

FEDERATED DEPARTMENT STORES INC /DE/
Form S-8
October 31, 2006

As filed with the Securities and Exchange Commission on October 31, 2006

Registration No.333- _____

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

FEDERATED DEPARTMENT STORES, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware

(State of incorporation)

7 West Seventh Street
Cincinnati, Ohio 45202

(Address of Principal Executive
Officer,
Including Zip Code)

13-3324058

(I.R.S. Employer Identification Number)

FEDERATED DEPARTMENT STORES, INC. 1995 EXECUTIVE EQUITY
INCENTIVE PLAN, AS AMENDED

(Full Title of the Plan)

Dennis J. Broderick, Esq.
Senior Vice President, General Counsel, and Secretary
Federated Department Stores, Inc.
7 West Seventh Street
Cincinnati, Ohio 45202
(513) 579-7000

(Name, Address and Telephone Number of Agent for Service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price per Share (2)	Proposed Maximum Aggregate Offering Price (2)	Amount of Registration Fee (2)
Common Stock, par value \$0.01 per share (2)	12,000,000 shares	\$44.65	\$535,800,000.00	\$57,330.60

(1) Plus such indeterminate number of shares as may be issued to prevent dilution resulting from stock splits, stock dividends or similar transactions in accordance with Rule 416 under the Securities Act of 1933, as amended (the "Securities Act").

(2) Estimated solely for calculating the amount of the registration fee, pursuant to paragraphs (c) and (h) of Rule 457 of the General Rules and Regulations under the Securities Act, on the basis of the average of the high and low sale prices of such securities on the New York Stock Exchange on October 26, 2006, a date within five business days prior to filing.

Explanatory Note

This Registration Statement on Form S-8 relating to the Federated Department Stores, Inc. 1995 Executive Equity Incentive Plan, as amended (the "Plan"), is being filed to register additional securities of the same class as other securities for which a previously filed registration statement on Form S-8 relating to the Plan is effective.

Pursuant to General Instruction E of Form S-8, this Registration Statement incorporates by reference the contents of the Registration Statement on Form S-8 (Registration No. 333-115714) filed by Federated Department Stores, Inc. ("Federated" or the "Company") with the Securities and Exchange Commission ("Commission") with respect to the Plan, including all attachments and exhibits thereto, with the exception of Items 3, 6 and 9 of Part II of such prior registration statement, each of which is amended and restated in its entirety herein.

PART II

Item 3. Incorporation of Documents by Reference.

The following documents, which the Company has filed with the Commission, are incorporated by reference to this Registration Statement:

- (a) the Company's annual report on Form 10-K for the fiscal year ended January 28, 2006 and the Company's annual report on Form 10-K/A for the fiscal year ended January 28, 2006 filed on June 6, 2006;
- (b) the Company's quarterly reports on Form 10-Q for the periods ended April 29, 2006 and July 29, 2006;
- (c) the Company's current reports on Form 8-K filed on March 28, 2006, March 30, 2006, March 31, 2006, April 10, 2006, May 3, 2006, May 24, 2006, June 1, 2006, June 6, 2006, June 9, 2006, June 21, 2006, June 22, 2006, July 13, 2006, August 29, 2006, September 1, 2006 and October 3, 2006; and
- (d) the description of the Company's Common Stock contained in a Registration Statement on Form 8-A, filed with the Commission on December 12, 1994.

In addition, all documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all such securities then remaining unsold shall be deemed to be incorporated by reference to this Registration Statement and to be a part hereof from the date of filing such documents.

Item 6. Indemnification of Directors and Officers.

The following summary of the material provisions of the Company's by-laws and certificate of incorporation relating to indemnification of directors and officers, the Company's indemnification agreements with officers and directors, insurance policies maintained by the Company in respect of directors and officers and the Delaware General Corporation Law is not intended to be exclusive and is qualified in its entirety by such by-laws, certificate of incorporation, agreements, insurance policies and statutes.

