CFPB ISSUES FINAL ABILITY-TO-PAY RULE

The Consumer Financial Protection Bureau has issued a final rule amending Regulation Z to remove the requirement that issuers consider the consumer's independent ability to pay for applicants who are 21 or older. The amended rule permits issuers to consider income and assets to which such consumers have a reasonable expectation of access. The CFPB is issuing the rule to amend Section 1026.51 and its official interpretations to address concerns that the current rule may be unduly limiting the ability of certain individuals 21 or older, including spouses and partners who do not work outside the home, to obtain credit.

The CFPB outlined four main elements of the final rule:

- The rule generally removes references to an "independent" ability-to-pay standard from Section 1026.51(a)(1) and associated commentary. Thus, card issuers no longer are required to consider whether consumers age 21 or older have an independent ability to pay; instead, card issuers now are required by Regulation Z to consider the consumer's ability to pay.

- In determining a consumer's ability to pay, the rule permits issuers to consider income or assets to which an applicant or accountholder who is 21 or older (and thus subject to Section 1026.51(a) rather than 1026.51(b)) has a reasonable expectation of access. The final rule includes examples clarifying those circumstances in which the expectation of access is deemed to be reasonable or unreasonable.

- The rule continues to require in Section 1026.51(b)(1)(i) that consumers under the age of 21 without a cosigner or similar party who is 21 or older have an independent ability to pay, consistent with Section 127(c)(8) of the Truth in Lending Act.

- The rule clarifies that application of the independent ability-to-pay standard to consumers under 21, consistent with Regulation Z, does not violate the Regulation B prohibition against age-based discrimination.

The CFPB originally announced a proposed rule in October 2012. *See* our prior *Alert* dated October 30, 2012. The CFPB received over 300 comments on the proposal. Based on a review of those comments and its own analysis, the CFPB adopted the amendments to Section 1026.51 substantially as proposed, with several edits and clarifications to address issues raised by commenters. Specifically, the final rule adopts Section 1026.51(a)(1) substantially as proposed, with edits and clarifications. In addition, the final rule adds comment 51(a)(1)—9, which clarifies that issuers may use a single, common application for all consumers, regardless of age. Also, the final rule adopts Section 1026.51(b)(1)(i) as proposed.

The final rule is effective on the date of publication in the Federal Register. Compliance with the rule is required within six (6) months of that date. Card issuers may, at their option, comply with the final rule prior to that date.

Card issuers will need to re-evaluate their application practices and procedures for determining ability-to-pay and revise application forms as appropriate. ❑

✧ *Mike Tomkies and Margaret Stolar*

LOOKING FOR A STATE LAW CREDIT CARD COMPLIANCE RESOURCE? We publish an easy-to-use online reference that summarizes state consumer lending and other consumer protection laws. Our CREDIT CARD DIGEST is organized topically, covers laws applicable to credit card programs of federally and state-chartered financial institutions from an out-of-state issuer perspective and includes an analysis of statute applicability. Card issuers, marketers, servicers and merchants should find this an invaluable resource for program development and regulatory compliance. *Contact us for details.*