Proposed Rules

Federal Register

Vol. 77, No. 216

Wednesday, November 7, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0039]

RIN 3170–AA28

Truth in Lending (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the official interpretation to the regulation, which interprets the requirements of Regulation Z. Regulation Z generally prohibits a card issuer from opening a credit card account for a consumer, or increasing the credit limit applicable to a credit card account, unless the card issuer considers the consumer's ability to make the required payments under the terms of such account. Regulation Z currently requires that issuers consider the consumer's independent ability to pay, regardless of the consumer's age; in contrast, TILA expressly requires consideration of an independent ability to pay only for applicants who are under the age of 21. The Bureau requests comment on proposed amendments that would remove the independent ability-to-pay requirement for consumers who are 21 and older, and permit issuers to consider income to which such consumers have a reasonable expectation of access.

DATES: Comments must be received on or before January 7, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0039 or Regulatory Identification Number (RIN) 3170–AA28, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number or RIN for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by calling (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Andrea Edmonds, Senior Counsel, Office of Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7000.

SUPPLEMENTARY INFORMATION:

I. Background

The Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) was signed into law on May 22, 2009.[1] The Credit Card Act primarily amended the Truth in Lending Act (TILA) and instituted new substantive and disclosure requirements to establish fair and transparent practices for open-end consumer credit plans.

The Credit Card Act added TILA section150 which states that ''[a] card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.'' [2] The Credit Card Act also added TILA section 127(c)(8), which applies special requirements for consumers under the age of 21. Section 127(c)(8)(A) provides that ''[n]o credit card may be issued to, or open end consumer credit plan established by or on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer'' that meets certain specific requirements.[3] Section 127(c)(8)(B) sets forth those requirements and provides that ''an application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application shall require * * * (i) the signature of a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21; or * * * (ii) submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.'' [4]

On January 12, 2010, the Board of Governors of the Federal Reserve System (Board) issued a final rule (January 2010 Final Rule) implementing new TILA Sections 150 and 127(c)(8) in a new 12 CFR 226.51.[5] The general rule in § 226.51(a) provided, in part, that ''[a] card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations.'' [6] Consistent with the statute, § 226.51(b) set forth a special rule for consumers who are less than 21 years old and provided, in part, that a card issuer may not open a credit card account for a consumer less than 21 years old unless the consumer has submitted a written application and the card issuer has either: (i) Financial

[1] Public Law 111–24, 123 Stat. 1734 (2009).

[2] 15 U.S.C. 1665e.

[3] 15 U.S.C. 1637(c)(8)(A).

[4] 15 U.S.C. 1637(c)(8)(B).

[5] *See* 75 FR 7658, 7719–7724, 7818–7819, 7900–7901 (Feb. 22, 2010).

[6] *Id.* at 7818.

information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account; or (ii) a signed agreement of a cosigner, guarantor, or joint applicant that meets certain conditions.[7] Accordingly, consistent with the statute, the Board's rule required that consumers under 21 years of age demonstrate an independent ability to pay, while the general rule applicable to consumers 21 and over did not impose a similar independence requirement. The Board's rule became effective on February 22, 2010.

On March 18, 2011, the Board issued a final rule amending § 226.51(a) to apply the independent ability-to-pay requirement to all consumers, regardless of age (March 2011 Final Rule).[8] The Board adopted this change, in part, in response to concerns regarding card issuers prompting applicants to provide ''household income'' on credit card applications. To address this specific concern, in addition to adopting an independent ability-to-pay requirement for consumers who are age 21 and older, the Board clarified in amended comment 51(a)(1)–4.iii that consideration of information regarding a consumer's household income does not by itself satisfy the requirement in § 226.51(a) to consider the consumer's independent ability to pay. The Board stated that in its view it would be inconsistent with the language and intent of section 150 of TILA to permit card issuers to establish a consumer's ability to pay based on the income or assets of individuals who are not responsible for making payments on the account.[9] The Board's amendments to § 226.51 became effective on October 1, 2011.[10]

Rulemaking authority for sections 150 and 127(c)(8) of TILA transferred to the Bureau on July 21, 2011, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[11] On December 22, 2011, the Bureau issued an interim final rule to reflect its assumption of rulemaking authority over Regulation Z.[12] The interim final rule made only technical changes to Regulation Z, such as noting the Bureau's authority and renumbering Regulation Z as 12 CFR Part 1026.[13]

Since the Bureau's assumption of responsibility for TILA and Regulation Z, members of Congress and others have expressed concerns about § 1026.51 and the implementation of the ability-to-pay provisions of the Credit Card Act. In particular, they objected to the Board's extension of the ''independent'' ability-to-pay standard in section 127(c)(8) of TILA to consumers who are 21 or older, and expressed specific concerns about the impact of the Board's March 2011 Final Rule on the ability of spouses and partners who do not work outside the home to obtain credit card accounts. These groups urged the Bureau to further study or reconsider the application of the ''independent'' standard set forth in section 127(c)(8) of TILA—which, they noted, the statute applies only to consumers who are under 21—more generally to consumers who are 21 and older.[14] As discussed further elsewhere in this **Federal Register** notice, the Bureau believes that the most appropriate reading of sections 150 and 127(c)(8) is that the ''independent'' ability-to-pay standard set forth in section 127(c)(8) was intended to apply only to consumers who are under the age of 21. Accordingly, the Bureau believes that § 1026.51(a), as currently in effect, may unduly limit the ability of certain individuals who are 21 or older to obtain credit and is proposing amendments to Regulation Z that it believes are more consistent with the plain language and intent of the Credit Card Act.

II. Legal Authority

The Bureau is issuing this proposal pursuant to its authority under TILA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies. The term ''consumer financial protection functions'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.''[15] TILA is a Federal consumer financial law.[16] Accordingly, effective July 21, 2011, except with respect to persons excluded from the Bureau's rulemaking authority by sections 1027 and 1029 of the Dodd-Frank Act, the authority of the Board to issue regulations pursuant to TILA transferred to the Bureau.

