing that they have the opportunity to cure the violation prior to the implementation of the fee.

Q23: We suspect that the underlying issue is whether the historical APR has ever been an effective tool for the consumer. If a fee that has been designated as a Finance Charge inflates a consumer's historic APR, and if they actually notice the inflated historic APR, our experience is that they regularly call a customer service associate to complain. A customer service associate must then do their best to educate the consumer on the concept of the historic APR. This is not an easy or fruitful conversation. We have had consumers stop using a credit account because they incorrectly believe that the historic APR indicates the periodic rate being charged on their account. We have not performed any studies on this topic. However, we strongly believe that it is not useful to consumers to include various fees in the historic APR. Please refer to our suggestion in question 13.

Q24: We recommend that the Board create a uniform title for the historic APR on the periodic statement and that this uniform title be relatively descriptive. In addition, we suggest that the Board create model language that explains the historic APR and why it may greatly exceed the periodic APR. This language would appear on the back of the periodic statement. We offer the following as a suggested title for the historic APR field on the periodic statement: Actual APR this cycle (See Back for Explanation): XX.XX%.

Q25: Please refer to our response to question five concerning the importance of maintaining the disclosure of fees in their current format on the periodic statement. Given the existing format of periodic statements, it is not difficult for a consumer to group similar fees within a billing cycle. Calculating fees charged on an annual basis is also a simple process if the consumer retains their periodic statements. Mandating such disclosures would create a significant expense for lenders (programming, statement redesign, extra statement pages/postage) for the benefit of the few consumers who are interested and fail to take such an initiative themselves. Lenders have already provided consumers with all the information necessary to make these calculations. If accumulation data is really that important to the consumer, then they have all the necessary tools to make that calculation.

Q26: Our experience indicates that most lenders utilize the periodic statement to deliver change-in-terms notices to consumers. As such, most consumers receive closer to 30 days notice before the effective date of a change in interest rate. Consumers are given the opportunity to “opt out” of the change. If the consumer chooses to opt-out of the change in interest rate then their account is typically closed and they may continue to pay off their outstanding balance at the existing rate. We are not aware of customer confusion or dissatisfaction of regulators in this area.

Q27: We believe there is currently sufficient disclosure to the consumer regarding default rates. Information on default rates is available in both the Schumer Box (per the commentary to Section 226.5a(b)(1), comment 7) account agreement and the default rate appears on the periodic statement if it is triggered. It is our experience that consumers notice the implementation of a default rate on the periodic statement, because these consumers will call a customer service associate to plead for a rate reduction. The consumers are aware that they have not been making timely payments so they are not surprised that the default rate has been implemented; they are just unhappy with the results of their actions. If the regulatory agencies are receiving complaints from consumers, they should be mindful that these complaints are from consumers who do not make timely payments and that the default rate is part of their contract with the lender.

We are aware that some lenders may trigger a default rate on a consumer’s account based on a decrease in the consumer’s credit bureau score indicating an increased risk on the part of that consumer. We believe that in those situations, it is not unreasonable that the consumer receive some sort of notice that the default rate is being implemented.

Q28: The Board should be able to answer this question by creating a typical credit account scenario over a three-month (for example) period and calculate the Finance Charge in that scenario using each of the balance calculation methods described in Regulation Z.

Q29: We believe that the average consumer does not understand the various balance calculation methods or their impact on the cost of credit. Except for occasional reports from consumer advocates, we do not believe the balance calculation method is a mainstream concept. We also believe that this disclosure, in its current format, is of limited value to the consumer when shopping for credit. We suggest that the Board consider creating a rating system that would “grade” each balance calculation method based on its impact to Finance Charges.

In question 28, we suggested that the Board create a typical scenario to determine the impact of each balance calculation method. Based on the results on this exercise, the Board should be able to rank or grade the various methods. This rank or grade could then be included in the Schumer Box to help consumers understand the impact of a particular balance calculation method. For example, if the Finance charge calculation scenario indicated that in the same situation the Average Daily Balance (including new purchases) method resulted in \$5.00 in Finance Charges, but the Average Daily Balance (excluding new purchases) method resulted in \$4.00 of Finance Charges, the Average Daily Balance (excluding new purchases) would be rated A while the other is rated B.

Q30: We support this additional flexibility for issuers. The back of statements would benefit from some simplification. The quantity of Federal and State disclosures required on a periodic statement can be intimidating for the average consumer. In addition, we have suggested new language for the back of the periodic statement that would provide more benefit to the consumer than the existing disclosures regarding balance calculation methods (see our responses to questions 24 and 36). The tiny minority of consumers that potentially use these disclosures will still have access to them in the initial disclosure statement.

