



JEFFREY L. GERHART
Chairman
WILLIAM A. LOVING, JR.
Chairman-Elect
JOHN H. BUHRMASTER
Vice Chairman
NANCY A. RUYLE
Treasurer
STEVEN R. GARDNER
Secretary
SALVATORE MARRANCA
Immediate Past Chairman
CAMDEN R. FINE
President and CEO

Submitted electronically

January 7, 2013

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 (Truth in Lending Act) to
Permit Credit Card Issuers to Consider Consumer Accessible Income
[Docket No. CFPB-2012-0039]

Dear Ms. Jackson:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the proposed notice published by the Consumer Financial Protection Bureau (CFPB) to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the official staff commentary to allow credit card issuers to consider accessible income when providing consumer credit card accounts for consumers who are 21 years of age or older. Regulation Z generally prohibits a card issuer from opening a credit card account for a consumer, or increasing the credit limit applicable to a credit card account, unless the card issuer considers the consumer's ability to make the required payments under the terms of such account. Regulation Z currently requires that issuers 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

¹ With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1.2 trillion in assets, \$1 trillion in deposits and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

under the age of 21. The CFPB requests comment on these proposed amendments that would 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. ICBA strongly supports this change to the regulation and urges the CFPB to finalize regulatory amendments that will allow credit card issuers to consider this income when issuing individual credit card accounts.

Background

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law on May 22, 2009. The Credit Card Act primarily amended TILA and instituted new substantive and disclosure requirements for open-end consumer credit plans. On March 18, 2011, the Federal Reserve issued a final rule amending Regulation Z § 226.51(a) to apply the independent ability-to-pay requirement to all consumers, not just consumers under 21 years of age. The Federal Reserve stated it adopted this change, in part, in response to concerns regarding card issuers prompting applicants to provide “household income” on credit card applications. The Federal Reserve also clarified in amended comment 51(a)(1)-4.iii that consideration of information regarding a consumer's household income does not by itself satisfy the requirement in § 226.51(a) to consider the consumer's independent ability to pay. The amendments to § 226.51 became effective on October 1, 2011. Rulemaking authority over the Regulation Z credit card rules transferred to the CFPB on July 21, 2011. In this proposed rule, the CFPB is proposing to permit credit card issuers to consider income or assets to which an applicant who is 21 years or older has a reasonable expectation of access.

ICBA Position

ICBA has long supported a change to Regulation Z that would allow household or accessible income to be considered by credit card issuers. Particularly, ICBA supported a regulatory change because of the implications the previous rule would have for individuals 21 years of age and older who may have a household income but not an independent income. One example would be a stay-at-home spouse who is part of the household but does not have an income independent of his or her working spouse. The rule, as it currently exists, would limit the lesser earning spouse from independently obtaining credit because he or she may not have a sufficient income independent from their spouse. Attached, for the CFPB's reference, is a January 3, 2011 comment letter to the Federal Reserve discussing ICBA's position on this issue.

ICBA strongly supports CFPB's efforts to make these changes to Regulation Z which will allow issuers to more fairly and reasonably consider consumer available income when repaying credit card debt, instead of only individual salary or income.

In addition, we ask the CFPB to permit credit card issuers to use the term “household income” on credit card applications as this term may be more understandable to consumers than “accessible income” or “available income.” Currently, comment 51(a)(1)–4.iii provides that if a card issuer requests on its application forms that applicants provide their income without reference to household income (such as by requesting “income” or “salary”), the card issuer may rely on the information provided by applicants to satisfy the requirements of § 1026.51(a). Proposed comment 51(a)(1)–5.i would similarly provide that card issuers may rely on information provided by applicants in response to a request for “salary,” “income,” or “assets.” In addition, proposed comment 51(a)(1)–5.i would clarify that, for purposes of § 1026.51(a), card issuers also may rely on information provided by applicants in response to a request for “available income,” “accessible income,” or other language requesting that the applicant provide information regarding current or reasonably expected income and/or assets or any income and/or assets to which the applicant has a reasonable expectation of access. The CFPB notes that it is retaining in proposed comment 51(a)(1)–5.i existing guidance regarding requests by issuers for “household income.” Proposed comment 51(a)(1)–5.i would state that card issuers may not rely solely on information provided in response to a request for “household income”; rather, the card issuer would need to obtain additional information about the applicant’s income (such as by contacting the applicant).