TILA, as amended by the Dodd-Frank Act, authorizes the Bureau to ''prescribe regulations to carry out the purposes of [TILA].''[17] These ''regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions,'' that in the Bureau's judgment are ''necessary or proper to effectuate the purposes of [TILA], to prevent circumvention or evasion thereof, or to facilitate compliance therewith.''[18]

III. Summary of the Proposed Rule

Section 1026.51 Ability To Pay

Overview

The Bureau is proposing to amend 12 CFR 1026.51 and the official interpretation to the regulation in order to address concerns that, in light of the statutory framework established by sections 150 and 127(c)(8) of TILA, current § 1026.51(a) may be unduly limiting the ability of certain individuals 21 or older, including spouses or partners who do not work outside the home, to obtain credit.[19]

51(a) General Rule

Section 1026.51(a) sets forth the general ability-to-pay rule that

[7] *Id.*

[8] 76 FR 22948, 22974–22977 (Apr. 25, 2011). The Board proposed this provision for comment in November 2010. 75 FR 67458, 67473–67475 (Nov. 2, 2010).

[9] 76 FR 22948, 23020–23021.

[10] *Id.* at 22948.

[11] Public Law 111–203, 124 Stat. 1376 (2010).

[12] 76 FR 79768 (Dec. 22, 2011).

[13] Accordingly, the provision addressed in this proposal is cited as 12 CFR 1026.51.

[14] *See, e.g.,* Written Statement of Ashley Boyd, MomsRising, U.S. House Subcommittee on Financial Institutions and Consumer Credit Hearing on ''An Examination of the Federal Reserve's Final Rule on the CARD Act's 'Ability to Repay' Requirement'' (June 6, 2012), *available at http://financialservices.house.gov/uploadedfiles/hhrg-112-ba15-wstate-aboyd-20120606.pdf;* Letter from Representatives Maloney, Slaughter, Bachus, and Frank to Raj Date (December 5, 2011), *available at http://maloney.house.gov/press-release/reps-maloney-slaughter-bachus-and-frank-call-cfpb-study-impact-credit-card-act%E2%80%99s-.*

[15] Public Law 111–203, 124 Stat. 1376 (2010), section 1061(a)(1). Effective on the designated transfer date, the Bureau was also granted ''all powers and duties'' vested in each of the Federal agencies, relating to the consumer financial protection functions, on the day before the designated transfer date. *Id.* section 1061(b)(1).

[16] Public Law. 111–203, section 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws''); *id.* section 1002(12) (defining ''enumerated consumer laws'' to include TILA).

[17] Public Law 111–203, section 1100A(2); 15 U.S.C. 1604(a).

[18] *Id.*

[19] The Bureau notes that several comments on its notice regarding streamlining of inherited regulations (76 FR 75825 (Dec. 5, 2011)) discussed aspects of § 1026.51 that are not being addressed in this proposal. The Bureau is continuing to consider comments on other aspects of § 1026.51; accordingly, commenters on this proposal should limit their comments to the amendments being specifically proposed herein by the Bureau.

implements section 150 of TILA.[20] Currently, § 1026.51(a)(1)(i) provides that a card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any limit applicable to such account, unless the card issuer considers the consumer's independent ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and current obligations. Section 1026.51(a)(1)(ii) further provides that card issuers must establish and maintain reasonable written policies and procedures to consider a consumer's independent income or assets and current obligations, and that such policies and procedures must include consideration of at least one of: the ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. Finally, § 1026.51(a)(1)(ii) states that it would be unreasonable for a card issuer to not review any information about a consumer's income, assets, or current obligations, or to issue a credit card to a consumer who does not have any independent income or assets. Comments 51(a)(1)(i)–1 through 51(a)(1)(i)–6 set forth additional guidance on compliance with the requirements of § 1026.51(a)(1).

The Bureau is proposing to amend § 1026.51(a) in two related respects. First, the Bureau is proposing to remove all references to an ''independent'' ability to pay from § 1026.51(a)(1) and the associated commentary. Second, as discussed in more detail below, the Bureau is proposing to permit issuers to consider income or assets to which an applicant who is 21 or older—and thus subject to § 1026.51(a) rather than § 1026.51(b)—has a reasonable expectation of access. The Bureau's proposal would clarify by examples in the commentary those circumstances in which the expectation of access is deemed to be reasonable or unreasonable.

As discussed above in the Background section of this **Federal Register** notice, the independence requirement was added to § 1026.51(a), and thus made applicable to applicants 21 or older, in the Board's March 2011 Final Rule. In the supplementary information to the March 2011 Final Rule, the Board acknowledged concerns from members of Congress, card issuers, trade associations and consumers that application of an ''independent income'' standard might restrict access to credit for consumers who do not work outside the home, including certain married women.[21] Ultimately, however, the Board concluded that application of this standard would not diminish access to credit for this population of married women and others who do not work outside the home.[22] In particular, the Board suggested that an issuer's request for ''income'' would protect credit access for these populations. However, information made available to the Bureau after the rule went into effect raises several questions about the Board's assumption in this respect.

Specifically, the Bureau has become aware that several issuers have denied card applications from otherwise creditworthy individuals based on the applicant's stated income. Credit bureau data, including data regarding payment history and size of payment obligations, suggest that some of these applicants had demonstrable access to funding sources. Although the Bureau does not have direct evidence of precisely who the unsuccessful applicants are, indirect evidence suggests a meaningful proportion of these denials may have involved applicants who do not work outside the home but who have a spouse or partner who does work outside the home. The Bureau bases this conclusion on summary data from a number of issuers on denials of credit card applications from otherwise creditworthy individuals due to the applicants' stated income.

