



November 20, 2009

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

Re: Regulation Z; Docket No. R-1370  
Proposed Rule: Implementation of the Credit Card Act

Dear Ms. Johnson:

Bill Me Later, Inc. (BMLI), a wholly-owned subsidiary of PayPal, Inc., respectfully submits the following comments on the Federal Reserve Board's proposed changes to Regulation Z, implementing the requirements of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Act").

BMLI operates the Bill Me Later ("BML") payment and line of credit system. The BML payment and line of credit system enables consumers to make purchases of goods and services online, using an open-end line of credit (not home-secured), provided by the issuer. A BML account may be opened by the consumer online in "real time" and may be used by the consumer to make a purchase at the time of account opening.

**1. BMLI requests that section 226.55(a) and/or the Commentary to that section clarify that the general rule does not apply to deferred interest arrangements; in the alternative, BMLI requests that section 226.55(b)(1) and/or the Commentary to that section clarify that the six-month minimum term for the temporary rate exception does not apply to deferred interest arrangements.**

The Act prohibits card issuers from increasing a promotional annual percentage rate before the promotional rate has been in effect for six months; the section directs the Board to define what is included within the term "promotional rate" and to establish reasonable exceptions. It appears that Congress added this section to prevent credit card companies from misleading customers with short-term "teaser rates." We do not believe, however, that Congress intended this limitation to be applied to short-term, deferred interest arrangements that many consumers find to be extremely beneficial.

**A. A deferred interest feature does not increase an annual percentage rate.**

Section 101(b) of the Act prohibits card issuers from increasing the rate on a consumer account, unless permitted by one of the exceptions. Section 226.55(a) of the proposed regulation implements section 101(b) and states the general rule that a card issuer may not increase the annual percentage rate on a consumer credit card account (not home-secured), except as permitted by one of the exceptions in section 226.55(b). A deferred interest feature does not increase the applicable rate that has been disclosed, and should not be subject to the general rule stated in section 101(b) of the Act or section 226.55(a) of the proposed regulation.

Deferred interest credit card transactions allow consumers to make purchases and to avoid interest charges if the purchases balance is paid in full by a certain date (called the "expiration date"). [Commentary paragraph 7(b)-1.] There is no increase in the rate. A deferred interest transaction is subject to the same rate as applies to other purchase transactions, if the balance is not paid in full by the expiration date. The deferred interest feature means that the rate will not be imposed or will be waived if the balance is paid in full by the expiration date. The proposed regulation makes it clear that the interest waiver feature does not make the deferred interest program subject to a temporary or introductory rate of 0% during the deferred period. For example, the card issuer may not disclose a temporary or promotional rate of 0% on the application and

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solicitation disclosure table or account opening table for a deferred interest offer. [Commentary paragraph 5a(b)(1)-9.] The card issuer may not disclose a temporary or promotional rate of 0% for deferred interest transactions on monthly billing statements, but must disclose the rate that applies assuming that the balance is not paid in full by the expiration date. [Commentary paragraph 7(b)-1(i).]

Since the rate on a deferred interest transaction is not increased, it is not subject to section 101(b) of the Act or section 226.55(a) of the proposed regulation.

**B. A deferred interest feature is not a temporary rate.**

In the alternative, a deferred interest arrangement should not be subject to the six month minimum term requirement in section 101(d) of the Act or section 226.55(b)(1) of the proposed regulation..

Section 101(b) of the Act allows a temporary, promotional rate to be increased, if certain disclosures are made and conditions met. Section 101(d) of the Act prohibits card issuers from increasing a promotional annual percentage rate before the promotional rate has been in effect for six months. Section 226.55(b)(1) of the proposed regulation implements sections 101(b) and 101(d); the proposed regulation uses the term “temporary rate” rather than “promotional rate,” but does not define the term.<sup>1</sup> Section 226.55(b)(1) states an exception to the general rule in section 226.55(a) for temporary rates, and allows the card issuer to increase a temporary rate after six months or longer, subject to the conditions stated in that section.

The commentary at paragraph 51(b)(1)-3 states that deferred interest and similar promotional programs are covered by the general prohibition on increasing rates in section 226.55, but are also covered by the exception to the rule in section 226.55(b)(1). The six month limitation should not apply to deferred interest transactions.

As stated above, deferred interest credit card transactions allow consumers to make purchases and to avoid interest charges if the purchases balance is paid in full by a certain date (called the “expiration date”). [Commentary paragraph 7(b)-1.] There is no temporary or promotional rate. A deferred interest transaction is subject to the same rate as applies to other purchase transactions, if the balance is not paid in full by the expiration date. The deferred interest feature means that the rate will not be imposed or will be waived if the balance is paid in full by the expiration date. The proposed regulation makes it clear that the interest waiver feature does not make the deferred interest program subject to a temporary or introductory rate of 0% during the deferred period. For example, the card issuer may not disclose a temporary or promotional rate of 0% on the application and solicitation disclosure table or account opening table for a deferred interest offer. [Commentary paragraph 5a(b)(1)-9.] The card issuer may not disclose a temporary or promotional rate of 0% for deferred interest transactions on monthly billing statements, but must disclose the rate that applies assuming that the balance is not paid in full by the expiration date. [Commentary paragraph 7(b)-1(i).]

**C. Deferred interest financing programs for terms less than six months benefit consumers, and are not misleading “teaser rates.”**

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<sup>1</sup> The term “promotional rate” is defined for other purposes in the January 2009 Regulation Z Rule in section 12 CFR 226.16(g)(2)(i), which states:

Promotional rate means any annual percentage rate applicable to one or more balances of transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transaction.

Deferred interest financing programs offered through the BML system have allowed over 200 retailers operating over 1,300 websites to offer consumers attractive financing options on the purchase of their products and services. These programs are beneficial to consumers because they allow consumers to purchase goods without finance charges if paid in full by the end of the promotional period.<sup>2</sup> These programs also are beneficial to merchants.<sup>3</sup> Traditionally, only large retailers able to attract private label card programs have been able to offer their customers financing programs of this type. The BML system is unique in that it allows any merchant accepting BML as a payment option to offer competitive deferred interest financing programs to their customers.

One of the primary deferred interest plans that BMLI offers to consumers is “No Payments for 90 Days.” The shorter duration of this plan allows us to make the plan generally available for purchases as low as \$250.<sup>4</sup> Customers can use this option to purchase items immediately and pay for them over time without interest, so long as the balance is paid before the end of 90 days. On average, approximately 75% of BML customers using the “No Payments for 90 Days” deferred interest plan pay off their balance in full prior to the promotion expiration date, thus the accountholder pays no interest on these balances. Having the ability to offer deferred interest arrangements of less than six months is critical not only to our business but also fundamental to our retail merchant partners.<sup>5</sup> It also empowers consumers to make financing choices that suit their needs.

**2. BMLI requests that section 226.51(a) and/or the Commentary to that section clarify that a credit card issuer complies with section 226.51(a) if it has policies and procedures in place to consider the consumer’s ability to make the required payments based on methods which reasonably establish, estimate or predict the consumer’s income or assets and current obligations. These could include, for example, information provided by the consumer, information in the card issuer’s records, information provided by consumer reporting agencies,<sup>6</sup> information from third parties such as employers, and information from third party databases which contain predictive profiles that need not contain individual-specific data about the particular consumer.<sup>7</sup>**

Section 109 of the Credit Card Act prohibits a card issuer from opening a consumer credit card account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of the account.<sup>8</sup> Proposed section 226.51(a) implements section 109 of the Credit Card Act by prohibiting a card issuer from opening a credit card account for a consumer under an open-end (not home-secured) credit plan, unless the card issuer considers the consumer’s ability to make the required minimum payments, based on the consumer’s income or assets and the consumer’s current obligations. The proposed section requires card issuers to have reasonable policies and procedures in place to consider this information. Proposed Commentary 51(a)-2 states that the card issuer complies with this rule if it bases its decision regarding the consumer’s ability to pay on the facts and circumstances known to the card issuer at the time the consumer applies to open the account. Neither the proposed section 226.51(a) nor the proposed Commentary states that the information the

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<sup>2</sup> When presented with the option to use the deferred interest option with an expiration date of 90 days or the regular BML product, approximately 40% of BML consumers choose the deferred interest option.

