CBA | CONSUMER BANKERS ASSOCIATION

The Voice of the Retail Banking Industry

January 7, 2013

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

Re: Docket No. CFPB-2012-0039 – Proposal to Amend the Ability to Pay Provisions of the Credit Card Accountability Responsibility and Disclosure Act

Dear Ms. Jackson:

The Consumer Bankers Association (CBA)[1] appreciates the opportunity to submit comments in connection with the proposal to amend the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Card Act) rules, along with proposed revisions to the applicable official interpretations. Currently, these rules require credit card issuers to consider a consumer's independent ability to pay, regardless of age. The Consumer Financial Protection Bureau (CFPB or Bureau) has proposed changes to these rules to remove this "independent ability to pay" for consumers who are over the age of 21, which is consistent with the Card Act statute, and to replace it with a requirement to permit issuers to consider income to which consumers have a "reasonable expectation of access." CBA generally supports this proposed rule to facilitate the ability of certain consumers, such as stay-at-home spouses, to receive credit and offers the following comments that we believe will improve this proposal.

Summary of CBA's Comments

- The proposal would allow credit card issuers to consider income to which the certain consumers have a "reasonable expectation of access." We support this approach that allows, but does not require, issuers to consider such income.
- Credit card issuers should be able to rely on application information for all of the Card Act "ability to pay" provisions.

[1] The Consumer Bankers Association ("CBA") is the only national financial trade group focused exclusively on retail banking and personal financial services — banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and federal representation for its members. CBA members include the nation's largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

- Certain of the proposed official interpretations that apply to consumers over the age of 21 should also apply to those under the age of 21. These include the provisions allowing issuers to consider the collective ability of joint accountholders to make the required payments and the provisions allowing issuers to consider information that is provided by the consumer or reflected in a credit report.
- Under the proposal, whether an issuer could consider the income and assets of authorized users, household members, or other persons would in certain situations depend on whether a Federal or State statute or regulation grants the applicant an ownership interest in such income or assets. The official interpretations should specifically reference community property laws as one such example.
- The proposed examples of the consideration of income of household members are too limited. Specifically, these would limit consideration of income only to "household members;" reference "salary" and not other types of income; and some of the examples would limit this to the portion of salary used for "the payment of household or other expenses," which we believe is an unnecessary limitation.

Discussion

The Ability of Issuers to Consider Income to which Certain Consumers have a "Reasonable Expectation of Access" Should Remain Optional

For consumers over the age of 21, the proposal would permit issuers to consider income to which the consumer has a "reasonable expectation of access," without specifically requiring issuers to consider such income. We support this permissive approach and request the CFPB include this in the final rule.

Card Issuers Should be Able to Rely on Application Information for all of the Card Act "Ability to Pay" Provisions

For applications when the applicants are over the age of 21, we wholeheartedly support the provisions of the proposal that will permit issuers to rely on application information with regard to an applicant's income and assets, as well as the income to which consumers have a "reasonable expectation of access," without further verification. However, in situations when an applicant is under the age of 21, Section 1026.51(b)(1)(ii)(B) would require a cosigner, guarantor, or joint applicant to provide financial information for verification if the applicant does not have the independent ability to make the required minimum payments.

We urge the CFPB to drop the verification requirement in Section 1026.51(b)(1)(ii)(B) in order to maintain consistency with the treatment of consumers who are over the age of 21. Otherwise, the proposal would result in two different treatments for the verification of cosigners, guarantors, or joint applicants. When the applicant is over the age of 21, the proposal would seem to permit creditors to rely on the information on the application and would not need to verify the income of the cosigner, guarantor, or joint applicant. However, when the applicant is under the age of 21, the proposal would require the creditor to verify the income of the cosigner, guarantor, or joint applicant.

There is no real justification for this distinction and this would result in unnecessary complications. This would include additional burdens on issuers to track separate policies and procedures, as well as additional training and recordkeeping responsibilities. This would also cause cosigners, guarantors, and joint applicants to be treated differently, based on whether the applicant is over or under the age of 21.

We are also concerned that this situation would be further complicated to the extent issuers consider the income to which these joint applicants, guarantors, or cosigners have "a reasonable expectation of access" as this may require income verification of additional parties. This would also raise privacy concerns in these situations when financial information is collected from all of these other individuals.

Certain of the Proposed Official Interpretations Should Also Apply to Those Under the Age of 21

Certain of the proposed official interpretations that apply to consumers over the age of 21 should also specifically apply to those under the age of 21. These include the following proposed comments:

1026.51(a)-7 – *Current obligations*. A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer's report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.

1026.51(a)-8 – *Joint applicants and joint accountholders*. With respect to the opening of a joint account for two or more consumers or a credit line increase on such an account, the card issuer may consider the collective ability of all persons who are or will be liable for debts incurred on the account to make the required payments.

For the proposed official interpretations that apply to consumers under the age of 21, we believe similar provisions should be included or there should be a cross reference to these specific provisions. Otherwise, we are concerned these provisions would be

interpreted to not apply to those under the age of 21, and we see no reason for such a distinction.

Consideration of State Community Property Laws

The proposed official interpretations indicate that whether an issuer can consider the income and assets of authorized users, household members, or other persons would depend on whether a Federal or State statute or regulation grants the consumer who is liable for the debt an ownership interest in such income or assets. This is referenced in proposed comment 51(a)(1)(4)(iii) in which issuers can consider the income or assets of such parties if the applicant is over the age of 21 and has a "reasonable expectation of access" to such income or assets, or if there is a Federal or State statute or regulation that grants the applicant an ownership interest. This is also referenced in proposed comment 51(b)(1)(i)-1.iii in which issuers cannot generally consider the income or assets of such parties if the applicant is under the age of 21, unless there is a Federal or State statute or regulation that grants the applicant an ownership interest.

We believe the official interpretations should specifically reference community property states in which married persons are considered to own their assets and income jointly so it is clear each of these is considered to include a "State stature that grants the applicant an ownership interest" in the income and assets. We note that the phrasing of proposed comment 51(a)(1)(4)(iii) indicates the applicant must have a reasonable expectation of access or must be granted an ownership interest under Federal or State law or regulation. In our view, this means the analysis of whether there is an ownership interest under Federal or State law or regulation would be independent as to whether there is the reasonable expectation of access and, therefore, there would be no need to take this into consideration, such as whether any claim under a community property state could or could not be successfully challenged if the marriage later dissolves. Any such analysis of the impact of the dissolution of the marriage can be made by the card issuer as it decides whether or not to approve an application.

Proposed Examples of Considering Income of Household Members is too Limited

The proposed official interpretations include examples of when issuers may consider the income of other household members. This includes situations when the applicant is over the age of 21, as well as when the applicant is under the age of 21. For the situations when applicants are over the age of 21, this includes examples of what is considered to be a "reasonable expectation of access."

One concern we have is that under these examples, the consideration of the income of others appears to be limited to "household members," which references those with

whom the applicant shares a household. We do not believe the consideration of other income should be limited to only those with whom the applicant shares a household. There are situations in which individuals share household expenses but may not be living together, such as when a spouse is in the military and deployed overseas. For this reason, we suggest the CFPB delete the term "household member" in these examples and use the term "nonapplicant," or similar term.

We also question why these examples are limited to the other household members' "salary," as opposed "income," which is the term used elsewhere in the proposal and includes bonuses, tips, commissions, interest, dividends, retirement benefits, public assistance, alimony, and child support. We believe these examples in the proposed official interpretations should include other types of income, in addition to salary. Alternatively, we would appreciate it if the CFPB would explain the limitation in these examples.

Similarly, we are concerned with the two examples in proposed comment 51(a)(1)(6)(ii) and 51(b)(1)(i)-3.ii that describe situations when the household member regularly transfers a portion of his or her salary into an account to which the applicant has access and that "the applicant uses for the payment of household or other expenses." The example in proposed comment 51(a)(1)(6)(ii) is for when the applicant is over the age of 21 in which such salary may be considered by the applicant. The example in proposed comment 51(b)(1)(i)-3.ii is for when the applicant is under the age of 21 in which such salary may be considered only if the applicant has an ownership interest under Federal or State statute or regulation.

For these examples, we see no reason why the salary in these situations should be limited to the use for the "payment of household or other expenses." We believe access to this salary should be permitted under these examples, regardless of how he or she chooses to spend the money and, again, this should be broadened to include other types of income.

Regulation B Concerns

We support the proposal, subject to the concerns raised above. However, the CFPB notes in the proposal that the rule would still result in differential treatment of consumers depending on whether they are over or under the age of 21. There are some clearly intended consequences (*e.g.*, a possible reduction in credit availability to applicants who are not yet 21 years old) and some that are possibly less intended (*e.g.,* a young married couple who cannot get credit because neither would *independently* survive an ability to pay calculation although they would if their incomes were pooled). We ask the CFPB to clarify, however, that compliance with any of the options provided in the

proposal would not cause concern under Regulation B. For example, if a creditor were to ask a 25-year old applicant for "accessible income" but a 19-year old applicant for "income"— even though the creditor *could* ask the older applicant for only "income"— that creditor should not, for that reason, have concerns regarding Regulation B. We do not believe the CFPB intends to create such concerns, but a clear statement to that effect may be useful in the context of potential litigation. Again, we support the proposal, but want to raise the issue at this time so the CFPB is aware of this as it examines banks for compliance with this new rule.

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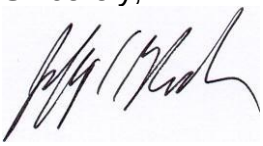
Thank you for the opportunity to comment on the proposal to amend the "ability to pay" provisions of the Card Act. If you have any questions or wish to discuss these issues further, please feel free to contact me at (202) 255-6366 or at jbloch@cbanet.org.

Sincerely,



Jeffrey P. Bloch
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