



November 20, 2009

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Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: Docket No. R-1370

Dear Ms. Johnson:

Equifax Inc. and its affiliates ("Equifax") submit this letter to the Board of Governors of the Federal Reserve System ("Board") in response to the Board's request for comments in the Notice of Proposed Rulemaking to amend Regulation Z, ("Proposed Regulations") implementing provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 ("Credit Card Act"). The Proposed Regulations were published in the *Federal Register*, Volume 74, No. 202, on October 21, 2009. We appreciate the opportunity to provide these comments regarding the Proposed Regulations.

Equifax is a 110-year old company, a member of the Standard & Poor's (S&P) 500® Index, and a global leader in turning information into intelligence. Equifax has various affiliates that provide consumer report services, including consumer credit reports (by Equifax Information Services LLC) and employment and income consumer reports (by The Work Number division of TALX Corporation). Through these and other affiliates, Equifax serves commercial customers across a wide range of industries and markets, including the financial services, retail, telecommunications, utilities, mortgage, brokerage, insurance, automotive, healthcare, and direct marketing sectors. Equifax affiliates also provide consumers with financial information and protection services, including identity theft prevention and detection services.

## **In General**

Our comments are focused on the various portions of the Proposed Regulations that implement the requirements of Section 109 “Consideration of the Ability to Pay” and Section 301 “Extensions of Credit to Underage Consumers” of the Credit Card Act. In particular, we recommend that the Board consider revisions to the proposed Official Staff Interpretation accompanying the proposed 12 C.F.R. § 226.51(a) “ability to pay” regulations in order to clarify the ability of card issuers to use consumer reports and Regulation B compliant modeling information in order to meet their obligations under § 226.51(a).<sup>1</sup>

### **Consideration of Ability to Pay**

The Proposed Regulations require a card issuer to take into account four considerations in measuring a consumer’s “ability to make the required minimum periodic payments”: 1) calculation of a minimum periodic payment under the account terms; 2) review of the consumer’s income and/or assets; 3) review of the consumer’s obligations; and 4) the final determination of whether the consumer has the ability to make the minimum periodic payment. The Proposed Regulation requires card issuers to put in place “reasonable policies and procedures in place to consider this information.”

#### **1. Calculation of a Minimum Periodic Payment under the Account Terms**

We support the Board’s proposal to include a “safe harbor” standard that enables card issuers to be confident that they are in compliance.

#### **2. Review of Consumer’s Income and/Assets**

In considering a consumer’s income and assets, Supplement I to Part 226, Official Staff Interpretations, § 226.51(a).1, calls for card issuers to consider the consumer’s ability to make the required minimum payments based on what appears to be consumer provided income or asset

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<sup>1</sup> We agree with the Board’s determination that the same “ability to pay” standards set forth in § 226.51(a) should apply with respect to accounts for consumers under the age of 21 to be governed by § 226.51(b.)

and obligation information. It also states the card issuer can consider credit reports, credit scores, and other factors, consistent with Regulation B. We recommend that the Board revise this provision to clarify that card issuers may utilize not only credit reports and scores, but also other types of consumer reports and Regulation B compliant modeling information to meet their obligations.

Credit reports and credit scores speak to a consumer's credit payment history and the likelihood of future payment, *i.e.*, credit risk, and can inform certain component information involved in the consideration process of whether a consumer can make the minimum required periodic payments for a new credit card account or an increased credit limit of an existing credit card account. However, in addition to consumer provided information, credit reports, and credit scores, card issuers must be able to use a broader range of consumer reports and consumer information to effectively and actively complete their payment assessment process. Thus, card issuers should be permitted to use employment and income information concerning consumers from sources other than the consumer and credit files. Card issuers should also be allowed to use modeled or projected income information that meets the Reg. B requirements for models and decision tools that are empirically derived and statistically sound.

While income and employment-focused consumer reports can be considered "other factors" within the meaning of the proposed Official Staff Interpretation, we are concerned that—given that other provisions of the Commentary (*e.g.* § 226.51(a).5) do reference "consumer reports" broadly rather than "credit reports" specifically—card issuers may not believe they have the authority to use other types of consumer reports that would be quite useful in meeting their ability-to-pay obligations. As a result, we recommend that this provision be revised to expressly reference consumer reports and also Regulation B compliant modeling information.

### **3. Review of Consumer's Obligations**

Supplement I to Part 226, Official Staff Interpretations, §226.51(a).5 allows credit issuers to base their calculation of a consumer's obligations on information "provided by the consumer or in a consumer report". Although this allows the card issuer to use broader types of consumer reports than just credit reports and credit scores, this should also be expanded to allow the use of

modeled obligation information that meets the requirements of Reg. B, as well as other information regarding a consumer's obligations. As with the income and asset component of the minimum payment consideration process card issuers need to be allowed to use other sources of reliable information, including modeled information, about a consumer's obligations.

#### **4. Final Determination of Ability to Make Minimum Payments**

As described above, the final determination or calculation of whether the consumer has the ability to make the minimum required payment appears to be a step-by-step calculation using information the card issuer received from various sources. We concur with this approach and the requirement that card issuers must have reasonable policies and procedures in place to consider the income or asset information and the obligation information in making their final determination of the consumer's ability to make the minimum periodic payment.

#### **Verification or Confirmation of Information**

In its Section-by-Section Analysis of Section 226.51(a), the Board specifically requested comments on "whether there is evidence that warrants a requirement to verify information before a credit card account is opened or a credit line is increased."

Although the overall systemic risk of credit card defaults is not as great as in the mortgage loan and home equity arena, there should be a requirement that a card issuer have confidence in the reasonable accuracy and reliability of the information used in its consideration of the consumer's ability to make their minimum periodic payments. The Board specifically expressed its belief that there are reasons for verification when the information provided by the consumer is inconsistent with information the card issuer already has or is able to obtain. This raises questions about the confidence and reliability of the information provided by the consumer or otherwise used by the card issuer in making its ability to pay consideration. To require a precise determination of the accuracy of the information is not possible, and would significantly increase the cost and time of opening accounts and increasing credit lines, but a requirement for a card issuer to have reasonable confidence in the reliability of the information used in the consideration process is appropriate. When a situation of questionable or potentially unreliable information presents itself in the consideration process, the card issuer should be able to resolve

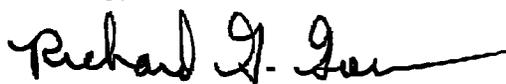
these issues through various means, including using additional third party sources of information, such as those described above. Use of these and other additional sources of information will provide critical verification or confirmation of the information, especially that provided by a consumer, the card issuer is using. This will enable the credit issuer to have reasonable confidence in the reliability of the information it is using in its consideration of the consumer's ability to make their minimum payment.

### **Conclusion**

The approach proposed by the Board for card issuers to consider a consumer's ability to make minimum periodic payments on a new credit card account or increased line of credit is generally appropriate. However, there are additional sources of information for consumer income and assets as well as obligations that card issuers should be permitted to use, including other types of consumer reports, modeled information that is empirically derived and statistically sound, and other information appropriate under Reg B in their final consideration decision that a consumer has the ability to pay. Additionally, card issuers should take appropriate steps to have a reasonable level of confidence in the accuracy and reliability of the information they use in their ability to pay consideration.

We appreciate this opportunity to provide these comments and recommendations that we believe will clarify and enhance the effectiveness of the proposed regulations for consideration of a consumer's ability to pay their minimum periodic payments as required by the Credit Card Act.

Sincerely,



Richard G. Goerss  
Chief Privacy Officer and Regulatory Counsel