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December 31, 2010

Ms. 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 Rule – Clarifying Credit CARD Act Revisions to Reg Z
Docket No. R-1393

Dear Ms. Johnson:

This letter is submitted in response to the Proposed Rule clarifying revisions to Reg Z that implement the various provisions of the Credit CARD Act..

Securian Financial Group is a provider of credit card and loan forms to credit unions and banks nationwide. We have extensive experience in matters pertaining to Reg Z as well as Reg B and the Equal Credit Opportunity Act.

We appreciate the opportunity to comment on the proposed clarifying amendments to Reg Z.

We are generally in agreement with most of the proposal. However, we have grave concerns regarding the proposed revisions to the Ability to Pay provisions under 226.51 and their conflict with Reg B. We also have additional comments and seek clarification regarding a few other sections of the proposal, including the effective date of any final rule that may be published.

ABILITY TO PAY PROVISIONS

Under the Credit Card Act, two separate provisions amended two separate sections of the Truth-in-Lending Act requiring creditors to evaluate consumers' ability to pay before issuing a credit card. The first is a "general" ability to pay that applies to consumers generally; the second is a specific, different requirement for consumers under the age of 21. Reg Z, Section 226.51, implements both provisions.

Section 226.51(a) implements TILA Section 150, which provides that:

> [a] card issuer may not open any credit card account for any consumer under an open end 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 payments*** under the terms of such account. (emphasis supplied).

Section 226.51(b) implements TILA Section 127(c)(8), which prohibits a card issuer from opening a credit card account for a consumer who is under the age of 21 unless the consumer has submitted a written application that meets certain requirements. Specifically, the application must require either:

> (1) "submission by the consumer of financial information, including through an application, indicating ***an independent means*** of repaying any obligation arising from the proposed extension of credit in connection with the account"; or
>
> (2) the signature of a cosigner who has such means, is 21 or older, and assumes joint liability for the account. (emphasis supplied).

Section 226.51(a) states the general rule and requires creditors to establish reasonable policies and procedures:

> 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 current obligations.
>
> Reasonable policies and procedures to consider a consumer's ability to make the required payments include a consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any income or assets.

Section 226.51(b) states the rules for underage consumers, and essentially reiterates the TILA language.

The Board has now become aware of confusion in the industry as to whether 226.51 establishes two different standards for "consumers" and "underage consumers" – one based on "household income" for the general population, and one that must be based simply on "income" for underaged consumers. Household income takes into account, for example, the spouse's income as well, even if the consumer is applying for individual credit.

When it issued the final rule, the Board stated in its Supplemental Information that a creditor could not take into account the assets of an underaged consumer's spouse when determining the underaged consumer's ability to pay, and that this would not violate Reg B. The final rule was silent regarding spousal income for consumers over the age of 21.

In the current proposal, the Board states that it generally intended 226.51 to establish consistent standards. It now seeks to "clarify" the rule by revising 226.51 to specifically require that, ***regardless of age***, a card issuer must consider the consumer's <u>independent</u> ability to make payments; therefore, the creditor ***would no longer be allowed to take into account household income***, such as from a spouse or domestic partner, for any consumer applying for a credit card.

This is a startling turn of events. It flies in the face of the very reason why the Equal Credit Opportunity Act was passed by Congress. It is also inconsistent with the intent of the ECOA, the language of Reg B, and the universal interpretation, and implementation, of Reg B.

The ECOA was enacted in 1974 because women were having difficulty establishing credit in their own names because often times they did not work for income outside the home, or made considerably less than their husbands. Creditors would require married women to show income of their spouse even if they were applying for individual credit, and single women often times would be denied credit altogether in a blatant act of discrimination. Divorced, separated, and widowed women had an especially difficult time re-establishing credit because accounts were often in their husbands' names, and as such, they had no credit history of their own.

Because of these inequities, the ECOA was enacted, and Reg B was put in place. Both establish rules for requesting information and evaluating applications, and specifically address issues of household income. Among these rules is that a creditor cannot inquire as to marital status or request information regarding the spouse in connection with an application for unsecured individual credit – ***unless*** (among other reasons) "the applicant is relying on the spouse's income as a basis for repayment of the credit requested". The "Background and Summary" portion of Reg B, under 226.6(b)(2), explains it this way:

> If a spouse's income is used in an application for credit, it must be considered equally with that of the applicant.

As such, Reg B clearly allows a consumer to rely on the income of his or her spouse when applying for individual credit, and a creditor can clearly seek information regarding the spouse's income. And when it does, it must consider the spouse's income equally. Otherwise, it is a Reg B violation.

Indeed, it is quite common for spouses to rely on their household income, rather than each individual's income, when applying for loans and making other financial decisions. For stay-at-home moms (and stay-at-home dads), this would be the ***only*** means of qualifying for their own individual credit card. If they are not allowed to establish their own credit, they will be particularly vulnerable in the case of divorce or death of their spouse. They will be in the exact same situation that Congress corrected almost forty years ago – stay at home moms will be discriminated against when applying for credit, and widowed, divorced and separated women would be doubly harmed because they will not be able to re-establish their credit.

Yet the Board's proposal would take us back to 1973: if a stay-at-home mom applies for her own credit card, the card issuer would have to inquire as to her independent means (i.e., income) of repaying the card balance. Since she will have no such independent means, she must be denied credit. This is an untenable result. It is insulting to women, puts the consumer credit industry back 40 years, directly conflicts with Reg B, and guarantees that card issuers will get sued.

Additionally, the Board's interpretation that Congress intended the same standard to be in place for underaged consumers and consumers over the age of 21 is without merit. Congress enacted two different provisions at the same time, using very different language. Well-established tenants of establishing Congressional intent mandates the conclusion that Congress could not have possibly intended the same result under both provisions. Moreover, the underaged consumer standard was clearly born from a long-standing concern that college students and teenagers (who are largely unmarried) were receiving credit cards with no means to repay them, starting them out in life with a high debt burden. There is no evidence whatsoever that Congress had the same concerns for consumers in general.

Finally, there is no evidence that Congress intended the Credit Card Act to overturn the intent, language, or current interpretation of Reg B for the general population. It does appear, however, that Congress either intended to change the Reg B rules for underaged consumers, or at least did not take into consideration the impact of underaged consumers who may be married and could rely on household income. While we are troubled by this result, the adverse impact on the consumers would be eliminated once they turned 21. As a result, the impact is temporary and curable. This is not the case, however, if the rule is applied to the general population.

We also note that the Board has not proposed corresponding changes to Reg B, which would seem appropriate given the Board's consideration of Reg B in this rulemaking and its interaction with proposed 226.51. (We believe that if the Board did attempt to revise Reg B, they would see that their proposal is not consistent with Reg B). Nor has the Board proposed to amend Reg Z or it Commentary to state that creditors who follow 226.51 and its Commentary do not violate Reg B. This only adds to the confusion and potential litigation facing card issuers, and provides conflicting guidance to any court that may hear such litigation.

Finally, we request that the portion of 226.51(a) that pertains to what is "unreasonable" be revised as follows:

> It would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who ~~does not have~~ *has no access to* any income or assets.

This language more accurately reflects the standards set forth in Reg B for household income.

We strongly urge the Board to review the standards and history of Reg B, and to revise this proposal accordingly. The Board should withdraw the proposed revisions to 226.51 and its Commentary. Instead, it should emphasize that two different standards are in fact being imposed, and that the reason is Congressional intent to treat underaged consumers differently than the general population, as well as the potential conflict with Reg B when it comes to the general population.

As currently written, the Board creates an inherent conflict between two federal laws, and mandates government-sponsored discrimination. We are sure that that is not the Board's intent, and we ask the Board to revise the proposal accordingly.

OTHER COMMENTS REGARDING THE PROPOSAL

We have the following comments with regard to other provisions of the proposal:

Employee Preferential Rates. The rule would state that, for employee preferential rates, the application and account opening disclosures would require a statement directly below the table explaining when that rate could increase (e.g., when the cardholder leaves the card issuer's employ). Said rules would apply to both credit cards and lines of credit. The Board asks whether there are other types of preferential rates that would apply.

In the credit union industry, it is very common to have two other preferred rates: one for making payments automatically via electronic recurring payments or via payroll deduction; another as a relationship reward, e.g., depending on the number of services that are being used or loan/deposit balances being carried. For example, if a member has a checking account, one loan, and deposit balances of $1,000 or more, he may qualify as a "gold" member, which would qualify him for a 0.25% discount on the credit card or line of credit. It is not uncommon for credit unions to offer one or multiple discounts on the same account.

We are concerned about the proposal for two reasons. First, when a creditor offers an employee rate, it is not usually done on the tabular disclosure. Rather, the tabular disclosure is drafted for general use, and if an employee applies, an amendment is used. Employees are well-informed that they are entitled to a discount, but that such discount will no longer apply if they change employment. We seek clarification that the rule would not <u>require</u> creditors to disclose the preferential rate in the tabular disclosure.

Second, we are concerned with information overload. As the Board notes, it is trying to keep the disclosure directly below the table short and concise. This is easy to do for an employee discount, as it is simple to state that the discount will end once the consumer is no longer employed with the creditor. However, for automatic payment and relationship discounts, the language can get a bit lengthy. In order for the circumstances under which the preferred rate can end to be clearly explained, the criteria for the discount must be first explained. For automatic payment discounts, this includes making payments via automatic deduction and maintaining sufficient funds in the account. For relationship programs, a multitude of criteria can be in place, and different discounts can be available depending on the different relationship levels. And, as noted above, creditors can offer all or some of these discounts on the same account.

