



*By electronic delivery*

January 3, 2011

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: Docket No. R-1393 – Regulation Z, Proposed Rules Clarifying Implementing Provisions of the CARD Act**

Dear Ms. Johnson,

Best Buy Stores, L.P. (“Best Buy”), one of the largest specialty retailer of consumer electronics, home office products, entertainment software, appliances and related services and an industry leader with more than 40 years of history, respectfully submits these comments in response to the Federal Reserve Board’s (the Board) proposed amendments to the final rules which amended Regulation Z’s provisions that applies to open-end (not home secured credit plans which were published on February 22, 2010 and July 29, 2010).

With our financial services partners – among them, HSBC and JPMorgan Chase – we offer millions of consumers a wide variety of credit options every year. We strongly support the need for our customers to fully understand the nature and responsibilities of their credit obligation and the terms and conditions upon which credit is granted. As such, we value the Board’s commitment to consumer protection and to practical and workable solutions for the implementation of the regulations. Additionally, we are grateful for the opportunity to provide comments on the proposed rules set forth in Docket No. R-1393, in particular comments regarding how the proposed rules relating to a customer’s ability to pay may impact the retail sector and retail credit card programs.

A consumer’s ability to re-pay the credit obligation is, and always has been, the fundamental consideration for any credit issuer regarding a consumer’s application for credit. As noted in the Board’s final rule 226.51(a)(1)(ii) a consumer’s ability to pay would include a consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. Furthermore, the rule provides that it would be unreasonable for a card issuer to not review any information about a consumer’s income, assets or current obligations, or to issue a credit card to a consumer who does not have any income or assets. Best Buy agrees with these considerations.



Our concern arises out of the Board's conclusion that a consumer's income and/or a consumers "independent" income should exclude household and/or spousal income and/or assets and any inclusion thereof would render any decision on the consumer's ability to pay as invalid. It is apparent that the Board also recognizes that such a strict interpretation inherently poses issues and as such has solicited comments on whether it would be appropriate to provide greater flexibility. To that end we respectfully submit the following observations.

Best Buy would like to thank the Board for providing clarity in regard to its decision to make the "independent income" standard fit all consumers. We appreciate the fact that this approach provides simplicity and fairness to all consumers which we believe is core to much of what Congress was attempting to accomplish through these changes.

However, we respectfully submit that the Board's apparent preference to limit the definition of "Independent" income to exclude household income other than in communal property states, penalizes families and spouses and as such is inconsistent with the intent of the legislation.

This approach does not recognize that in many instances a spouse within a common law state may have even greater property rights than a spouse within a community property state for a variety of reasons. Concepts such as equitable distribution, elective share, etc. all have worked over the years to provide for greater gender equality in terms of marital assets so to assume that only individuals living in communal property states have joint property is fundamentally flawed.

In its execution the Board's proposed rule would have the practical effect of giving spouses in 41 of the 50 states less standing in the family's finances than a spouse in one of the 9 community property states. This effect is inconsistent with and possibly in violation of a person's common law property rights. In many typical retail credit situations, a spouse simply will not be available to sign the credit application. Thus the married consumer trying to get credit may not be able to utilize the household income that is a very real portion of that consumer's overall financial picture. Additionally, the consumer would not be allowed to list a jointly owned home as an asset. As such this type of restrictive interpretation would seem to go beyond assessing ability to pay and instead create unreasonable barriers to credit for certain segments of society.

The board's acknowledgement that its commentary could prevent a consumer from opening a credit card account despite the fact that the consumer has access to income or assets is a very real assessment. The practical implications of that are that it potentially relegates one spouse to "second class" status within the house and society and that clearly is not the intent of the legislation.



Since it is unreasonable to exclude joint assets and/or income from any individual's ability to pay calculations it would seem that the Board should be striving to ensure that consumers and lenders have a certain degree of flexibility in assessing available income and/or assets and should not be seeking to assume that spousal assets are unavailable.

A consumer has no way of knowing what any individual bank's methodology for determining their ability to pay is. Most likely they have no exposure to the concept at all. In an effort to aid the consumer, The Board should be striving to create a standard that is readily understandable to a consumer and fair in its application.

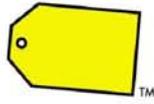
The flaw in the Board's approach is not recognizing the considerable gaps between consumers covered by 226.51(b) (those under the age of 21) and those covered by 226.51(a) (consumer older than age 21) in their ability to earn, the amount of assets owned and their marital status. Although the Board may be trying to standardize the application of ability to pay, it may be a case of trying to fit a square peg into a round hole. The Board is trying to unify into one standard under 226.51, two groups that are so fundamentally different that in trying to force a single standard the effect would have the unintended consequence of creating a more discriminatory treatment of a larger portion of the population.

In essence the role of the Federal Reserve should not be to create a discriminatory outcome but rather to provide the most readily understandable format for determining the ability of a debtor to satisfy the debt. Household income is a readily understandable term that in a preponderance of circumstances provides the most accurate measure of ability to pay. Basing ability to pay on that measurement should not be deemed unacceptable. Rather, that format, along with other traditional underwriting metrics should be considered sufficient.

Since ability to pay is generally only one of many items evaluated in a credit application, it would seem reasonable that household income be an acceptable standard for ability to pay so long as other risk models are employed.

We ask the Board to clarify that "independent income" should include all reasonable sources of income and/or assets to that consumer even if they are not the sole and exclusive individual whom generates those funds and/or assets. The intent of § 226.51 should be to prohibit indiscriminately lending to individuals without an ability to pay rather than attempting to limit the availability of credit (and hence economic opportunity) to the detriment of certain segments of society.

On behalf of Best Buy, I thank you for this opportunity to comment on the Board's proposed rule clarifying the final rules which amended Regulation Z's provisions that applies to open-end (not home secured) credit plans which were published on February 22, 2010 and July 29, 2010. If you have any questions concerning our comments, or if



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we may otherwise be of assistance in connection with this issue, please do not hesitate to contact me at [dan.olstad@bestbuy.com](mailto:dan.olstad@bestbuy.com) or Stephen Bowe, Best Buy Corporate Counsel, Financial Services Compliance, at [stephen.bowe@bestbuy.com](mailto:stephen.bowe@bestbuy.com).

Dan Olstad  
Senior Director of Financial Services  
Best Buy Stores, L.P.