The Bureau also does not believe that section 150 of TILA requires consideration of the ''independent'' ability to pay for applicants who are 21 or older. Section 150 of TILA refers to ''the ability of the consumer to make the required payments under the terms of the account'' and does not expressly include an independence requirement. In contrast, section 127(c)(8)(B)(ii) of TILA, which sets forth analogous requirements that apply to consumers who are under 21, expressly requires that the consumer demonstrate ''an independent means of repaying any obligation arising from the proposed extension of credit * * *.'' The Bureau believes that the better reading of section 150 of TILA, in light of section 127(c)(8), is that it does not impose an independence requirement in the ability-to-pay provision for consumers who are 21 or older.[23]

The Bureau notes that the Board came to the contrary conclusion that, because section 150 of TILA requires card issuers to consider ''the ability of *the consumer* to make the required payments'' (emphasis added), it indicates that Congress intended card issuers to consider only the ability to pay of the consumer or consumers who are responsible for making payments on the account.[24] The Board further noted that, to the extent that card issuers extend credit based on the income of persons who are not liable on the account, it would be consistent with the purposes of section 150 of TILA to restrict this practice.[25]

The Bureau agrees with the Board that the application of an overly broad standard under section 150 of TILA could undermine the purposes of the statute by permitting issuers to open accounts for consumers based on income or assets of other individuals in cases where reliance on such income or assets would not reasonably reflect the consumer's ability to use such income or assets to make payments on a credit card debt. Therefore, as discussed below, the Bureau is proposing additional guidance to clarify when reliance on a third party's income or assets would be considered unreasonable and, accordingly, could not be used to satisfy § 1026.51(a). However, the Bureau also believes that there are other situations in which it is quite reasonable to rely on the income or assets of a third party in assessing an applicant's ability to pay. Nothing in the text of TILA section 150 suggests that it was intended to impose a blanket prohibition on extending credit in the latter circumstances. Rather, the plain language of section 150 of TILA suggests that it was intended to impose a more flexible standard than the independent ability-to-pay requirement of section 127(c)(8).

Accordingly, given the likely impact of the Board's March 2011 Final Rule on

[20] Section 127(c)(8) of TILA, which sets forth a special rule for consumers who have not attained the age of 21, is implemented in § 1026.51(b) of Regulation Z.

[21] 76 FR 22948, 22976.

[22] *Id.*

[23] The Bureau notes that section 127(c)(8)(B) of TILA itself also sets forth two different ability-to-pay standards, depending on the age of the individual; the Bureau believes that this further suggests that Congress did not intend to apply an independent ability-to-pay requirement to individuals who are 21 or older. Section 127(c)(8)(B)(i) sets forth the standard that applies to an individual age 21or older who is serving as a cosigner or otherwise assuming liability on an account being opened by a consumer who is under 21. Section 127(c)(8)(B)(i) states that such over-21 cosigner or similar party must ''hav[e] a means to repay debts incurred by the consumer in connection with the account.'' In contrast, as discussed above, section 127(c)(8)(B)(ii) requires the under-21 consumer to submit financial information ''indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.''

[24] *See* 76 FR 22975.

[25] *See id.*

the access to credit for spouses or partners who do not work outside the home, and based on the Bureau's statutory interpretation of sections 127(c)(8) and 150 of TILA, the proposed rule would remove references to an ''independent'' ability to pay from § 1026.51(a)(1) and the commentary to § 1026.51(a)(1).

Although the Bureau believes that removing the independent ability-to-pay requirement from § 1026.51(a)(1) best promotes consistency with the statute and will help to mitigate unintended impacts of the rule on spouses or partners who do not work outside the home, the Bureau also believes that it is important to clarify in more detail the income or assets on which a card issuer may rely in order to comply with § 1026.51(a). Therefore, the Bureau is proposing to amend § 1026.51(a)(1)(ii) to clarify that the consideration of a consumer's current income or assets may include any income or assets to which the consumer has a reasonable expectation of access. The Bureau believes that the purposes of section 150 of TILA are best effectuated by placing limitations on the income or assets on which an issuer may rely when opening new credit card accounts or increasing credit limits for consumers who are 21 or older; accordingly, the proposed rule and proposed commentary would clarify that there are certain sources of income or assets on which it would be unreasonable for an issuer to rely.[26]

Current comment 51(a)(1)–4 sets forth guidance regarding the consideration of income and assets under § 1026.51(a). The proposed rule would replace current comment 51(a)(1)–4 with new comments 51(a)(1)–4 through –6; current comments 51(a)(1)–5 and –6 would be renumbered as comments 51(a)(1)–7 and –8. Amended comment 51(a)(1)(i)–4 would generally incorporate portions of existing comment 51(a)(1)–4.ii, which provides guidance on the income or assets that may be considered for purposes of § 1026.51(a), with reorganization for clarity. In addition, for consistency with proposed § 1026.51(a)(1)(ii), proposed comment 51(a)(1)–4 would be revised to expressly provide that a card issuer may consider any income and assets to which an applicant, accountholder, cosigner, or guarantor who is or will be liable for debts incurred on the account has a reasonable expectation of access.

Proposed comment 51(a)(1)–5 would generally incorporate portions of existing comment 51(a)(1)–4.i and –4.iii, which provide guidance on the sources of information about a consumer's income and assets on which a card issuer may rely. Currently, comment 51(a)(1)–4.iii provides that if a card issuer requests on its application forms that applicants provide their income without reference to household income (such as by requesting ''income'' or ''salary''), the card issuer may rely on the information provided by applicants to satisfy the requirements of § 1026.51(a). Proposed comment 51(a)(1)–5.i would similarly provide that card issuers may rely on information provided by applicants in response to a request for ''salary,'' ''income,'' or ''assets.'' In addition, proposed comment 51(a)(1)–5.i would clarify that, for purposes of § 1026.51(a), card issuers also may rely on information provided by applicants in response to a request for ''available income,'' ''accessible income,'' or other language requesting that the applicant provide information regarding current or reasonably expected income and/or assets or any income and/or assets to which the applicant has a reasonable expectation of access.

