



*By electronic delivery*

November 20, 2009

Jennifer J. Johnson  
Secretary of the Board  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

**RE: Docket No. R-1370 – Regulation Z, Proposed Rule Implementing Provisions of the CARD Act**

Dear Ms. Johnson,

Best Buy Stores, L.P. (“Best Buy”), one of the largest specialty retailer of consumer electronics, home office products, entertainment software, appliances and related services and an industry leader with more than 40 years of history, respectfully submits these comments in response to the proposed rule published by the Federal Reserve Board (the “Board”) to amend Regulation Z, 12 C. F. R. Section 226, to implement the provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “CARD Act”) that are scheduled to become effective on February 22, 2010. The proposed rule was published in the *Federal Register* on October 21, 2009.

Best Buy appreciates the speed, thought and effort the Board invested in the proposed rule to provide clarity to the implementation of the CARD Act. We strongly support the principles of the proposed rule. We appreciate that the Board expressly recognized that properly disclosed deferred interest credit programs are permissible, as those programs are valuable to consumers and the economy. As we are sure the Board appreciates, the implementation of the CARD Act may present Best Buy and other retailers with operational challenges, particularly with respect to the enhanced disclosure requirements and the determination of the ability to pay at the point of sale. Best Buy is grateful for the opportunity to provide the Board with comments on the proposed rule, as we believe that there are certain areas where clarification will benefit creditors, retailers, and consumers alike, as well as facilitate compliance with the CARD Act. Best Buy respectfully submits the following comments for your consideration.

#### **In-Person Applications and Solicitations**

We strongly support the disclosure requirements contained in § 226.55 of the proposed rule. However, we ask the Board for clarification with respect to disclosure requirements related to variable-rate accounts for in-person applications and solicitations.

In accordance with § 226.5(a)(b)(1)(i), if the applicable periodic rate is a variable rate, the card issuer must disclose the fact that the rate may vary and how the rate is determined, identifying the type of index or the formula used in setting the rate. And, pursuant to §§ 226.5(a)(e)(1)(ii) and (iii), applications and solicitations that are made available to the general public may contain the “date the required disclosure information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date” and a “statement that the consumer should contact the

card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.”

In the retail environment, in-person applications and solicitations are often printed in large quantities and then distributed to the retail store(s), where they replace prior versions of those materials and are used until depletion or replacement. Due to the direct and indirect costs associated with printing, distributing, and replacing the in-person applications and solicitations as well as the sensitivity regarding the waste of unused materials, in-person applications and solicitations are typically updated and printed and then distributed to Best Buy stores approximately six times per year.

In a situation where in-person applications and solicitations comply with the proposed rule in that they, at minimum, (1) disclose the variable rate and how the rate is determined (for example, that the rate is 23.49% as of November 1, 2009, which is derived by summing 19.99% plus the Prime Rate as of that date), (2) disclose that the variable rate may have changed since that date, and (3) provide the consumer with contact information to enable him/her to inquire as to whether the variable rate has changed since that date, it is Best Buy’s interpretation of the proposed rule that we may continue our current rhythm for the replacement of in-person applications and solicitation materials. Best Buy does not interpret the proposed rule to suggest that we must ensure that in-person applications and solicitation materials are modified, re-printed, distributed, and replaced solely in response to changes to the indexed rate (i.e., an increase or decrease in the Prime Rate) used to set the relevant variable rate. However, in order to facilitate consistency and compliance, Best Buy respectfully urges the Board to clarify that retailers such as Best Buy (and their issuing banks) are not required to immediately effectuate the printing, distribution, and replacement of in-person applications and solicitation materials solely in response to changes to the Prime Rate (or other such disclosed variable rate indexes), so long as the existing in-person applications and solicitation materials have the required disclosures (including those referenced above) and are otherwise in compliance with law.

#### **Disclosures Prior to the Commencement of the Deferred Interest Period**

As previously stated, Best Buy greatly appreciates the Board’s statements that it does not believe that the CARD Act was intended to ban properly disclosed deferred interest programs and that card issuers may continue to offer such programs consistent with the requirements of the proposed rule. Consumers with Best Buy’s private label credit cards appreciate the ease and convenience of using their cards to avail themselves of deferred interest plans when making purchases within Best Buy’s retail channels. Some consumers use their Best Buy-branded private label cards to participate in multiple deferred interest plans over the course of weeks or months in conjunction with their multiple purchases. For example, Best Buy and many other retailers leverage “everyday plans” such as 6 months deferred interest for any purchase over specified dollar amounts.

