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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: Final rule; official interpretations.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) issues this final rule to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the official interpretations to the regulation. 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 final rule amends Regulation Z to remove the requirement that issuers consider the consumer's independent ability to pay for applicants who are 21 or older, and permits issuers to consider income and assets to which such consumers have a reasonable expectation of access.

DATES: The rule is effective on the date of publication in the *Federal Register*. Compliance with the rule is required by [insert date that is six months of the date of publication in the *Federal Register*]. Card issuers may, at their option, comply with the final rule prior to this date.

FOR FURTHER INFORMATION CONTACT: Krista P. Ayoub and Andrea Pruitt Edmonds, Senior Counsels, Office of Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, D.C. 20552, at (202) 435-7000.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The Credit Card Accountability Responsibility and Disclosure Act (Credit Card Act) was enacted in 2009 as an amendment to the Truth in Lending Act (TILA) to address concerns that certain practices in the credit card industry were not transparent or fair to consumers. As amended, TILA section 150 generally prohibits a card issuer from opening a credit card account or increasing a line of credit for any consumer unless it considers the consumer's ability to make the required payments under the terms of the account. TILA section 127(c)(8) establishes special requirements for consumers under 21 and, among other things, prohibits a card issuer from extending credit to younger consumers unless the consumer's written application is cosigned by a person 21 or older with the means to make the required payments, or the card issuer has financial information that indicates the consumer's independent ability to make the required payments under the terms of the account. The statutory requirements in TILA sections 150 and 127(c)(8) are implemented in section 1026.51(a) and (b) of Regulation Z, respectively. Notwithstanding TILA's different ability-to-pay standards for consumers based on age, Regulation Z currently applies the independent ability-to-pay standard to all consumers, regardless of age.

The Bureau of Consumer Financial Protection (Bureau) is issuing this final rule to amend § 1026.51 and the official interpretations to the regulation to address concerns that, in light of the statutory framework established by TILA sections 150 and 127(c)(8), 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. The final rule takes effect on the date of publication in the *Federal Register* and all covered persons must come into compliance with the final rule no later than six months from the effective date, although covered persons may come into compliance before that date.

The final rule has four main elements. First, the final rule generally removes references to an "independent" ability-to-pay standard from § 1026.51(a)(1) and associated commentary. As a result, card issuers are no longer required to consider whether consumers age 21 or older have an independent ability to pay; instead, card issuers are now required by Regulation Z to consider the consumer's ability to pay. Second, in determining a consumer's ability to pay, the final rule permits issuers to consider income or assets to which an applicant or accountholder who is 21 or older – and thus subject to § 1026.51(a) rather than § 1026.51(b) – has a reasonable expectation of access. The final rule clarifies by examples in the commentary those circumstances in which the expectation of access is deemed to be reasonable or unreasonable. Third, the final rule continues to require in § 1026.51(b)(1)(i) that consumers under the age of 21 without a cosigner or similar party who is 21 years or older have an independent ability to pay, consistent with TILA section 127(c)(8). Finally, the final rule clarifies that application of the independent ability-to-pay standard to consumers under 21, consistent with Regulation Z, does not violate the Regulation B prohibition against age-based discrimination.

II. 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

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

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 150, 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

[2] 15 U.S.C. 1665e.
[3] 15 U.S.C. 1637(c)(8)(A).
[4] 15 U.S.C. 1637(c)(8)(B).

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 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 or older 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 (March 2011 Final Rule) amending § 226.51(a) to apply the independent ability-to-pay requirement to all consumers, regardless of age.[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

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

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 TILA section 150 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 TILA sections 150 and 127(c)(8) 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, card issuers, trade associations, and consumers 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 TILA section 127(c)(8) 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 TILA

[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.

section 127(c)(8) – which, they noted, the statute applies only to consumers who are under 21 – more generally to consumers who are 21 and older.[14]

In order to address any potential unintended adverse impact of the current rule on certain individuals age 21 or older, including spouses and partners who do not work outside the home, to obtain credit, the Bureau published proposed amendments to portions of the regulations and accompanying commentary on November 7, 2012 (November 2012 Proposal).[15] In the proposal, the Bureau stated that it believes that the most appropriate reading of TILA 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. The Bureau also stated that it 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. The Bureau proposed amendments to Regulation Z that it believes are more consistent with the plain language and intent of the Credit Card Act.

In response to the proposal, the Bureau received over 300 comments from individual consumers, consumer groups, trade groups, retailers, banks, credit unions, card issuers, and other financial institutions. Based on a review of these comments and its own analysis, the Bureau adopts the amendments to § 1026.51 substantially as proposed, with several edits and clarifications to address issues raised by the commenters.

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[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] *See* 77 FR 66748 (Nov. 7, 2012).

III. Legal Authority

The Bureau issues this final rule pursuant to its authority under TILA, the Dodd-Frank Act, and the Credit Card 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."[16] TILA is a Federal consumer financial law.[17] 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]."[18] 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."[19]

[16] 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).
[17] 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).
[18] Public Law 111-203, section 1100A(2); 15 U.S.C. 1604(a).
[19] *Id.*

The Credit Card Act primarily amended TILA. Section 2 of the Credit Card Act authorizes the Bureau to "issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act."[20]

IV. Section-by-Section Analysis

Section 1026.51 Ability to Pay

51(a) General Rule

Overview

The Bureau is amending 12 CFR 1026.51 and the official interpretations to the regulation in order to address concerns that, in light of the statutory framework established by TILA sections 150 and 127(c)(8), 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.

The Proposal

Section 1026.51(a) sets forth the general ability-to-pay rule that implements TILA section 150.[21] 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

[20] Credit Card Act § 2.

[21] TILA section 127(c)(8), 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.

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 not to review any information about a consumer's income or assets and 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 proposed to amend § 1026.51(a) in two related respects. First, the Bureau proposed to remove all references to an "independent" ability to pay from § 1026.51(a)(1) and the associated commentary. Second, the Bureau proposed to permit issuers to consider income or assets to which an applicant or accountholder 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 have clarified by examples in the commentary those circumstances in which the expectation of access is deemed to be reasonable or unreasonable.

The Bureau's November 2012 Proposal noted that 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.[22] 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.[23] In particular, the Board suggested that permitting an issuer to solicit an applicant's

[22] 76 FR 22948, 22976.
[23] *Id.*

"income" and make credit decisions on that basis would protect credit access for these populations.

The Bureau noted in the November 2012 Proposal that information made available to it after the March 2011 Final Rule went into effect raised several questions about the Board's assumption in this respect. Specifically, the Bureau has become aware that several issuers have denied card applications from individuals with high credit scores based on the applicant's stated income. Credit bureau data, including data regarding payment history and size of payment obligations, suggested that some of these applicants had demonstrable access to funding sources. Although the Bureau did not have direct evidence of precisely who the unsuccessful applicants are, indirect evidence suggested 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 based 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 stated that it does not believe that TILA section 150 requires consideration of the "independent" ability to pay for applicants who are 21 or older. TILA section 150 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, TILA section 127(c)(8)(B)(ii), which sets forth analogous requirements that apply to consumers who are under 21, expressly requires that the consumer submit financial information, through a written application, that indicates "an independent means of repaying any obligation arising from the proposed extension of credit . . . ." The Bureau believes that the better reading of TILA

section 150, in light of TILA 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.[24]

The Bureau noted that the Board came to the contrary conclusion that, because TILA section 150 requires card issuers to consider "the ability of *the consumer* to make the required payments" (emphasis added), 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.[25] 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 TILA section 150 to restrict this practice.[26]

In issuing its proposal, the Bureau agreed with the Board that the application of an overly broad standard under TILA section 150 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 proposed 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 believed that there are other situations in which card issuers could reasonably rely on the income or assets of a third party in assessing an

[24] The Bureau noted that TILA section 127(c)(8) itself also sets forth two different ability-to-pay standards, depending on the age of the individual; the Bureau stated that it 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 21 or 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 contract, 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."

[25] *See* 76 FR 22975.

[26] *See id*.

applicant's ability to pay. The Bureau maintained that 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 TILA section 150 suggests that it was intended to impose a more flexible standard than the independent ability-to-pay requirement of TILA section 127(c)(8)(B)(ii).

Accordingly, given the likely impact of the Board's March 2011 Final Rule on the access to credit for spouses or partners who do not work outside the home, and based on the Bureau's statutory interpretation of TILA sections 127(c)(8) and 150, the proposed rule would have removed references to an "independent" ability to pay from § 1026.51(a)(1) and the commentary to § 1026.51(a)(1).