<sup>3</sup> The deferred interest feature offered by BMLI is paid for by the merchant; BMLI does not use “hair trigger” traps to charge the costs of the program to the consumer.

<sup>4</sup> This program is perfect, for example, for travel expenses for a person on an expense account; expenses may be charged and paid for within 90 days without interest, allowing time for reimbursement.

<sup>5</sup> The cost of the program to the merchant would be 50% higher, if the deferral period must be six months, which could make it uneconomical for the smaller purchases for which the program is designed. Many merchants would drop the program rather than paying the higher cost of offering the six months deferral.

<sup>6</sup> Some consumer reporting agencies offer tools with predictive analytics which estimate consumer’s income and debt to income ratios.

<sup>7</sup> Commentary paragraph 34(a)(4)(ii)(A)-4 states that information from databases that do not contain individual specific data may not be used to verify a consumer’s income, but verification is not required by section 226.51(a).

<sup>8</sup> Compare section 109 with section 301, which prohibits establishing an open-end account for a person under the age of 21, unless that person submits a written application that contains financial information indicating the means to repay the debt by the consumer or by a co-signer.

card issuer considers concerning income or assets must be provided by the consumer.<sup>9</sup> Section II.B of the Supplementary Information states that the card issuer may rely on information provided by the consumer or the consumer's credit report for information about the consumer's income or assets. 74 F.R. 54127. This statement should be included in paragraph 51(a)-5 of the Commentary. Section V. of the Supplementary Information, which is the Section-by-Section Analysis of the proposed regulation, states that a card issuer is not required to verify income or asset information on which it relies before opening an account, and no such requirement is contained in the proposed regulation or the Commentary. To the extent that third-party income estimators and income prediction models are shown to be as reliable in predicting consumer's incomes as the consumer's self-declared income without verification, it should be reasonable for card issuers to use such tools and models in the consideration of the consumer's ability to pay.

Section 109 of the Credit Card Act does not require or authorize the Board to prohibit card issuers from opening a credit card account unless the card issuer obtains income or asset information from the consumer. That section prohibits a card issuer from opening a consumer credit card account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of the account. Section 301 of the Credit Card Act prohibits a card issuer from opening a consumer credit card account<sup>10</sup> for a consumer under the age of 21 years, unless the consumer or a co-signer has submitted a written application that contains financial information indicating the means to repay the obligation. Section 109 applies to all consumers, including consumers under the age of 21 years; section 301 applies only to underage consumers. Section 301 clearly states that the card issuer's consideration of the underage consumer's ability to pay must be based, at least in part, on information provided by the consumer in a written application. No such requirement was included in section 109, indicating a clear intent that card issuers may rely on information provided by the consumer or on information from other sources with respect to the consumer's income and assets. To interpret section 109 to require card issuers to consider only income and asset information provided by the consumer would essentially cause section 109 to subsume section 301 and make section 301 mere surplusage, except for accounts that are not covered by section 109. The more reasonable interpretation is that card issuers may comply with the requirements of section 109 by relying on methods which reasonably establish, estimate or predict the consumer's income or assets and current obligations. These could include, for example, information provided by the consumer, information in the card issuer's records, information provided by consumer reporting agencies, information from third parties such as employers, and information from third party databases which contain predictive profiles that need not contain individual-specific data about the particular consumer.

Thank you for allowing us to share our comments regarding the implementation of the Credit Card Accountability Responsibility, and Disclosure (CARD) Act of 2009. We are confident that the Board will adopt a final rule in the next stages of rulemaking, which will allow creditors and companies such as ours to continue to offer low-cost financing options to our customers. As the Board works through this process, we would be pleased to provide any additional information and insight deemed relevant to assisting your work.

Sincerely,



Marsha Y. Reeves  
General Counsel  
Bill Me Later, Inc.

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<sup>9</sup> Compare proposed section 226.51(a) with proposed section 226.51(b), which applies to consumers who are under the age of 21 years. With respect to underage consumers, the creditor must require a written application with financial information that supports the ability to pay the account.

<sup>10</sup> Section 301 also applies to other open-end consumer credit plans.