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
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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 1.6 million U.S. retail establishments, more than 24 million employees - about one in five American workers - and 2006 sales of $4.7 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.

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.

It is for this reason that NRF has been supportive of the Federal Reserve Board's ("the Board") 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. Accordingly, NRF appreciates the Board's efforts to focus attention on some of the elements of the credit card selection decision that are likely to be of particular concern to consumers.

Traditional Retail Credit versus Third Party Credit

The retail industry essentially invented what is known today as consumer credit; and, over time, 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 can look 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 continuing manageable payments for consumers.

Because retail credit is different from general purpose cards, we would like to narrow the focus of our comments to those proposals that would impact retailers and their proprietary cards most specifically.

Account-opening summary table

In section 226.5(a) the Board proposes creating new account opening tables that will be substantially similar to those included in direct-mail credit card applications and solicitations in order to give consumers a more reasonably understandable summary of important account terms. The new tables would include more information than those currently required at application. We in the retail industry are generally supportive of the inclusion of new tables both for their benefit to consumers and for the accompanying reduced compliance burden for creditors who today provide account-opening disclosures. (Under the new rule, creditors would be able to provide the new tables in lieu of those otherwise required at application.) Clearly the Board is sensitive to the repetitious and sometimes confusing materials that accompany account opening as evidenced by the lengthy study of this issue and use of consumer focus groups in this area. However, we would like to see some additional clarification (for consumers) that these disclosures should not be viewed as authoritative for the length of the loan. As the Board knows, a subsequent change-in-terms to the account may render certain disclosures irrelevant and, if the account has a variable APR, that information will be outdated as soon as the rate changes.

One additional area of concern that arises with the inclusion of the new tables is the accompanying requirement that the tables adhere to the new, higher "readily noticeable" standard. This includes printing the new account disclosures in a minimum 10-point font. While we agree with the Board that the tables should be printed in such a way as to highlight to consumers the importance and significance of the proposals, we urge the Board to move away from requiring a specific font size. Consistent with our comments on the new interagency model privacy form under the Gramm-Leach-Bliley Act, we believe that there should be flexibility to allow businesses to achieve the new "readily noticeable" standard while not unduly compromising the length or size of their existing disclosure forms. We also believe that font size alone does not determine whether or not a notice is "readily noticeable," as font size varies from style to style. In fact some font styles are more easily readable in lower font sizes when compared with others, such as "condensed" fonts. As you know, retailers commonly offer credit terms in the "take ones" offered at point of sale, keeping the documents a convenient size for customers to easily handle and then place in their pocket or purse is of critical importance for retailers.

Applications and solicitations and account-opening APR disclosures

The Board proposes to cover applications and solicitations under the enhanced section 226.5a; this would include applications and solicitations made available to the general pubic as well as "in-person" applications and solicitations such as when a retail employee, in the course of processing a sales transaction, invites the customer to apply for the retailer's credit card and the customer submits an application. In these instances, retailers may provide 226.5a disclosures in the form of a table (as discussed above) and those disclosures must be accurate when given or when printed. This includes the Annual Percentage Rate ("APR").

As you may know, many retailers have multiple credit rates (typically two), and while the Board gives guidance on how to handle instances where a rate cannot be determined at the time the disclosures are given because the rate depends on a *later* determination of the consumer's creditworthiness, it does not give adequate guidance on how a retailer should handle instances where the rate can be easily and quickly determined at point of sale. While the retailer can print *both* rates in the disclosure tables, the table would not be accurate once the consumer has made the application and been scored for credit worthiness. The pre-printed tables may not also be accurate if changes to the underlying index change lending rates (as also noted above), particularly if those rate cuts or increases happen at frequent intervals.

In these instances it would be helpful if the retailer would be allowed to print the *actual rate*, as of account opening, that applies to the customer on another document accompanying account opening. This could be on the customer's receipt, on the "temporary shopping pass" provided by the retailer so that the consumer can continue making purchases until their charge plate arrives, or any like document related to account opening provided at point of sale. This would clearly serve the intended purpose of the enhanced disclosures by giving clear and adequate notice of important credit terms before the consumer makes charges on the account. For programming purposes, it may not be practical for point of sale ("POS") equipment to print the APR in the requisite 16 or 18 point font required in the proposed rule. We would again ask for flexibility in this area, as we know the Board appreciates the special circumstances and limitations of POS transactions, and simply require that the APR is "readily noticeable" to the consumer. Perhaps the APR determination could be orally highlighted by the salesperson completing the transaction.