Although the Bureau stated that it believes that removing the independent ability-to-pay requirement from § 1026.51(a)(1) would best promote consistency with the statute and would help to mitigate any unintended impacts of the rule on spouses or partners who do not work outside the home, the Bureau also stated that it was 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 proposed to amend § 1026.51(a)(1)(ii) to clarify that the consideration of a consumer's 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 TILA section 150 would be 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 have clarified that there are certain sources of income or assets on which it would be unreasonable for an issuer to rely.[27]

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

Current comment 51(a)(1)-4 sets forth guidance regarding the consideration of income and assets under § 1026.51(a). The proposed rule would have replaced current comment 51(a)(1)-4 with new comments 51(a)(1)-4 through -6; current comments 51(a)(1)-5 and -6 would have been renumbered as comments 51(a)(1)-7 and -8. Amended comment 51(a)(1)(i)-4 generally would have incorporated 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 have been 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 generally would have incorporated 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 similarly would have provided 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 have clarified 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 noted that it was 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 have stated 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 believed 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 believed 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 have provided further clarification regarding when it is permissible to consider a household member's income for purposes of § 1026.51(a).[28] Proposed comment 51(a)(1)-6 would have set forth four illustrative examples regarding the consideration of a household member's income. Three of the proposed examples would have described 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 would have noted 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

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

§ 1026.51(a). Proposed comment 51(a)(1)-6.ii would have assumed 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. Proposed comment 51(a)(1)-6.ii would have permitted an issuer 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 would have assumed 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 proposed example would have clarified 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 would have described a situation in which the consumer's expectation of access would not be deemed to be reasonable. The proposed example would have stated 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 example would have clarified that an issuer would not be permitted to consider the household member's salary as the applicant's income for purposes of § 1026.51(a).

The Bureau solicited 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. Finally, as noted above, the proposal would have renumbered current comment 51(a)(1)-5 – which concerns "current obligations" – as comment 51(a)(1)-7 without further change.

Comments Received

As noted above, the Bureau received over 300 comments from individual consumers, consumer groups, banks, credit unions, trade groups, card issuers, retailers, and other financial institutions. The majority of industry commenters supported the Bureau's proposal to eliminate the independent ability-to-pay requirement for consumers 21 or older. One industry commenter stated that many of its customers have been frustrated and disappointed by their inability to obtain a credit card because they do not have independent income. Another industry commenter posited that the current standard has reduced access to credit not only for married persons and partners who do not work outside the home, but also for elderly Americans who are increasingly dependent on their adult children for financial assistance. An industry commenter noted the impact of the Bureau's current rules on military spouses, who it maintains are more likely to be under-employed, working part-time, or out of the labor force completely. Most industry commenters, including banks, credit unions, trade groups, card issuers, and retailers, similarly supported language in proposed § 1026.51(a)(1)(ii) to permit card issuers to rely on income or assets to which a consumer has a reasonable expectation of access, but requested certain edits and clarifications, which are discussed in more detail below.

In addition, certain consumer commenters, individually and in connection with advocacy groups representing the interests of women (including mothers who do not work outside the home), strongly supported the Bureau's proposal and urged the Bureau to remove the independent ability-to-pay requirement. These commenters argued that changing the rule is

critical to ensuring that stay-at-home spouses and partners are able to build and retain access to credit in the case of abuse, death, or disability of the breadwinner. Some consumer commenters also noted that having a credit card is an essential tool for managing a household and is necessary for making purchases, travel reservations, and bill payments, as well as for qualifying for a business or home loan.

Two consumer group commenters opposed the Bureau's proposal, arguing that the independent ability-to-pay standard could be clarified without removing it altogether. These commenters stated that the Bureau should retain the independent ability-to-pay requirement, but clarify that a person can have income or assets that do not come from that person's individual wages (*e.g.*, where a non-applicant's income is deposited in a joint account, or another account to which the applicant has access). These commenters argued that an issuer's consideration of a consumer's ability to pay should be based solely on the income or assets controlled by the consumer liable on the account and that it is better for consumers to have a cosigner on the card account than to take on debt based on potentially unreliable income.

Several industry commenters stated their general opposition to any additional rules that would interfere with a financial institution's ability to make its own underwriting decisions. Other industry commenters expressed concern that card issuers relying on reasonably expected income as an underwriting criterion would have difficulty evaluating whether the applicant truly has the means to repay a debt and, as a result, would inevitably make poor decisions. Several industry commenters urged the Bureau to make it clear that card issuers are not required to consider income to which the consumer has a reasonable expectation of access for applicants 21 or older, but instead may consider, for example, the consumer's independent ability to pay.

Finally, several industry commenters requested that the Bureau clarify in the rule, commentary, or supplementary information that compliance with the ability-to-pay options provided in the proposal does not give rise to discrimination claims based on age, sex, or marital status under the Equal Credit Opportunity Act (ECOA) [29] and Regulation B.[30] Specifically, a number of industry commenters requested that the Bureau clarify that application of different ability-to-pay standards to consumers based on age does not violate ECOA or Regulation B because the Credit Card Act, and not the card issuer, requires the different treatment. One industry commenter requested assurances that the continued consideration of the independent ability to pay for consumers 21 or older does not violate Regulation B's prohibition against sex discrimination. Another industry commenter expressed concern that application of the reasonable expectation of access criterion to consumers 21 or older may result in a potential discriminatory practice based on marital status.

The Final Rule

The final rule adopts the amendments to § 1026.51(a)(1) substantially as proposed, with several edits and clarifications to address issues raised by commenters. In addition, the final rule adds comment 51(a)(1)-9, which clarifies that issuers may use a single, common application for all consumers, regardless of age.

Ability-to-pay standard. As noted above, § 1026.51(a)(1)(i) currently 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

[29] 15 U.S.C. 1691 *et seq.*
[30] 12 CFR part 1002.

obligations. The Bureau acknowledged in the proposal that § 1026.51(a)(1)(i) in its current form may unduly limit the ability of certain individuals age 21 or older to obtain credit. Accordingly, the Bureau proposed to eliminate the independence standard for these consumers and delete all references to the term "independent" from § 1026.51(a)(1) and associated commentary.

Based on comments received as discussed above and its own analysis, the Bureau is adopting its proposal to remove references to the independence standard in § 1026.51(a)(1) and associated commentary. The Bureau believes that the removal of the independence standard from the ability-to-pay requirement will likely result in greater access to credit for stay-at-home spouses and partners and is consistent with the explicit requirements of TILA section 150. As stated above and in the proposal, the Bureau has become aware of several issuers having denied card applications from individuals with high credit scores based on the applicant's stated income. In addition, comments submitted by industry members and consumers corroborate the Bureau's concerns that the current independent ability-to-pay standard has resulted in card issuers denying credit to individuals with high credit scores because they do not have an independent source of income. For example, one industry commenter stated that many of its customers have been frustrated and disappointed by their inability to obtain a credit card because they do not have independent income. One consumer commenter stated that, despite having excellent credit, her application for credit was denied due to lower income resulting from the decision to work only part-time to care for a young child. Another consumer commenter stated that since reentering the workforce after an extended period as a stay-at-home mother, she has twice been denied a credit card because she did not have credit in her own name. A trade group commenter noted the "unfair impact" of the current independent ability-to-pay requirement on military spouses and

their families, who it argued rely on the working spouse's income to a greater extent than their civilian counterparts.

As stated above, the Bureau also does not believe that TILA section 150 requires consideration of the "independent" ability to pay for applicants who are 21 or older. TILA section 150 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, TILA section 127(c)(8)(B)(ii), 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 TILA section 150, in light of TILA 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.

As also stated above, the Bureau agrees with the Board that the application of an overly broad standard under TILA section 150 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 providing 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 card issuers could reasonably 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 TILA section 150 suggests that it was intended to impose a more flexible regulatory standard than the independent ability-to-pay requirement of TILA section 127(c)(8)(B)(ii).

Accordingly, given the likely impact of existing § 1026.51(a) on the access to credit for spouses or partners who do not work outside the home, and based on the Bureau's statutory interpretation of TILA sections 127(c)(8) and 150, the final rule removes all references to an "independent" ability-to-pay standard from § 1026.51(a)(1) and comments 51(a)-1 and -2. However, as discussed below, the final rule states in § 1026.51(a)(1)(ii) that it would be reasonable for a card issuer to consider a consumer's independent income or assets in its consideration of the consumer's ability to pay. This provision is consistent with the approach clarified in the final rule to permit card issuers the flexibility to rely on a consumer's independent income or assets, or as an alternative, income or assets to which a consumer has a reasonable expectation of access. The final rule also makes a non-substantive, technical change in § 1026.51(a)(1)(i) for consistency and clarity.

Reasonable expectation of access. As discussed above, in conjunction with the proposal to amend § 1026.51(a)(1)(i) by removing the term "independent" from the ability-to-pay requirement, the Bureau proposed to amend § 1026.51(a)(1)(ii) to add new language clarifying 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 also proposed several non-substantive, technical changes to § 1026.51(a)(1)(ii) for clarity.

As noted above, most industry commenters supported the Bureau's proposal in § 1026.51(a)(1)(ii) to permit card issuers to rely on income or assets to which a consumer has a reasonable expectation of access, but suggested certain edits and clarifications as discussed in more detail below. Numerous consumer commenters also supported the Bureau's proposal and

posited that changing the ability-to-pay rules is critical to ensuring that non-working spouses and partners have access to credit in the event of abuse, death, or disability of the primary breadwinner.