The Bureau notes that it is retaining in proposed comment 51(a)(1)–5.i existing guidance regarding requests by issuers for ''household income.'' Proposed comment 51(a)(1)–5.i would state that card issuers may not rely solely on information provided in response to a request for ''household income''; rather, the card issuer would need to obtain additional information about the applicant's income (such as by contacting the applicant). The Bureau believes that it would be inappropriate to permit an issuer to rely on the income of one or more third parties when opening a credit card account for a consumer merely because the applicant(s) and the other individual(s) share a residence. For example, a household might consist of two roommates who do not have access to one another's income or assets. The Bureau believes that in this case it generally would be inappropriate to permit one roommate to rely on the income or assets of the other; however, given that they share a household, it is possible that one roommate applicant might interpret the request for ''household income'' to include the other roommate's income.

Proposed comment 51(a)(1)–6 would provide further guidance on when it is permissible to consider a household member's income for purposes of § 1026.51(a).[27] Proposed comment 51(a)(1)–6 sets forth four illustrative examples regarding the consideration of a household member's income. Three of the proposed examples describe circumstances in which the Bureau believes that the applicant has a reasonable expectation of access to a household member's income. Proposed comment 51(a)(1)–6.i notes that if a household member's salary is deposited into a joint account shared with the applicant, an issuer is permitted to consider that salary as the applicant's income for purposes of § 1026.51(a). Proposed comment 51(a)(1)–6.ii assumes that the household member regularly transfers a portion of his or her salary, which in the first instance is directly deposited into an account to which the applicant does not have access, from that account into a second account to which the applicant does have access. The applicant then uses the account to which he or she has access for the payment of household or other expenses. An issuer is permitted to consider the portion of the salary deposited into the account to which the applicant has access as the applicant's income for purposes of § 1026.51(a). The third example in proposed comment 51(a)(1)–6.iii assumes that no portion of the household member's salary is deposited into an account to which the applicant has access. However, the household member regularly uses that salary to pay for the applicant's expenses. The example clarifies that an issuer is permitted to consider the household member's salary as the applicant's income for purposes of § 1026.51(a) because the applicant has a reasonable expectation of access to that salary.

The final example in proposed comment 51(a)(1)–6.iv describes a situation in which the consumer's expectation of access would not be deemed to be reasonable. The example states that no portion of the household member's salary is deposited into an account to which the applicant has access, the household member does not regularly use that salary to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that salary. The proposed comment clarifies that an issuer would not be permitted to consider the household member's salary

[26] The Bureau also is proposing several nonsubstantive, technical changes to § 1026.51(a)(1)(ii) for clarity.

[27] For simplicity and ease of reference, the proposed examples in comment 51(a)(1)–6 address scenarios involving two individuals who reside in the same household (*i.e.*, the applicant and another individual). The examples refer to the second member of the applicant's household as a ''household member.'' However, the Bureau notes that the proposed rule and commentary also would apply to households in which more than two individuals reside.

as the applicant's income for purposes of § 1026.51(a).

The Bureau solicits comment on whether the examples set forth in proposed comment 51(a)(1)–6 are appropriate, as well as on whether there are additional examples that should be included.

As noted above, the Bureau is merely renumbering current comment 51(a)(1)–5—which concerns ''current obligations''—as comment 51(a)(1)–7. However, the Bureau solicits comment on whether additional guidance on this subject is appropriate or necessary in light of the proposed changes to § 1026.51(a) and the official interpretation to that subsection.

51(b) Rules Affecting Young Consumers

Section 1026.51(b) implements section 127(c)(8) of TILA and sets forth special ability-to-pay rules for consumers who are under the age of 21. Section 1026.51(b)(1) currently provides that a card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old unless the consumer has submitted a written application and the card issuer has either: (i) Financial information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account, consistent with § 1026.51(a); or (ii) a signed agreement of a cosigner, guarantor, or joint applicant, who is at least 21 years old, to be either secondarily liable for any debt on the account incurred before the consumer has attained the age of 21 or jointly liable with the consumer for any debt on the account, and financial information indicating that such cosigner, guarantor, or joint applicant has the independent ability to make the required minimum periodic payments on such debts, consistent with § 1026.51(a).

The Bureau is proposing several amendments to § 1026.51(b) for conformity with the proposed amendments to § 1026.51(a) discussed above. First, § 1026.51(b)(1)(i) currently provides that a card issuer may open a credit card account for an underage consumer if the card issuer has ''[f]inancial information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account, *consistent with paragraph (a) of this section.*'' (Emphasis added.) As discussed above, the proposal would remove the independence standard from the general ability-to-pay test in § 1026.51(a), but § 1026.51(b) would continue to require that underage consumers without a cosigner or similar party have an independent ability to pay, consistent with section 127(c)(8) of TILA. Accordingly, the Bureau is proposing to delete the phrase ''consistent with paragraph (a) of this section'' from § 1026.51(b)(1)(i), to reflect the difference in ability to pay standards for consumers who are 21 or older and consumers who are under the age of 21. Similarly, the Bureau is proposing to delete from § 1026.51(b)(1)(ii)(B) a reference to the independent ability to pay of a cosigner, guarantor, or joint applicant who is 21 or older, because proposed § 1026.51(a) would require only that consumers who are 21 or older have the ability to pay, consistent with the guidance set forth in § 1026.51(a), rather than the independent ability to pay.

