January 7, 2013

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20006

Re: Credit Card Ability-to-Pay Requirements (Docket No. CFPB-2012-0039)

Dear Ms. Jackson,

The American Financial Services Association ("AFSA") welcomes the opportunity to respond to the Consumer Financial Protection Bureau's ("CFPB") proposed rule ("Proposed Rule") to amend Regulation Z, which implements the Truth in Lending Act ("TILA"), and the official interpretation to the regulation, which interprets the requirements of Regulation Z (the "Commentary"). AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. Its 350 members include consumer and commercial finance companies, auto finance/leasing companies, mortgage lenders, mortgage servicers, credit card issuers, industrial banks and industry suppliers.

AFSA agrees with the CFPB that in light of the statutory framework established by sections 150 and 127(c)(8) of TILA, the current § 1026.51(a) is unduly limiting the ability of certain individuals 21 or older, including spouses or other adult members of the household who do not work outside the home, to obtain credit. We agree that the CFPB should remove the independent ability-to-pay requirement for consumers who are 21 and older, and permit issuers to consider income to which such consumers have a reasonable expectation of access.

However, we have a few concerns regarding the Proposed Rule.

First, we ask that the CFPB confirm that if card issuers rely on the information provided by the applicant on the credit application under "available income" or "accessible income" or some other similar name, the card issuer does not have to undertake any actions to verify the information, e.g., evaluating whether the income of a household member exists, the amount of that income, the accessibility of that income, or that the income falls within the acceptable categories listed. We ask for the clarification because the examples in the Commentary (1026.51(a)-6) of what constitutes "accessible income" make this unclear. We believe that one of the challenges of considering non-applicant income is that it may be difficult (if not impossible) for lenders to ascertain who earned the accessible income and whether the person who earned that income is already in debt. Lenders must be able to rely on the fact that the money put on the application as accessible is in fact accessible for the applicant's use not only because the applicant can access it but because it is not already needed to pay debts of someone other than the applicant (like the income earner). The CFPB should confirm that this proposal does not change the fact that the lender only needs to consider the obligations of the applicant, and any

debts of the non-applicant who earned income the applicant is relying upon do not need to be evaluated by the lender. For example, if a stay-at-home applicant that puts their non-applicant spouse's income in the "available income" blank, the CFPB should specify that lender will not need to evaluate the debts or credit report of the non-applicant spouse. Instead, the lender only has to evaluate the applicant's debts/credit report. If the card issuer has to evaluate the accessible income in the context of obligations or debts of someone other than the applicant, there would be many operational and practical barriers to the card issuer considering non-applicant income. It would be very difficult to obtain information on a credit card application that is adequate to analyze debts of other people who may have access or may have earned the income the applicant is relying upon.

Second, we are concerned that complying with the Proposed Rule would raise risks under Regulation B, which implements the Equal Credit Opportunity Act ("ECOA"). Footnote 30 of the Proposed Rule states, "While proposed § 1026.51(a) would permit a card issuer to consider a third party's income or assets to which a consumer has reasonable expectation of access, an issuer also would be permitted to continue to consider only the applicant's independent ability to pay." Given that the CFPB has indicated in the Proposed Rule that only looking at the applicant's independent ability to repay will disadvantage stay-at-home spouses, who are likely predominantly female, AFSA is concerned that card issuers who decide to consider only the applicant's independent ability to pay could run the risk of being accused of violating Regulation B. Thus, we ask that the CFPB clearly state that card issuers who make a credit determination based only on the applicant's independent ability to repay are not in violation of Regulation B.

Third, also regarding Regulation B, we ask that the CFPB use its authority to implement Regulation B to specify that complying with the Proposed Rule does not result in a violation of Regulation B based on age discrimination, since the Proposed Rule does result in treating applicants who are under the age of 21 differently.

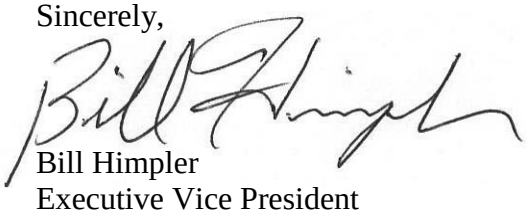
Fourth, it is unclear whether a card issuer would be in violation of the ECOA effects test if the issuer does not change all of its consumer credit card applications as soon as the rule goes into effect, since not making the change immediately might tend to discourage applicants who are spouses or partners who do not work outside the home, which may, as noted earlier, be primarily women. This is important because many card issuers distribute paper "take one" applications to the thousands of merchant locations that use their card and changing applications takes time and is an expensive process.

Fifth, we ask for clarification regarding the treatment of a joint application where one spouse is over the age of 21 and the other is under the age of 21. We believe that the Proposed Rule allows card issuers to aggregate the joint applicants' incomes, but we ask that the CFPB confirm that. It is clear that card issuers can attribute other income to the applicant who is over the age of 21, but it is not clear that card issuers can aggregate the incomes of the two applicants if they have not indicated that they have access to each others' incomes. The CFPB should clarify whether Comment 1026.51(a)-8 applies in the context of 1026.51(b). It is not specifically listed in Comment 51(b)(1)(ii)-1 as applicable. The CFPB should consider adding a reference to that and to Comment 51(a)-7.

Sixth, we have some concerns about the unstated assumption in the Proposed Rule that card issuers will change their applications to appropriately ask applicants about "available income," "accessible income," or use "other language requesting that the applicant provide information regarding current or reasonably expected income and/or assets or any income and/or assets to which the applicant has a reasonable expectation of access." This concept would likely confuse consumers as they complete an application for credit. It is also difficult to include this concept in the one-size-fits-all applications that AFSA members use. We would therefore request that the final rule provide issuers with flexibility to modify their applications so that they can continue to use one application form for all consumers, regardless of age. For example, an application could have two fields, with instructions that only those over 21 provide "accessible income."

We look forward to working with the CFPB on this Proposed Rule. Please contact me by phone, 202-466-8616, or e-mail, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association