



## CONSUMER FINANCIAL PROTECTION BUREAU

### Statement on Ability to Repay and Immigration Status

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Statement.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau or CFPB) is issuing this statement to remind creditors of their obligations under the Truth in Lending Act (TILA) as implemented by Regulation Z, and consistent with Executive Order 14406, titled “Restoring Integrity to America’s Financial System.”

**DATES:** This statement is applicable on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Dave Gettler, Paralegal Specialist, Office of Regulations, at 202-435-7700. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### *Ability to Repay Determinations*

The Truth in Lending Act<sup>1</sup> and its implementing Regulation Z<sup>2</sup> require creditors to assess consumers’ ability to repay before offering mortgages and certain open-end credit products. This statement emphasizes to creditors that these requirements may obligate consideration of a consumer’s immigration status, especially where removal from the United States may disrupt the consumer’s income.

Under TILA and Regulation Z, before lending to consumers for dwelling-secured transactions like mortgages, creditors must make “a reasonable and good faith determination at

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<sup>1</sup> 15 U.S.C. 1601 *et seq.*

<sup>2</sup> 12 CFR part 1026.

or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.”<sup>3</sup> Regulation Z sets forth parameters that lenders must follow to make such “reasonable and good faith” determinations of a consumer’s ability to repay. For instance, a creditor must consider “the consumer’s current or reasonably expected income or assets.”<sup>4</sup> Those creditors relying on a consumer’s current income must in turn consider their “current employment status.”<sup>5</sup> As the regulations make clear, employment can take a number of forms—including part time, seasonal, irregular, and the like. A creditor may rely on any such employment income to determine loan repayment ability, “so long as the creditor considers those characteristics of the employment.”<sup>6</sup> And for those creditors relying on the consumer’s expected income in addition to or instead of current income, “the expectation that income will be available for repayment must be reasonable and verified with third-party records that provide reasonably reliable evidence of the consumer’s expected income.”<sup>7</sup>

Similarly, credit card issuers must “consider[] the consumer’s ability to make the required minimum periodic payments.”<sup>8</sup> That consideration may be based on information “provided by the consumer in connection with the account” or “obtained through third parties (subject to any applicable information-sharing rules).”<sup>9</sup> And the information could include “any current or reasonably expected income or assets of the consumer.”<sup>10</sup> To ensure card issuers evaluate a consumer’s ability-to-pay, regulations require that they “establish and maintain reasonable written policies and procedures to consider the consumer’s ability to make the required minimum payments under the terms of the account,” which “include treating any

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<sup>3</sup> 12 CFR 1026.43(c).

<sup>4</sup> 12 CFR 1026.43(c)(2)(i).

<sup>5</sup> 12 CFR 1026.43(c)(2).

<sup>6</sup> Comment 43(c)(2)(ii)-1.

<sup>7</sup> Comment 43(c)(2)(i)-3.

<sup>8</sup> 12 CFR 1026.51(a).

<sup>9</sup> Comment 51(a)(1)(i)-5.

<sup>10</sup> Comment 51(a)(1)(i)-4.i.

income . . . to which the consumer has a reasonable expectation of access as the consumer's income."<sup>11</sup>

Importantly, Regulation Z makes clear that, in evaluating a consumer's ability to repay based on expected employment income, creditors need only consider repayment ability based on what is known when the decision to extend credit is made or the credit is issued, depending on the credit type.<sup>12</sup> Commentary to mortgage-related regulations explains that "[a] change in the consumer's circumstances after consummation . . . that cannot be reasonably anticipated from the consumer's application or the records used to determine a repayment ability is not relevant to determining a creditor's compliance with the rule."<sup>13</sup> Likewise, while card issuers may use statistically sound and empirically derived models to calculate future income to which the consumer has a reasonable expectation,<sup>14</sup> they need not make any particular predictions about the continued likelihood that a consumer will earn income in the absence of specific information that would reasonably allow them to make a determination about the nature of the income stream in the future.<sup>15</sup> However, if the information the creditor considers when the decision to extend credit is made or the credit is issued indicates that there will be a change in repayment ability after consummation, a creditor must consider that information in order to have reasonably assessed a borrower's ability to repay.<sup>16</sup>

### *Lending and Immigration Status*

In making lending decisions, creditors are permitted to take into account a wide range of information in order to make a reasonable assessment of a consumer's ability to repay.

Regulation B, which implements the Equal Credit Opportunity Act (ECOA), expressly states that "[a] creditor may take the applicant's immigration status into account,"<sup>17</sup> and that a creditor

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<sup>11</sup> 12 CFR 1026.51(a)(1)(ii).

<sup>12</sup> This includes the consummation of the mortgage loan and, in the case of credit cards, when a credit card account is opened or the credit limit is increased.

<sup>13</sup> Comment 43(c)(1)-2.

<sup>14</sup> Comment 51(a)(1)(i)-5.iv.

<sup>15</sup> Comment 51(a)(1)(i)-2.

<sup>16</sup> Comment 43(c)(1)-2.

<sup>17</sup> 12 CFR part 1002, supp. I, comment 2(z)-2.

