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To the Federal Reserve Board:

Thank you for the opportunity to respond to the proposed rule, Docket No. R-1384, 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 2009 sales of $23.5 billion. The company operates 800 Macy's stores and 40 Bloomingdale's stores and employs a diverse workforce of 161,000 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 to Macy's and Bloomingdale's customers.

The Board requested comment on whether the safe harbor approach should permit issuers to base penalty fees on consumer conduct by tiering the dollar amount of penalty fees based on the number of times a consumer engages in particular conduct during a specified period or imposing penalty fees in increments based on the consumer's conduct. We support the Board's suggestion of providing options and flexibility to issuers in establishing a reasonable penalty fee for their credit card accounts. Page 2. The final safe harbor approach should incorporate both the cost to the issuer as well as provide a deterrence/penalty to the cardholder for violating the terms of their agreement. Penalty fees are assessed to a customer because they have violated the terms of their agreement with the card issuer, the penalty fee should discourage the cardholder from making similar violations in the future. Removing the teeth from a penalty fee could cause ambivalence among a certain population of cardholders regarding whether or not they violate the terms of their agreement. Contracts generally include penalty provisions which are substantial enough to discourage the parties from breaching the contract.

In regard to the reasonable penalty fees based on costs methodology, the Board proposes to exclude credit losses and associated costs from the cost analysis when establishing a reasonable penalty fee under this method. The valuation of costs associated with consumer lending would typically include the potential for losses including the carrying cost associated with managing the risk (loss reserve requirement). The way we evaluate customer segments includes losses. In segments that have a higher risk of loss, we would want to match penalty fee pricing in our effort to balance risk and the availability of credit as anticipated under reasonable safety and soundness practices.

In regard to reasonable penalty fees based on the deterrence methodology, the Board requested comment on whether it is appropriate to permit card issuers to test the effect of penalty fee amounts that exceed the amounts otherwise permitted by §226.52(b)(1). The Board acknowledges that it is unlikely most issuers will be able to perform the necessary analysis and testing to utilize this methodology prior to the compliance date for these regulations. Given the extremely limited time to implement the regulations, the Board must permit card issuers to test the effect of penalty fee amounts that exceed the amounts otherwise permitted; otherwise, the Board is presenting an "option" that cannot be implemented. Page 3. Also, if the issuer must validate these fees on a regular basis, how can this be accomplished without the ability to test penalty fees of various amounts?

Regarding both the cost and the deterrence methodologies, we suspect that it is unlikely issuers will utilize these options if pre-emption is not granted from state unfair and deceptive business practice statutes. Determining whether a penalty fee calculated using methodologies approved the Board is reasonable should be limited to the issuer's regulator. If an issuer must defend their penalty fee analysis not only to their regulator but also to 50 state attorney generals or in civil court, then the risk associated with utilizing these options may be so great that only the "safe harbor" will be used and the Board will have used these regulations to dictate a single "reasonable" penalty fee amount to all card issuers.

The Board also requests comment on whether a card issuer utilizing the cost or deterrence methodologies should revalidate their analysis in establishing a reasonable penalty fee under these methods every 12 months or some other period. We would expect that the Board will analyze historic economic trends in determining what constitutes a reasonable period of time before such analysis is necessary. The analysis necessary to revalidate a penalty fee, particularly with the deterrence method, will be complicated, time consuming, and costly. The Board should require a card issuer to revalidate penalty fees calculated in this way no more often than is reasonably likely to have an impact on the amount of the fee. Page 4. However, the Board should permit the issuer the flexibility to revalidate their analysis sooner than required by the Board.