As stated in the proposed rule, “... prior to the commencement of the deferred interest period, § 226.55(b)(1)(i) requires the card issuer to disclose the length of the period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the period.” It is Best Buy’s understanding that some parties have interpreted the proposed rule to mean that printed disclosures must be provided to consumers for each transaction involving a deferred interest plan associated with the use of a private label credit card. Given Best Buy’s loyal customer base and the benefits associated with use of the Best Buy-branded private label card, this interpretation would suggest that many of Best Buy’s customers would receive written disclosures in relation to each and every transaction at Best Buy’s stores.

Best Buy’s interpretation of § 226.55(b)(1)(i) is that written disclosures are not required for each and every transaction involving use of the Best Buy-branded private label card; to do so would be

excessive, costly, wasteful and, most importantly, would diminish the effectiveness of written disclosures provided to consumers. A comprehensive written disclosure to cardholders who avail themselves of everyday financing plans multiple times during the year would likely provide limited benefit to the consumer while adding significant cost and material waste to the retail point of sale environment. Best Buy believes that the Board's intent is addressed by interpreting the proposed rule to require that disclosures be provided to consumers prior to and in conjunction with credit card account opening, as well as periodically during the life of the account (such as periodic direct mail notification of the written disclosures referred to in § 226.55(b)(1)(i)), but that the proposed rule does not require excessive disclosures on a per transaction basis.

In order to facilitate compliance and consistency in practice, Best Buy respectfully urges the Board to clarify that the proposed rule does not require written disclosures to be provided to consumers each time they avail themselves of a deferred interest plan via the use of their private label card. As the Board recognizes, the necessary integration to provide a specific rate to a specific customer prior to the completion of a transaction is problematic, if not impossible, for many retailers. If, however, the Board does intend for the proposed rule to require written disclosures for each such transaction at or before the point of sale as described above, then Best Buy respectfully submits that the Board's guidance regarding these disclosures be modestly expanded to clarify the adequacy of a written disclosure provided on the sales receipt, which receipt contains a statement similar to the following: *"No interest if paid in full within 6 months. If the balance attributable to the promotional items is not paid in full within the promotional time frame, finance charges will be imposed from the date of purchase at a variable APR of up to [x]%"*. We would suggest this approach in addition to a more formal periodic disclosure that would fully comply with the disclosure required under § 226.55(b)(1)(i), requiring a specific rate. This approach would ensure a balance between transparent, simple, efficient, and effective disclosures during the check-out experience while also ensuring compliance with the proposed rule.

#### Availability of Instant Credit

Proposed § 226.51(a)(1) provides that the card issuer's consideration of the ability of the consumer to make the required minimum periodic payments must be based on the consumer's income or assets and the consumer's current obligations. In addition, § 226.51(a)(1) requires that the card issuers have reasonable policies and procedures in place to consider this information. We appreciate that the Board provided a safe harbor in § 226.51(a)(2)(ii) with respect to the reasonable method that card issuers could use to comply with the minimum payments requirement. Furthermore, we are thankful that the Board acknowledges that the requirement to verify income, assets or obligations of the consumer at the point of sale would restrict the consumers' ability to open a new credit card account at point of sale.

We urge the Board to further clarify that its intent is not to require retailers in an "instant credit" environment to collect or verify written documentation (i.e., pay stubs, bank statements, income tax returns, and the like) from consumers as part of the credit application process. We would like to draw the Board's attention to the operational and logistical difficulties that retailers will face to effect compliance with such a collection requirement as well as the potential negative impact that it may have on consumers. For example, retailers in today's instant credit environment utilize computer systems that automatically submit consumer-supplied data in order to effectuate an automated, nearly "instant," response in relation to the application for credit; the collection and manual submission of written documentation (such as paystubs or bank statements) from consumers would slow the application process and, presumably, the automated nature of the approval process. For further example, there is concern that consumers will hesitate to provide such sensitive and personal documentation (like pay stubs) to retail associates. Furthermore, because consumers rely upon instant credit decisions but generally do not have written documentation readily available to verify their income, assets, or obligations at point of sale, a

verification requirement would severely restrict the consumers' ability to instantly open a new credit card account at point of sale in order to make their desired purchases.

In order to ensure that the proposed rule does not inadvertently jeopardize a consumer's ability to participate in retail credit programs such as deferred interest programs, we request that the Board clarify that its intent is not to require retailers in an "instant credit" environment to collect or verify written documentation (i.e., pay stubs, bank statements, income tax returns, and the like) from consumers as part of the credit application process.

On behalf of Best Buy, I thank you again for this opportunity to comment on the Board's proposed rule implementing the CARD Act. If you have any questions concerning our comments, or if we may otherwise be of assistance in connection with this issue, please do not hesitate to contact me at [dan.olstad@bestbuy.com](mailto:dan.olstad@bestbuy.com).

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