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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: Final rule; Official Interpretations.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulation Z, which implements the Truth in Lending Act, and the Official Interpretations of the regulation, which interpret 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 to 25 percent of the credit limit in effect when the account is opened. Regulation Z previously stated that this limitation applies prior to account opening and during the first year after account opening. This final rule amends Regulation Z to apply the limitation only during the first year after account opening.

DATES: This rule is effective March 28, 2013.

FOR FURTHER INFORMATION CONTACT: Gregory Evans, Counsel, Office of Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

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. Public Law 111–24, 123 Stat. 1734 (2009). 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.'' 15 U.S.C. 1637(n)(1).

On January 12, 2010, the Board of Governors of the Federal Reserve System (Board) issued a final rule implementing new TILA section 127(n) in 12 CFR 226.52(a). *See* 75 FR 7658, 7819 (Feb. 22, 2010) (January 2010 Final Rule). 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.'' *Id.* Under the Board's January 2010 Final Rule, this limitation applied only during the first year after account opening. *Id.* 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.[1] 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.'' 76 FR at 22977. The Board viewed this practice as ''inconsistent with the intent of [TILA] [s]ection 127(n)(1) insofar as it alters the statutory relationship between the costs and benefits of opening a credit card account.'' *Id.* The Board's change to § 226.52(a) was scheduled to become effective on October 1, 2011. *Id.* at 22948.

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. *See First Premier Bank* v. *U.S. Consumer Fin. Prot. Bureau,* 819 F. Supp. 2d. 906 (D.S.D. Sept. 23, 2011). 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 Act). Public Law 111–203 (2010).[2] 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. *First Premier Bank,* 819 F. Supp. 2d. at 923 (South Dakota litigation). 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 published in the **Federal Register** an interim final rule to reflect its assumption of rulemaking authority over Regulation Z. 76 FR 79768 (Dec. 22, 2011). 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 rulemaking and in the litigation discussed above is properly cited as 12 CFR 1026.52(a).

II. Summary of the Bureau's Rulemaking Process

A. The Bureau's Proposal

On April 12, 2012, the Bureau issued a proposal to amend 12 CFR 1026.52(a), and associated Official Interpretations, to provide that the fee limit of 25 percent of the credit limit in effect when

[1] 76 FR 22948, 23002 (Apr. 25, 2011) (April 2011 Final Rule). The Board proposed this provision for comment in November 2010. 75 FR 67458, 67475 (Nov. 2, 2010).

[2] *See* 12 U.S.C. 5581; 15 U.S.C. 1604(a); Designated Transfer Date, 75 FR 57252 (Sept. 20, 2010).

the account is opened applies only during the first year after account opening. 77 FR 21875 (Apr. 12, 2012) (April 2012 Proposed Rule). The Bureau issued the April 2012 Proposed Rule to resolve the uncertainty created by the South Dakota litigation discussed above. The comment period closed on June 11, 2012.

B. Summary of Public Comments

In response to the April 2012 Proposed Rule, the Bureau received over 50 electronically submitted comments, as well as approximately 1,000 mailed form letters, prior to the comment closing date. The majority of the comment letters were submitted by members of the public, although the Bureau also received comments from industry, consumer advocacy groups, and the New York State Office of the Attorney General.

Many members of the public opposed the April 2012 Proposed Rule, arguing that amending 12 CFR 1026.52(a) would reduce protections for vulnerable consumers. Consumer advocates and the New York State Office of the Attorney General expressed similar views. Some of these commenters suggested that the Bureau pursue other means of limiting pre-account opening fees, such as writing additional rules, coordinating examination activities, or bringing enforcement actions. Industry representatives, however, supported the proposed rule as a more accurate implementation of the Credit Card Act and an effective way to resolve the current litigation.

III. Legal Authority

The Bureau is issuing this final rule 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.'' [3] TILA is a Federal consumer financial law.[4] 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].'' Public Law 111–203, Section 1100A(2); 15 U.S.C. 1604(a). 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. *Id.*

IV. Summary of the Final Rule

The Bureau is amending § 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 amending the Official Interpretations of § 1026.52(a) to reflect this change and to correct a mathematical error present in the Board's Official Staff Interpretations, and now the Bureau's Official Interpretations, since the Board's January 2010 Final Rule.

The Bureau takes seriously the concerns raised by commenters, particularly with respect to the effect that the rule may have on vulnerable consumers. The Bureau believes, however, that the final rule is necessary to resolve the uncertainty created by the South Dakota litigation discussed above. The Bureau will continue to monitor the credit card market to determine if it should take further action to protect consumers, using one or more of its powers under TILA, the Credit Card Act, or the Dodd-Frank Act.