Q31: (1) The proposed bankruptcy legislation currently moving through Congress may make this a moot point. However, we do not support this type of disclosure. First, it would be very expensive for lenders to implement a disclosure that incorporated all the variables often existing in open-end credit accounts. Multiple rates, introductory rates, penalty rates, and the revolving nature of open-end credit make the accuracy of any such disclosure remarkably temporary. We believe that this proposal underestimates the capabilities of consumers. Consumers are able to see the impact of their payment on their outstanding balance and they have not been asking us to provide this type of information. If regulatory agencies and consumer advocates believe this information is so valuable to the consumer then they could make available a web-based calculator that would provide similar payoff information based on the particularities of a credit account as input by the consumer.

(2) Given the myriad of ways in which consumers use open-end revolving credit accounts, such a disclosure would have very little relevance to the average consumer. In addition, not all accounts have a credit limit.

Q32: This information is not readily available to us and we do not believe it is readily available to other lenders. To make such information readily available would require new systems and processes at significant expense. Lender would incur hardware, software, tech support, training, program maintenance, customer service support and communications expenses.

Q33: Our research indicates that from August 2004 through January 2005, only 1.45% of our active consumers paid only the minimum payment or less than the minimum payment. We interpret this to indicate that consumers are already aware of the impact of making only the minimum payment on their account.

Q34: In our experience, a common method of payment allocation is to apply the payments first to Finance Charges, then fees and then to the balance with the lowest APR on the account. This has an obvious impact on the cost of credit to the consumer in that the payment is not first being applied to the balance with the highest APR.

Q35: We believe that the payment allocation method is often disclosed, but we are unsure whether such disclosure reaches the degree of "typical." When disclosed, it most often appears in the account agreement and possibly on the back of the periodic statement.

Q36: Obviously, payment allocation information is useful to the consumer. While we disclose this information in our account agreement, our customer service associates still receive calls on this subject. We would support including this information on the back of the periodic statement. The cost of such a disclosure would not be significant if lenders are given a sufficient lead time to use existing supplies of pre-printed periodic statement stock. We suggest that the Board prepare model language that could be used by lenders.

Q37: We believe the existing tolerances in Regulation Z are sufficient. We support the Board expressly permitting an overstatement of the finance charges on open-end credit. First, no lender would purposely overstate a rate on a credit account. However, if it should happen, as long as the consumer was not actually charged excessive finance charges, only the lender is potentially harmed by the overstatement.

Q42: This is not relevant in the credit card industry. We believe all consumers receive the required disclosures without exception.

Q43: We suggest that the Board consider revising the claims and defenses provision of Regulation Z. It is our experience that lenders are unclear on how they are impacted by this provision and differ in how this provision should be implemented. Elaboration on this provision may also initiate some modification by the major credit card associations in their practices and clarify who bears the financial burden of this regulation: the issuer or

the merchant. It would also be beneficial to stipulate what sort of documentation or investigation must occur in this situation.

Additionally, the “not authorized” billing error section could use additional elaboration to differentiate it from Section 226.12(b), which does not have the billing-error time limitations. Perhaps the Board should consider whether friendly/family fraud should be subject to the billing-error notification time restrictions.

Q46: It is our belief that a consumer may not be pleased to receive an additional unsolicited card unless it were a replacement for their existing card. However, we support the Board loosening the restrictions on sending replacement cards. General purpose credit cards contain an expiration date and these cards may be replaced on a regular basis under Regulation Z. Private label or “store cards” generally do not contain an expiration date. However, these cards “wear out” over time. Regulation Z should be amended to permit a lender to issue replacement cards on some regular basis if the card does not contain an expiration date. This would allow lenders to determine whether it is more cost effective and better customer service to issue regular replacement plastics or wait until a customer is unable to use their card and calls to complain and request a new plastic.

Q47: It is our belief that cut-off hours vary greatly among lenders who disclose them. Cut-off hours are generally established based on when the payment processing center receives mail from the U.S. Postal Service.

Q48: It would be very complicated for a lender to set and disclose different cut-off times for each payment channel.

Q49: Our experience indicates that when disclosed, it is very clear. The day that the payment is due is always very clear and we believe that consumers should not be encouraged to wait until the final minutes of the due date to make their payment. Such actions result in processing errors that create additional expense for the lender and aggravation for the consumer who may need to have credit reporting data corrected.

Q50: It is quite likely that the operating hours of third-party processors differ from those of the lender. We treat the payment as received by us when our third-party processor receives it. We are not aware of lender confusion or the dissatisfaction of regulators in this area.

Q51: We are opposed to any such regulation in this area. Some difficulties with such a regulation would be determining when a payment is “received.” Would this require the U.S. Postal Service to segregate processed mail as of 11:59 pm? Is the payment received when it is available at the Post Office even though the lender picked up their mail 10

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minutes earlier? There are practical limitations that impact the necessity of a cut-off time.

Q53: We suggest that the de minimis exceptions not be adjusted.

Q54: No additional comments.

Q56: We suggest that the Board recommend to Congress that the historic APR be removed from the periodic statements of open-end credit accounts.

We hope that we have provided comments and suggestions that will assist your initial review of Regulation Z.

Sincerely,

Steven L. Franks

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