From: Charming Shoppes, Inc., James Kreig

Subject: Regulation Z - Truth in Lending (Credit Card Act)

Comments:

FASHION SERVICE CORP.

November 13, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Amendments to Federal Reserve Regulation Z

Docket No. R-1370

Dear Ms. Johnson:

I am writing on behalf of Fashion Service Corp. ("FSC") to comment on one aspect of the proposed changes to Federal Reserve Regulation Z needed to implement the requirements of the Credit CARD Act of 2009. FSC is a subsidiary of Charming Shoppes, Inc. ("CSI") and is the entity within the CSI family of companies responsible for the coordination of retail credit extended to the consumer customers of CSI and its subsidiaries.

The one aspect of the proposal that concerns CSI is language around the consideration of the consumer's ability to repay a credit card debt as set forth in proposed Section 226.51 of Regulation Z. The proposed language in Section 226.51 is unclear in the context of an application for a proprietary credit card made by a consumer to a retailer at point of sale in a retail store. Historically, the retailing industry (in conjunction with an affiliated or unaffiliated credit card issuer) has relied upon a credit score obtained from one of the three major consumer reporting agencies (Equifax, Experian or TransUnion) to determine the consumer's eligibility for credit. The proposed language of Section 226.51 along with the proposed Official Staff Commentary could be read to require that the card issuer (or retailer) obtain BOTH a credit score (or a credit report) AND information about the consumer's income or assets directly from the consumer at point of sale. CSI believes that the Federal Reserve should make it clear in the final regulation that a card issuer could meet the requirements of Section 226.51 by obtaining and considering a consumer report (with a credit score) without also being required to obtain income or asset information directly from the consumer to satisfy the requirements of Section 226.51.

CSI is a leading multi-channel, multi-brand specialty apparel retailer primarily focused on plus-size women''s apparel. CSI operates its retail stores and related e-commerce websites through 4 distinct brands - Lane Bryant(R), Fashion Bug(R), Petite Sophisticate(R), and Catherines Plus(R). It has more than 2,200 retail stores in 48 states and is one of the largest women's specialty apparel retailers in the United States. CSI is a public company whose stock is traded on the NASDAQ under the ticker symbol "CHRS."

CSI, through an unaffiliated limited purpose credit card bank, offers proprietary credit card programs to encourage sales in its retail stores. CSI believes that these proprietary credit card programs act as promotional vehicles by engendering customer loyalty, creating a substantial base for targeted direct-mail promotion, and encouraging incremental sales.

ANALYSIS

The following introductory language from the Federal Reserve proposal states:

The proposed rule would also clarify the types of factors creditors should review in considering a consumer''s ability to make the required minimum payments. Specifically, an evaluation of a consumer''s ability to pay must include a review of the consumer''s income or assets as well as the consumer''s current obligations, and a creditor must establish reasonable policies and procedures for considering that information. When considering a consumer''s income or assets and current obligations, a creditor would be permitted to rely on information provided by the consumer or information in a consumer''s credit report.

74 F.R. 54127 (emphasis added).

Based on this language, it would seem that the proposed requirement to review both (1) the consumer's income or assets and (2) the consumer's ability to repay could be done by a card issuer EITHER obtaining information directly from the consumer OR from information contained from a consumer reporting agency in a consumer report. In other words, BOTH prongs of the requirement - income or asset consideration and current obligation consideration could be satisfied by the card issuer by reliance on information contained in a consumer report. Hence, if a card issuer obtained and analyzed a consumer report at time of application, the card issuer would satisfy both prongs of the requirement.

However, the language of the proposed Regulation itself (Section 226.51 of Federal Reserve Regulation Z) does not contain this clarity. The proposed language states in relevant part:

Section 226.51 Ability to Pay.

(a) General rule. (1) Consideration of ability to pay. A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer''s income or assets and the consumer''s current obligations. Card issuers must have reasonable policies and procedures in place to consider this information.

This language suggests that the consumer's ability to pay must be considered in the context of both the consumer's income and assets and the consumer's current obligations without any specificity as to how a card issuer may meet this requirement.

Moreover, the clarity provided in the introductory language is blurred by the language of the proposed Official Staff Commentary that states in relevant part:

Section 226.51 Ability to pay.

51(a) General rule.

