

# Proposed Rules

Federal Register

Vol. 77, No. 71

Thursday, April 12, 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–2012–0015]

RIN 3170–AA21

### 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, and the official interpretation to the regulation, which interprets the requirements of Regulation Z. Regulation Z generally limits the total amount of fees that a credit card issuer may require a consumer to pay with respect to an account, limiting fees to 25 percent of the credit limit in effect when the account is opened. Regulation Z currently states that this limitation applies prior to account opening and during the first year after account opening. The proposal requests comment on whether to amend Regulation Z to apply the limitation only during the first year after account opening.

**DATES:** Comments must be received on or before June 11, 2012.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2012–0015 or Regulatory Identification Number (RIN) 3170–AA21, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier in Lieu of Mail:* 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:** Gregory Evans, Counsel, or Benjamin K. Olson, Managing Counsel, Division of Research, Markets, and 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.<sup>1</sup> 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 Section 127(n)(1), which states that “[i]f the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened,” then “no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made

available under the terms of the account.”<sup>2</sup>

On January 12, 2010, the Federal Reserve Board of Governors (Board) issued a final rule implementing new TILA Section 127(n) in 12 CFR 226.52(a).<sup>3</sup> Section 226.52(a) limits the total amount of fees that a credit card issuer may require a consumer to pay with respect to an account to 25 percent of the credit limit in effect when the account is opened. Under the January 2010 final rule, this limitation applied only during the first year after account opening.<sup>4</sup> This rule became effective on February 22, 2010.

On April 8, 2011, the Board issued a final rule expanding § 226.52(a) to apply to fees the consumer is required to pay with respect to an account prior to account opening.<sup>5</sup> The change was based on the Board’s understanding that certain credit card issuers were “requiring consumers to pay application or processing fees prior to account opening that, when combined with other fees charged to the account after account opening, exceed 25 percent of the account’s initial credit limit.”<sup>6</sup> The Board viewed this practice as “inconsistent with the intent of [TILA] Section 127(n)(1) insofar as it alters the statutory relationship between the costs and benefits of opening a credit card account.”<sup>7</sup> The Board’s change to § 226.52(a) was scheduled to become effective on October 1, 2011.<sup>8</sup>

On July 20, 2011, a credit card issuer filed a lawsuit in the United States District Court for the District of South Dakota, alleging that the Board exceeded its authority by expanding § 226.52(a) to apply to fees the consumer is required to pay prior to account opening.<sup>9</sup> On July 21, 2011, the Board’s rulemaking authority to implement the provisions of TILA transferred to the Bureau pursuant to Sections 1061 and 1100A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank

<sup>2</sup> 15 U.S.C. 1637(n)(1).

<sup>3</sup> See 75 FR 7658, 7819 (Feb. 22, 2010).

<sup>4</sup> *Id.*

<sup>5</sup> 76 FR 22948, 23002 (Apr. 25, 2011). The Board proposed this provision for comment in November 2010. 75 FR 67458, 67475 (Nov. 2, 2010).

<sup>6</sup> 76 FR at 22977.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 22948.

<sup>9</sup> See *First Premier Bank, et al. v. United States Consumer Fin. Prot. Bureau, et al.*, — F. Supp. 2d. —, 2011 WL 4458785 (D.S.D. Sept. 23, 2011).

<sup>1</sup> Public Law 111–24, 123 Stat. 1734 (2009).

Act).<sup>10</sup> On August 5, 2011, the card issuer filed a motion for a preliminary injunction, asking the court to postpone the October 1, 2011 effective date with respect to the application of § 226.52 to fees paid prior to account opening. The district court granted the motion for a preliminary injunction on September 23, 2011. As a result of the court's order, the portion of the Board's 2011 final rule applying § 226.52(a) to pre-account opening fees has not become effective.

On December 22, 2011, the Bureau issued an interim final rule to reflect its assumption of rulemaking authority over Regulation Z.<sup>11</sup> 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. Accordingly, the provision addressed in this proposal and in the litigation discussed above is properly cited as 12 CFR 1026.52(a).

