
SEARS HOLDINGS

Susan P. Ehrlich
President, Financial Services

Sears Holdings Management Corporation
3333 Beverly Road A4-104B
Hoffman Estates, IL 60179
(847) 286-7184
Fax (847) 286-6004
Email Susan.Ehrlich@searshc.com

January 3, 2011

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

Re: Comments Re Docket No. R-1393 and RIN No. 7100-AD55
Proposed Amendments to Regulation Z published in the Federal Register
On November 2, 2010 Regarding Ability to Pay Requirements for Individual
Credit Accounts

Dear Ms. Johnson:

This letter is submitted on behalf of Sears Holdings Corporation (“Sears”) in response to the notice of proposed rule amending Regulation Z and request for public comment published in the Federal Register on November 2, 2010 by the Board of Governors of the Federal Reserve System (“FRB”) (Federal Reserve System, 12 CFR Part 226, Regulation Z; Docket No. R-1393). Sears would like to comment on the aspect of the proposed rule that would require a credit card issuer to assess a consumer’s ability to pay before opening a new credit card account or increasing the credit limit on an existing account.

Sears is the nation's fourth largest broad line retailer with approximately 3,900 full-line and specialty retail stores in the United States and Canada. Sears operates through its subsidiaries, including Sears, Roebuck and Co., Kmart Corporation and Lands’ End, Inc. Sears facilitates its customers’ need for credit through Sears branded credit card programs provided by several different national banks and has been in the business of enabling consumer purchases of household goods by providing financing methods to its customers since it started the first retail credit program in 1953.

The proposed rule would implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the “Credit Card Act”), which primarily amended the Truth in Lending Act (“TILA”). Specifically, the Credit Card Act required 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.” (See Section 109 of Credit Card Act amending Section 150 of TILA). Under the Federal Reserve’s proposed rulemaking, credit card issuers would no longer be permitted to rely on a consumer’s household income when determining the consumer’s ability to pay the obligations incurred by the consumer under the account. A credit card issuer would now be required to consider only the individual applicant’s *independent* income. Furthermore, the proposed rule would permit a credit card issuer to consider spousal income where the applicant’s

spouse is not a joint applicant or joint accountholder *only* to the extent that a federal or state statute or regulation grants the spousal applicant an ownership interest in that income or those assets.

While Sears supports the FRB's requirement that a credit card issuer have reasonable procedures to consider an applicant's ability to pay when making a decision about whether to extend or increase credit to the applicant, Sears believes that the proposed rule goes beyond the specific legislative language adopted by Congress or the legislative history of the CARD Act.

Consideration of Household Income and Household Income Estimators

Sears does not believe that requiring a credit card issuer to consider only a consumer's *independent* income when evaluating the consumer's ability to pay is a fair or reasonable interpretation of the requirements of the CARD Act. Where Congress intended to limit use of particular income sources, or require independent means of debt repayment as it did in the case of under age 21 applicants/cardholders, it expressly did so when it laid out specific requirements for those under-majority age applicants, such as proof of independent ability to manage a line of credit or providing a creditworthy co-signer for the account. That is not the case with the majority age credit card applicant population. The Act merely required that the creditor consider the majority age consumer's *ability* to pay the debt. We note this striking difference in language and assume that this language difference was deliberate on the part of Congress and left open the door to consideration of household income, or income estimators based on household income, as evidence of the "ability" of the consumer to pay the debt. Sears believes the FRB has eliminated the distinction between these two populations and is putting undue restrictions on income consideration for majority age applicants where none were expressed or intended.

In addition, this proposed rule requires the issuer to consider all debt reflected on an individual applicant's credit bureau report, notwithstanding that much of that debt is in the form of joint or household obligations such as mortgage loans or auto loans, by example. In light of the household debt burden that would be evaluated against an individual's ability to pay, it simply does not make sense to exclude the household income that is used to service that debt. To do less is unfair to the individual consumer.

With respect to making credit available at retail, this proposed rule will cause consumers to have to change the way they shop. Most consumers share household duties, including shopping and obtaining credit for purchasing household goods. Many retailers offer immediate discounts or special financing when the customer makes the purchase with a new or existing private label branded credit card. Restricting the use of household income to qualify for that new credit card will preclude members of the same household from efficiently performing their shared duties by requiring the presence of both income earners in a typical two income household to shop together to take advantage of the credit card offer, or effectively preventing the low/no income member of the household from shopping alone. Thus, the effect of the proposed rule will be far more disruptive than we believe was intended or envisioned by Congress.

Impact on Credit Availability to Women, Minorities, Retirees and Military Spouses

Of equal concern, the proposed rule directly undermines more than a generation of case law and progress initiated with the passage of the Equal Credit Opportunity Act ("ECOA"). Prior to the passage of ECOA and its corresponding implementing Regulation B, non-working spouses found it exceedingly difficult to develop credit in their own name, even when they had access to all or a portion of the household funds. The proposed amendments would unfairly limit the ability of a spouse not employed outside the home to access consumer credit. Such a person would likely have

no “independent” income and, when all joint household debt is taken into consideration, would have no “ability to pay” (as defined under these newly proposed regulations) any obligations incurred under credit extended to that person. As a result, a spouse not employed outside the home would not be granted access to revolving credit products offered by credit card issuers to him or her. Since women are more likely than men to be the low or non-income earning spouse in a household, and minorities are more likely to be in the lower income ranges of two income households, this practice would have the effect of creating a disparate impact on women and minorities and a potential discrimination claim under Regulation B and the ECOA.

After a generation of case law interpreting the requirements for equal credit access for spouses, this new restriction would create legal uncertainty for applicants, retailers and banks. Disallowing consideration of household income will inappropriately limit the income upon which these applicants/cardholders have traditionally and should reasonably be able to rely – that is, the income of the other member of the household – in applying for credit.

Additionally, the proposed rule would restrict retirees’ access to credit. A retiree with a small stream of pension benefits or similar type of income or one who relies on his or her spouse’s stream of income would not be able to show sufficient independent, individual ability to pay. The credit card issuer would be required, under the proposed amendments, to deny such retiree’s credit application where it otherwise would be approved on the basis of household income today.

Furthermore, the proposed amendments are unfair to spouses of active duty members of the military and may severely restrict such individuals’ access to credit. Even if a military spouse is employed and has independent income, he or she may be in the position that, jointly with their active duty spouse, they could qualify for credit products but, individually, they may not. This problem would be exacerbated if the active duty member of the military is stationed overseas and his or her spouse remains in the United States. Such a State-side spouse who could not qualify on his or her own would have no access to credit because he or she would be unable to apply without the presence and signature of his or her active duty military spouse.

Impact on Credit Availability at Retail Point of Sale

The additional guidance offered in the proposal by the FRB about collection of income information or a card issuer’s ability to consider the spouse’s income or assets to the extent that a federal or state statute or regulation grants the applicant an ownership interest in that income or those assets is impractical and unrealistic in a point of sale credit environment.

The proposed rule allows creditors to accept whatever the applicant discloses as income. Applicants will interpret this requirement differently, and some applicants will disclose household income and others individual income, yielding differing results for applicants with the same individual credit profile. In addition, before issuing a credit card to a married applicant without sufficient “independent” income, a retailer will need to determine the applicant’s state of residence, whether such a state is a community property state and what the rules in such state are with respect to whether the married applicant has an ownership interest in his or her spouse’s income or assets. In addition, other non-community property states (such as Massachusetts) treat assets acquired during long term marriages as joint assets whether or not titled as such and give property rights to the non-titled spouse in those assets. Retailers would also have to factor in the effect of pre and post nuptial agreements governing spousal assets that might alter otherwise existing state law assumptions.

Retailers could not adequately train their employees on the nuances of the complex, multiple state laws, contractual issues and precedents governing spousal assets. Determining “independent” income

would become an impossible operational challenge for retailers to effectively handle in a point of sale credit environment. Retailers would not be willing to delay the purchase transaction to try to work through these issues, while customers may well refuse to discuss such personal information in an environment where privacy to explain these complex issues cannot be assured. Retailers and their credit granting partners would simply deny the application which will result in further restricting consumers' access to credit.

Sears strongly believes that prohibiting credit card issuers from considering household income--or scoring models based on household income--when making an ability-to-pay decision about an applicant for credit will present a significant and practical obstacle to many American's access to credit. We believe that this frustrates the true intent of Congress regarding a consumer's "ability to pay" at a time when these individuals and the retail industry would benefit from the demonstrated credit availability that household income and score models would provide. Sears, therefore, strongly urges the FRB to permit credit card issuers to consider household income and credit score models based on household income when making ability to pay credit decisions.

Sears appreciates the opportunity to share its views with FRB on the proposed rule. We would be pleased to discuss this with you further at your convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SEHR', is written over a horizontal line.

Susan P. Ehrlich
President – Financial Services
Sears Holdings Corporation