1. Consideration of additional factors. Section 226.51(a) requires a card issuer to consider a consumer''s ability to make the required minimum periodic payments under the terms of an account based on the consumer''s income or assets and the consumer''s current obligations. The card issuer may also consider credit reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 202).

*   *   *

4. Income, assets, and employment. Any current or reasonably expected assets or income may be considered by the card issuer. For example, a card issuer may use information about current or expected salary, wages, bonus pay, tips and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments that the consumer can or will be able to use.

5. Current obligations. A card issuer may consider the consumer''s current obligations based on information provided by the consumer or in a consumer report.

Proposed Comment 226.51(a)(5) seems to state that a card issuer may only use information from a consumer report in connection with an analysis of the consumer's current obligations. Implicit in this language is the notion that the card issuer cannot use the information in a consumer report as part of the consideration of the consumer's income or assets. This interpretation - if correct - would mean that a card issuer would be required in all cases to obtain information about income or assets directly from the consumer. The card issuer could not obtain and consider income or asset information from a consumer report.

CSI believes that asking a consumer to provide information about the consumer's income or assets while standing at the check-out counter of a retail store (perhaps surrounded by other customers) would be problematic and awkward and unlikely to result in accurate income or asset information being communicated to the store employee. CSI believes that the existing mechanism of relying exclusively on credit report and credit score information obtained "behind the scenes" from one of the three major consumer reporting agencies has served the retail credit industry well over many years and should not be changed. Consumers seeking credit should not be required to make information about their income or assets public in order to apply for credit in a retail store.

CSI asks that the final language of Section 226.51 (and the accompanying Official Staff Commentary) be revised to explicitly provide that the requirement to consider both (1) the consumer's income or assets and (2) the consumer's ability to repay could be satisfied by the card issuer EITHER obtaining information from the consumer OR from information contained from a consumer reporting agency in a consumer report. In other words, both prongs of the requirement - income or asset consideration and current obligation consideration - could be satisfied by the card issuer by reliance on information contained in a consumer report. If a card issuer obtained and analyzed a consumer report (or credit score) at time of application or at time of credit line increase, the card issuer would satisfy both prongs of the requirement.

THE MECHANICS OF RETAIL CREDIT

To further explain CSI's concerns, CSI believes that some information about the retail store credit process would be helpful.

CSI - like many retailers today - offers retail credit through an unaffiliated limited purpose credit card bank. The credit card bank issues proprietary credit cards in connection with its open-end credit plans. In most cases, the first transaction under the open end credit plan is typically made within a few seconds of the approval of the consumer's application for credit in the retail store.

In the case of the opening of a new credit card account in a retail store, the process usually starts by the consumer entering a retail store and selecting merchandise to purchase. The consumer then approaches the cash register with the selected items. The store employee at the register is trained to ask the consumer if he or she has the store's credit card and, if the answer is no, the store employee will solicit the consumer to open a credit card account. Typically, some incentive (e.g. 15% off the purchase price) is offered as an inducement to apply for the store credit card. If the consumer decides to apply, he or she is directed to an "instant credit machine" that is linked electronically to the bank issuing the credit card. The consumer (applicant) provides the store employee with his or her name, residential street address, social security or taxpayer identification number and date of birth. This information is transmitted to the credit card bank through the point-of-sale equipment at the retailer and, in a matter of seconds; the bank obtains a credit report from a consumer reporting agency, analyzes credit information and transmits back to the store an approval or a denial of the credit application. If the application for credit is approved, the customer charges the amount of the purchase to his or her new credit card account at that time. This process is known in the retailing industry as "instant credit."

The card-issuing bank then mails the actual credit card to the consumer within a few days of the credit approval.

ALTERNATIVE

If the Federal Reserve deems it appropriate to require a card issuer to obtain income or asset information directly from the consumer at time of the application for credit or at the time a consumer seeks an increase in a line of credit, then CSI suggests that the Federal Reserve set a de minimus credit line limit exception for the requirement to obtain income or asset information directly from the consumer. CSI suggests that credit lines of $3,000.00 or less could be exempted from a requirement to obtain income or asset information directly from consumers. The risk to the card issuer is small and the convenience to the consumer would far outweigh any benefit to providing this information to the card issuer.

Thank you for your consideration of these comments.

James J. Kreig
Charming Shoppes, Inc.