Minimum payment disclosures

The Board has proposed a very creative means of encouraging card issuers to attempt to provide real-time minimum payment disclosures on credit card statements. Allowing credit grantors to replace the warning and the toll-free phone number for a generic payment time calculation, with a customized calculation is a decided improvement.

Nevertheless, for those retail credit grantors who choose to take advantage of this option, as well as those who choose the alternative statement and telephone disclosures, some additional clarification would be helpful. As the Board is aware, it is not uncommon for retail credit grantors to provide consumers with access to multiple open-end credit lines accessible by a single card. For example, a general purpose department store might have a standard purchases line (for apparel and other everyday items) that requires a monthly minimum payment of 10% of the outstanding balance. However, when the customer makes bigger ticket durable goods purchases (such as carpeting or furniture) a secondary "major purchases" credit line on the card is activated. Purchases on that line might be subject to a four or five percent minimum monthly payment. In the not uncommon event of multiple purchases, the minimum monthly payment likely is at least the combination of the minimums on those two different lines.

It is not clear whether the proposal contemplates a separate minimum payment disclosure for each of these sub-accounts, and if so, what that disclosure would entail. Would separate minimum payment warnings and estimates of different duration need to be provided in connection with each sub-account? There would seem to be little advantage, and potential for significant clutter, associated with multiple warnings, distracting consumers from more relevant disclosures. On the other hand, as to the time periods disclosed on the statement, some credit grantors may want to disclose only the longest applicable period, while others may wish to specify the maximum time necessary to clear each available line. The former further "de-clutters" the statement. The latter is more detailed.

Within the terms of the card agreement, consumers can choose the amount they wish to pay each month. If the goal is to educate consumers at the point of payment as to the adverse consequences of choosing to pay the least amount each month, then granting credit grantors flexibility from among either of the options mentioned above would serve that purpose. Retailers seek clarification as to the Board's disclosure intentions.

In addition, because sub-accounts often carry differing terms, in the interest of balancing full disclosure against relative brevity, we would recommend that the statement listing of the fees and charges associated with those accounts be separately listed on the statement rather than being combined into a single total.

NRF also supports the Board's efforts to target the minimum payment disclosures to those consumers who are most likely to see them, by creating exceptions in those instances in which the consumers regularly pay more than the minimum payment. We would suggest that the Board also specifically relieve credit grantors of the need to make the disclosure in any situation in which, by paying the minimum amount, the customer will in fact pay the outstanding balance on the account.

Advertising

Another of the Board's proposals concerns minimum payment disclosures in advertising. In essence, the proposal would require that where a minimum payment is advertised in conjunction with the purchase of an item on an open-end credit plan the advertisements themselves should detail the number of months required to accomplish full payment as if the purchase were being financed under a closed-end installment loan. While well intentioned, this proposal has the effect of exacerbating the confounding of closed and open-end credit that the Board seeks to eradicate elsewhere in its discussion of "spurious" open-end credit grantors.

One of the assumptions underlying open-end credit is that consumers will be free to add on to their purchases under an existing line and/or that amount of "open to buy" on their credit line becomes available (replenished) as consumers pay down their loans. Thus, the time period required to repay the balance and the total actual payments in a true open-end credit environment is not comparable to that in closed-end disclosures. For example, a consumer may choose to purchase a washing machine advertised at only $29 per month under a retailer's open-end plan. He or she may sometime later, or on the same day, choose to purchase a stove also advertised at $29 per month. However, under the Board's proposal, even if each carried a hypothetical 18 months of payments, the combination of the two purchases under an open-end plan is highly unlikely to be either 18 months from the time of the first or second purchase, nor is it likely to be the 36 months total the Board's proposal might otherwise lead consumers to believe.

As the Board notes, it is the essence of open-end credit that consumers are expected to make regular use of their lines. It is the nature of virtually every open-end retail credit program with which NRF is familiar that payments on such combined purchases are not calculated in the linear fashion (i.e. as if they were a series of closed-end contracts) that the proposal seems to imply. Accordingly, the proposal is undesirable both because it does not provide consumers with a realistic assessment of the time required to complete minimum payments if the line is used in the manner the Board expects (even if they make minimum payments) and it further blurs the distinction between the two types of credit.

