macy's inc

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Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

Docket No. R-1314

August 1, 2008

To the Federal Reserve Board:

Thank you for the opportunity to respond to the proposal, Docket No. R-1314, intending to protect consumers against unfair or deceptive acts or practices with respect to consumer credit card accounts. These comments are provided on behalf of FDS Bank, a Federal Savings Bank located in Mason, Ohio and an issuer of proprietary retail credit cards for Macy's and Bloomingdale's.

This response letter will only comment on those portions of the proposal for which FDS Bank has previous experience or anticipates relevant future activity. FDS Bank has provided information requested in the notice where available and hopes this information will assist the Board as it considers final revisions to this proposal.

The Board proposes to modify the safe harbor available to creditors regarding when a creditor must mail or deliver an account statement to a consumer in order for the consumer to have sufficient time to make a payment on the account and avoid a late payment fee. The proposal would change the safe harbor from 14 to 21 days. Generally, it is to the creditor's benefit to mail monthly statements as early as possible. The credit card market is highly competitive and if a creditor was poorly servicing its customers by failing to send timely statements, consumers would exercise their right to seek out another lender. Our concern is that this proposal is too aggressive and sets a standard that creditors are unable to meet.

We would like to review this proposal based on our procedures and utilizing a 30-day billing cycle for this example. Our billing cycle closes on the payment due date. Our billing program runs two days after the close of the billing cycle. The two day delay allows purchases and payments received on the cycle close date to be applied to the account before the end of cycle reconciliation. Statement files are created as part of the billing program. These files may contain hundreds of thousands of statements to be printed. Separate statement files are created for customers who receive their statement electronically. Thus, on day 27 the statement files are sent to the print vendor. The quality assurance process begins at the same time that the files are sent to the print vendors. Given the size of the statement files, the printing process cannot be delayed while the file quality is reviewed. After the statements are printed they must also go through a sort process before they are delivered to the U.S. Postal Service. Typically, a 500,000 piece statement file would take three days to process.

This is where operational realities impact the statement preparation process. If the quality review indicates that some type of corruption occurred in the statement file, the printing process must be halted while the statement file is further reviewed. If the file is not salvageable then all the statements printed to that point must be destroyed and the billing program must be rerun to create a new statement file. Should this happen, the creditor would not be able to release statements within the 21 days in this proposal. If the creditor is unable to release statements within the safe harbor granted in Regulation Z, the creditor must hold finance charges and late fees for that cycle on the affected accounts. In addition, a customer service message must be delivered to the affected consumers notifying them of the late mailing and that finance charges and late fees will not apply for that cycle. Given the size of these statement files, the expense to the creditor is significant. There is also the possibility of mechanical problems with machinery used to prepare statements which can also delay statement processing.

We are also concerned that the Board is not giving sufficient credit to the U.S. Postal Service. This organization does an amazing job of quickly and efficiently delivering large volumes of mail. We believe that allotting seven days to deliver a statement would not be representative of the majority of statements delivered by the USPS.

We recommend that if the Board must increase the number of days in the safe harbor then they consider an increase to 18 days. This would increase the buffer for mail delivery for the customer and hopefully not establish an unattainable standard for financial institutions.

Regarding some of the requests for information on this topic: Each billing cycle, we average 12.5% of our active cardholders who receive an electronic statement. Of those receiving electronic statements, about half also receive a paper statement. Of the payments we receive, 45.19% are received in the mail, 26.97% are made at one of our stores and 27.84% are received electronically or are made over the phone. The Board inquired whether a rule should be adopted that payments received within a certain number of days after the due date will not be considered late. We believe that if the Board adopts a new standard for when a statement must be mailed then such a rule is unnecessary. Many lenders voluntarily maintain such a policy but we believe that the Board should not further compromise the contractual relationship between the lender and their customer. The Board also inquired whether they should adopt a rule where the lender must reverse a decision to treat a payment as late if it was mailed before the due date and what evidence of such mailing would be appropriate. The consumer has an obligation to post their payments with sufficient time allowed for delivery. The only type of evidence we might consider would be a registered mail receipt that was validated by the USPS a reasonable number of days prior to the due date. However, there is a notable expense associated with sending a payment registered mail as well as a mandatory visit to the post office. Suggesting that consumers absorb this additional expense and inconvenience for every bill they mail is unreasonable. It is also unreasonable that a lender be expected to label and store all the payment envelopes it receives and then, if necessary, attempt to decipher postmarks that can often be illegible. This would be an excessive burden on financial institutions to compensate for an extreme minority of consumers.

