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November 19, 2009

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

RE: Notice of Proposed Rulemaking: Amendments to Regulation Z pursuant to the Credit Card Accountability Responsibility and Disclosure Act of 2009 [Docket No. R–1370]

Experian Information Solutions, Inc. ("Experian") is pleased to offer comments on portions of the proposed rule ("Rule") promulgated by the Board of Governors of the Federal Reserve System (the "Board") under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "Card Act"). In particular, portions of the proposed amendments to Regulation Z implement Section 109 of the Card Act, prohibiting 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.[1]

As a preface, it bears noting that Section 109 of the Card Act requires only that the card issuer consider "the ability of the consumer to make the required payments under the terms of such account", and does not explicitly require consideration of income or assets. Thus, it seems that the Board has some latitude in setting a standard under the Rule. As detailed below, there are a number of circumstances in which a card issuer's ability to obtain income information directly from the consumer is severely limited. At least in such instances, use of appropriately modeled income data or third party sources would be appropriate to ascertain a consumer's ability to pay. The Board should also consider that secondary validation of stated income through these same tools is of great value, and take care not to inadvertently restrict their use.

Experian concurs with the Board's reasoning that a consumer's obligations can be readily and adequately ascertained directly from a consumer report. Likewise, should the final Rule require acquisition of income data from the consumer, flexibility in verification requirements is appropriate, given the unsecured nature of the consumer's obligations. The Rule as currently drafted, however, anticipates that the card issuer would in all cases obtain a statement of the consumer's income or assets from the consumer. Even putting

[1] Section 109 of the Card Act, 15 U.S.C. 1665e, adding new Truth in Lending Act Section 150, to be implemented at §226.51(a) of Regulation Z and in the related proposed comments.

to one side the issue of the accuracy of stated income, in many instances obtaining such a statement is extremely problematic. For instance, in retail point-of-sale environments and even in many face-to-face transactions in a bank, privacy concerns severely limit the consumer's willingness to provide sensitive data such as income. Line increases on existing customers, whose income data may not have been collected recently or in the first instance, create other challenges for card issuers. In this latter circumstance, mandating that card issuers are required to obtain income and asset data creates an environment ripe for "phishing" and similar attempts at identity theft. Consumers would rightly be wary of any such inquiries, no matter how legitimate.

As a solution to this problem under the proposed Rule, Experian respectfully submits that "reasonable policies and procedures" to consider a consumer's ability to pay can be based on the consumer report. We note in general that a card issuer's typical risk assessment based on the credit report intuitively includes an assessment of a consumer's ability to pay. Consumers who have consistently made timely payments on a number of obligations have demonstrated an ability to pay. More directly, income can ably be estimated and validated from the consumer report, based on statistical modeling of certain data elements contained in the report. Thus, the Congressional mandate to ascertain the overall burden on a consumer of additional debt can be met, using systems and tools already available and familiar to the issuer.

Statistical modeling has long been recognized as appropriate, particularly for assessment of credit risk. Regulation B allows use of credit scores that are "empirically derived, demonstrably and statistically sound." There are now literally thousands of generic and custom risk scores that meet this standard existing in the marketplace, and Experian is a recognized leader in statistical modeling to assess likely consumer behavior.[2] Such scores are used at all phases of the lending process, including forecasting credit, fraud and bankruptcy risk in account acquisition, predicting account behaviors and fraudulent transactions in existing accounts, and assessing collectability of delinquent accounts. Indeed, Experian has previously developed a number of different income estimation models.

Of particular note for the rulemaking under the Card Act, Experian has just introduced its Income Insight^{SM} product, which provides an estimated income for the consumer. The "philosophical" reasoning behind income modeling may be readily apparent. A consumer whose credit report reflects a mortgage open for five years with a given payment, an installment loan for a car with a given payment, open revolving accounts, etc., and who has had no material delinquencies is likely to have an income within certain ranges. Creation of an empirically derived and statistically sound model is, of course, dependent on acquisition of a statistically significant set of accurate data. Data income

[2] Experian has delivered over 1,500 custom scorecards worldwide through its 40 offices in 30 different countries. Within North America, Experian has been developing models since 1976 and our clients have included most of the top ten card issuers in the United States, the top five mortgage lenders/retail banks in the United States, and the top four consumer finance companies.

can be more difficult to obtain than other data typically on a consumer report (e.g., default data for use in risk modeling). Income data that lenders do collect is not reported to consumer reporting agencies and may not be independently verified for accuracy. Use of other sources of income data, commonly either derived or aggregated at a particular geographic or household level, leave question as to the statistical soundness of the model then created. By obtaining a large source of verified income data (the dependent variable for this type of model), Experian has been able to model likely income *for the individual consumer* based on attributes (the independent variables) derived from data solely from the consumer report. As with Experian's credit risk models, none of the attributes relates to a protected status under Regulation B. By using data strictly from the credit report and avoiding use of any extraneous demographic data, Experian's Income Insight product complies with both the Fair Credit Reporting Act and Equal Credit Opportunity Act standards.

We believe that the Income Insight performance statistics, as well as the individual validations of Income Insight now being performed by our clients,[3] confirm that use of this and similar income modeling tools are entirely appropriate to meet the requirements to assess a consumer's ability to pay under the Card Act. Moreover, there is a robust market for such products, which will grow more refined and accurate as competition brings new modeling algorithms and datasets to the marketplace.

In sum, modeled income is a valuable tool to validate consumer income and ability to pay in all circumstances, and the Board should take care not to inadvertently preclude its use by promulgating a final Rule that seems to mandate use of stated income or traditional methods of income verification. More important, there are circumstances where obtaining data directly from the consumer is difficult or comes with grave concerns over the privacy and security of sensitive data. Experian believes that the Board has been given adequate latitude under the Card Act to allow the use of statistically sound and empirically derived modeled estimates in all cases, but the Board should at a minimum explicitly allow the use of modeling and similar tools in lieu of obtaining income and asset data from the consumer in such circumstances. In addition, the Board should relax any requirement to obtain income data directly from the consumer when the creditor is opening a new line or increasing an existing line for some limited amount, where the risk to the consumer of being unable to pay is substantially reduced.

[3] Experian will share model validation data with its clients under appropriate non-disclosure agreements and perform client-specific validations as each client assesses its compliance with Reg B and Card Act requirements.

Thank you for this opportunity to comment. Please do not hesitate to contact me if Experian can provide any further information for the Board's consideration in this important rulemaking.

Sincerely,

Jason Engel

Jason Engel
Vice President & Chief
Regulatory Counsel