The Bureau is proposing several new comments to specifically explain how the independent ability-to-pay standard under § 1026.51(b)(1)(i) differs from the more general ability-to-pay standard in § 1026.51(a). Proposed comment 51(b)(1)(i)–1 would generally mirror proposed comment 51(a)(1)–4 and would address sources of income and assets that an issuer may consider, except that it would not include references to income and assets to which the applicant has only a reasonable expectation of access. For example, proposed comment 51(b)(1)(i)–1.i would note that, because § 1026.51(b)(1)(i) requires that the consumer who has not attained the age of 21 have an independent ability to make the required minimum periodic payments, the card issuer may only consider the current or reasonably expected income and assets of an applicant or accountholder who is less than 21 years old under § 1026.51(b)(1)(i). In addition, proposed comment 51(b)(1)(i)–1.i would specifically note that the card issuer may not consider income or assets to which an applicant, accountholder, cosigner, or guarantor, in each case who is under the age of 21 and is or will be liable for debts incurred on the account, has only a reasonable expectation of access under § 1026.51(b)(1)(i).

Proposed comment 51(b)(1)(i)–2 would generally mirror comment 51(a)(1)–5, with several amendments to reflect the different ability-to-pay standard for consumers who are under 21. For example, proposed comment 51(b)(1)(i)–2.i would state that card issuers may rely on information provided by applicants in response to a request for ''salary,'' ''income,'' ''assets,'' or other language requesting that the applicant provide information regarding current or reasonably expected income and/or assets. The proposed comment would further provide, however, that card issuers may not rely solely on information provided in response to a request for ''available income,'' ''accessible income,'' or ''household income.'' Instead, the card issuer would need to obtain additional information about an applicant's income (such as by contacting the applicant).

The Bureau recognizes that, as a practical matter, a card issuer will likely use a single application form for all consumers, regardless of age. In such circumstances, the Bureau notes that card issuers might choose to ask a series of questions regarding income in order to gather enough information to satisfy both of the different standards that apply to consumers depending on whether a particular applicant has attained the age of 21. For example, a card issuer might provide two separate blanks on its application form, one prompting applicants to provide their ''income,'' and the other prompting applicants for ''other accessible income.'' The Bureau solicits comment on how, as a practical matter, card issuers are likely to prompt consumers for income and assets in light of the different standards that the proposal applies based on a consumer's age. The Bureau further solicits comment on whether additional clarification or guidance on this issue is necessary in the rule or the commentary.

Proposed comment 51(b)(1)(i)–3 would set forth the same four factual scenarios that are provided in proposed comment 51(a)(1)–6 and would explain how income and assets would be treated in those scenarios pursuant to the independent ability-to-pay test in § 1026.51(b). The Bureau solicits comment on whether the examples set forth in comment 51(b)(1)(i)–3 are appropriate, as well as on whether there are additional examples that should be included.

Finally, the Bureau is proposing to amend existing comment 51(b)(1)–2 and to redesignate it as comment 51(b)(1)(ii)–1. Existing comment 51(b)(1)–2 states that information regarding income and assets that satisfies the requirements of § 1026.51(a) satisfies the requirements of § 1026.51(b)(1). The Bureau notes that, as proposed, income and assets that satisfy the requirements of § 1026.51(a) might no longer satisfy the requirements under § 1026.51(b) for an applicant who is under the age of 21; however, income and assets that satisfy the requirements of § 1026.51(a) would satisfy the ability-to-pay requirements of § 1026.51(b)(1)(ii)(B) (*i.e.,* those that apply to a cosigner, guarantor, or joint applicant who is 21 or older). Proposed comment 51(b)(1)(ii)–1 would accordingly state that information regarding income and assets that satisfies the requirements of § 1026.51(a) also satisfies the requirements of § 1026.51(b)(1)(ii)(B).

The Bureau notes that one consequence of the proposed rule is that a spouse or partner who does not work outside the home who is 21 or older could rely on income to which that consumer has a reasonable expectation of access. In many cases, spouses or partners who do not work outside the home who are 21 or older could, accordingly, rely on the income of a working spouse or partner and could open a new credit card account without needing a cosigner, guarantor, or joint applicant. However, the proposed rule would not permit an applicant who is under the age of 21 to rely on income or assets that are merely accessible; accordingly, the Bureau expects that in some cases, depending on the specific circumstances, nonworking spouses or partners under the age of 21 may need to apply jointly with their income-earning spouse or partner or to offer that spouse or partner as a guarantor on the account. The Bureau believes that this outcome is consistent with the independent ability-to-pay standard that section 127(c)(8) of TILA applies to applicants who have not attained the age of 21. At the same time, the Bureau understands that the proposed rule may make it more difficult for spouses or partners under 21 who do not work outside the home to obtain credit, as compared to spouses or partners who are 21 or older who do not work outside the home.

The Bureau solicits comment on whether additional guidance is appropriate or necessary to clarify application of the rule to applicants under the age of 21, particularly spouses or partners who do not work outside the home. If such clarification is warranted, the Bureau solicits comment on how such guidance could be provided in a manner consistent with both section 127(c)(8) of TILA, the Equal Credit Opportunity Act, and Regulation B.[28] The Bureau notes that a prohibition on discrimination based on marital status is a long-standing and fundamental tenet of fair lending law and, given that section 127(c)(8) of TILA imposes a more stringent independent ability-to-pay standard on applicants who are under the age of 21 than on those who are 21 or older, the Bureau believes it would be inappropriate to apply the ''reasonable expectation of access'' income standard to all applicants who are under 21.

IV. Section 1022(b)(2) of the Dodd-Frank Act

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts,[29] and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The proposal would amend § 1026.51(a) to permit the consideration, for applicants 21 or older, of income and assets to which the applicant has a reasonable expectation of access. Currently, § 1026.51(a) requires that issuers consider the consumer's independent ability to make the required minimum periodic payments under the terms of the account, based on the consumer's income or assets.