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

In developing the final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts,[5] 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 final rule provides that the limitation on credit card account fees in § 1026.52(a) applies only during the first year after account opening. Thus, once the final rule takes effect, fees that a consumer is required to pay prior to account opening are not subject to the limitation in § 1026.52(a).

The Bureau believes that the final rule may impose potential costs on consumers by permitting a creditor to collect fees that would have been disallowed under the Board's April 2011 Final Rule. Card issuers should benefit from clarification of the scope of § 1026.52(a), which will resolve any uncertainty created by the South Dakota litigation. The final rule also permits card issuers to collect fees that were previously prohibited. The Bureau does not expect the final rule to impose costs on card issuers or to cause a reduction in consumer access to credit. All methods of compliance under previous regulation remain available to card issuers. Thus, a card issuer who was previously in compliance with § 1026.52(a) need not take any additional action to remain so.

The final rule has 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 does the final rule have a unique impact on rural consumers.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (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, including small businesses, small governmental units, and small not-for-profit organizations.[6] 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.[7] The Bureau also is subject to certain

[3] 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.

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

[5] 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 depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. This discussion considers the impacts of the final rule relative to existing law.

[6] 5 U.S.C. 601 *et seq.* The Bureau is not aware of any governmental units or not-for-profit organizations to which the rule would apply.

[7] 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.

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. 5 U.S.C. 609.

In the April 2012 Proposed Rule, the Bureau did not conduct an IRFA because the Bureau concluded that the proposed rule, if finalized, would not have a significant economic impact on any small entities. The Bureau reasoned that it did not expect the proposal to impose costs on card issuers because if the Bureau adopted the proposal as written, all previous methods of compliance would remain available to small entities. Thus, a small entity already in compliance need not take any additional action. The undersigned therefore certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. 77 FR 21875, 21877 (Apr. 12, 2012). The Bureau did not receive comment with respect to this certification or its underlying reasoning.

The Bureau reiterates its previous conclusion that the overall effect of the final rule is to narrow the compliance obligations under § 1026.52(a) for card issuers and to give card issuers additional certainty about how to comply with § 1026.52(a). Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VII. Paperwork Reduction Act

The collection of information related to this final rule 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 (Expiration Date 11/30/15). The Bureau determined that the April 2012 Proposed Rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Bureau did not receive any comments regarding this conclusion, to which the Bureau adheres. The Bureau concludes that the final rule, which adopts the proposal in relevant respects, also imposes no new information collection requirements subject to the Paperwork Reduction Act.

With this final rule, card issuers subject to § 1026.52(a) will not have to comply with its fee limitations 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 final rule 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. That rule imposed a similar limitation on fees.[8] Accordingly, for the reasons stated above, the Bureau estimates that there is no increase in the one-time or ongoing burden to comply with the requirements under § 1026.52(a).

The Bureau has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Consumer Financial Protection Bureau, Attention: PRA Office, 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov*.

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, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 2601; 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 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 1026.52 is amended by revising paragraph (a)(1) to read as follows:

§ 1026.52 Limitations on fees.

(a) *Limitations 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 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.

* * * * *

■ 3. In Supplement I to Part 1026—Official Interpretations:

■ A. Under *Section 1026.52—Limitation on Fees:*

■ i. The heading *52(a) Limitations prior to account opening and during the first year after account opening* is revised.

■ ii. Under *52(a)(1) General rule,* paragraphs 1 and 3 are revised.

■ iii. Under *52(a)(2) Fees not subject to limitations,* paragraph 1 is revised.

The revisions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.52—Limitations on fees.

52(a) Limitations 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

[8] *See* 75 FR 7791 for the Board's burden analysis under the Paperwork Reduction Act.

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.

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 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 during the first year after the credit card account is opened.

* * * * *

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, 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 $600. Section 1026.52(a)(1) requires the card issuer to waive or remove $100 in fees from the account or to credit the account for an amount equal to $100 within a reasonable amount of time but no later than August 31.

* * * * *

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 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.

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Dated: March 22, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–07066 Filed 3–27–13; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1434; Airspace Docket No. 11–ACE–27]

Amendment of Class E Airspace; West Union, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at West Union, IA. Decommissioning of the West Union non-directional beacon (NDB) at George L. Scott Municipal Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, June 27, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone 817–321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 30, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace for the West Union, IA, area, creating additional controlled airspace at George L. Scott Municipal Airport (77 FR 71361) Docket No. FAA–2011–1434. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface