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November 16, 2009

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

Re: Docket No. R-1370

Dear Ms. Johnson:

This comment letter is submitted to the Board of Governors of the Federal Reserve System ("Board") on behalf of TransUnion LLC and its affiliates ("TransUnion") in response to the Notice of Proposed Rulemaking published in the *Federal Register* on October 21, 2009 to revise Regulation Z to implement the Truth in Lending Act ("TILA") as amended by the Credit CARD Act ("Act") ("Proposal"). TransUnion is a "nationwide" consumer reporting agency ("CRA"), as described in Section 603(p) of the Fair Credit Reporting Act ("FCRA") and has approximately 3,000 employees with operations on four continents and in 25 countries. Globally, TransUnion manages more than 500 million consumer credit records and has access to consumer credit information regularly and voluntarily supplied by data furnishers on substantially all of the credit active consumers in the United States.

In General

Our comments are limited to the portion of the Proposal in § 226.51 pertaining to a card issuer's obligation to consider a consumer's ability to pay in connection with the opening of a credit card account, or increasing the credit line on an existing credit card account. If the Board requires card issuers to consider income in these circumstances, we believe that, due to principles of consumer privacy as well as the existence of a prior commercial relationship, an issuer should be permitted to rely on empirically derived and statistically sound income and debt-to-income estimation models, or on independent sources, for purposes of obtaining or confirming such income information.

We note at the outset that the Act does not require a card issuer to specifically consider a consumer's income when opening an account or increasing a credit line. In fact, such a specific requirement was deleted from the original version of the amendment offered by Senator Menendez before it was incorporated into the Act. Therefore, if the Board requires a card issuer to consider income, the requirement is one created solely by the Board and can be modified or interpreted by the Board without constraint by the Act. As our comments below illustrate, we ask the Board to exercise reasonable flexibility and consider consumer protection when imposing the requirement on card issuers to consider income for purposes of § 226.51.

Point of Sale Credit Transactions

An important and critical aspect of the U.S. consumer economy is the ability for consumers to have access to credit at the point of sale. Being able to purchase goods or services while simultaneously establishing credit with a new lender is the lynchpin of the United States auto, retail (electronics, white goods, clothing, etc.), and home improvement industries. The Chairman of the Federal Trade Commission once referred to this phenomenon as the "miracle" of instant credit fueled by the consumer reporting system in the U.S.[1] The Board must carefully balance the purpose of the Proposal with possible impacts on consumer buying patterns, in particular in light of the financial stress the U.S. economy has experienced.

With the avalanche of data breach and data security concerns being reported in the media, consumers are increasingly wary of providing non-public personal information in a public environment (such as at a cashier or customer service desk). Couple this with the fact that consumers who seek to purchase goods and services from retail establishments are generally serviced by individuals whom they may not fully trust with keeping their non-public personal information protected at all times, requiring consumers to provide their most sensitive data (such as income) in such an environment may have a chilling impact on point-of-sale transactions. To provide a solution to this reasonable privacy concern expressed by consumers, TransUnion has developed tools, such as EasyApply™, that will enable point-of-sale representatives of the retailer to only seek limited public or non-descriptive information (such as name, address, phone number, age and last 4 digits of their social security number) that a consumer should feel more comfortable in providing in a public place. These tools enable a lender to establish a consumer's identification and are sufficient to locate the consumer's credit file. We believe requiring a consumer to provide actual income in a public setting to a point-of-sale representative will be viewed by the consumer as an invasion of their privacy that is an unnecessary risk for what they wish to do (such as, buy a refrigerator) and will impact the overall sale of consumer goods and services. We believe that these privacy concerns cannot be overlooked by the Board when it considers the final rules as it is a function of consumer protection.

Increase in Credit Lines

As a result of the Act, TransUnion anticipates that credit limits, in particular increases in credit lines, will be managed much more conservatively since credit card lenders have restrictions placed on their ability to manage risk in other ways. TransUnion believes that once a credit relationship has been established with a consumer, factors other than income, such as "how" that consumer has performed with that lender, should be viewed as a compensating control to actual confirmation of income. In that vein, TransUnion believes that if a lender has an established commercial relationship with the consumer, the lender should be permitted to utilize statistically valid income and debt-to-income estimation models as well as other independent data sources (not from the consumer) to support the consumer's income profile. In this manner credit card lenders will be able to increase credit lines during a point-of-sale transaction without requiring the consumer to provide personal non-public information to the clerk, cashier or customer service representative. Again, the Board must be cognizant of consumer protection and privacy concerns when crafting these new rules.

[1] *See, e.g.*, Remarks of Timothy J. Muris, October 4, 2001 at the Privacy 2001 Conference found at http://www.ftc.gov/speeches/muris/privisp1002.shtm (last visited on November 11, 2009).

Use of Models Generally

We believe that statistically valid and empirically derived income and debt-to-income estimation models provide card issuers with a valuable tool in connection with account management. The apparent goal of the Act, and of the Proposal, is to ensure that card issuers do not grant credit in a manner that results in the cardholder becoming overextended. We believe that validated income and debt-to-income models provide an appropriate method for issuers to estimate income and debt-to-income burdens for use in connection with other information (*e.g.*, consumer report information) to determine whether the applicant or cardholder will be able to make payments on the account. We therefore believe that the Board should permit a card issuer to rely on income and debt-to-income information obtained from empirically derived and statistically sound estimation models for purposes of § 226.51.

Regardless of how the Board interprets the requirements of the Act, it would be unfortunate if the Board foreclosed innovation and options through which card issuers could comply with § 226.51. For example, if the Board has present concerns about the use of estimated income and debt-to-income for purposes of § 226.51, we caution the Board against making blanket statements and generalizations that could produce a chilling effect on the current or future interest that card issuers may have in the use of income estimation models. There is no reason to suggest that it would be impossible for an income or debt-to-income estimation model to provide appropriate income and debt-to-income burden information to card issuers for use in connection with reasonable policies and procedures to evaluate a consumer's ability to repay amounts owed on a credit card account.

Estimated Income as Supplement to Reported Income

TransUnion believes that a card issuer should be permitted to obtain estimated income and debt-to-income information to supplement income information reported by the consumer or obtained from other sources. Modeled estimated income and debt-to-income information can be very valuable to card issuers (and other creditors) in determining whether the income information provided by the consumer is accurate.[2] Although the Board would likely have no objection to an issuer relying on estimates if such estimates simply confirmed the income and debt-to-income burden obtained from the consumer, we ask the Board to clarify that the card issuer may consider the estimated income and debt-to-income, as necessary and appropriate, to modify the income reported by the consumer. We believe such flexibility will allow card issuers to obtain a higher degree of confidence when reviewing income information, and such usage of estimated income and debt-to-income obtained from independent sources would further the objectives of the Proposal. We therefore ask the Board to expressly allow a card issuer to use estimated income and debt-to-income information *in conjunction with* income information reported by the consumer.

Estimated Income as Substitute for Reported Income

Because the Proposal requires card issuers to rely on reported income for purposes of complying with § 226.51, we believe the Board should grant card issuers flexibility in those

[2] Self-reported income may be inaccurate for a variety of reasons. Some consumers may attempt to overstate income for obvious reasons. Others may understate income, especially if they have privacy concerns and must provide it to a store employee to open a credit card account at the point of sale.

circumstances where it may not be practical or necessary to obtain income information as reported directly by the consumer. For example, as we describe in detail above, some consumers may be very uncomfortable providing income information to a store clerk when opening a credit card account at the point of sale. This discomfort may cause consumers to avoid applying for credit at the point of sale if required to provide income information, possibly denying them valuable benefits associated with the account (*e.g.*, discounts, promotional financing).

It is clear from the Proposal that the Board does not intend to implement the Act in a manner that encroaches on legitimate consumer privacy concerns, or that inappropriately restricts commerce. Therefore, we believe that the final rule should make it clear that a card issuer is permitted to consider estimated income and debt-to-income information obtained from empirically derived and statistically sound models when opening an account at point of sale, or in other circumstances when obtaining directly reported income information is not feasible. For example, we also believe a card issuer should be permitted to rely on such information when increasing a credit limit at the issuer's initiative—it is impractical to obtain income information from the cardholder in this circumstance. It is not as simple as having the card issuer attempt to contact the cardholder to obtain income information. Fears of phishing and identity theft will likely result in many consumers being unwilling to provide income information to their card issuers unless the consumer initiates the request for an increased credit line. TransUnion believes that the ability to rely on income and debt-to-income information from empirically derived and statistically sound models in these circumstances strikes the appropriate balance for consumer protection while still allowing card issuers to comply with the requirements of the Act.

If the Board has concerns about allowing card issuers unrestricted use of estimated income and debt-to-income in the circumstances described above, perhaps the Board could provide reasonable guidelines for use of estimated income and debt-to-income in those circumstances. For example, if the credit limit is sufficiently low given the consumer's other debts and estimated income, we believe use of an income model can provide a card issuer with more than sufficient information to make such relatively "low risk" decisions.

Conclusion

TransUnion believes that consumers and card issuers will be well served if card issuers can rely on income information from empirically derived and statistically sound models. Please do not hesitate to contact me at 312-466-7730 if TransUnion may be of further assistance in connection with this matter.

Sincerely,

John W. Blenke
Executive Vice President,
Corporate General Counsel and Corporate Secretary

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