## 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."<sup>12</sup> TILA is a Federal consumer financial law.<sup>13</sup> Accordingly, effective July 21, 2011, except with respect to persons excluded from the Bureau's rulemaking authority by Section 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]."<sup>14</sup> These regulations may

contain such 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 purpose of TILA, facilitate compliance with TILA, or prevent circumvention or evasion of TILA.<sup>15</sup>

## III. Summary of the Proposed Rule

The Bureau is proposing to amend 12 CFR 1026.52(a) to resolve the uncertainty caused by the litigation discussed above. Specifically, the Bureau is proposing to amend § 1026.52(a) to provide that the limitation on credit card fees applies only during the first year after account opening. The Bureau is also proposing to make corresponding amendments to the Official Interpretations of § 1026.52(a).

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

In developing the proposed rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts,<sup>16</sup> 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 provides that the limitation on credit card account fees in § 1026.52(a) applies only during the first year after account opening. If the proposal is adopted, fees that a consumer is required to pay prior to account opening will not be subject to the limitation in § 1026.52(a).

The Bureau believes that the proposal, if adopted, may impose potential costs on consumers by permitting covered persons to collect fees that would be disallowed absent the proposal. Covered persons should benefit from clarification of the scope of § 1026.52(a) to resolve any uncertainty created by the litigation discussed above. The proposed rule would also permit covered persons to collect fees that would be prohibited absent the proposed rule. The Bureau does not expect the proposal to impose costs on

covered persons. All methods of compliance under current law will remain available to covered persons if the proposal is adopted. Thus, 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.<sup>17</sup> 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.<sup>18</sup>

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. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.<sup>19</sup>

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. Instead, the overall

<sup>10</sup> Public Law 111-203 (2010). See 12 U.S.C. 5581; 15 U.S.C. 1604(a); Designated Transfer Date, 75 FR 57252 (Sept. 20, 2010).

<sup>11</sup> 76 FR 79768 (Dec. 22, 2011).

<sup>12</sup> Public Law 111-203, 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.

<sup>13</sup> 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).

<sup>14</sup> Public Law 111-203, Section 1100A(2); 15 U.S.C. 1604(a).

<sup>15</sup> *Id.*

<sup>16</sup> Specifically, Section 1022(b)(2)(A) 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 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.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> 5 U.S.C. 609.

effect of the proposal would be to narrow the compliance obligations under § 1026.52(a) for covered persons and to give covered persons additional certainty about how to comply with § 1026.52(a).

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

The collection of information related to this notice of proposed rulemaking has been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned OMB Control Number 3170-0015. Under the Paperwork Reduction Act, 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 currently valid control number assigned by OMB. As discussed below, the Bureau does not believe that this proposed rule imposes any new collection of information or any increase to the previously approved estimated burden associated with the information collection in Regulation Z.

The collection of information, if any, in Regulation Z, 12 CFR part 1026. The information collection in Regulation Z is required to provide benefits for consumers and is mandatory.<sup>20</sup> The respondents and/or recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions, small businesses, and institutions of higher education. Under § 1026.25, creditors are required to retain evidence of compliance for twenty-four months, but Regulation Z does not specify the types of records that must be maintained.

If this proposal to Regulation Z is adopted, card issuers will not be required to comply with § 1026.52(a) with respect to fees the consumer is required to pay prior to account opening. 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. That rule imposed a similar limitation on fees.<sup>21</sup> 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 § 1026.52(a).

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 collection in Regulation Z, the Bureau solicits comment on the proposed modification to § 1026.52(a) 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 by the Internet to [http://omb\\_submission@omb.eop.gov](mailto:omb_submission@omb.eop.gov), with copies to the Bureau at the address previously specified.