The proposal would allow issuers to extend credit (either open credit card accounts under open end consumer credit plans, or increase credit limits applicable to such accounts) in circumstances where they are currently prohibited from doing so, notably in response to applications from consumers 21 or older that rely on income or assets to which the applicant only has a reasonable expectation of access. Extensions of credit based on the consideration of such income or assets would likely benefit both covered persons (the creditors) and consumers (the applicants) since in most circumstances, creditors would not extend credit, nor would adult applicants accept the offer were it not in the mutual interest of both parties. While in theory certain consumer and issuer behaviors could lead to situations where consumers enter into credit contracts that are harmful to their own financial situation, it seems unlikely that preventing creditors from extending credit in such situations would prevent many such cases, while it may prevent many mutually beneficial transactions. At present, the Bureau does not have data with which to quantify the relative credit performance of applicants who received credit on the basis of income or assets to which the applicant had only a reasonable expectation of access compared to other types of applicants. The Bureau seeks data on the prevalence of such applications and evidence regarding the performance of such loans.

The proposal itself does not impose additional compliance costs on covered persons since all methods of compliance under current law will remain available to covered persons if the proposal is adopted,[30] and a covered person who is in compliance with current law need not take any additional action if the proposal is adopted.

Finally, the proposed rule would have no unique impact on insured depository institutions or insured credit unions with $10 billion or less in assets as described in section 1026 of the Dodd-Frank Act, nor would the proposed rule have a unique impact on rural consumers.

The Bureau requests comments on the potential benefits, costs, and impacts of the proposal.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[31] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[32]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[33] The Bureau also is subject to certain additional procedures under the RFA

[28] 15 U.S.C. 1691 *et seq.;* 12 CFR part 1002.

[29] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on insured depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Act; and the impact on consumers in rural areas. This discussion considers the impacts of the proposed rule relative to existing law.

[30] While proposed § 1026.51(a) would permit a card issuer to consider a third party's income or assets to which a consumer has a reasonable expectation of access, an issuer also would be permitted to continue to consider only the applicant's independent ability to pay.

[31] 5 U.S.C. 601 *et seq.* The Bureau is not aware of any governmental units or not-for-profit organizations to which the proposal would apply.

[32] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with the Small Business Administration and an opportunity for public comment. *Id.*

[33] 5 U.S.C. 603–605.

involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[34]

An IRFA is not required for the proposal because the proposal, if adopted, would not have a significant economic impact on any small entities. The Bureau does not expect the proposal to impose costs on covered persons. All methods of compliance under current law will remain available to small entities if the proposal is adopted. Thus, a small entity that is in compliance with current law need not take any additional action if the proposal is adopted.

Accordingly, the undersigned certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

VI. Paperwork Reduction Act

This proposal would amend Regulation Z, 12 CFR 1026. The collections of information related to Regulation Z have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA) [35] and assigned OMB Control Number 3170–0015. Under the PRA, the Bureau may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid control number assigned by OMB. As discussed below, the Bureau does not believe that this proposed rule would impose any new collection of information or any increase to the previously approved estimated burden associated with the information collections in Regulation Z.

If this proposal to amend Regulation Z is adopted, card issuers will be permitted, but not required, to consider additional sources of income and assets for purposes of § 1026.51(a), when evaluating an application for a new credit card account under an open-end (not home-secured) consumer credit plan. The Bureau believes that any burden associated with updating compliance under the proposed provisions is already accounted for in the previously approved burden estimates associated with the collection in Regulation Z under the Board's January 2010 Final Rule estimates, which were incorporated by reference in the Board's March 2011 Final Rule.[36]

[34] 5 U.S.C. 609.

[35] 44 U.S.C. 3501 *et seq.*

[36] *See* 75 FR 7658, 7791 (Feb. 22, 2010) for the Board's burden analysis under the Paperwork Reduction Act. *See* also 76 FR 22948, 22996 (Apr. 25, 2011).

Accordingly, for the reasons stated above, the Bureau estimates that there would not be an increase in the one-time or ongoing burden to comply with the requirements under proposed § 1026.51.

Although the Bureau does not believe that the proposed rule imposes any new collection of information or any increase to the previously approved estimated burden associated with the collections in Regulation Z, the Bureau solicits comment on the proposed modification to § 1026.51 or any other aspect of the proposal for purposes of the PRA. Comments on the collection of information requirements should be sent to the Office of Management and Budget, Attention: Desk Officer for the Consumer Financial Protection Bureau, Office of Information and Regulatory Affairs, Washington, DC 20503 or via the Internet to *http://oira_submission@omb.eop.gov,* with copies to the Bureau at the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the Internet to *CFPB_Public_PRA@cfpb.gov.* All comments will become a matter of public record.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to the text of the regulation and official interpretation. New language is shown inside ►bold-faced arrows◄, while language that would be deleted is set off with **[**bold-faced brackets**]**.

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble above, the Bureau proposes to amend part 1026 of Chapter X in Title 12 of the Code of Federal Regulations as follows:

PART 1026—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1601 *et seq.*

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

2. Section 1026.51 is amended by revising paragraphs (a)(1) and (b)(1) as follows:

§ 1026.51 Ability to Pay.

(a) *General rule.* (1)(i) *Consideration of ability to pay.* A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's **[**independent**]** ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and ►the consumer's◄ current obligations.

(ii) *Reasonable policies and procedures.* Card issuers must establish and maintain reasonable written policies and procedures to consider a consumer's ►income or assets and a consumer's current obligations, which may include any income and assets to which the consumer has a reasonable expectation of access◄ **[**independent income or assets and current obligations**]**. Reasonable policies and procedures to consider a consumer's **[**independent**]** ability to make the required payments include the consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer to not review any information about a consumer's ►current obligations,◄ income, ►or ◄ assets **[**, or current obligations**]**, or to issue a credit card to a consumer who does not have any **[**independent**]** income or assets.