Telephone Purchases

We applaud the Board's proposal to create an exception to the timing rules to allow for the immediate extension of credit for telephone orders. As the Board notes, some retailers offer discounted purchase prices or promotional payment plans to consumers who finance the purchase by establishing a new open-end credit plan with the retailer. Under current timing rules, retailers must provide TILA account opening disclosures before the first transaction. This means that the retailer must delay the shipment of goods until a consumer has received the appropriate disclosures, creating a great deal of inconvenience for consumers who want to take advantage of favorable credit terms or need to obtain merchandise in an expedited fashion.

Under the proposed rule, retailers that establish an open-end plan in connection with a telephone purchase may provide account opening disclosures as soon as reasonable practicable *after* the first transaction if the retailer (1) permits the consumer to return any goods financed under the plan at the time the plan is opened and provides the consumer sufficient time to reject the plan and return the items free of cost after reviewing the written account opening disclosures; and (2) informs the consumer about the return policy as a part of the offer the finance the purchase.

We believe that there will be several unintended consequences of the first requirement listed above. First, the Board may be requiring retailers to offer new credit customers greater benefits than those enjoyed by *current* credit customers or users of general-purpose credit cards. That is, free shipping, returns and re-stocking for items that the consumer orders and then returns after they have decided not to take advantage of a credit offer. This could add up to hundreds of dollars in benefits for a new credit customer, particularly on large purchases such as electronics, appliances and furniture – items typically included in the special credit offers discussed above.

Further, how will a retailer know if the customer is returning the merchandise based on the rejection of credit terms, or for some other reason, such as the customer simply changed their mind? In those cases it would be unreasonable for the retailer to be required to absorb the costs of shipping and returns.

While we understand the Board's intent not to "stick" consumers with unexpected costs when credit terms turn out to be unacceptable, we believe that providing the requisite oral notice of important account terms and the company's return policy (and the costs included therein) should create adequate protections for the consumer. If the Board is not comfortable with this approach, the retailer should have the option of referring the customer to their website or to an e-mail notice (if the customer has an e-mail account) for the appropriate account disclosures if the customer consents to such notice. Upon review, if the customer does not cancel within a set period of time (e.g.

24-48 hours of account opening), then the customer should be responsible for shipping and return costs. This approach would not only give new telephone customers equal treatment to existing account holders, it will also put them on a more level playing field with consumers who apply for credit Online.

Of additional concern would be the retailer's ability to suppress a new credit account that has already been reported to a CRA. As you know, every retailer reports to the bureaus at different times of the month, depending on their billing cycles and other factors. In a worst case scenario, the consumer opens the credit account by phone on the 15^{th} of the month and the retailer reports new accounts on the 18^{th}. This gives little time for the customer to receive the required disclosures in the mail and to then determine to accept or reject the account before their credit reports would be impacted. While a retailer can go back to the CRA and attempt to suppress the account, this is not currently a very regular practice, and it is usually done under special circumstances such as when the consumer has been the victim of identity theft. This circumstance gives additional support to the proposal above that would allow for the consumer to obtain the initial disclosures orally or through electronic means and make a swifter decision as to whether or not they want to accept or reject the credit terms. In addition, it is important for the Board to remember that the consumer *always* has the option of closing the account at any time (as opposed to rejecting it) if he or she is not satisfied with the credit arrangement over time. Those accounts are reported to the CRAs as "closed at the customer's request."

Electronic applications and solicitations

As the Board may know, retailers are using a greater variety of tools at point of sale to facilitate the opening of a new credit account. This includes input devices such as PIN pads that allow consumers to complete credit applications in a paperless form, thus avoiding providing sensitive personally identifiable information ("PII") either orally or on paper. We respectfully ask for clarification from the Board that these types of devices not be considered "electronic applications" for purposed of this rule and risk being lumped in with Internet-based transactions. This is just a point of clarification, but one that is important to the retail industry as we deploy enhanced electronic devices at point of sale for customer convenience and security.

Conclusion

The Board has offered a number of thoughtful proposals for improving the ability of consumers to understand and competitively select appropriate credit products. Our comments have focused on the particular needs of some retail credit providers. We appreciate the Board's serious consideration and ask that it address the concepts raised in these comments.