



May 18, 2015

Monica Jackson
Office of the Executive Secretary
Bureau of Consumer Financial Protection
1700 G Street, NW
Washington, DC 20552

***Re: Request for Information Regarding Credit Card Market
Docket No. CFPB-2015-0007***

Dear Ms. Jackson:

The American Financial Services Association (“AFSA”)¹ welcomes the opportunity to comment on the Consumer Financial Protection Bureau’s (“CFPB”) review of the consumer credit card market.

At the outset, the CFPB encourages commenters to address all areas of interest or concern considered most relevant to the CFPB’s review of the credit card market. First, AFSA strongly urges the CFPB and other regulators to work towards better coordination with each other and strive for more consistency in regulation and supervision. Second, AFSA understands that the Credit Card Accountability Responsibility and Disclosure Act of 2009 (“CARD Act”)² has led to a heightened focus on the need to increase consumers’ understanding through education, as well as the simplification and clarity of disclosures. AFSA believes that consumers’ understanding has increased since the CARD Act.

The CFPB is seeking comments on the continuing impact of the CARD Act on the credit market, as well as other areas of interest. Below, we address some of the CFPB’s questions on the CARD Act and other interest areas. We will address other areas in a subsequent comment letter.

Responses to Specific Topic Areas or Questions

A. The Terms of Credit Card Agreements and the Practices of Credit Card Issuers

Neither the substantive terms and conditions nor the length and complexity of credit card agreements have changed substantially over the past two years. Credit card agreements have been revised to be more readable since the passage of the CARD Act, but since credit cards are a complicated product, the agreements have not changed dramatically.

¹ Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

² 15 U.S.C. 1616

AFSA strongly encourages the CFPB to modernize regulations to recognize newer technology and help promote a paperless society. Many consumers, particularly young consumers, would like to do everything online. Many young consumers would also like their trusted financial institution to expedite relationships requested and authorized by the consumer with third-party merchants. AFSA members would like to explore making more products and services available online or through mobile apps, and explore making registration for products and services seamless to the consumer, but are generally constrained by a myriad of disclosure requirements and other restrictions.

For example, Regulation Z³ requires disclosures to contain solicitation and account-opening tables. Gramm-Leach-Bliley Act (“GLBA”) privacy notices⁴ have to be provided in model chart form to take advantage of the safe harbor provision. While these tables could be displayed easily on a desktop computer, they may not be as easily displayed on a small three-inch smart phone screen. Regulation Z also requires disclosures to be given in a form that the consumer can keep, which can be challenging on mobile devices. We suggest that the CFPB grant credit card issuers some flexibility in how disclosures have to be delivered and retained in order to expand mobile credit card activity.

GLBA also prohibits a financial institution from disclosing an account number to a non-affiliated third party for marketing purposes. It would be consistent with current consumer expectations for financial institutions to be able to provide a consumer’s card account number to merchants whom the consumer has a relationship with, in order to expedite account set up at those merchants or simplify the consumer’s purchase path experience. AFSA members would like the CFPB to consider if passing a card account number in either of these scenarios truly constitutes “marketing,” and how financial institutions, with proper controls and consents from the consumer, can effectuate such consumer requests without running afoul of the GLBA prohibition.

In addition to asking about credit card agreements, the CFPB asks about the practices of credit card issuers. As AFSA raised in its 2013 comment letter on the CARD Act review,⁵ by disallowing re-pricing as a tool to address risk in the future life cycle of an account, issuers must address that potential risk earlier in the account life cycle. Issuers have tended to offer higher rates (to all borrowers, not just those who later display increased risk characteristics) to offset the risk. Furthermore, as issuers have been required to establish card terms at account opening that are difficult to change thereafter, it seems that interest rates for consumers have risen, credit line increases have decreased in volume and dollar amounts, and balance transfer offers have become less widespread and/or generous.

B. The Effectiveness of Disclosure of Terms, Fees, and Other Expenses of Credit Card Plans

AFSA believes that the current disclosures of rates, fees, and other cost terms of credit card accounts are effective in conveying to consumers the costs of credit card plans. However, there is

³ 12 CFR Part 226

⁴ 15 U.S.C. § 6801 - 6809

⁵ http://www.afsaonline.org/library/files/legal/comment_letters/AFSA-InformationonCreditCardMarket-DocketNo.CFPB-2012-0048.pdf

room for improvement. Disclosures are lengthy and it might be helpful to eliminate mandatory disclosures for “no fee” statements. Eliminating these disclosures would not harm consumers, but would lessen the number of disclosures, thus benefitting consumers. In addition, acquisition/booking fees should be clear and transparent.

On a related note, credit card issuers have come under fire in the last few years for certain marketing practices. The CFPB’s use of its “unfair, deceptive, or abusive acts and practices”⁶ (“UDAAP”) authority has been too amorphous. Card issuers ask that the CFPB either provide more guidance as to the expectations in this area or allow for a more robust “no action” process.

C. The Adequacy of Protections Against Unfair or Deceptive Acts of Practices (“UDAAP”) or Unlawful Discrimination Relating to Credit Card Plans

There may be some areas where UDAAP or unlawful discrimination issues exist in the card market, but AFSA believes that the CARD Act has been effective in eliminating many areas of concern. Card issuers have made significant improvements in their rewards terms during the past year. They continue to work on improving the clarity of promises made and ensuring that promises are kept. There is a trend in the card market towards simplification of both products and terms. If the CFPB and other regulators were to provide more specific guidance in regulations on how to protect against UDAAP/unlawful discrimination issues, it might be helpful.

D. Has the implementation of the CARD Act has affected (i) the cost and availability of credit, particularly with respect to non-prime borrowers; (ii) the use of risk-based pricing; or (iii) credit card product innovation?

There have not been major changes in the cost and availability of credit or the use of risk-based pricing in the last two years. Card issuers continue to use risk-based models to set pricing at card acquisition. Pricing remains higher than it was prior to CARD Act, but has not increased significantly since the last CARD Act review. Pricing generally remains high because re-pricing is no longer a tool available to address risk which develops in the future life cycle of an account. Issuers must address that potential risk earlier in the account life cycle by either offering higher rates (to all borrowers, not just those who later display increased risk characteristics) or using lower credit lines so less outstanding balance is subject to the risk. Both of these, or a combination of both strategies, may raise the cost of credit or restrict the availability of credit. Interest rates for these consumers rose and have not gone back down. Credit line increases have generally decreased in volume and dollar amounts, and balance transfer offers have become less widespread and/or generous.

Consumers with higher risk profiles and those without an established credit history are less likely than in the past to be offered credit. A significant number of consumers are still being left out of the market due to the ability to pay requirements – applicants who otherwise would have been approved. The market is also limited by issuers’ difficulties in providing proactive credit line increases.

⁶ 12 U.S.C. §§ 5481, 5531 & 5536(a)

Since the CARD Act was enacted, the economy has been improving, which has kept annual percentage rates (“APRs”) down. If APRs begin to increase and charge-offs will rise, the cost and availability of credit is likely to be further constrained by the inability to re-price existing balances.

On another note, since the CARD Act resulted in less pricing competition among card issuers due to pricing constraints, card competition has risen in the areas of customer service, card rewards, and product innovation. In other words, customer service has improved, card rewards have improved, and issuers are working on new products.

E. Online Disclosures

AFSA will address this issue in a separate comment letter at a later date.

F. Rewards Products

AFSA agrees with the CFPB that rewards play an important part in consumers’ decisions to apply for a card. AFSA members have worked to simplify features and benefits to address the potential complexity of disclosures surrounding rewards. AFSA members have also simplified rewards redemption. These efforts have meaningfully reduced consumer complaints.

Furthermore, we emphasize that card issuers need to have the ability to innovate to meet consumer needs and stay competitive with non-card rewards programs that consumers use. Placing restrictions on only a portion of the rewards market will not provide benefits to consumers and will harm financial institutions, pushing more products into the unregulated space.

G. Grace Periods

AFSA will address this issue in a separate comment letter at a later date.

H. Ancillary Products

AFSA will address this issue in a separate comment letter at a later date.

I. Fee Harvester Cards

AFSA does not have a comment on this section at this time.

J. Deferred Interest Products

AFSA does not have a comment on this section at this time.

K. Debt Collection

AFSA will address this issue in a separate comment letter at a later date.

L. Ability to Pay

The CFPB asks how card issuers are determining whether applicants for credit cards have sufficient income or assets to cover extensions of new credit. Consumers self-report their income to issuers. For example, according to one issuer, if the customer request a credit line of \$35,000 or more, or if their customer's stated income is in the top 1% in the US (generally above \$250,000), the issuer calls to confirm the income amount. Issuers decline applications that cannot satisfy the ability to pay requirement.

The CFPB also asks how card issuers are making the ability to pay determination in connection with the consideration of credit line increases. For credit line increases, issuers use income guidelines that are appropriate with safety and soundness principles. As with new extensions of credit, the issuer declines applications for credit line increases where the consumer cannot satisfy the ability to pay requirement. A significant number of credit card applicants are declined for ability to pay reasons – applicants who would otherwise have met issuers' credit criteria. Additionally, some issuers have significant limitations on modeled income from the Office of the Comptroller of the Currency ("OCC"), which has constrained their ability to do proactive line increases.

AFSA supports the use of modeled income. Regulation Z requires card issuers to consider the consumer's ability to pay to make required minimum payments when opening a new credit card account or increasing a credit line on an existing account. Regulation Z permits credit card issuers to make this ability to pay assessment using either stated income or through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income and assets.

When analyzing the ability to pay decision using modeled income, as compared to stated income, the results from several issuers have shown that: (1) modeled income compares well with stated income from a bad rate perspective; (2) modeled income rank orders risk similar to stated income; (3) there are no significant performance differences between modeled income and stated income when comparing applicants with similar credit profiles; (4) once underwriting screens are applied, the type of income (modeled, stated or verified) used for ability to pay compliance purposes has little effect on credit quality; and (5) modeled income is more correlated to the actual payments made by consumers.

These results demonstrate the reasonableness of modeled income. Without the ability to access refreshed income data and comply with ability-to-pay requirements, proactive credit line increase volumes have been significantly impacted. According to an analysis conducted by Experian, credit line increase frequency at major nationally-chartered banks decreased by 50% in the 2nd half of 2012 (when the OCC began instructing credit card issuers to stop using modeled income) versus the pre-CARD Act levels of 2009.

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Thank you for considering AFSA's comments on the credit card market. Please contact me by phone, 202-466-8616, or e-mail, [bhimpler@afsamail.org](mailto:bhimpler@afsamail.org), with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bill Himpler". The signature is written in a cursive style with a large, stylized "B" and "H".

Bill Himpler  
Executive Vice President  
American Financial Services Association