* * * * *

(b) *Rules affecting young consumers.* (1) *Applications from young consumers.* A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and the card issuer has:

(i) Financial information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account**[**, consistent with paragraph (a) of this section**]**; or

(ii)(A) A signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or jointly liable with the consumer for any debt on the account; and

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the **[**independent**]** ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

(2) *Credit line increases for young consumers.* If a credit card account has been opened pursuant to paragraph (b)(1)(ii) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint applicant who assumed liability at account opening agrees in writing to assume liability on the increase.

3. In Supplement I to part 1026 under *Section 1026.51 Ability to Pay:*

A. Under subheading *51(a) General rule* and subheading *51(a)(1)(i) Consideration of ability to pay:*

i. Paragraphs 1, 2, and 4 are revised.

ii. Paragraphs 5 and 6 are redesignated as paragraphs 7 and 8 respectively.

iii. New paragraphs 5 and 6 are added.

B. Under subheading *51(b)(1) Applications from young consumers:*

i. Paragraph 2 is removed.

ii. Add subheading *Paragraph 51(b)(1)(i),* and paragraphs 1 through 3.

iii. Add subheading *Paragraph 51(b)(1)(ii)* and paragraph 1.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.51—Ability To Pay

51(a) General Rule

51(a)(1) Consideration of Ability To Pay

1. *Consideration of additional factors.* Section 1026.51(a) requires a card issuer to consider a consumer's ⟦independent⟧ ability to make the required minimum periodic payments under the terms of an account based on the consumer's ⟦independent⟧ income or assets and current obligations. The card issuer may also consider consumer reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 1002).

2. *Ability to pay as of application or consideration of increase.* A card issuer complies with § 1026.51(a) if it bases its determination regarding a consumer's ⟦independent⟧ ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.

* * * * *

►4. *Consideration of income and assets.* For purposes of § 1026.51(a):

i. A card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are applying for a new account or will be liable for debts incurred on that account, including a cosigner or guarantor. Similarly, when a card issuer is considering whether to increase the credit limit on an existing account, the card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are accountholders, cosigners, or guarantors, and are liable for debts incurred on that account. A card issuer may also consider any income and assets to which an applicant, accountholder, cosigner, or guarantor who is or will be liable for debts incurred on the account has a reasonable expectation of access.

ii. Current or reasonably expected income includes, for example, current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. Assets include savings accounts or investments.

iii. Consideration of the income and assets of authorized users, household members, or other persons who are not liable for debts incurred on the account does not satisfy the requirement to consider the consumer's income or assets, unless the consumer has a reasonable expectation of access to such income or assets or a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income and assets.

5. *Information regarding income and assets.* For purposes of § 1026.51(a), a card issuer may consider the consumer's income and assets based on the following information:

i. Information provided by the consumer in connection with the account, including information provided by the consumer through the application process. For example, card issuers may rely on information provided by applicants in response to a request for ''salary,'' ''income,'' ''assets,'' ''available income,'' ''accessible income,'' or other language requesting that the applicant provide information regarding current or reasonably expected income and/or assets or any income and/or assets to which the applicant has a reasonable expectation of access. However, card issuers may not rely solely on information provided in response to a request for ''household income.'' Instead, the card issuer would need to obtain additional information about an applicant's income (such as by contacting the applicant).

ii. Information provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules).

iii. Information obtained through third parties (subject to any applicable information-sharing rules).

iv. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income and/or assets, including any income and/or assets to which the consumer has a reasonable expectation of access.

6. *Examples of considering income.* Assume that an applicant is not employed but shares a household with another individual (the ''household member'') who is employed. The applicant is age 21 or older so § 1026.51(b) does not apply.

i. If the household member's salary is deposited into a joint account shared with the applicant, a card issuer may consider that salary to be the applicant's income for purposes of § 1026.51(a).

ii. The household member's salary is deposited into an account to which the applicant does not have access. However, the household member regularly transfers a portion of that salary into an account to which the applicant does have access, which the applicant uses for the payment of household or other expenses. A card issuer is permitted to consider the portion of the salary deposited into the account to which the applicant has access as the applicant's income for purposes of § 1026.51(a).

iii. No portion of the household member's salary is deposited into an account to which the applicant has access. However, the household member regularly uses that salary to pay for the applicant's expenses. A card issuer is permitted to consider the household member's salary to be the applicant's income for purposes of § 1026.51(a) because the applicant has a reasonable expectation of access to that salary.

iv. No portion of the household member's salary is deposited into an account to which the applicant has access, the household member does not regularly use that salary to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that salary. A card issuer is not permitted to consider the household member's salary as the applicant's income for purposes of § 1026.51(a).◀

【4. *Income and assets.* i. *Sources of information.* For purposes of § 1026.51(a), a card issuer may consider the consumer's income and assets based on:

A. Information provided by the consumer in connection with the credit card account under an open-end (not home-secured) consumer credit plan;

B. Information provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules);

C. Information obtained through third parties (subject to any applicable information-sharing rules); and

D. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income and assets.

ii. *Income and assets of persons liable for debts incurred on account.* For purposes of § 1026.51(a), a card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are applying for a new account and will be liable for debts incurred on that account. Similarly, when a card issuer is considering whether to increase the credit limit on an existing account, the card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are accountholders and are liable for debts incurred on that account. A card issuer may also consider any current or reasonably expected income and assets of a cosigner or guarantor who is or will be liable for debts incurred on the account. However, a card issuer may not use the income and assets of an authorized user or other person who is not liable for debts incurred on the account to satisfy the requirements of § 1026.51, unless a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income and assets. Information about current or reasonably expected income and assets includes, for example, information about current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. A card issuer may also take into account assets such as savings accounts or investments.

iii. *Household income and assets.* Consideration of information regarding a consumer's household income does not by itself satisfy the requirement in § 1026.51(a) to consider the consumer's independent ability to pay. For example, if a card issuer requests on its application forms that applicants provide their ''household income,'' the card issuer may not rely solely on the information provided by applicants to satisfy the requirements of § 1026.51(a). Instead, the card issuer would need to obtain additional information about an applicant's independent income (such as by contacting the applicant). However, if a card issuer requests on its application forms that applicants provide their income without reference to household income (such as by requesting ''income'' or ''salary''), the card issuer may rely on the information provided by applicants to satisfy the requirements of § 1026.51(a).】

▶7◀【5】. *Current obligations.* A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.