ICBA encourages the CFPB to allow credit card issuers flexibility in what term they use on the credit card application, and to allow the term “household income” to be used on applications to represent “available” or “accessible” income. Credit card issuers should not be forbidden from using the term “household income” if they believe their consumers will better understand this term when filling out their application. Indeed, this term is no less clear than “accessible income” or “available income,” and is one that consumers are accustomed to seeing as representative of their accessible income to pay bills, that is not necessarily individual salary or income.

Thank you for considering our comments and for your work on this rulemaking. Please feel free to contact ICBA any time for additional feedback or to discuss our comments and thoughts in more detail. If you have questions or need additional information about our thoughts in this letter, please do not hesitate to contact me at 202-659-8111 or by email at Elizabeth.Eurgubian@icba.org.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel

Attachment



JAMES D. MACPHEE
Chairman
SALVATORE MARRANCA
Chairman-Elect
JEFFREY L. GERHART
Vice Chairman
JACK A. HARTINGS
Treasurer
WAYNE A. COTTLE
Secretary
R. MICHAEL MENZIES SR.
Immediate Past Chairman

CAMDEN R. FINE
President and CEO

January 3, 2010

By electronic deliver to:

regs.comments@federalreserve.gov

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1393

Re: Proposed Rule to Clarify Regulation Z (Truth in Lending Act)
Provisions on the Credit Card Accountability Responsibility and Disclosure
Act of 2009 [Docket No. R-1393]

Dear Ms. Johnson:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the Federal Reserve's proposed rule to clarify provisions of Regulation Z which implements the Truth in Lending Act (TILA). In this proposed rule, the Federal Reserve is providing clarification regarding compliance with certain aspects of the regulations that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act).²

¹The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold \$1 trillion in assets, \$800 billion in deposits, and \$700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

² Pub. Law 111-24, 123 Stat. 1734 (2009).

Background

The Credit Card Act was signed into law on May 22, 2009. This law primarily amended TILA and established many new substantive and disclosure requirements pertaining to open-end consumer credit plans. The Federal Reserve published regulatory changes to Regulation Z to implement the provisions of the Credit Card Act in three stages. All of these regulatory proposals have been finalized by the Federal Reserve. Since publication of the February 2010 and June 2010 final rules to implement the Credit Card Act, the Federal Reserve has become aware that clarification is needed regarding how financial institutions will comply with some of the rules. These proposed regulatory amendments are intended to clarify the previous provisions that have provided confusion.

Ability to Pay Requirement

In particular, the Federal Reserve proposes a clarification to the credit card provisions of Regulation Z regarding the consumer's ability to pay. Section 226.51 implements the provisions of the Credit Card Act that require creditors to assess a consumer's ability to pay before opening a new credit card account or increasing the credit limit on an existing account. Currently, § 226.51 requires that creditors establish and maintain reasonable written policies and procedures to consider the income or assets and the current obligations of all consumers. For all consumers, a creditor must consider either 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. Section 226.51 states it would be unreasonable for a creditor not to review information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have income or assets.

Some creditors request on application forms that applicants provide their "income," whereas other creditors request that applicants provide their "household income." The Federal Reserve proposes that creditors only consider the "consumer's independent" ability to make required minimum payments in determining their ability to pay, as well as their "independent" assets and current obligations. The Commentary further clarifies that "when a consumer's spouse is not a joint applicant or joint accountholder, a card issuer may consider the spouse's income or assets to the extent that a federal or state statute or regulation grants the consumer an ownership interest in the spouse's income or assets."³

³ See 75 FR 67501.

ICBA's Comments

ICBA opposes this proposed amendment to Regulation Z regarding a consumer's ability to pay for the reasons expressed below.