The Board requests comment on whether it will be difficult to comply with the proposed regulation that caps the amount of the penalty fee by the dollar amount of the violation that triggers the fee. We appreciate that the Board believes it would not be overly burdensome for card issuers to program their systems to automatically perform this individualized calculation on each credit account. However, we request that the Board consider the scope of the changes requested of card issuer's systems during the past year. Performing this type of individualized calculation will require significant programming and testing that cannot even begin until the Board releases the final rule. The Board must remember that not all card issuers use a third-party data processing system. Some card issuers use in-house systems and they cannot depend on a third-party that is entirely devoted to programming whatever requirements are eventually decided upon by the Board. These issuers must divert resources from other parts of their business to make whatever changes are required by the Board, with an extremely short compliance period. While attempting to compensate for the effects of the ongoing recession, it is definitely a hardship on any business to remove vital resources from other projects in order to implement complicated fee structures on a proprietary processing system.

In addition, penalty fees that vary in amount will be very confusing to consumers. If a consumer is charged one amount for a penalty fee and then charged a higher amount for the same type of penalty fee in a later month, there is a higher likelihood that the consumer is going to call the card issuer to request clarification on the fee amount. Every customer service call is an additional expense for the card issuer, and customers who are dissatisfied with the explanation for the differing fee amounts could result in the termination of an otherwise satisfactory relationship. Page 5.

With the new regulation, the Board proposes to prohibit a card issuer from imposing a penalty fee based on account inactivity and the Board requests comment on whether it is appropriate to prohibit penalty fees in this circumstance. While we do not charge an inactivity fee on our credit accounts, we also do not believe an inactivity fee is a penalty fee and thus it should be excluded from the scope of this regulation. It would be a very simplistic view to equate absolutely every fee on a credit card account as a "penalty fee." A cash advance fee could be penalizing a cardholder for taking a cash advance rather than covering the additional costs and risks associated with this type of transaction. An international transaction fee could be penalizing a cardholder for using their card to make a purchase in a different currency rather than covering the additional costs associated with this type of transaction. Even an interest charge could be viewed as penalizing a cardholder for not paying their balance in full each month rather than for the convenient access to credit that allowed the cardholder to make an immediate purchase and pay for that purchase over time. In the proposed regulation, the Board acknowledges that a card issuer has expenses associated with maintaining an inactive account. Statements or other required notices, such as privacy policies, may have been mailed. New cards may have been mailed. Customer service calls may have been placed. The account records use computer memory which is an expense for the card issuer. With no activity on an account, the card issuer has no way to offset the ongoing expenses of maintaining the credit account. However, a cardholder receives tangible benefits from maintaining an inactive account. In many situations, an unused revolving credit account has a positive impact on a consumer's credit score, potentially allowing the consumer to obtain less expensive credit. Page 6. An inactive credit account provides a consumer with immediate access credit in a time of emergency or should the consumer desire to make an unexpected purchase.

If a card issuer were prohibited from charging an inactivity fee, the result may be to close inactive credit card accounts. We would expect that such accounts would appear on credit reports as "closed by credit grantor" which has a potentially negative impact on credit reports.

Rather than prohibit an inactivity fee, we would recommend that an inactivity fee be treated in the same way as an annual fee. A cardholder is given advance notice that an inactivity fee will be charged to the account and the cardholder then has the option to use the account to avoid the fee, close the account prior to being charged the fee, or pay the fee for the privilege of retaining access to the credit card account.

The Board requested comment on the appropriate dollar amounts for the proposed safe harbor penalty fee as well as the proposed upper limit of a penalty fee. We understand that the credit card industry is accumulating and analyzing "blind" cardholder data for the Board to use in its analysis of these topics. We commend the card issuers who are sharing data to provide requested information for the Board. We understand that private label card data will be included in this analysis and we encourage the Board to consider private label accounts when making these decisions. Private label accounts typically have smaller balances than general purpose cards and they should not be disadvantaged by being forced into a uniform fee structure if a unique fee structure would be more appropriate for these types of credit card accounts.

Finally, the Board requested comment on whether a card issuer should review an increased APR for a possible reduction every six months in perpetuity or whether the review should only be required for a certain number of years. We encourage the Board to consider limiting the regular review of these accounts to a maximum of two or three years. We believe that after two or three year, the likelihood that the factors that caused the increased APR will improve is greatly reduced. Thus, the burden of reviewing these accounts ever six months in perpetuity outweighs the potential benefit to consumers.

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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