



Credit Union National Association

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January 7, 2013

Ms. Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: Proposed Rule to Amend Regulation Z regarding Ability-to-Pay;
Docket No. CFPB-2012-0039

Dear Ms. Jackson:

This letter represents the views of the Credit Union National Association (CUNA) on the Consumer Financial Protection Bureau's (CFPB or Bureau) proposal to amend Regulation Z with regard to the ability-to-pay assessment that credit card issuers are currently required to conduct for all credit card applicants, regardless of age. By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90% of the nation's 7,000 state and federal credit unions, which serve approximately 95 million members.

We appreciate the Bureau's effort in issuing this proposed rule to address industry concerns regarding Regulation Z's independent ability-to-pay assessment. Specifically, CUNA, members of Congress, and others opposed the Federal Reserve Board's March 2011 rule that expanded the independent ability-to-pay requirement to consumer-applicants who are 21 or older.¹ Further, we have expressed on several occasions our specific concerns about the impact of the expanded rule on the ability of spouses and partners who do not work outside the home to obtain credit card accounts. In response to these concerns, the Bureau's proposal would remove all references to an independent ability-to-pay from section 1026.51(a)(1) of Regulation Z, which applies to applicants who are 21 or older.

We support the Bureau's proposal to remove the independence requirement for consumers of credit cards that are 21 or older, as we believe this requirement has made it more difficult for nonworking spouses and partners to obtain credit. However, as discussed below, we have several concerns regarding other aspects of the proposal that may prove problematic for credit card issuers if the rule is adopted as proposed.

¹ Our disagreement with application of the independent ability-to-pay standard to all consumers, regardless of age, is discussed in a January 2011 comment letter to the Federal Reserve Board. Our letter is available at www.cuna.org/reg_advocacy/comment_letters/cl_010411.html.



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Proposed Provision regarding “Reasonable Expectation of Access”

In addition to removing reference to the “independent” ability-to-pay for a consumer who is at least 21, the proposal would amend section 1026.51(a)(1)(ii) of Regulation Z to clarify that consideration of the consumer’s current income may include any income that he or she has a “reasonable expectation of access” to. Specifically, the proposal would add the following italicized language to section 1026.51(a)(1)(ii):

Card issuers must establish and maintain reasonable written policies and procedures to consider a consumer’s income or assets and a consumer’s current obligations, which may include any income and assets to which the consumer has a reasonable expectation of access.

77 Fed. Reg. 66,748, 66,754 (Nov. 7, 2012).

We support this proposed provision to allow a credit card issuer, as part of the ability-to-pay assessment, to consider income that the consumer has a “reasonable expectation of access” to. Similar to the proposed removal of the independent assessment, we believe this proposed provision will make it easier for nonworking spouses and partners—who are at least 21—to obtain credit. However, we are concerned that in determining whether a credit card applicant has a “reasonable expectation of access,” credit card issuers could open themselves up to litigation. We believe this could occur not only in instances where the issuer denies the applicant upon determining a lack of “reasonable expectation of access,” but also in instances where the issuer determines such access exists yet denies the applicant based on other aspects of the issuer’s underwriting process.

To address this concern, we ask the Bureau to clarify in the final rule that, for purposes of ability-to-pay, the credit card issuer has sole discretion in determining: (1) whether a credit card applicant has “reasonable expectation of access” to the income of a spouse or partner and, (2) whether to extend credit to the consumer. Further, the CFPB should provide supplemental guidance in regard to factors an issuer may choose to consider in determining “reasonable expectation of access.”

Proposed Examples of “Reasonable Expectation of Access”

The Bureau’s proposal would amend the commentary to section 1026.51(a) to include three illustrative examples in which an issuer can conclude that the applicant has a “reasonable expectation of access” to a household member’s income, and one example in which such a “reasonable expectation of access” does not exist. While we appreciate the Bureau’s attempt to provide practical examples to assist credit card issuers, we have several concerns with the examples. In addition to the comments below, we request the Bureau to clarify the manner in which the issuer would be required to verify the existence of relevant accounts held at other financial institutions, including such outside accounts held in the name of the applicant—entirely or jointly—and solely in the name of the household member. We believe the issuer should be permitted to rely

upon the applicant's assertion regarding access to funds. Further, we ask the Bureau clarify whether the issuer would be expected to include the commentary's examples in the actual credit card application form.

Example 1: A household member's salary is deposited into a joint account shared with the applicant.

We support example 1. We believe an issuer would feasibly be able to determine an applicant's access to funds by reviewing the history of deposits of a household member's salary into a joint account. However, for this and the examples below, we believe the issuer should be permitted to rely on the assertion of the applicant.

Example 2: Assume that the household member regularly transfers a portion of his or her salary, which is initially directly deposited into an account to which the applicant does not have access, from that account into a second account to which the applicant does have access. The applicant then uses the account to which he or she has access for paying household or other expenses. Under this scenario, an issuer would be able to consider the portion of the salary deposited into the account to which the applicant has access for purposes of section 1026.51(a).

We support example 2. We believe an issuer would likely be able to determine an applicant's access to funds by reviewing a record of transfer deposits from the household member's account into an account to which the applicant has access. However, this again assumes the household member's account is held by the credit card issuer.

Example 3: Assume that no portion of the household member's salary is deposited into an account to which the applicant has access. However, the household member regularly uses that salary to pay for the applicant's expenses. Under this scenario, an issuer would be able to consider the household member's salary for purposes of section 1026.51(a) because the applicant has a reasonable expectation of access to that salary.

We do not support example 3. We believe it would be prohibitively difficult, if not impossible, for smaller credit card issuers—including credit unions—to verify the fact pattern presented in this example.

Example 4: No portion of the household member's salary is deposited into an account to which the applicant has access; the household member does not regularly use that salary to pay for the applicant's expenses; and no law or regulation grants the applicant an ownership interest in that salary. Under this example, the applicant's expectation of access would not be considered reasonable.

We support example 4. However, as noted above, we request the CFPB clarify that in each of these examples the issuer is permitted to rely on information provided by the applicant regarding his or her access to the funds of a household member.

“Reasonable Expectation of Access” in Community Property States

The Bureau’s proposal does not address the issue of “reasonable expectation of access” in community property states. In community property states, the income of each spouse or partner is considered to be community property, and each spouse or partner has the power to manage community property. Therefore, we ask the Bureau to clarify that in community property states, spouses or partners have a “reasonable expectation of access” to community funds, and credit card issuers are permitted to rely on that legal authority for purposes of the ability-to-pay determination.

Use of a Single Application Form

The Bureau recognized in the proposal that, as a practical matter, credit card issuers will likely use a single application form for all consumers, regardless of age, and that issuers might choose to ask a series of questions regarding income in order to gather enough information to satisfy both standards (i.e., the ability-to-pay standard or the independent ability-to-pay standard). We urge the Bureau to explicitly state in the final rule that issuers are permitted to use a single application form, as described above.

Impact of Proposal on Spouses under 21

Since the proposal would not permit an applicant who is under 21 to rely on income that is merely accessible, it is likely that some nonworking spouses or partners under 21 will need to apply jointly with their spouse or partner, absent a co-signor. We believe such an outcome will make it more difficult for nonworking spouses or partners under 21 to obtain credit, as compared to such spouses or partners who are 21 or older.

Therefore, we request the Bureau provide additional guidance to clarify application of the rule to nonworking spouses or partners who are under 21. We believe this guidance will be necessary for issuers to ensure proper compliance with Regulation B and the Equal Credit Opportunity Act.

Thank you for the opportunity to express our views on the CFPB’s proposal to amend Regulation Z regarding the independent ability-to-pay standard. If you have any questions about our comments, please do not hesitate to give Senior Vice President and Deputy General Counsel Mary Mitchell Dunn or me a call at (202) 508-6743.

Sincerely,



Luke Martone
Assistant General Counsel