bluestem
brands, inc.

6509 Flying Cloud Drive
Eden Prairie, MN 55344

December 23, 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-1393, RIN No. 7100-AD55
<u>Truth in Lending, Proposed Rule, Request for Comment</u>

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's open-end credit rules, published at 75 Fed. Reg. 67458 (Nov. 2, 2010). We appreciate the opportunity to provide comments on the Proposal, and we appreciate the Board's publication of the Proposal to provide additional clarity and guidance on certain provisions of Regulation Z. The past two years have seen an enormous number of changes to Regulation Z on a highly accelerated timeframe, and there are numerous areas in need of further guidance. We urge the Board to continue to provide clarification, formally and informally, as the need arises.

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 open-end credit products issued by third party bank partners that permit customers to make purchases and pay over time. These open-end credit accounts are subject to the requirements in Regulation Z that are affected by the Proposal.

Our concern with respect to the Proposal is the change that would eliminate the ability to consider household income in order to comply with the ability to pay rules under Section 226.51(a) of Regulation Z. We believe that the Proposal would impose substantial operational problems, would not be in the best interests of consumers, and would not implement the intent of Congress in enacting Section 150 of TILA. We urge the Board to reconsider and withdraw this section of the Proposal, and to instead revise Regulation Z to expressly permit consideration of household income for purposes of Section 226.51(a).[1]

Income and Obligations Do Not Match Up. As an initial, practical matter, we believe that prohibiting the use of household income makes it very difficult to compare an applicant's income and obligations. A credit report will likely show not only individual obligations but also joint obligations of the applicant (most likely the applicant and his or her spouse). A mortgage, for example, is likely to be reported on the credit report as a total obligation, even though it is a household obligation – and was underwritten as a household obligation – rather than an individual obligation. A car loan or other joint obligation creates similar problems. A creditor therefore faces a practical difficulty if trying to compare the applicant's obligations, including these joint obligations, with only the individual income of the applicant. In many cases, it will likely reflect that the applicant's obligations already exceed income. This result makes little sense. Permitting consideration of household income provides a better way for issuers to compare income and obligations.

Proposal Would Disadvantage Non-Working Spouses. In addition, we believe that prohibiting the consideration of household income is at odds with the long-standing policies of Regulation B, and particularly the long history of protecting non-working spouses and their ability to establish credit. Regulation B has recognized, for many years, that spouses – particularly non-working spouses – should have access to credit, and should be able to establish creditworthiness based on that spouse's access to credit accounts that may be in the name of the other spouse. *See* 12 C.F.R. § 202.6(b)(6). The new Proposal comes to the exact opposite result, entirely forbidding consideration of the other spouse's income for purposes of satisfying the ability to pay requirement. In effect, whereas Regulation B seeks to provide access to credit to non-working spouses, the Proposal would preclude any credit card issuer from extending credit to a non-working spouse (with the potential exception of community property states). The impact of the Board's Proposal is likely to be especially difficult for women, who are disproportionately responsible for child care – this is the very interest that the Regulation B provisions were designed to address.

We urge the Board to instead recognize that ability to pay should not depend on the legal entitlement to or ownership of income, but rather the practical ability to repay the credit. A non-working spouse, even if he or (more likely) she has no independent income may, as a practical matter, have the ability to make the payments from household income. Indeed, in a divorce proceeding, the spouse might well be entitled to payments from the working spouse such as

[1] We understand that household income cannot be used for purposes of the TILA and Regulation Z rules governing consumers under 21 years of age, and therefore do not suggest that household income be permitted for purposes of Section 226.51(b).

alimony. Given these practical realities, a creditor should be able to rely on household income to satisfy the ability to repay test.[2]

Thus, while we appreciate the Board's conclusion in the Proposal that refusing to consider the household income would not violate Regulation B, we urge the Board to instead allow issuers to consider household income. This will not only comply *technically* with Regulation B, but also better serve the policies underlying Regulation B.

The Board's suggestion that issuers may be able to consider household income in community property states provides little assistance. Our program is national in scope, and developing separate application procedures for community property states would be impractical. We also think that it would be confusing to applicants, who are generally not very aware of the differences between state property laws and their impact.

Congress Did Not Preclude Household Income. We also do not agree that Congress has precluded consideration of household income by enacting TILA Section 150. Indeed, the requirement to consider any form of income was added by the Board in adopting Section 226.51(a) – the statutory language in TILA Section 150 does not refer to income at all. Moreover, in the situation where Congress wanted creditors to consider only individual income, for those under 21, Congress was far more explicit. Thus, TILA Section 127(c)(8)(B)(ii), as added by the Credit CARD Act, requires that an applicant under 21 demonstrate "an *independent means* of repaying" the debt.

For all of these reasons, we urge the Board to grant greater flexibility to allow issuers to consider household income for purposes of evaluating ability to pay under Section 226.51(a). We believe that the use of household income fully addresses Congress' purposes and yet removes a practical – and problematic, from a policy perspective – obstacle. Of course, for purposes of Section 226.51(b), we recognize that issuers would continue to be required to follow the more specific underwriting requirements for consumers under 21.

Effective Date is Required. At a minimum, if the Board decides to adopt this aspect of the Proposal, we urge the Board to provide time for issuers to come into compliance with this new interpretation. Until now, issuers have in good faith requested and relied upon household income to satisfy the requirements of Section 226.51(a). Sufficient time should be provided for issuers to revise their policies and procedures, and especially to revise forms that have been designed and circulated based on the use of household income – for example, written application forms that expressly request "household income." There is substantial lead time required to change these forms. As a result, we request that the Board provide issuers a one-year transition period, through either a delayed effective date or a delayed mandatory compliance date.

[2] In this regard, we note that the person most likely to be hurt if the applicant cannot repay the obligation is the creditor, which will not be able to collect on the credit card account and will have no other recourse given the unsecured nature of the obligation. Thus, the creditor has every reason to make reasonable assumptions in applying household income to determine ability to pay.

* * *

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