### 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 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. In § 1026.52, revise paragraph (a) to read as follows:

#### § 1026.52 Limitations on fees.

(a) *Limitations [prior to account opening and] during first year after account opening.* (1) *General rule.* Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured)

consumer credit plan [prior to account opening and] during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

\* \* \* \* \*

### Supplement I to Part 1026—Official Interpretations

3. In Paragraph 52(a), revise to read as follows:

#### Section 1026.52—Limitations on Fees

52(a) *Limitations [prior to account opening and] during first year after account opening.*

##### 52(a)(1) *General rule.*

1. *Application.* The 25 percent limit in § 1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account to the card issuer or from another credit account provided by the card issuer). For example:

i. Assume that, under the terms of a credit card account, a consumer is required to pay \$120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of \$15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At account opening on January 1 of year one, the credit limit for the account is \$500. Section 1026.52(a)(1) permits the card issuer to charge to the account the \$120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a \$100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a \$5 cash-advance fee to the account. On March 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a \$15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a \$50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a \$2.50 cash advance fee to the account. Furthermore, § 1026.52(a)(1) prohibits the card issuer from collecting the \$2.50 cash advance fee from the consumer by other means.

<sup>20</sup> 15 U.S.C. 1601 et seq.

<sup>21</sup> See 75 FR 7791 for the Board's burden analysis under the Paperwork Reduction Act.

ii. Assume that, under the terms of a credit card account, a consumer is required to pay \$125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is \$500. Section 1026.52(a)(1) permits the card issuer to charge the \$125 in fees to the account. However, § 1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account [prior to account opening or] during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees [prior to the opening of the credit card account or] during the first year after the credit card account is opened.

iii. Assume that, on January 1 of year one, a consumer is required to pay a \$100 fee in order to apply for a credit card account. On January 5, the card issuer approves the consumer's application, assigns the account a credit limit of \$1,000, and provides the consumer with account-opening disclosures consistent with § 1026.6. The date on which the account may first be used by the consumer to engage in transactions is January 5. The consumer is required to pay \$150 in fees for the issuance or availability of credit, which § 1026.52(a)(1) permits the card issuer to charge to the account on January 5. However, because the \$100 application fee is subject to the 25 percent limit in § 1026.52(a)(1), the card issuer is prohibited from requiring the consumer to pay any additional non-exempt fees with respect to the account until January 5 of year two.]

\* \* \* \* \*

3. *Changes in credit limit during first year.*

i. *Increases in credit limit.* If a card issuer increases the credit limit during the first year after the account is opened, § 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is \$400 and the consumer is required to pay \$100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for the account to \$600. Section 1026.52(a)(1) does not permit the card issuer to require the consumer

to pay additional fees based on the increased credit limit.

ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, § 1026.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced. For example: [ ] ▶ ◀

[A. Assume] ▶ assume ◀ that, at account opening on January 1, the credit limit for a credit card account is \$1,000 and the consumer is required to pay \$250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to \$500. Section 1026.52(a)(1) requires the card issuer to waive or remove \$175 in fees from the account or to credit the account for an amount equal to \$175 within a reasonable amount of time but no later than August 31.

[B. Assume that, on June 25 of year one, a consumer is required to pay a \$75 fee in order to apply for a credit card account. At account opening on July 1 of year one, the credit limit for the account is \$500 and the consumer is required to pay \$50 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On February 15 of year two, the card issuer decreases the credit limit for the account to \$250. Section 1026.52(a)(1) requires the card issuer to waive or remove fees from the account or to credit the account for an amount equal to \$62.50 within a reasonable amount of time but no later than March 31 of year two.]

\* \* \* \* \*

52(a)(2) *Fees not subject to limitations.*

1. *Covered fees.* Except as provided in § 1026.52(a)(2), § 1026.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account [prior to account opening and] during the first year after account opening, other than charges attributable to periodic interest rates. For example, § 1026.52(a) applies to:

i. Fees that the consumer is required to pay for the issuance or availability of

credit described in § 1026.60(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit;

ii. Fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account;

iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases);

iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by § 1026.52(a)(2)(i));

v. Fixed finance charges; and  
vi. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

\* \* \* \* \*

Dated: April 4, 2012.

**Richard Cordray,**  
*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2012-8534 Filed 4-11-12; 8:45 am]

**BILLING CODE 4810-AM-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

**Revisions of Boundaries for the Thunder Bay National Marine Sanctuary and Underwater Preserve; Intent To Prepare Draft Environmental Impact Statement; Scoping Meetings**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of intent to revise boundaries; intent to prepare environmental impact statement; scoping meetings.

**SUMMARY:** In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric