macy's inc

**Law Department**

Steven L. Franks
Senior Counsel
9111 Duke Boulevard
Mason, Ohio 45040
Office: (513) 573-2743
Fax: (513) 573-7797
Email: steven.franks@macys.com

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To the Federal Reserve Board:

Thank you for the opportunity to respond to the proposed rule, Docket No. R-1370, amending Regulation Z, which implements the Truth in Lending Act, and the staff commentary to the regulation. These comments are on behalf of Macy's, Inc., one of the nation's premier retailers, with fiscal 2008 sales of $24.9 billion. The company operates 800 Macy's stores and 40 Bloomingdale's stores and employs a diverse workforce of 167,000 employees. These comments are also on behalf of FDS Bank, a Federal Savings Bank located in Mason, Ohio and an issuer of private label retail credit cards for Macy's and Bloomingdale's.

1.) The Credit CARD Act of 2009 (the "Act") requires that before a credit card account is opened or a credit line increased, the issuer must consider the ability of the consumer to make the required payments. This is a rather obvious requirement for any lender making a loan. Certainly, all lenders strive to determine that the recipient of a loan is able to pay it back. The difficult part of this item is the assumption on behalf of the

Board that the only way to consider someone's ability to repay a loan is to directly inquire about their income or other assets. Credit card issuers are adept at using statistical credit models in conjunction with credit bureau data to determine an applicant's ability to repay a loan. An applicant's credit history demonstrates a consumer's commitment to meeting their financial obligations. Their ability to properly budget for monthly expenses is indicative of their ability to make at least their minimum payments. This type of evaluation is more revealing to a credit card lender than asking an applicant for an unverified income amount. Obtaining a salary amount does little to demonstrate that an applicant is likely to make the minimum payments on a credit card loan.

The current state of the credit card industry is demonstrative of the industry's ongoing consideration of an applicant's ability to repay. The delinquency rate in the credit card industry correlates with national unemployment figures. Obviously, applicants who once had the ability to make their minimum payments are now in arrears due to the staggering number of jobs lost in this country during the past year. If the industry were making loans without regard of the applicant's ability to repay, the delinquency rate would far exceed the unemployment figures.

In addition, as widely reported in the media, credit card issuers have reacted to the ongoing recession by reducing credit limits and tightening the criteria necessary to qualify for a new account or increase the credit limit on an existing account. These practices are in response to the current economic environment and are appropriate practices to ensure the safety and soundness of the issuing bank. These represent additional measures taken by credit card issuers in response to the diminished ability of cardholders to repay their credit card loan.

Consumers are extremely concerned about the privacy of their personal information. Both the store associate and the applicant are placed in an uncomfortable position when discussing sensitive information with other customers standing in close proximity. Unlike an application for a more significant loan in a more secure setting (for example, a home or auto loan), we are dealing with a smaller line of credit and it would not be the practical expectation of any customer that a retailer would ask for income data. If this practice discourages the use of consumer credit, it will have a negative impact on retail sales and will result in a slower rate of recovery from the ongoing recession. It could ultimately result in lost jobs at Macy's and throughout the retail industry.

We recommend that the final regulation permit a credit card issuer to use all available tools to evaluate an applicant's ability to make minimum payments on a new credit card account or an increased credit limit on an existing credit account, but not require that the credit card issuer survey the applicant for specific income or asset data. The applicability of these same tools should carry over to the requirements of section 226.51(b)(1)(ii) where an applicant under the age of 21 who has submitted a written application for a credit card account must provide financial information indicating an independent ability to make the minimum payments on the proposed extension of credit in connection with the account. Credit card issuers should have the opportunity to use the same tools to analyze these applications.

2.) However, if the requirement in Section 226.51(a)(1) remains as proposed, we ask that the Board clarify that household income is an appropriate measure of the "consumer's income or assets." Without this clarification, a stay-at-home parent would be unable to qualify for a credit card account even though their spouse or partner has sufficient income to qualify for the account. This could also impact a married couple under the age of 21. While neither may have an individual income sufficient to independently qualify for a credit card account, their household income may be sufficient.

3.) The Act requires that excess payments may only be allocated to a deferred interest promotional balance during the last two months before the promotion ends. Payment allocation is an established concept under the Act. What issuers and consumers need in Regulation Z is the ability to move an allocated payment upon the consumer's request. Our customers are used to advising us how to apply their payments to the various balances on their credit account. The loss of authority over their own finances will be a difficult adjustment for some consumers. Credit card issuers need the authority to move an allocated payment to satisfy disgruntled consumers. Credit card lending is very much a customer service business and credit card issuers need the tools necessary to assist a disappointed consumer. Failure to grant issuers the authority to move an allocated payment could once again negatively impact the retail environment as a consumer may be unwilling to use promotional offers once they discover that they have no control over the repayment of this financing option.

Not all consumers possess the self-control to independently save the funds necessary to pay these promotional balances during the last two months of a promotion. For example, if a consumer makes a $1,000 purchase on a 12-month deferred interest promotional offer, the consumer might be required to make 10-monthly minimum payments of about $33 each for a total of $330. Thus, this consumer would need to have personally saved $670 to pay that balance in full over the final two months of the promotion. Many of our customers prefer to pay $85 a month on that deferred interest promotional offer to have it paid off within 12-months. With the new payment allocation rules, if the consumer intends to pay $85 toward the deferred interest balance, the extra $52 may be applied to an outstanding revolving balance. If that consumer calls our customer service department, we need the tools available to assist that disgruntled consumer rather than just saying, "Sorry, it's the law."

Giving the consumer the power to request that an allocated payment be moved to another balance still meets the goal of preventing card issuers from applying excess payments to promotional balances before balances subject to an interest charge. But it does give the consumer some power over their finances. The Act does not prohibit the Board from making such a regulation.

4.) Section 226.9(e) of Regulation Z has been modified by the Act to require a renewal notice to a consumer if there have been changes to the terms of the account but the consumer has not yet received a change-in-terms notice for their account. This renewal notice is in addition to the existing notice prior to charging an annual or other periodic fee to an account. We ask that the Board provide additional guidance in Regulation Z to define what constitutes the "renewal" of a credit card account that does not charge an annual or other periodic fee. Prior to this proposed revision, it was clear that a renewal notice was required prior to charging an annual or periodic fee. It is not clear what "renewal" means in the context of an account with no annual or periodic fee and credit cards with no expiration date.

5.) The Act added Section 172 to the Truth-in-Lending Act and required that promotional rates have a 6-month minimum term, "[S]ubject to such reasonable exceptions as the Board may establish, by rule." In the proposed rule, the Board has not utilized its ability to make any exceptions to this policy. We encourage the Board to consider making an exception for promotional rate plans of less than 6-months for the purchase of a particular item. In this situation, the consumer gets the full benefit of the promotional offering. For example, we offer a 3-month promotional plan from time-to-time for purchases at least $500 in certain departments in our stores. The 3-month promotion does not begin until the consumer has possession of the purchased item. This type of promotion is easily differentiated from an offer that might be made in conjunction with opening a new credit card account. A new account promotional offer might include a reduced APR from the account opening date for 3-months. In that situation, the shorter promotion offer works against a consumer because they may not get 3 full months of the promotional rate on all of their purchases, which would reduce the value of the offer. With our promotional plan, the consumer gets the full 3-month benefit.

Today, we might offer the 3-month promotion on purchases of at least $500 and a 6-month promotion on purchases of at least $750. If we are forced to eliminate the 3-month plan, it is possible that we will no longer be able to offer a promotional plan for lower priced purchases and consumers will lose out on the benefit of these plans. That could discourage some consumers from making these purchases which will once again depress retail sale figures. Certainly, Congress and the President did not intend the Act to eliminate promotional offers where the consumer receives the full benefit of their bargain.

6.) Section 226.7(b)(12) outlines the requirements for the minimum payment warning on periodic statements. In section 226.7(12)(i)(B), if the repayment estimate in the minimum payment disclosure is less than 2 years then the time period must be disclosed in months. If the estimate is 2 years or more, the estimate would be rounded to the nearest whole year. Following this requirement, if the minimum payment would take from 3 years 1 month to 3 years 5 months, issuers would be required to indicate that it would take 3 years to pay the balance in full if making only the minimum payment. However, the 36-month repayment disclosure would indicate that making a larger payment than the minimum payment due would result in paying off the balance in 36-months. This would confuse the consumer and negate the benefit of the disclosure for these customers. We recommend that the minimum payment notice be disclosed in months if the repayment estimate is less than 4 years. This would eliminate the confusing overlap.

7.) The Board requested comment on whether a uniform implementation date of February 22, 2010 for all the regulation would ease the compliance burden associated with implementing the various revisions to Regulation Z. We discourage the Board from changing the implementation date of the sections of Regulation Z not impacted by the Act. Credit issuers have used these dates as they scramble to meet the compliance dates as we understand them today. Comments on this proposal are not due until November 20, 2009 and we do not anticipate a final rule from the Board until December 2009. Learning in December of a new February compliance date will not give issuers sufficient time to complete modifications that are currently not required until July 1, 2010.

8.) We ask the Board to provide detailed guidance regarding transition to the new rules. For example, we currently offer a 3-month promotional plan. While we intend to stop offering this plan before February 22, 2010 (unless the Board utilizes its exception power to permit this type of offer) it's probable that some customers will still be awaiting delivery of their purchases charged to this promotional plan. The promotional period does not begin until the merchandise is delivered. Thus, these exceptions will not begin the 3-month promotional period until after February 22, 2010. In addition, some customers will have outstanding balances subject to the 3-month promotional plan that will expire after February 22, 2010. We would appreciate clarification that the intent of this new prohibition on promotional offers of less than 6-months is not to penalize those consumers that benefited from this type of offer prior to the implementation date of the regulation. We ask the Board to carefully consider whether transition guidance is justified in other sections of Regulation Z.

9.) Section 226.9(c)(2)(v)(B) outlines the written disclosure that is required prior to commencement of a promotional period in order to increase the APR on that balance upon expiration of the promotion. We ask the Board to consider granting a waiver of the E-Sign disclosures for a merchant providing that disclosure electronically during checkout for an online purchase. The Board has exercised its authority to exempt other disclosures from the E-Sign requirements and this is the same type of disclosure that merited exemption in other sections of Regulation Z.

10.) In Section 226.9(g)(3)(B)(2), the Board indicates that if a consumer triggers a penalty APR and then make six consecutive required minimum periodic payments immediately after triggering the penalty APR then the penalty APR will cease to apply. We request clarification regarding the application of this requirement to consumers with balances already subject to a penalty APR on February 22, 2010. Will this requirement only apply to consumers who trigger a penalty APR on or after February 22, 2010 or does it in some way apply to consumers who are subject to a penalty APR prior to February 22, 2010. If this requirement applies to balances subject to a penalty APR prior to February 22, 2010, please provide details of how a creditor should apply this requirement to these balances.

