



November 13, 2012

## CFPB Proposal Would Remove Reg Z's Independence Requirement from Ability-to-Repay Assessment for Credit Card Accounts

### SUMMARY

- The Consumer Financial Protection Bureau's (CFPB) Regulation Z, which implements the Truth in Lending Act (TILA), generally prohibits an issuer from opening a credit card account for a consumer, or increasing the credit limit, unless the issuer considers the consumer's ability to make the required payments under the terms of the account. Reg Z currently requires issuers to consider the consumer's independent ability-to-pay, regardless of the consumer's age; in contrast, TILA expressly requires consideration of an independent ability-to-pay only for applicants who are under the age of 21.
- The CFPB's proposal would amend Reg Z and its commentary to remove the independent ability-to-pay requirement for consumers who are 21 and older, and permit issuers to consider income to which such consumers have a reasonable expectation of access.
- The CFPB is accepting comments until January 7, 2013; please send your comments to CUNA by December 17.

### BACKGROUND

As amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), TILA § 150 requires issuers to consider a consumer's ability-to-pay when opening, or increasing the limit on, a credit card account. In addition, the CARD Act added TILA § 127(c)(8), which requires card issuers to consider the *independent* ability-to-pay for consumers under the age of 21, absent a co-signer..

In January 2010, the Federal Reserve Board (Board) issued a final rule implementing these sections of TILA to require issuers to consider a consumer's ability-to-pay, including the additional *independent* ability-to-pay assessment for consumers under 21. However, in March 2011, the Board amended the rule to apply the independent ability-to-pay requirement to all consumers, regardless of age.

### DESCRIPTION OF PROPOSAL

CUNA<sup>1</sup>, members of Congress, and others have voiced their disagreement with the Board's March 2011 expansion of the *independent* ability-to-pay requirement to consumers who are 21 or older, and expressed specific concerns about the impact of the expansion 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 CFPB's proposal would remove all references to an *independent* ability-to-pay from § 1026.51(a)(1) and related commentary; § 1026.51(a) applies to consumers who are 21 or older.

In addition, the proposal would amend § 1026.51(a)(1)(ii) to clarify that—for a consumer who is 21 or older—the consideration of the consumer's current income or assets may include any income or assets to which the consumer has a reasonable expectation of access. The CFPB believes that the purposes of section 150 of TILA are best effectuated by placing limitations on the income or assets on which an issuer may rely when opening new credit card accounts or increasing credit limits for consumers who are 21 or older; accordingly, the proposed rule and proposed commentary would clarify that there are certain sources of income or assets on which it would be unreasonable for an issuer to rely.

#### Proposed Commentary

The proposed commentary would include four illustrative examples on when it is permissible to consider a household member's income for purposes of § 1026.51(a). The following three examples describe circumstances in which the applicant would be considered to have a reasonable expectation of access to a household member's income:

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<sup>1</sup> In a January 3, 2011, comment letter to the Board regarding the March 2011 amendments to Reg Z, we stated our opposition to applying the independent ability-to-pay standard to all consumers, regardless of age. That comment letter is available at [http://www.cuna.org/reg\\_advocacy/comment\\_letters/cl\\_010411.html](http://www.cuna.org/reg_advocacy/comment_letters/cl_010411.html).

- A household member’s salary is deposited into a joint account shared with the applicant.
- 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 § 1026.51(a).
- 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 § 1026.51(a) because the applicant has a reasonable expectation of access to that salary.

The fourth illustrative example describes a circumstance in which the applicant’s expectation of access would not be considered reasonable. The example states that: 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.

Use of a Single Application Form

The CFPB recognizes that, as a practical matter, a card issuer will likely use a single application form for all consumers, regardless of age. In such circumstances, card issuers might choose to ask a series of questions regarding income in order to gather enough information to satisfy both of the different standards (i.e., the ability-to-pay standard or the *independent* ability-to-pay standard). For example, a card issuer might provide two separate blanks on its application form, one prompting applicants to provide their “income,” and the other prompting applicants for “other accessible income.”

Unique Impact on Spouses under 21

Since the proposal would not permit an applicant who is under 21 to rely on income or assets that are merely accessible, the CFPB expects that in some cases, depending on the specific circumstances, nonworking spouses or partners under the age of 21 may need to apply jointly with their income-earning spouse or partner, absent a co-signor. The CFPB believes that this outcome is consistent with the independent ability-to-pay standard of TILA that applies to applicants who are under 21. At the same time, the CFPB understands that the proposed rule may make it more difficult for spouses or partners under 21 who do not work outside the home to obtain credit, as compared to spouses or partners who are 21 or older who do not work outside the home.

**QUESTIONS TO CONSIDER**

- 1) In general, do you support the proposed removal of the independence requirement for consumers of credit cards who are 21 or older? (CUNA’s initial reaction is that this will benefit issuers as well as consumers.)  
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- 2) Are the proposed illustrative examples appropriate? Are there additional examples that should be included?  
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- 3) How, as a practical matter, are card issuers likely to prompt consumers for income and assets in light of the different standards that the proposal applies based on a consumer’s age? Is additional clarification or guidance on this issue necessary in the rule or commentary?  
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- 4) Is additional guidance necessary to clarify application of the rule to applicants under 21, particularly spouses or partners who do not work outside the home? If so, how could such guidance be provided in a manner that is consistent with § 127(c)(8) of TILA, the Equal Credit Opportunity Act, and Reg B? A prohibition on discrimination based on marital status is a fundamental tenet of fair lending law and, given that § 127(c)(8) imposes a more stringent ability-to-pay standard on applicants under 21, the CFPB believes it would be inappropriate to apply the “reasonable expectation of access” income standard to all applicants who are under 21.  
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- 5) Other comments or questions.  
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**Please send comments to Assistant General Counsel [Luke Martone](#).  
[Click here](#) for the proposed rule in the *Federal Register*.**