bluestem
brands, inc.

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December 21, 2010

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

**Re: Docket No. R-1390 (Regulation Z; Truth in Lending)**
**Proposed Revisions Published September 24, 2010**

Ladies and Gentlemen:

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, published at 75 Fed. Reg. 58539 (Sept. 24, 2010). We appreciate the opportunity to provide comments on the Proposal.

Bluestem Brands, Inc. is a multi-brand retailer, delivering a wide selection of products and shop-at-home convenience through e-commerce and direct marketing via the Fingerhut and Gettington.com brands. In addition to offering a large selection of brand name products, Bluestem Brands markets and services credit products that permit customers to make purchases and pay over time. These credit products are issued by MetaBank, a federal savings association, and WebBank, a Utah industrial bank. As part of these credit products, the banks offer and Bluestem Brands services a credit protection product that includes cancellation and suspension benefits.

The Proposal is focused on real estate lending. Bluestem Brands is not engaged in mortgage lending, and offers no comments on those aspects of the Proposal. However, the Proposal also includes very significant changes to the requirements in Section 226.4 of Regulation Z regarding debt cancellation products.[1] The changes are apparently intended to cover debt cancellation for all credit products subject to Regulation Z, even though contained within the mortgage-related Proposal. We are writing to specifically comment on those aspects of the Proposal. We urge the Board to carefully consider the impact that the Proposal would have on non-mortgage products.

**Proposal is Ill Suited to Credit Card Products**

The Proposal's changes to debt cancellation disclosures are part of a rulemaking relating to mortgages – and they may well make sense in the context of debt cancellation or similar products sold in connection with mortgage loans. However, they are ill suited to credit card lending in a number of respects.

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[1] The Proposal would modify the rules for selling credit insurance, debt cancellation, and debt suspension products. We use the term debt cancellation in this letter because the product offered on the credit accounts available to Bluestem customers includes debt cancellation and suspension benefits.

*First,* the new price disclosure, requiring the creditor to disclose the per month cost based on the maximum balance, will be misleading to consumers. Most consumers do not carry a balance at the maximum level, and thus the fee amount disclosed will be too high – much too high in some cases. This disclosure seems more designed to shock the consumer than to promote an understanding of the true costs of debt cancellation. We believe that consumers are familiar with and understand the commonly used unit cost disclosures used today (*e.g.*, 99 cents per $100), and those disclosures are appropriate for credit card products.

*Second,* because of the way credit card accounts are usually solicited, through the mail, it will be nearly impossible to solicit customers for debt cancellation products at account opening if the Proposal is adopted. At the time of mailing an account solicitation, a creditor will not – and cannot – know the credit line that will be assigned to the consumer, the consumer's age, or the consumer's employment. Absent that information, creditors cannot give the disclosures required by the new form, nor determine the customer's eligibility for coverage under proposed § 226.4(d)(3)(ii). This is very different from the mortgage context, where there are often in-person meetings and serial communications over a period of time that would allow the disclosures to be given and eligibility determinations to be made.

*Third,* credit card issuers have already been subject to an enormous number of changes in the past years. Since August 2009, there have been three separate amendments to Regulation Z's credit card rules to implement the Credit Card Accountability Responsibility and Disclosure Act of 2009, as well as a fourth rulemaking that is now pending. In addition, the Board substantially rewrote other aspects of the credit card rules – including a complete redesign of the application/solicitation, account opening, periodic statement, and change-in-terms disclosure requirements. This included changes to how debt cancellation fees are disclosed in each context. As a result, now is not the time to revisit – yet again – this area of credit card disclosure. Rather, the Board should allow time to review disclosures as modified to comply with the most recent changes before determining to adopt yet more changes.

We urge the Board, therefore, not to extend the Proposal to credit card products. The Proposal is not well suited to the credit card industry, and now is not the right time for additional changes to credit card disclosures.

**The Proposal Seeks to Substantively Regulate in the Guise of Disclosure**

We believe that the Proposal is also inappropriate because, through the guise of new disclosure requirements, it is really aimed at substantively regulating – and discouraging – debt cancellation products. Such action is not, we respectfully submit, appropriate in the context of rulemaking under TILA.