▶8◀【6】. *Joint applicants and joint accountholders.* With respect to the opening of a joint account for two or more consumers or a credit line increase on such an account, the card issuer may consider the collective ability of all persons who are or will be liable for debts incurred on the account to make the required payments.

* * * * *

51(b)(1) Applications From Young Consumers

* * *

▶*Paragraph 51(b)(1)(i).*

1. *Consideration of income and assets for young consumers.* For purposes of § 1026.51(b)(1)(i):

i. A card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are applying for a new account or will be liable for debts incurred on that account, including a cosigner or guarantor. Similarly, when a card issuer is considering whether to increase the credit limit on an existing account, the card issuer may consider any current or reasonably expected income and assets of the consumer or consumers who are accountholders, cosigners, or guarantors and are liable for debts incurred on that account. However, because § 1026.51(b)(1)(i) requires that the consumer who has not attained the age of 21 have an independent ability to make the required minimum periodic payments, the card issuer may only consider the current or reasonably expected income and assets of an applicant or accountholder who is less than 21 years old under § 1026.51(b)(1)(i). The card issuer may not consider income or assets to which an applicant, accountholder, cosigner, or guarantor, in each case who is under the age of 21 and is or will be liable for debts incurred on the account, has only a reasonable expectation of access under § 1026.51(b)(1)(i).

ii. Current or reasonably expected income includes, for example, current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income include interest or dividends, retirement benefits, public assistance, alimony, child support, or separate maintenance payments. Assets include savings accounts or investments.

iii. Consideration of the income and assets of authorized users, household members, or other persons who are not liable for debts incurred on the account does not satisfy the requirement to consider the consumer's income or assets, unless a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income and assets.

2. *Information regarding income and assets for young consumers.* For purposes of § 1026.51(b)(1)(i), a card issuer may consider the consumer's income and assets based on the following information:

i. Information provided by the consumer in connection with the account, including information provided by the consumer through the application process. For example, card issuers may rely on information provided by applicants in response to a request for ''salary,'' ''income,'' ''assets,'' or other language requesting that the applicant provide information regarding current or reasonably expected income and/or assets. However, card issuers may not rely solely on information provided in response to a request for ''available income,'' ''accessible income,'' or ''household income.'' Instead, the card issuer would need to obtain additional information about an applicant's income (such as by contacting the applicant).

ii. Information provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules).

iii. Information obtained through third parties (subject to any applicable information-sharing rules).

iv. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income and/or assets.

3. *Examples of considering income for young consumers.* Assume that an applicant is not employed but shares a household with another individual (the ''household member'') who is employed. The applicant is under the age of 21 so § 1026.51(b) does apply.

i. If the household member's salary is deposited into a joint account shared with the applicant, a card issuer may consider that salary to be the applicant's income for purposes of § 1026.51(b)(1)(i).

ii. The household member's salary is deposited into an account to which the applicant does not have access. However, the household member regularly transfers a portion of that salary into an account to which the applicant does have access, which the applicant uses for the payment of household or other expenses. Whether a card issuer may consider the portion of the salary that is deposited into the account to be the applicant's income for purposes of § 1026.51(b)(1)(i) depends on whether a Federal or state Statute or regulation grants the applicant an ownership interest in the account to which the applicant has access.

iii. No portion of the household member's salary is deposited into an account to which the applicant has access. However, the household member regularly uses that salary to pay for the applicant's expenses. A cards issuer may not consider the household member's salary as the applicant's income for purposes of § 1026.51(b)(1)(i) because the salary is not current or reasonably expected income of the applicant.

iv. No portion of the household member's salary is deposited into an account to which the applicant has access, the household member does not regularly use that salary to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that salary. The card issuer may not consider the household member's salary to be the applicant's income for purposes of § 1026.51(b)(1)(i).

Paragraph 51(b)(1)(ii)

1. *Financial information.* Information regarding income and assets that satisfies the requirements of § 1026.51(a) also satisfies the requirements of § 1026.51(b)(1)(ii)(B) and card issuers may rely on the guidance in comments 51(a)(1)–4, –5, and –6 for purposes of determining whether a cosigner, guarantor, or joint applicant who is at least 21 years old has the ability to make the required minimum periodic payments in accordance with § 1026.51(b)(1)(ii)(B). [*See* comment 51(a)(1)–4.] ◄.

* * * * *

Dated: October 17, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–26008 Filed 11–6–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1161; Directorate Identifier 2011–NM–277–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain The Boeing Company Model 737–200, –200C, –300, –400 and –500 series airplanes. The existing AD currently requires a one-time mid-frequency eddy current (MFEC) inspection, a low frequency eddy current (LFEC) inspection, and a detailed inspection for damage or cracking of stringer S–4L and S–4R lap joints and stringer clips between body station (BS) 540 and BS 727, and follow-on inspections and repair if necessary. Since we issued that AD, we have received reports of cracking of the lap joint lower row. This proposed AD would instead require repetitive external eddy current inspections for cracking of certain fuselage crown lap joints and corrective actions; internal eddy current and detailed inspections for cracking of certain fuselage crown lap joints, and repair if necessary; and detailed inspections of certain stringer clips, and replacement with new stringer clips if necessary. This proposed AD would also add airplanes to the applicability. We are proposing this AD to detect and correct cracking of the fuselage lap joints, which could result in sudden decompression of the airplane.

DATES: We must receive comments on this proposed AD by December 24, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include ''Docket No. FAA–2012–1161; Directorate Identifier 2011–NM–277–AD'' at the beginning of