The consumer group commenters, however, argued that a card issuer should not be permitted to allow a person to take on debt based on income to which the consumer merely has access, which they view as unreliable income. Instead, these commenters argued that the card issuer should require a joint applicant or cosigner on the account if the applicant does not have sufficient current or reasonably expected income or assets to satisfy the independent ability-to-pay requirement. Several industry commenters also expressed concern that issuers relying on a consumer's reasonable expectation of access to income or assets would have difficulty evaluating whether the applicant truly has the means to repay a debt and, as a result, would inevitably make poor decisions. One industry commenter argued that the reasonable expectation of access criterion would present material risks to the underwriting process. Some industry commenters also expressed concern that extending the card issuer's ability to consider reasonably accessible income to that of cosigners and guarantors would add an additional layer of risk to the credit transaction. Several industry commenters urged the Bureau to make clear that card issuers are not required to consider income to which the consumer has a reasonable expectation of access, but instead may consider, for example, the consumer's independent ability to pay.

Based on careful consideration of the comments submitted and its own analysis, the Bureau adopts substantially as proposed amendments to § 1026.51(a)(1)(ii). The final rule retains in § 1026.51(a)(1)(ii) the requirement that card issuers establish and maintain reasonable written policies and procedures to consider the consumer's ability to make the required minimum

payments under the terms of the account based on the income or assets and current obligations of card applicants. As amended, this paragraph now provides that such policies and procedures include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, *or* limiting consideration of the consumer's income or assets to the consumer's independent income and assets. In other words, a card issuer *may* consider income and assets to which an applicant has a reasonable expectation of access, but is not *required* to do so. A card issuer has the option of limiting its consideration of an applicant's income and assets to his or her independent income and assets.[31]

The Bureau also adopts its proposal to conform § 1026.51(a)(1)(ii) to amended § 1026.51(a)(1)(i) by revising it to state that it would be unreasonable for a card issuer not to review any information about a consumer's income or assets and current obligations – rather than the consumer's "independent" income or assets, as stated in the current rule.

Although some commenters expressed concern that the new reasonable expectation of access criterion may result in riskier underwriting and, thus, greater incidence of default, no supporting data was provided and the Bureau is not convinced that would be the case should a card issuer decide to incorporate a consumer's reasonable expectation of access to income as an underwriting criterion. As discussed in greater detail below, the Bureau is providing in the official commentary examples of when it would be reasonable or unreasonable for an issuer to consider the income or assets of a non-applicant to which the applicant claims to have a reasonable expectation of access. In addition, as one commenter noted, the ability-to-pay requirement is not a substitute for other asset-liability management parameters and underwriting

[31] Several commenters described this option as "continuing" to use the current "independent ability-to-pay standard." Strictly speaking, however, that regulatory standard no longer exists under the final rule; it has been replaced with the ability-to-pay standard. It is thus more accurate to describe this option as using an independent-income-or-assets underwriting criterion to satisfy the ability-to-pay regulatory standard.

criteria used by card issuers in determining whether a consumer is eligible for an extension of credit and may not be evaluated until other underwriting criteria have been analyzed. The Bureau believes that because credit cards are generally unsecured, card issuers will be motivated to carefully review the risk factors available to them regarding a consumer's creditworthiness.[32]

The Bureau also proposed changes to the commentary to § 1026.51(a)(1) to reflect the proposed changes to § 1026.51(a)(1). Current comment 51(a)(1)-4 sets forth guidance regarding the consideration of income and assets under § 1026.51(a). The proposed rule would have replaced current comment 51(a)(1)-4 with new comments 51(a)(1)-4 through -6; current comments 51(a)(1)-5 and -6 would have been renumbered as comments 51(a)(1)-7 and -8. The final rule adopts the proposed comments substantially as proposed, with additional clarification and guidance as requested by commenters. The final rule also adopts comment 51(a)(1)-9, which clarifies the requirements for issuers using a single, common application for all consumers, regardless of age.

Amended comment 51(a)(1)-4, as proposed, generally would have incorporated 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 have been revised to expressly provide that a card issuer may consider any income or 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. In response to the Bureau's proposal, one

[32] Although not addressed in the proposal, consumer group commenters urged the Bureau to ban deferred interest plans on credit card accounts, where such plans promote "no interest" until a certain date, but then retroactively access that interest starting from the purchase date if the consumer does not pay off the entire balance by the specified date. These commenters believed these types of deferred interest plans are unfair and deceptive. Because deferred interest plans are outside the scope of this rulemaking, the comments are not further addressed in this final rule.

industry commenter requested that the Bureau clarify in the commentary that income or assets available to a consumer under state community property laws should be eligible for consideration as income or assets to which a consumer has a reasonable expectation of access. The Bureau received no other specific comments on this aspect of the proposal.

The final rule revises proposed comment 51(a)(1)-4 in a number of ways in response to comments received and to make further clarifications. To begin with, the final rule clarifies in comment 51(a)(1)-4.i that, for purposes of § 1026.51(a), a card issuer may treat any income and assets to which an applicant has a reasonable expectation of access as the consumer's current or reasonably expected income or assets, but is not required to do so. The final rule further clarifies that a card issuer may instead limit its consideration of the consumer's current or reasonably expected income or assets to his or her independent income and assets, and notes that such an issuer may look to the guidance provided in comments 51(b)(1)(i)-1 and 51(b)(2)-2 for the purpose of using independent income and assets as an underwriting criterion. Finally, the final rule corrects an inadvertent omission in the proposal by adding the term "joint applicant" to comment 51(a)(1)-4.i.

In comment 51(a)(1)-4.ii, the final rule clarifies that current or reasonably expected income and assets includes income that is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or joint account). For the reasons discussed below, comment 51(a)(1)-4.ii also clarifies that proceeds from student loans may be treated as current or reasonably expected income, provided that the card issuer only considers the loan proceeds remaining after tuition and other expenses have been disbursed to the applicant's educational institution.

Finally, the final rule revises comment 51(a)(1)-4.iii. in several ways. In response to a request for clarification, the final rule includes State community property laws as an example of a Federal or State statute or regulation that grants a consumer an ownership interest in the income and assets of another person. The final rule also clarifies that a card issuer may consider the consumer's current or reasonably expected income to include the income of authorized users, household members, or other persons who are not liable for debts incurred on the account if that income is regularly deposited into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or joint account). The Bureau believes that such income may be considered the consumer's current or reasonably expected income, even though it is not the consumer's individual wages, because the consumer has access to the non-applicant's income that is being deposited regularly into an account on which the consumer is an accountholder. As discussed below, the final rule revises the examples in comment 51(a)(1)-6 to be consistent with the revisions to comment 51(a)(1)-4.iii.

Proposed comment 51(a)(1)-5 generally would have incorporated 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 in response to such prompts to satisfy the requirements of § 1026.51(a). Proposed comment 51(a)(1)-5.i similarly would have provided 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 have clarified 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 or assets or any income or assets to which the applicant has a reasonable expectation of access.

Proposed comment 51(a)(1)-5.i also retained existing guidance regarding requests by issuers for "household income." Specifically, proposed comment 51(a)(1)-5.i would have stated 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 stated in the proposal that it 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 also stated that it 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.

Several industry commenters stated that it was unclear whether card issuers would be required to take additional steps to confirm information provided as part of an application, and urged the Bureau to clarify what, if any, verification of applicant information is required. One industry commenter suggested that the Bureau add the term "solely" or "without further inquiry" to comment 51(a)(1)-5 to better illustrate that card issuers are not required to verify financial information received in response to prompts for "salary," "income," "assets," "available

income," "accessible income," or other language requesting that the applicant provide information regarding current or reasonably expected income or assets or any income or assets to which the applicant has a reasonable expectation of access. The consumer group commenters, however, indicated that card issuers should be required to obtain some verification of whatever income source is relied upon.

Several industry commenters also suggested that the card issuer be permitted to rely on income information provided by the consumer on an application in response to prompts for "household income" without additional information. These commenters argued that consumers are more familiar with the term "household income" than the allowable terms suggested in the proposal, such as "accessible income" and "available income," and that the term elicits the type of income the Bureau's proposal is designed to permit issuers to use in ability-to-pay considerations. One commenter commissioned its own study, which it states indicated that "household income" is a meaningful term for consumers, and that a request for "household income" elicited the appropriate type of income for an ability-to-pay determination. The commenter also stated that few of the respondents in its study provided the income of a roommate or similar household member when asked for "household income." The commenter suggested that the Bureau allow card issuers to rely on information received from consumers in response to a prompt for income using the term "household income," provided that the request is qualified with a phrase such as "that the applicant can access." Another industry commenter questioned whether the term "accessible household income" would be more likely than "available income" or "accessible income" to elicit a response inclusive of a spouse's or partner's income.

The final rule adopts comment 51(a)(1)-5 substantially as proposed with additional clarification. First, in response to inquiries regarding card issuers' obligations to verify information included in applications received from consumers, the Bureau clarifies in comment 51(a)(1)-5.i that card issuers are not required to verify financial information received in response to prompts for "salary," "income," "assets," "available income," "accessible income," or other language requesting that the applicant provide information regarding current or reasonably expected income or assets and any income or assets to which the applicant has a reasonable expectation of access. Specifically, the final rule revises comment 51(a)(1)-5 to state that card issuers may rely without further inquiry on information provided by applicants in response to prompts for financial information that are consistent with the guidance in comment 51(a)(1)-5.i. The Bureau notes that this clarification does not alter the current rule, which does not require verification of income information provided in response to prompts such as "salary" or "income."