We seek clarification, again, that such rules would only apply if the creditor discloses the discounted rate. Currently, most of our clients disclose the standard rate, but also note below the table that "discounts can apply; ask the credit union for more details". For clients that do disclose the discount (when known), we are currently disclosing this information below the table, but not necessarily directly below it ("Other Fees" tend to be directly below the mandated disclosures). We also disclose it all together, only once, as noted above – both the criteria for the discount as well as the circumstances under which the discount will end are disclosed all in the same paragraph. We also use checkboxes on the account opening disclosures so that the form can be used for all consumers. For example:

> If checked, you have the following rate discounts on your account:
>
> ☐ <u>**Automatic Payment Discount**</u>. If checked, the rate disclosed above reflects a 0.50% discount because you have agreed to make your payments via automatic recurring electronic payments, or via payroll deduction. If you discontinue automatic payments or fail to maintain sufficient funds in the account to make such payments, your rate will increase 0.50%. This will result in more payments of the same amount.
>
> ☐ <u>**Relationship Discount**</u>: If checked, the rate disclosed above reflects a 0.25% discount because you qualify for Preferred Member status. To qualify for Preferred Member status, you must have one of each of the following: a Primary Checking Account, a Gold Checking Account, or a Money Market Account; a single or joint Gold Savings Account with a minimum average balance of $2,000; and a current consumer or home equity loan with us. You must also be in good standing on all of the accounts to obtain the discount. If you cease to qualify for Preferred Member status

for any reason, your rate will increase by 0.25%. This will result in more payments of the same amount.

As you can see, while the language is relatively concise (and complies with the applicable variable rate disclosures), it is more than a simple one-line sentence. We therefore request greater flexibility when making these disclosures. We are concerned that if we are required to make a one-line disclosure directly beneath the table, it will not be enough to clearly explain the discount. We would then have to disclose the above information elsewhere, which seems unnecessary, and could be confusing to the consumer. We also note that some creditors could circumvent the disclosures by using a one-line, vague description, and then "bury" the pertinent details in the account agreement.

We would like clarification that language such as the above would satisfy the requirements, even if it is lengthier and contains details that are not allowed to be in the table. We note that creditors have an incentive to disclose this information so that any rate increase can be contractually enforced. We also note that they have an incentive (which all of our clients take advantage of) to put the details of the discount on the account opening disclosure form, rather than in the account agreement. This is because it is more cost efficient to have all consumer-specific information that must be programmed onto the form to be all in the same document. Having all such information on the Account Opening Disclosures allows creditors to print account agreements in bulk, with no changes from consumer to consumer, and to keep all variable information on one form.

Advanced Notice of 226.6(b)(4) Changes. We object to the Board's new definition of "significant change in account terms" which would now include items required to be disclosed under 226.6(b)(4), and would now require advanced notice of changes to such terms.

In the proposal, the Board uses the example of a creditor changing the frequency or timing of when variable rate changes based on an Index might occur. While the Board is correct in stating that such a change could result in more interest accruing, thus increasing the cost to the consumer, such increase would be miniscule. Typically a creditor may change the frequency from quarterly to monthly, or semi-annually to quarterly. But this would affect the consumer only if the Index changes, and Indexes tend not to change all that frequently. They also do not tend to change drastically at one time (e.g., a quarter point), and therefore any change is minimal.

The frequency of which the rate may change is also not a disclosure required to be in the Table, which the Board acknowledges. As such, it will be very difficult for consumers to shop around based on that criterion, making the change-in-terms notice not very helpful to the consumer. Such changes would be better suited to notice after the fact, and as a memo line on periodic statements. This will still inform the consumer of such change in a manner in which he is likely to see it, and he will still have time to shop for a different card (if he so chooses) before he incurs any, or significant, additional interest charges.

The other primary disclosure affected by this new proposal is the balance computation method. Again, this is not a significant change in account terms, and not one by which consumers shop. There is no need to provide advance notice of a change in balance computation method.

We also note that the Board's proposed rule would apply even if the change is beneficial to the consumer, such as decreasing the frequency with which a variable rate may change, or if the new balance computation method is more favorable to the consumer. Requiring advance notice in such situations provides no additional protection to the consumer, and is inconsistent with long-established change-in-terms rules under Reg Z. Indeed, the Board recognized this in the original rules when it chose not to make ***all*** changes in terms "significant". The Board should not do so now.

Change-in–terms notices are expensive for creditors to send. Applying the advanced notice rules to the 226.6(b)(4) disclosures would only increase regulatory burden and administrative costs to creditors, with no corresponding benefit or protection to the consumer. The 226.6(b)(4) disclosures are simply not "significant account terms" so as to warrant advanced notice of changes. We ask the Board to withdraw this proposal, or allow notice of such changes to be given after the change is made, and to allow the notice to be on or with the periodic statements.

Effective Date. We note that the proposal sets forth no timeframe for when the changes to the rules would be effective. While the Board characterizes the changes as "clarifications", some of the proposals are substantive changes to the existing rules, and even the clarification will require many creditors to revise, re-program, and re-load multiple forms, conduct new training, and revise written policies and procedures. We ask that the final rule become effective no less than nine months after the date the final rule is published in the Federal Register.

CONCLUSION

We ask the Board to withdraw the proposed changes to 226.51 regarding household income, and to instead clarify that household income can be considered with regard to applications received from consumers over the age of 21.

We also ask the Board to withdraw the requirement to send advance notice of 226.6(b)(4) changes.

Finally, we ask for clarification of those issues noted above, and that our other comments be considered in this rulemaking.

Sincerely,

/s/
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