The Company's certificate of incorporation and by-laws provide that the Company shall indemnify its officers and directors to the full extent permitted by applicable law. Section 145 of the Delaware General Corporation Law provides, in general, that each director and officer of a corporation may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed legal proceedings in which he or she is involved by reason of the fact that he or she is or was a director or officer, if he or she acted in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, if he or she had no reasonable cause to believe that his or her conduct was unlawful. If the legal proceeding, however, is by or in the right of the corporation, the director or officer may not be indemnified in respect of any claim, issue or matter as to which he or she has been adjudged to be liable to the corporation unless a court determines otherwise.

The Company also maintains insurance for officers and directors against certain liabilities, including liabilities under the Securities Act. The effect of this insurance is to indemnify any officer or director of the Company against expenses, including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement, incurred by an officer or director upon a determination that such person acted in good faith. The premiums for such insurance are paid by the Company.

Pursuant to separate indemnification agreements with the Company, each officer and director of the Company is indemnified against all liabilities relating to his or her position as an officer or director of the Company, to the fullest extent permitted under applicable law.

Item 8. Exhibits

- 4.1 Federated Department Stores, Inc. 1995 Executive Equity Incentive Plan, as amended (incorporated by reference to Appendix C to the Company's

proxy statement on Schedule 14A, dated April 13, 2006).

- 4.2 Second Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the fiscal year ended January 28, 1995 (File No. 001-135361)).
- 4.2.1 Amended and Restated Article Seventh to the Certificate of Incorporation of the Company (incorporated by reference to Annex F to the Company's proxy statement on Schedule 14A, dated May 31, 2005).
- 4.2.2 Amended and Restated Section 1 of Article Fourth to the Certificate of Incorporation of the Company (incorporated by reference to paragraph 4 under the caption "Item 3 - Proposal to Amend Federated's Certificate of Incorporation" in the Company's proxy statement on Schedule 14A, dated April 13, 2006).
- 4.3 By-Laws of the Company (incorporated by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-8, filed on April 1, 2003).
- 4.3.1 Amended and Restated Sections 28 and 29 of the By-Laws of the Company (incorporated by reference to Exhibit 99.1 to the Company's Current Report on Form 8-K filed on July 19, 2005).
- 5.1 Opinion of Counsel (Dennis J. Broderick).
- 23.1 Consent of Independent Registered Public Accounting Firm.
- 23.2 Consent of Dennis J. Broderick (included in Exhibit 5.1).
- 24.1 Powers of Attorney.

Item 9. Undertakings

A. The Company hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
 - (a) To include any prospectus required by Section 10(a)(3) of the Securities Act;
 - (b) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered)

and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

- (c) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in this registration statement;

provided

, however, that paragraphs (A)(1)(a) and (A)(1)(b) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Company pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

- B. The Company hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Company's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

The Registrant

. Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Cincinnati, State of Ohio, on this 31st day of October 2006.

FEDERATED DEPARTMENT STORES,
INC.

By: /s/ Dennis J. Broderick
 Dennis J. Broderick
 Senior Vice President, General Counsel and
 Secretary

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
* _____ Terry L. Lundgren	Chairman of the Board, President, Chief Executive Officer and Director (principal executive officer)	October 31, 2006
* _____ Karen M. Hoguet	Executive Vice President and Chief Financial Officer (principal financial officer)	October 31, 2006
* _____ Joel A. Belsky	Vice President and Controller (principal accounting officer)	October 31, 2006
* _____ Meyer Feldberg	Director	October 31, 2006
* _____ Sara Levinson	Director	October 31, 2006
* _____ Joseph Neubauer	Director	October 31, 2006
* _____ Joseph A. Pichler	Director	October 31, 2006
* _____ Joyce M. Roché	Director	October 31, 2006
* _____ William P. Stiritz	Director	October 31, 2006

Karl M. von der Heyden

* _____ Director October 31, 2006

Craig E. Weatherup

* _____ Director October 31, 2006

Marna C. Whittington

* The undersigned, by signing his name hereto, does sign and execute this Registration Statement pursuant to Powers of Attorney executed by the above-named persons.

By: /s/ Dennis J. Broderick
 Dennis J. Broderick,
 Attorney-in-Fact
INDEX TO EXHIBITS

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