11.) In Section 226.9(c)(v)(D), the Board provides an exception to increasing an APR on an existing balance upon the consumer's completion, or failure to complete, a workout or temporary hardship arrangement. This exception applies if the creditor provides a written disclosure to the consumer prior to commencement of the workout or temporary hardship arrangement. We ask that the Board reconsider requiring this written disclosure prior to commencement of the arrangement. Consumer's who approach us for a workout or temporary hardship arrangement do so because their immediate circumstances are making it difficult for them to meet their financial obligations. These consumers are in desperate need of our assistance. The consequence of this provision is that a consumer must wait an additional period of time until a written disclosure can be delivered before receiving the benefits of a workout or temporary hardship arrangement. This will prolong their anxiety and cause unnecessary frustration with their creditor. We encourage the Board to permit verbal disclosure of this information prior to commencement of the arrangement and a subsequent written notice sent within a reasonable period. This will allow the consumer to immediately benefit from the arrangement. In addition, it creates a linear procedure for the creditor and reduces opportunities for error by a creditor who must wait to apply an arrangement to an account until after the written notice has been delivered. In addition, we request the Board provide transitional guidance regarding balances subject to a workout or temporary hardship arrangement prior to February 22, 2010 that will not expire until after February 22, 2010. We anticipate that the Board intended to permit the exception in these situations but we would appreciate clarification in the final rule.

12.) In section 226.58, the Board provides requirements for posting credit card agreements as required by the Act. However, in section 226.58(b)(4)(ii) the Board indicates that as part of the credit card agreement, the issuer must also post the credit limit. Typically, the amount of the credit limit is not part of the contractual agreement between the issuer and the consumer. The credit limit is a relatively fluid amount. Historically, it has been increased or decreased by the card issuer and/or upon request of the consumer. Since credit card agreements typically do not contain individual credit limits (or ranges of credit limits for new accounts) it will systemically be very difficult to connect these disparate items to comply with this regulation. Since the Act only requires posting of credit card agreements and specific credit limits are not part of the credit card agreement, and since Regulation Z does not otherwise require disclosure of the credit limit, we ask the Board to consider removing this requirement.

13.) Finally, as a retailer, we offer "instant credit" to our customers and allow them to apply at the register. The Board acknowledged the "instant credit" concept by allowing an issuer to use the Account Opening Disclosure Box on a credit application in place of the Application Disclosure Box. Since the Account Opening Disclosure Box must be provided to the customer prior to the first transaction on the account, this allowed an issuer to provide "instant credit" without requiring that the consumer be given two disclosure boxes that are substantially the same.

However, a significant difference exists between the two disclosure boxes relating to the accuracy of a variable rate. Under the current rules, a variable rate listed in an Application Disclosure Box is considered accurate if it was in effect within 30 days of printing the application. A variable rate listed in an Account Opening Disclosure Box is considered accurate if it was in effect within 30 days of providing the disclosure. If an issuer with a variable rate product wishes to take advantage of the opportunity to use the Account Opening Disclosure Box on their applications, which means the issuer would have to destroy and replace applications every time the index tied to their variable rate changes. I believe the Federal Open Market Committee meets on a monthly basis. If the Committee changed the federal funds rate every month and an issuer recalculated their variable rate monthly, then by the time an issuer supplied new applications displaying the current variable rate, they would have to destroy and reprint those applications.

We encourage the Board to weigh the value of providing the variable rate in effect at a particular moment to the environmental impact of destroying and reprinting credit applications. Consider just Macy's, Inc. with 800 Macy's stores and 40 Bloomingdale's stores throughout the country. Assume that applications are displayed in 20 locations throughout a store (probably a conservative number). That means that a supply of applications must be printed for 16,800 display stands. If only 50 applications were stocked in each display stand, that would equal 840,000 applications. These are extremely conservative numbers. For Macy's alone, we typically print 6,000,000 applications at a time and anticipate that supply would last 4 to 5 months. Now, consider all the retailers and banks that offer instant credit and face this same situation. Mandating such a widespread destruction of unused documents is counter to any reasonable "green" policy. Given the attention to the environment demonstrated by the current administration as well as global attention on this topic, we encourage the Board to reconsider this policy that will result in widespread waste of natural resources.

Again, we thank the Board for the opportunity to comment on the proposed rule and we appreciate your review of our comments.

Sincerely,

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| Steven Franks<br>Senior Counsel, Macy's, Inc. | Michael Gatio<br>President, Macy's Credit and Customer Services | Teresa Huxel<br>President, FDS Bank |