



June 4, 2012

Research, Markets & Regulations Division
Bureau of Consumer Financial Protection
1500 Pennsylvania Avenue, NW
(Attn: 1801 L Street, NW)
Washington, DC 20220

***Re: Streamlining Inherited Regulations (Docket No. CFPB-2011-0039)
Response to Comments Filed***

To whom it may concern:

The American Financial Services Association (“AFSA”) welcomes the opportunity to respond to comments filed in response to the Consumer Financial Protection Bureau’s (“CFPB”) notice of streamlining project (“Notice”) requesting suggestions for streamlining regulations the CFPB recently inherited from other federal agencies. 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.

Our comments below emphasize that the CFPB should: (1) continue to allow consumers to take advantage of deferred interest financing plan, (2) permit issuers to provide disclosures electronically, without regard to the requirements of the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”) E-Sign Act, (3) keep the current definition of “consumer,” and (4) permit consumers to rely on household income to obtain credit. Lastly, the CFPB should not require mortgage lenders to pay all closing costs as overhead.

Deferred Interest Financing Plans

AFSA notes that one comment letter submitted in response to the Notice argues that the CFPB should prohibit deferred interest financing plans. Such plans allow consumers to finance the purchase price of goods and services and avoid interest if those purchases are paid in full before the end of the deferred interest period. If the purchases are not paid in full prior to the expiration of such period, the consumer is charged interest (including any deferred interest that has accrued since the date of the purchase). AFSA believes that these plans are valuable to consumers and merchants and should not be prohibited.

As retailers pointed out in prior comment letters involving Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act”) implementation and revisions to Regulation Z, deferred interest plans are a very important tool for consumers and retailers. In the National Retail Federation (“NRF”) comment letter to the Federal Reserve Board (“Board”), dated February 11, 2009, Mallory Duncan, Senior Vice President and General Counsel, wrote the

following about the benefits of deferred interest plans for retailers and consumers: “[E]very year millions of consumers have access to something that otherwise would be unavailable: interest-free loans. Tens of billions of dollars of purchases are made by the customers of NRF members. * * * [W]e and American customers will suffer the consequences if [deferred interest plans] are effectively banned.”

In issuing revisions to Regulation Z in connection with its streamlining efforts, AFSA also urges the CFPB to take into consideration the colloquy set forth in the May 19, 2009 Senate Congressional Record under the heading “Deferred Interest” in which Senators Chris Dodd and Richard Shelby confirm that Congress did not intend to prohibit deferred interest plans by the broad language used in Section 102 of the CARD Act. This colloquy and the fact that Congress included an exception in section 104 of the CARD Act relating to deferred interest plans evidences Congress’ intent to allow deferred interest plans.

AFSA believes that deferred interest credit facilities and offers provide important benefits to consumers and the merchants that offer them, and we urge the Bureau to adopt the position that the Board set forth, whereby they recognized the benefits of deferred interest plans and allowed for their continued use under Regulation Z. We note that in doing so, the Board added a number of consumer protections that combat the risk of confusion on the part of consumers regarding the terms of these plans (i.e., particular marketing disclosures under 1026.16(h), messages on billing statements under 1026.7(b)(14), and certain special payment allocation in the last two billing cycles of any deferred interest period under 1026.53(b)(1)). Therefore, we ask that the CFPB preserve consumer and merchant access to these valuable plans.

E-Sign Act

AFSA respectfully disagrees with a comment made in response to the Notice stating that the CFPB should not permit certain disclosures now required to be in writing, to be delivered in electronic form. In light of the pervasive usage of the internet and email, there are many opportunities to streamline regulations by permitting issuers to provide disclosures electronically, without regard to the requirements of the E-Sign Act, especially when the transaction to which the disclosure relates is being conducted by the consumer electronically.

Allowing records to be delivered electronically would not obviate deliberate and careful consumer protections. When the transaction to which the disclosure relates is being conducted by the consumer electronically, the consumer’s decision to engage in that transaction online should be deemed the functional equivalent of consent to electronic disclosures. For example, when a consumer applies online for a card, an issuer should be permitted to deliver the account-opening disclosures, if the customer is approved, or the adverse action notice, if the consumer is declined, electronically, without regard to the E-Sign Act requirements. Moreover, consumers who wish to take advantage of a promotional rate for a credit card online, such as by transferring a balance, should be permitted to do so, provided the promotional rate disclosures are delivered electronically without regard to the E-Sign Act. Similarly, card issuers should be permitted to electronically provide consumers who have provided their email addresses with cardholder agreements and billing statements, even without regard to the requirements of the E-Sign Act.