“may consider the applicant’s immigration status or status as a permanent resident of the United States, and any additional information that may be necessary to ascertain the creditor’s rights and remedies regarding repayment.”<sup>18</sup> Such a consideration may be necessary because an “applicant’s immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor’s ability to obtain repayment.”<sup>19</sup> As the Bureau recently explained, “[a] credit applicant’s immigration or citizenship status may present underwriting risks that typical assessments of financial capacity alone will not fully resolve. As Regulation B acknowledges, this is something creditors may legitimately consider.”<sup>20</sup>

## **II. Discussion**

As discussed above, continued access to employment can be a key component of assessing a borrower’s income. A borrower’s income and indications of a change to that income are often critical to reasonably assessing a borrower’s ability to repay. The Bureau issues this guidance to remind creditors that, when determining repayment ability, creditors relying on an individual’s income derived from U.S.-based employment are permitted—and may, under certain facts and circumstances, be obligated—to consider information that bears on the consumer’s underlying and continuing ability to earn income—when residency in the United States is a necessary component of such employment. Where a change “cannot be reasonably anticipated” from the application and relevant records, the change need not be considered.<sup>21</sup>

The obligation arises if documentation in the consumer’s application or other records indicates that the consumer’s repayment ability will change on account of their immigration status. In such a circumstance, a creditor must consider that information, just as they must consider anything else in the application or records at or before consummation indicating that

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<sup>18</sup> 12 CFR 1002.6(b)(7).

<sup>19</sup> 12 CFR part 1002, supp. I, comment 6(b)(7)-1. “Accordingly, the creditor may consider immigration status and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.” *Id.*

<sup>20</sup> CFPB, *Withdrawal of Joint Statement on the Equal Credit Opportunity Act and Noncitizen Borrowers*, 91 FR 1138, 1139 (Jan. 12, 2026).

<sup>21</sup> Comment 43(c)(1)-2 (applicable in mortgage context); *see also* comment 51(a)(1)(i)-2 (credit card issuers).

there will be a change in a consumer's repayment ability after consummation.<sup>22</sup> A failure to do so would overlook key information regarding the consumer's income, and may risk the creditor failing to reasonably assess the consumer's ability to repay the credit sought.

In particular, a creditor's awareness of a consumer's immigration status may implicate a creditor's reasonable expectations about whether a consumer's income from U.S.-based employment will remain available for repayment. For example, a creditor may regard a credit applicant who is neither lawfully present nor permitted to work in the United States as being subject to removal, in light of the Administration's stated policy of removing any person unlawfully present in the United States.<sup>23</sup> Indications that an individual may not be lawfully present, and therefore may be at risk of removal, may come from various sources, including direct inquiry or the consumer's reliance on atypical identification methods, such as an Individual Taxpayer Identification Number (ITIN), typically issued to taxpayers to individuals who lack proof of legal residency.

To the extent a creditor's information regarding the borrower's immigration status indicates that the borrower may be an unlawfully present individual and removed from the United States, there is a danger that removal would render any such borrower unable to earn income derived from employment that requires physical presence in the United States. Accordingly, considering whether information regarding an applicant's immigration status indicates a reasonably expected change in future income is a matter of sound compliance practice. The Bureau expects compliance with the law and failure to account for such a reasonably expected change in income may not comply with a creditor's obligation to reasonably assess a borrower's ability to repay the loan or line of credit sought.

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<sup>22</sup> Comment 43(c)(1)-2.

<sup>23</sup> E.O. 14159, "Protecting the American People Against Invasion," sec. 2 (Jan. 20, 2025), 90 FR 8443 (Jan. 29, 2025) (declaring the policy of the Administration "to faithfully execute the immigration laws against all inadmissible and removable aliens" and "achieve the total and efficient enforcement of those laws").

Of course, there are a wide variety of lawful immigration statuses in the United States.<sup>24</sup> Assessing how each status might bear on a lender's reasonable expectation that a consumer has the ability to repay an obligation with U.S.-based employment income is varied, and it cannot be assumed that consumers with different lawful statuses have identical abilities to repay. Accordingly, the Bureau cannot, and does not, provide a comprehensive analysis of variations in immigration status and the consequent reasonable expectations as to a consumer's ability to repay a loan through expected income from U.S.-based employment. Rather, the Bureau reminds creditors when future changes in borrower income must be considered under Regulation Z. Regulation Z enables lenders to make these judgments by affirming their ability to lawfully consider the consumer's immigration status, lawful presence, authorization to work, and other factors that may indicate risk of removal insofar as it bears on their current or reasonably expected income from U.S.-based employment.

### **III. Regulatory Matters**

As guidance, this statement does not have the force or effect of law. It has no legally binding effect, including on persons or entities outside the Federal Government.

The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) has determined that this action is a "significant regulatory action" under E.O. 12866. Accordingly, OMB has reviewed this action.

In an abundance of caution, pursuant to the Congressional Review Act,<sup>25</sup> the Bureau will submit a report containing this statement and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the statement taking effect. OIRA has designated this statement as not a "major rule" as defined by 5 U.S.C. 804(2).

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<sup>24</sup> See U.S. Dep't of Homeland Security, Office of Homeland Security Statistics, *Immigration*, <https://ohss.dhs.gov/topics/immigration>.

<sup>25</sup> 5 U.S.C. 801 *et seq.*

The Bureau has determined that this statement does not contain any new or substantively revised information collection requirements that would require approval by OMB under the Paperwork Reduction Act.<sup>26</sup>

**Russell Vought,**

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<sup>26</sup> 44 U.S.C. 3501 *et seq.*