Particularly, ICBA opposes this amendment because of the implications it would have for individuals over the age of 21 who may have a household income but not an independent income. One example would be a stay-at-home spouse who is part of a household but does not have an income independent of his or her working spouse. Many households consist of individuals who have vastly different individual incomes, but both individuals contribute to the household's duties and responsibilities. This is not an unusual makeup of a household. This proposed rule, however, would limit the lesser earning spouse from independently obtaining credit because he or she may not have a sufficient income independent from their spouse. Such a requirement seems to ignore the way many households operate in the United States, and would ironically further limit access to credit at a time when consumers need it the most.

Furthermore, this type of underwriting could have a discriminatory impact on some individuals, particularly women, who are more likely to be the stay-at-home spouse in a one income family. As a result, this requirement is inconsistent with the goals of the Equal Credit Opportunity Act (ECOA) and Regulation B which provides that creditors not "discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction." 12 CFR 202.4(a). While the Federal Reserve states in the Supplementary Information that a consumer without independent income could still open a credit card account by applying jointly with a spouse or household member who has sufficient income or assets, ICBA asks the Federal Reserve to consider that ECOA has sought to address the situations of the past in which non-working women could not get a credit card or loan unless their spouse was a joint account holder. This proposed Regulation Z amendment would contradict ECOA's intent.

In addition, the change to Regulation Z is a substantive amendment and not a technical amendment as stated by the Federal Reserve. This change would have a tremendous impact on community banks and the consumers they serve because it would limit their customer base to only household members or spouses that are the primary financial earners, unless the consumer elects to make a joint application. If the Federal Reserve wishes to propose such a major regulatory change, then it should provide a greater amount of time for the public to provide their comments and should also conduct consumer testing and industry outreach across the country to validate through data that such a change is in the best interest of consumers and the credit card industry. Now is not the time for the Federal Reserve to be making major changes to the credit card provisions of Regulation Z without sufficient data to bolster its reasoning.

Finally, this amendment to Regulation Z is not consistent with the provisions of the Credit Card Act, which only had an “independent” ability requirement for consumers under age 21. If Congress wanted to include an “independent” ability to pay requirement for all individuals, it would have done so. ICBA urges the Federal Reserve to remain as consistent with the Credit Card Act as possible and to not include additional regulatory requirements for credit cards that are not expressly required by statute.

The Consumer Financial Protection Bureau (CFPB) will assume rulewriting authority over Regulation Z in July 2011, and Elizabeth Warren, assistant to the President regarding the CFPB, has made statements that the Bureau will begin its duties by examining products such as credit cards and credit card disclosures. Since the Bureau has confirmed it will soon be reexamining Regulation Z’s credit card rules, ICBA asks that the Federal Reserve forego making substantive amendments regarding the credit card provisions that could potentially be reexamined and changed again once the Bureau assumes rulewriting authority over Regulation Z. The Federal Reserve and the CFPB should coordinate on these issues until the transfer of authority to the CFPB is effective.

Based on the reasons stated above, ICBA urges the Federal Reserve to withdraw this proposed change regarding ability to pay and to clarify in Regulation Z that creditors may consider either individual or household income when satisfying the ability to pay requirements of the Credit Card Act.

ICBA thanks the Federal Reserve for the opportunity to comment on this proposed rule. As you are aware, community banks are common sense lenders that offer credit cards and other credit products on fair terms as a means of providing valuable services to their customers. As you review these and other Regulation Z provisions, please remember that community banks have not engaged in the misleading practices conducted by some of the larger financial institutions that are the impetus for the recent consumer credit laws and agency rulemakings.

If you have questions about this letter or need additional information, please do not hesitate to contact me at 202-659-8111 or Elizabeth.Eurgubian@icba.org. In addition, ICBA would be happy to meet with Federal Reserve staff to discuss these comments in further detail and provide additional insight from the community bank perspective.

Sincerely,

/s/

Elizabeth A. Eurgubian
Vice President & Regulatory Counsel