Allowing the electronic delivery of records would not be a disastrous change for consumers, but would, in fact, help consumers. Requiring these disclosures to be provided in writing or electronically only if the E-Sign Act requirements are met only serves to prevent the disclosures from being provided in a timely manner and inhibits the ability of a consumer to use the features and benefits of the consumer's account.

Definition of "Consumer"

Regulation Z (12 CFR part 226), Regulation E (12 CFR part 205), Regulation DD (12 CFR part 230), Regulation V (12 CFR part 222), and Regulation P (12 CFR part 216 and parallel regulations at 12 CFR part 332 (FDIC), 16 CFR part 313 (FTC), 12 CFR part 716 and 741.220 (NCUA), 12 CFR part 40 (OCC), 12 CFR part 573 (OTS)) each define "consumer" differently. AFSA is concerned about a comment in one of the letters in response to the Notice that if the CFPB intends to make the definition of "consumer" consistent, the CFPB should broaden the definition of Regulation Z by defining "consumer" to mean a natural person or individual, instead of using the current definition of a natural person using credit for a personal, family or household purpose. AFSA believes that the Regulation Z definition should remain the same.

The folly of applying consumer credit rules to commercial credit transactions was exemplified in the original 1968 Truth-in-Lending law, which applied to agricultural credit transactions with individuals. This was changed in 1982 to limit that law to credit used for personal, family or household purposes. The intent of Congress was clear in making that change. The Bureau should not try to override that clear congressional intent by expanding the definition of consumer beyond the clear limitations established in current law.

Ability to Pay

We ask that the CFPB permit consumers to rely on household income to obtain credit. Regulation Z's ability to pay rule for credit cards requires issuers to consider only an applicant's independent ability to pay, regardless of the applicant's age. This rule is inconsistent with the requirements of the Credit Card Accountability Responsibility and Disclosure Act ("CARD Act") and has limited the ability of certain consumers, in particular stay-at-home spouses who do not have independent income, to obtain credit. We therefore strongly recommend that the CFPB modify the ability to pay requirements of Regulation Z to permit consumers over the age of 21 to rely on household income.

In a December 5, 2011 letter to then-acting head of the CFPB Raj Date, Rep. Carolyn Maloney (D-NY), Rep. Barney Frank (D-MA), and other members of the House of Representatives wrote:

We understand from some issuers that there may have already been a negative impact on the ability of stay-at-home spouses to secure a line of credit. One issuer has seen a greater decline in the size of the average line of credit assigned to women as opposed to men across all approved applicants. In addition, approval rates have declined significantly for women in certain age groups, especially for those 62 and over, who may be particularly likely to rely on the income of other household members (for example, a spouse's retirement income).

Rep. Maloney and Rep. Louise Slaughter (D-NY), who were among the principal authors of the Credit Card Accountability, Responsibility, and Disclosure Act (“CARD Act”), have said that the rule “goes beyond the intent” of the law and that it “represents a serious risk for women in abusive domestic partnerships.” In a letter to the Federal Reserve, Rep. Maloney and Rep. Slaughter wrote, “Women trapped in abusive marriages may be unable to work due to a controlling spouse, a hallmark of relationships characterized by domestic violence. The availability of an independent credit card may represent her best chance at establishing independence and a path out of a dangerous relationship.”

For these reasons, we urge the CFPB to change the requirements as soon as possible.

Require Mortgage Lenders to Pay All Closing Costs as Overhead

One comment letter in response to the CFPB’s Notice advocated that the disclosure requirements under the Real Estate Settlement Procedures Act (“RESPA”) and the Truth in Lending Act (“TILA”) could be greatly streamlined if lenders were required to pay all closing costs themselves, as overhead. AFSA believes that this is contrary to the CFPB’s stated goal of transparency for consumers. Lenders would still pass these costs onto consumers, but would be forced to do so in a less transparent way. If closing costs are disclosed, consumers can see exactly what they are paying for and can better compare costs. Folding all closing costs into lender overhead would eliminate the consumer’s ability to consider and negotiate the various fees when shopping for a loan. This could have the effect of driving business to lender-affiliated services, thereby reducing the choices available to consumers in the marketplace.

Conclusion

We look forward to working with the CFPB on this important initiative. 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