

# FINGERHUT

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November 17, 2009

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
Twentieth Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

**Re: Docket No. R-1370 (Truth in Lending, Regulation Z)  
Proposed Revisions Published October 21, 2009**

Dear Ms. Johnson:

We are writing to provide comments on the Proposed Rule (the "Proposal") issued by the Board of Governors of the Federal Reserve System ("Board") to amend Regulation Z in order to implement certain provisions of the Credit CARD Act of 2009 (the "Act"), published at 74 Fed. Reg. 54124 (Oct. 21, 2009). We appreciate the opportunity to provide comments on the Proposal.

Fingerhut Direct Marketing, Inc. ("Fingerhut") is an online and catalog retailer of general merchandise featuring more than 300 national brands and nearly 30,000 items. The Fingerhut brand has been in existence for more than 50 years and has improved the lives of millions of customers through its commitment to high quality merchandise, convenient and flexible credit terms and extraordinary levels of customer service. Fingerhut is headquartered in Eden Prairie, Minnesota. As part of our business, we service a private-label consumer credit program offered by CIT Bank. That program offers our customers a convenient and competitively priced alternative to other forms of financing, for use in making purchases from Fingerhut.

We applaud the Board for providing much needed clarity on many of the provisions of the Act as part of the Proposal. On the whole, we believe that the Proposal is a reasonable approach to implementing the provisions of the Act, and improving the disclosures for consumer credit cardholders. We do, however, have several comments that we urge the Board to consider in developing a final rule.

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F I N G E R H U T   D I R E C T   M A R K E T I N G ,   I N C .

### **36-Month Repayment Disclosures**

The Board’s proposal to implement the Act’s requirement of providing a disclosure about the amount needed to pay an outstanding card balance in 36 months (*see* Proposal § 226.7(b)(12)(i)(F)(I); App. M1; TILA § 127(b)(11)(B)(iii)) inadvertently fails to account for card programs – like the Fingerhut credit program – that use graduated minimum payment amounts rather than percentage-based formulas. Indeed, because of the structure of the minimum payment schedule used in the Fingerhut program, the amount calculated by the Board’s proposed rule for the 36-month disclosure would be confusing, and possibly even misleading, to consumers.

***Fingerhut Program Minimum Payments.*** Unlike many credit card programs, the Fingerhut program does not use a “percentage of the outstanding balance” formula for determining a customer’s minimum payment. Instead, based on the cardholder’s balance, a minimum payment is assessed according to a graduated schedule. The schedule is as follows:

<b><u>Balance</u></b>	<b><u>Minimum Payment</u></b>
\$0 to \$5.98	100%
\$5.99 to \$44.99	\$5.99
\$45.00 to \$69.99	\$6.99
\$70.00 to \$99.99	\$7.99
\$100.00 to \$124.99	\$9.99
\$125.00 to \$199.99	\$13.99
\$200.00 to \$249.99	\$16.99
\$250.00 to \$299.99	\$19.99
\$300.00 to \$349.99	\$22.99
\$350.00 to \$449.99	\$28.99
\$450.00 to \$549.99	\$33.99
\$550.00 to \$799.99	\$46.99
\$800.00 to \$1,099.99	\$59.99
\$1,100.00 to \$1,399.99	\$69.99
\$1,400.00 and higher	5%

The Fingerhut program’s minimum payment requirements are higher than most general purpose credit cards. In all cases, the minimum payments are at least five percent (5%) of the account balance.

In many cases, the repayment period using this schedule is less than 42 months, and thus the 36-month repayment disclosure would not be required under the Proposal. (Proposal § 226.7(b)(12)(i)(F)). However, in other cases the repayment period will be longer, and thus the 36-month disclosure would be required under the Proposal.

***Requirements Under the Proposal.*** Under proposed Appendix M1, the 36-month disclosure is required to be based on the assumption that the cardholder pays the same amount each month during the 36-month period. It is also required to be based on a weighted average APR for the account, and various other assumptions outlined by the Board.

***Incompatibility With Fingerhut Program.*** The rules in Appendix M1 do not work well with the graduated payment schedule in the Fingerhut program. The key problem is that Appendix M1 assumes that there is a constant payment amount that the cardholder could pay in order to pay the balance in three years. However, the graduated payment schedule generally does not permit this. Rather, the schedule typically requires a larger payment in the initial month.

For example, consider a Fingerhut program account with a \$800 initial balance, at a 24.9% APR. Based on the graduated minimum payment formula, a \$59.99 minimum payment would be required in the first month, and the total number of months to pay off by paying only the minimum payment would be 54 (rounded to 5 years for disclosure purposes). Calculating a payment amount required to pay off the balance in 36 months would yield a result of \$31.77. However, that amount is less than the required minimum payment under the graduated minimum payment formula. If a cardholder paid only the amount provided in the disclosure, the cardholder would violate the terms of the agreement and incur a late fee by paying only that amount.

For some balances, the result of paying the required minimum payment is also a lower total cost of repayment than paying the amount that results in a 36-month repayment. A cardholder with the same \$800 balance as the prior example would have a contractual minimum payment of \$59.99 for the current month. The total cost of repayment, over a 54-month (5 year) period would be \$1,097.36. For a 36-month repayment, the payment amount would be \$31.77 (as noted above, less than the contractual payment). Moreover, the total cost of the 3-year repayment would be \$1,143.56 (excluding the fact that the customer would incur late fees by failing to pay the required minimum payment). Thus, the three-year repayment would cost the customer \$46.20 more than if the customer paid the minimum payment each month for 54 months.

The reason for this is that the Fingerhut program requires a fast pay-down of the balance during the first part of the repayment period. As a result, the balance is reduced more quickly under the Fingerhut program's graduated payment schedule than under a typical credit card repayment formula.

We do not believe that this result is unique to the Fingerhut program. Rather, it is the result of requiring a relatively high percentage of the balance for minimum payments, combined with a relatively small minimum dollar periodic payment. Under this type of schedule, the minimum payments in the initial months will be higher than those required for a strict 36-month repayment; however, the minimum payments will decline over time, and the repayment period would ultimately extend for more than 36 months if the cardholder continued to make only the (declining) minimum payments.

Given these facts, providing the 36-month repayment disclosure would be problematic for the Fingerhut program, and for other programs that similarly may use a graduated minimum payment structure. To disclose a 36-month repayment amount that is *less* than the required minimum payment would be confusing or even deceptive, as paying that amount would result in a late fee and might well increase the total cost of repayment. Moreover, trying to explain the inconsistency on the periodic statement would be difficult, and could create more confusion than it dispels.

***Proposed Solution.*** The Board has already recognized that an exception from the 36-month disclosure requirement was appropriate when the disclosure would be unhelpful or confusing to consumers. Thus, in § 226.7(b)(12)(i)(F), the Board adopted an exception under which the 36-month disclosure need not be given if the repayment period, for a consumer making minimum payments, would be disclosed as 3 years (or less). The exception appropriately recognizes that a 36-month disclosure could only serve to create confusion for a customer who would pay off the balance as quickly, or more quickly, by paying the minimum payment.

A similar exception should be adopted under which the 36-month disclosure is not required if the minimum payment amount on the account is greater than the payment amount that would be disclosed in order to pay off the account in 36 months. This exception would recognize that disclosing a 36-month repayment amount that is *lower* than the required minimum payment would result in consumer confusion, would provide no meaningful disclosure, and could result in consumers being charged late fees because they did not understand the table.

Such an exception would be fully consistent with the purposes of the repayment disclosures. The purpose of the statutory requirement is to alert consumers to the benefits of making higher monthly payments. For programs like the Fingerhut program, that purpose is already filled by the minimum payment schedule, which requires substantially higher monthly payments than most general purpose cards.

In order to implement this solution, we suggest that § 226.6(b)(12)(i)(F) be revised to read as follows (added language in italics):

(F) Except if either *(I)* the minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section is three years or less, *or (II) the amount calculated pursuant to clause 226.6(b)(12)(i)(F)(1) is less than the minimum payment required on the plan for that billing cycle*, the following disclosures:

In the event that the Board decides not to adopt this exception, we request that the Board allow issuers to provide a more meaningful disclosure about the amount required to repay the balance in 36 months, given that the calculation above would be problematic. For example, the issuer could calculate the amount that the customer would have to pay in excess of the required minimum payment in order to pay the balance in 36 months. This would not give the customer a fixed payment amount for the whole 36-month period, but would provide a useful disclosure of how much additional to pay in order to both (a) satisfy the terms of the account by making at least the minimum payment, and (b) repaying the balance in 36 months.

### **Transition Period for Promotional Offers**

Fingerhut markets goods to consumers through the mail, using catalogs that consumers can keep and order from for an extended period of time. These catalogs need to be planned and printed well in advance. Offers for financing under the Fingerhut program, including promotional financing terms, are included with these catalogs.

The Proposal adopts a number of new requirements with respect to these financing offers, including (most particularly) new advertising disclosures in § 226.16, disclosure requirements for promotional financing in order to avoid restrictions or change-in-terms requirements for rate changes in § 226.9(c)(2) and § 226.55(b)(1), and a minimum 6-month duration for promotional rates in § 226.55. Fingerhut is working expeditiously to address these significant changes. However, a number of facts limit our ability to achieve compliance by February 22:


- We are not yet sure what the final rules will be, as we have only the Proposal. Even assuming that a final rule is available by the end of 2009, that will leave only 50 days to achieve compliance.
- Fingerhut has already mailed catalogs to customers that could be used after February 22.
- Fingerhut has prepared (and is continuing to prepare) and put into process additional catalogs that will be mailed between now and then. Given the lead time for production, it is not possible to wait for a final rule before doing so.

Given these limitations, we urge the Board to delay the effective date of those portions of the Proposal not required by the Act, until July 1, 2010. The changes to the advertising rules, the revisions to the application and solicitation (“Schumer box”) disclosures, and the revisions to the account opening disclosures (among others) should become effective on July 1, as originally set forth in the January 2009 final rule.

We also urge the Board to judge the compliance of offers made prior to February 22, 2010 based on the law in effect when the offer is made. For example, a catalog with a 4-month promotional offer that is mailed to a consumer in December 2009 (but can be used until April 2010) should be judged by the law in effect in December 2010. The 4-month promotional period, though not allowed by § 226.55(b)(1), should be permitted in this case because the offer is made before the effective date of February 22 – even if the offer is accepted after February 22. We submit that any contrary rule will force creditors to dishonor offers lawfully made before February 22, when issuers have simply had no time or notice to come into compliance with the new rule in advance.

We thank the Board for the opportunity to provide our comments on the Proposal. If you would like to discuss this matter further, please feel free to contact Andy Spicher, Vice President—Credit Forecasting and Compliance, at (952) 656-3940, or the undersigned at (952) 656-3928.

Sincerely,



Linda R. Witte  
Senior Vice President, General Counsel and Secretary

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