The final rule also clarifies in comment 51(a)(1)-5.i the circumstances under which a card issuer may not rely solely on information provided in a credit card application. Specifically, comment 51(a)(1)-5.i, as adopted, states that card issuers may not rely on information provided in response to a request for "household income"; rather, the card issuer must obtain additional information about the applicant's income, including income to which the applicant has a reasonable expectation of access (such as by contacting the applicant). The Bureau does not believe it is appropriate to allow card issuers to rely on information provided in response to "household income" to determine the consumer's current or reasonably expected income for purposes of the ability-to-pay standard in § 1026.51(a). The Bureau remains concerned that the term "household income" may generate financial data for income to which the applicant has no

expectation of access. As stated in the proposal, the Bureau believes that it would be inappropriate to permit a card 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 individuals 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. As noted above, one industry commenter relied on a study of prospective and current cardholders in urging the Bureau to permit card issuers to rely on information provided in response to a request for "household income." However, it is not clear whether prompting respondents for "income" or another allowable term would have produced different information than was received in response to a request for "household income." Further, it appears that some respondents indicated that they might include a roommate's income in response to a request for "household income." Thus, the Bureau does not believe that the study warrants revising the treatment of household income. Accordingly, the final rule retains in comment 51(a)(1)-5.i the requirement that card issuers obtain additional information about an applicant's income (such as by contacting the applicant) in response to a request for "household income." Comment 51(a)(1)-5.i as adopted also clarifies that if a card issuer chooses to prompt consumers for financial information using the term "household income" on credit card applications, a card issuer may use the guidance in comments 51(a)(1)-4, -5 and -6 when collecting additional information to determine the consumer's current or reasonably expected income under § 1026.51(a).

As discussed above, several consumer groups indicated that card issuers should be required to obtain some verification of whatever income source is stated on the application. As also discussed above, the final rule generally does not require that card issuers verify the income information that an applicant indicates on an application (*i.e.*, except in the circumstances discussed in comment 51(a)(1)-5). The Bureau notes that TILA section 150 does not require verification of a consumer's ability to make required payments. Moreover, credit card applications are usually solicited and received en masse and, as one industry commenter noted, are usually subject to a heavily automated process. To require verification of information from masses of applications received at once would likely increase approval times, resulting in greater consumer inconvenience and costs to card issuers. As a result, the Bureau believes that card issuers should be afforded the flexibility to determine instances when they need to verify information. Furthermore, because these accounts are generally unsecured, the Bureau believes that card issuers have business reasons to seek supplemental information or clarification when either the information supplied by the applicant is inconsistent with the data the card issuers already have or are able to gather on the consumer or when the risk in the amount of the credit line warrants such follow-up. Nonetheless, the Bureau believes it is appropriate to require card issuers to collect additional information regarding the applicant's current or reasonably expected income (such as by contacting the applicant) when the application uses the term "household income." As discussed above, the Bureau believes that this term could lead an applicant to overstate the applicant's current or reasonably expected income that may be considered for purposes of § 1026.51(a)(1).

Proposed comment 51(a)(1)-6 provided further guidance on when it is permissible to consider a household member's income for purposes of § 1026.51(a).[33] Proposed comment 51(a)(1)-6 set forth four illustrative examples regarding the consideration of a household member's income and explained how income and assets would be treated in those scenarios pursuant to the ability-to-pay standard in § 1026.51(a). Proposed comment 51(a)(1)-6.i noted 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 assumed 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 assumed 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 clarified 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 described a situation in which the consumer's expectation of access would not be deemed to be reasonable. The example stated

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

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 clarified that an issuer would not be permitted to consider the household member's salary as the applicant's income for purposes of § 1026.51(a).

Several industry commenters indicated concern that comment 51(a)(1)-6 only addresses situations involving the salary of a household member. These commenters also raised concerns about whether card issuers could rely on these examples in situations where spouses or partners do not reside in the same physical location (*e.g.*, military spouses, graduate students, elderly parents). Several industry commenters suggested that the comment be revised to indicate that residence in the same physical location or dwelling is not a prerequisite to be considered members of the same household. Another industry commenter suggested that the Bureau replace the term "household member" with "non-applicant" or, in the alternative, add examples to the commentary that would apply to applicants and non-applicants that do not reside in the same household. This commenter also suggested defining "household" in the commentary as "a social unit that shares resources regardless of whether the unit shares one residence."

