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VIEWPOINT

Industry Has to Act to Fix CARD Law Income Rule

BY EDWARD G. RICE



Financial institutions of all types are facing regulatory changes on a scale not seen in decades. These changes touch upon everything from mortgage lending to solicit-

ing college students for credit cards.

One of the more significant legislative changes is set forth in the Credit Card Accountability Responsibility and Disclosure Act of 2009, which substantially amends the federal Truth-in-Lending Act. Under this new law, creditors opening credit card accounts for consumers are now required to consider the ability of the consumer to make the required payments under the account.

This rule also applies to increasing credit limits. Of course, Regulation Z is the implementing regulation for TILA, and significant proposals to amend this regulation were published by the Federal Reserve System's board of governors on Oct. 29.

Many questions have arisen in light of the proposed amendments to Regulation Z. Of particular concern is the requirement that the creditor, in considering a consumer's ability to pay, would now have to take into account the consumer's income or assets as well as his or her current obligations. This proposed requirement to

consider income, which was not contained in the Credit CARD Act itself, has wide-reaching ramifications for the prescreen business model.

Prescreening is a process permitted by the Fair Credit Reporting Act, and involves the generation of a consumer report in a credit transaction that is not initiated by the consumer. For any consumer identified on the prescreen list, the FCRA requires that the creditor must make a "firm offer of credit" to that consumer. In the current prescreening environment, income is not a data point contained in the consumer's credit file, and therefore, this information would not be revealed during a routine prescreen list request. Though there are income predictive or estimation models that are starting to appear in the marketplace, the proposed regulations do not clearly address the use or permissibility of these tools one way or the other.

Much of the consumer credit originated today is the result of the prescreen process. The proposed amendment to Regulation Z requiring the creditor to look at income does not, in my estimation, materially further the apparent purposes of the Credit CARD Act when compared with the detriment that such a requirement would impose on both the industry and consumers. The prescreen process is most convenient and beneficial to the consumer, and most effective and efficient for the card issuer.

Information on the consumer's obligations, the data currently available in a con-

sumer credit report, historically has been sufficient to establish a consumer's ability to pay. The credit problems in the card industry may be more of a symptom of the practices of some creditors rather than a structural defect in the way credit is and has been for many years provided.

Since the proposed regulations are open to comment, it is important for those of us in the industry to request clarification. One solution the board should consider if they wish to keep income as an "ability to pay" requirement would be to allow card issuers to comply by relying on methods that reasonably establish, estimate or predict the consumer's income or assets. These could include, for example, information in the card issuer's records, information in the consumer reporting agency's database and information from third-party databases which contain predictive profiles that need not contain individual-specific data about the particular consumer.

The financial services industry needs to take steps now to address holes in the proposed amendments rather than waiting to see how the final rules pan out. To the extent that third-party income estimators and income-prediction models are shown to be reasonably reliable in predicting a consumer's income, it should be reasonable for card issuers to use such tools and models in the consideration of the consumer's ability to pay.

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