Regarding the Board's proposal on payment allocation, we encourage the Board to adopt a fourth option for payment allocation. We recommend that if the creditor allows the consumer to specify how to apply their payment then the creditor should be permitted to establish the payment allocation if the consumer fails to specify how they want their payment applied or if the consumer's directions and the payment amount do not balance. Offering this option places control of the payment allocation method with the consumer and also allows creditors not to change their payment allocation systems if the consumer should fail to specify the payment allocation. Such a "carrot" may create an incentive for creditors to consider processes necessary to permit consumer selected payment allocation. However, our experience with this process is entirely manual. An associate must key into our system the customer's payment allocation. Manual processes are inherently expensive and potentially more prone to error than automated systems. In addition, without this additional payment allocation option, we would seemingly be required to abandon our current process of allowing consumers to direct their payment allocation and install one of the methodologies proposed by the Board which may be less favorable for our customers.

Regarding the portion of the payment allocation proposal where a creditor may not apply excess payments to a deferred balance until balances earning interest are paid-in-full, the Board questioned whether such a policy would likely prevent the customer from paying off the deferred balance before the deferred period ended and finance charges were applied to the account back to the date of the purchase. If the creditor is not allowing the customer to specify their payment allocation, it seems the answer would depend on the customer's monthly balances in non-deferred account types and their ability to make large payments. If a customer typically revolves a non-deferred balance then it is likely that any excess payment they make would be applied to those balances and the consumer would be unable to pay down the deferred balance. If the creditor has to follow one of the proposed payment allocation methods, it is also unlikely that a consumer with non-deferred balances will be able to pay off the deferred balance before the end of the deferral period. Unless the consumer can afford to pay off their non-deferred balance in full and then make excess payments that will be applied to the deferred balance, they will not be able to enjoy the benefits offer by the deferred payment option.

Regarding the Board's proposal to prohibit changing the APR on existing balances through a change-in-terms notice, we request that the Board comment on how this proposal would interact with the payment allocation proposal. Assuming that a change-in-terms notice is used to increase the APR on an open-end credit account, if a customer has an outstanding balance at the "old" rate and a balance at the "new" rate, must excess payments first be applied to the balance at the "new" rate as opposed to the balance at the "old" rate? Shouldn't the creditor have the right to apply the payment to the older debt first? Also, the consumer has a right under Regulation Z, Section 226.12(c) to assert claims and defenses against a card issuer. However, that right only exists on the unpaid amount of the transaction in dispute. If payments are being applied to new transactions first, then this right may be extinguished on newer transactions sooner than it would if the creditor were applying a first-in/first-out payment application method. Thus, the consumer's right could be reduced or eliminated before a dispute related to the transaction reached the point where a consumer might want to exercise this right.

In addition, the following section is copied from our recent response to the Board regarding proposed modifications to Regulation Z. Since these comments are relevant to this proposal, they are being included here as well:

> The Board proposes, in connection with the UDAP proposal, that if a creditor intends to change the Annual Percentage Rate on an existing account, the change-in-terms notice provided to the consumer must identify the balances subject to the newly disclosed APR as well as the balances to which the current APR will continue to apply. We encourage the Board, as they work to sync up the various proposals, to provide guidance on how a penalty rate program interacts with this proposal. For example, a consumer has a $1000 balance on their account with an APR of 14.9%. The creditor sends a change-in-terms notice changing the APR on the account to 16.5%. After that terms change is in effect, the consumer charges an additional $500 to the account subject to the 16.5% APR. If the consumer then triggers the penalty rate of 21% on the account, we assume that the balances subject to each of the APRs could be adjusted to 21%. What happens if the consumer is then able to cure the penalty rate? Must the unpaid balances return to separate APRs? If payments were made on the balance while it was subject to the penalty APR, how should those payments be applied in order to determine what portion of the remaining balance goes to which APR? May the entire balance go to the new APR on the account (16.5%)? Our opinion is that if the consumer triggers a penalty APR, they should forfeit the benefit of having any of their balance return to the pre change-in-terms APR.
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> In addition, if a creditor intends to change the penalty rate on accounts from, for example, 21% to 23%; we request additional guidance on whether an existing balance subject to the 21% penalty rate must remain at 21% and then new purchases would be subject to the new penalty APR of 23%? With this example, guidance is also requested on what APR the balances are given should the customer cure whatever triggered their penalty rate.

Finally, regarding the Board's proposal concerning pre-screened offers of credit where the APR or credit limit are dependent on specific criteria relating to the consumer's creditworthiness: If the pre-screened solicitation does not market a specific credit limit and the APRs are not mentioned, except in the application disclosure box, we request guidance on where the proposed disclosure should be placed in such a situation. Would it be appropriate to place the disclosure in close proximity to the application disclosure box as opposed to the marketing portion of the solicitation?

In the retail environment and possibly in retail banking, it is possible to pre-screen an individual consumer while they are in the store/bank and then present a verbal offer for an open-ended credit product. We believe the APR and credit line are typically firm in verbal offers, so we encourage the Board to consider excluding this disclosure if the credit offer is made verbally.

We thank you again for the opportunity to comment on this proposal and we hope that our comments will be useful as you finalize regulations regarding unfair or deceptive acts or practices.

Sincerely,

Steven L. Franks