For example, the proposed model form disclosure begins with the word "**STOP**," in bold, capitalized letters. This type of wording is unprecedented in consumer credit disclosures. We are not aware of any credit disclosure – under TILA, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, or even state credit disclosure laws – that is so clearly designed to discourage a consumer from purchasing a product. We submit that this goes beyond a disclosure, and rather seeks to substantively discourage the sale of debt cancellation.

The "Do I need this product" box is also problematic. The disclosure about the availability of other insurance is misleading, because (at least to our knowledge) there is no commercially available

product that provides the same package of benefits offered by debt cancellation. Life insurance may provide a cheaper coverage in the event of the consumer's death, but it would not provide coverage for the other triggering events offered by debt cancellation. Likewise, the disclosure about whether the consumer already has adequate insurance or savings will be highly confusing when presented in the context of a real-world debt cancellation product that has multiple triggering events. We note that each of the samples provided by the Board relates to a product with one triggering event – actual credit card programs cover all of these and other triggering events, making the disclosure far more cumbersome to provide and far less useful to consumers.

The "Can I receive benefits box?" and especially the bolded, underlined sentence "**You may not receive any benefits even if you buy this product.**" is also unnecessary and highly prejudicial. All products of this type – insurance, warranties, protection plans, etc. – have qualifications and conditions. Consumers know this, and consumers will receive terms and conditions that spell out what the qualifications and conditions are. It is improper to single out debt cancellation for enhanced disclosure that seems calculated only to make consumers especially suspicious of the product.

We urge the Board to reconsider these disclosures, which we believe will do very little to promote understanding of the terms and conditions of the debt cancellation products. Rather, the disclosures will only discourage consumers from purchasing the product because of prejudicial disclosures.

**Existing Disclosure Requirements and Principles are Adequate**

In the Initial Regulatory Flexibility Analysis, the Board states that it "has not identified any Federal rules that conflict with the proposed revisions to Regulation Z." 75 Fed. Reg. at 58687. We believe that this statement fails to account for the existing rules published by the Office of the Comptroller of the Currency ("OCC") that require national banks to make certain disclosures in connection with the sale of debt cancellation (and debt suspension) products. *See* 12 C.F.R. pt. 37. The OCC's rule requires that certain "short form" disclosures and "long form" disclosures – containing important information about debt cancellation and its terms and conditions – be provided as part of the sales process. Notably, the contents and rules for the OCC disclosures are different from the new Board proposal – which may require creditors to shoulder the burden of providing multiple different disclosures in connection with the sale of debt cancellation.

While the OCC's rules are only binding on national banks, they are generally followed by other creditors, at least in the credit card industry, as "best practices" guidelines. The rules have been adopted by other regulators as well. *See, e.g.,* Utah Admin. Code R331-25 (Utah banking regulation adopting rules substantially similar to the OCC rule for Utah-chartered depository institutions).

We believe that these requirements, combined with the existing requirements for disclosures related to debt cancellation under Regulation Z, provide ample visibility to consumers on the fees, terms and conditions of debt cancellation products. We note, in particular, that the recently effective amendments to the credit card disclosure rules under Regulation Z (on July 1, 2010), made debt cancellation sold after commencement of an open-end plan subject to the requirements of § 226.4(d) for the first time. We support that change, but believe the Board should provide further time to observe the

effect of that change. Ultimately, we believe that it is sufficient to ensure adequate disclosure to consumers.

At a minimum, if the Board determines to enact changes to debt cancellation disclosures, we urge the Board to follow an approach more compatible and consistent with the OCC's rule.

**Consumers Should Have the Option to Bypass Telephone Disclosures**

Under the Proposal, a creditor would have to give the required disclosures orally, confirmed later in writing, if the consumer purchases the debt cancellation coverage by telephone. While the oral/telephonic disclosure requirement is not new in the Proposal, the increased scope of the disclosures that must be given makes this a more cumbersome process.

The telephone disclosures should be optional for consumers – if a consumer declines to hear the disclosures after being given the option, then the creditor should be able to complete the sale of the debt cancellation and send the written disclosures within three (3) business days. It serves little purpose to require the creditor to read lengthy oral disclosures if the consumer does not want them. As with written disclosures, the creditor's obligation should be to make the disclosures available, not to read them to an unwilling consumer.

In this regard, we note that nearly all (or perhaps all) credit card debt cancellation plans offer the consumer the ability to cancel, with a full refund, within 30 days. As a result, the consumer receiving the mailed disclosures would have ample time to consider them and decide whether to cancel or maintain the coverage.

At the very least, the creditor should be permitted to read only the most important disclosures, such as the cost disclosures, over the telephone.

**Determining Consumer Eligibility is Unworkable**

Under the Proposal, as a condition to excluding the debt cancellation fee from the finance charge, the creditor would need to confirm the consumer's eligibility for coverage based on age and employment. For plans that protect in the event of multiple circumstances – like the plans available on the accounts that we administer, and virtually every other plan available on credit card accounts – the creditor would need to confirm this for every coverage event on the product under proposed Comment 4(d)-14. We believe that this is so burdensome that it will limit creditors' ability to offer the product, and the concern can be addressed in less burdensome ways.

If the creditor is required to make this eligibility determination, it will require the creditor to first gather the information on age and employment before selling the debt cancellation. While age is already gathered (and required under the USA Patriot Act regulations), gathering employment information can likely be done only by asking the consumer. But simply asking for current employment information is likely inadequate to determine eligibility – length of employment, whether employment is seasonal, and whether the person is technically self-employed are all factors, among others, that may determine eligibility. While it may be possible to get this information when debt cancellation is sold by telephone, it will be a lengthy telephone call and the consumer may well not want to provide such detailed information. When debt cancellation is sold by mail, this would be even more problematic.

Moreover, with the multi-coverage plans that are common for credit cards, eligibility or non-eligibility for a particular facet of coverage is not dispositive of the value of the product to the consumer for the price offered. A consumer ineligible for loss-of-employment coverage may well be able to take advantage of other coverage such as in the event of a hospitalization or in the event of death. Thus, we do not think it is sound policy to exclude a person from the entire plan simply because the person may be ineligible for a particular benefit.

The Proposal would address this by requiring the creditor to make available an option for such people that consists only of coverage for which the individual is eligible. That proposal is unworkable, however. Contracts, systems, disclosures, and processes for credit card debt cancellation plans are not able to offer multiple combinations of coverage options. The product is designed to provide a bundle of coverage at a set price; it is not designed to be customized from person to person. Credit card issuers are not insurance companies, and are not in the business of customizing coverage packages of insurance for individual consumers. Rather, they offer debt cancellation as an institutional risk control device and as a convenience to consumers. They should not be required to function like insurance companies in order to do so.

To the extent that the Board is concerned that consumers do not understand coverage limitations, we believe that the best option to address this is through disclosure requirements, in connection with debt cancellation products, of the eligibility criteria. We support providing disclosures – in a prominent manner – of key disclosure requirements for a product, such as age- and employment-related criteria. We note, moreover, that providing disclosures to consumers about the criteria allows consumers to determine their own eligibility, rather than forcing them to provide additional personal information to issuers to make that determination. We think that consumers are in a better position to determine their own eligibility, after disclosure of the criteria.

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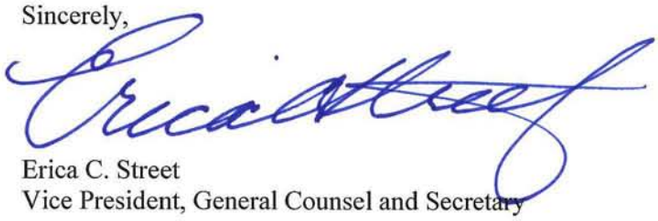
Fundamentally, we believe that the Board's proposal reflects a skepticism toward debt cancellation products, and a desire to impose regulatory burdens to deter the offering of such products – rather than to provide reasonable disclosure rules that enable customers to make appropriate decisions. We submit that this overlooks the unique combination of benefits and features that debt cancellation provides to consumers, at a single, predictable price. We urge the Board to reconsider the Proposal in light of the discussion above.

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 the undersigned at (952) 656-3933.

Sincerely,



Erica C. Street
Vice President, General Counsel and Secretary