Several industry commenters also suggested that the examples in proposed comment 51(a)(1)-6 should be revised to refer to "salary or other income" so that it is clear that the examples also address income that may come from a variety of sources such as Social Security benefits, veteran's benefits, retirement income, and investment income. One industry commenter also suggested that the examples in proposed comment 51(a)(1)-6.ii should be revised to delete the reference to "payment of household or other expenses" as unnecessary. One

industry commenter was concerned that the language in the prelude to the examples in which the applicant is described as unemployed may lead some to believe that unemployment is a prerequisite to application of the reasonable expectation of access criterion and, thus, should be deleted.

The final rule adopts comment 51(a)(1)-6 as proposed in substance, but makes several amendments in response to commenters' concerns and requests for clarification. First, comment 51(a)(1)-6, as adopted, clarifies that the card issuer may consider a consumer's reasonable expectation of access to the salary or other income of any non-applicant, including, but not limited to, a household member. Accordingly, the final rule removes all references to "household members" in the examples and replaces them with the term "non-applicant." In addition, the examples in comment 51(a)(1)-6 also refer to the non-applicant's "salary or other income" to make clear that the examples also address income that may come from a variety of sources such as Social Security benefits, veteran's benefits, retirement income, and investment income. Also, as discussed above, the final rule revises comment 51(a)(1)-6 to make the examples more consistent with the interpretations set forth in comment 51(a)(1)-4.iii, as adopted in the final rule.

Specifically, as revised in the final rule, the example in comment 51(a)(1)-6.i assumes that a non-applicant's salary or other income is deposited regularly into a joint account shared with the applicant. This example clarifies that a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the account to be the applicant's current or reasonably expected income for purposes of § 1026.51(a). In this case, the applicant would have a current or expected ownership interest in the non-applicant's income that is being deposited regularly into the joint account.

The example in comment 51(a)(1)-6.ii assumes that the non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly transfers a portion of that income into the applicant's individual deposit account. The example in comment 51(a)(1)-6.ii provides that a card issuer is permitted to consider the amount of the non-applicant's income that is being transferred regularly into the applicant's account to be the applicant's current or reasonably expected income for purposes of § 1026.51(a).

The example in comment 51(a)(1)-6.iii assumes that the non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly uses a portion of that income to pay for the applicant's expenses. This example clarifies that a card issuer is permitted to consider the amount of the non-applicant's income that is used regularly to pay for the applicant's expenses to be the applicant's current or reasonably expected income for purposes of § 1026.51(a). The Bureau agrees with certain commenters that this example is important because it makes clear that income in which a consumer has a reasonable expectation of access includes situations where the non-applicant's income is not deposited into a shared account to which the applicant has access. It is possible that a non-working spouse or partner does not have a shared account with the non-applicant but regularly receives income from that person.

Finally, the example in comment 51(a)(1)-6.iv assumes that the non-applicant's salary or other income is deposited into an account to which the applicant does not have access, the non-applicant does not regularly use that income to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that income. This

example clarifies that a card issuer is not permitted to consider the non-applicant's income as the applicant's current or expected income for purposes of § 1026.51(a).

As discussed above, one industry commenter was concerned that the language in the prelude to the examples in which the applicant is described as unemployed may lead some to believe that unemployment is a prerequisite to application of the reasonable access criterion and, thus, should be deleted. The final rule retains in comment 51(a)(1)-6 the language in the prelude to the examples in which the applicant is described as unemployed. The Bureau believes that this language is useful for the examples to clarify that the applicant does not have income earned from his or her own wages. Nonetheless, the Bureau notes that a card issuer may still rely on the examples in comment 51(a)(1)-6, even if the applicant is employed.

Single application. The Bureau recognized in the proposal that, as a practical matter, a card issuer is likely to use a single application form for all consumers, regardless of age, and solicited comment on how, as a practical matter, card issuers are likely to prompt consumers for income and assets in light of the two different income criteria that may be used to satisfy the ability-to-pay income requirements, which would be applied to consumers based on age. One commenter noted that it has not yet determined how it will modify its application, but urged the Bureau to retain flexibility in the rule so that card issuers may rely on income and assets information provided in the application process. Several commenters similarly urged the Bureau to provide card issuers with the flexibility to develop the application and approaches to be used to interact with consumers under the revised standard. Some commenters urged the Bureau to state in the final rule that issuers are permitted to use a single application form for all consumers, regardless of age. Other commenters requested clarification on whether issuers would be required or permitted to include the commentary examples on the credit card application.

Another commenter stated that issuers need the flexibility to develop approaches suitable to the context of the application, whether it is direct mail, point of sale, on-line, or mobile.

The Bureau agrees with commenters that additional clarification regarding the type, format, and content of credit card applications would be helpful. Accordingly, the final rule adopts comment 51(a)(1)-9, which clarifies that card issuers may use a single, common application form or process for all consumers, regardless of age. Comment 51(a)(1)-9 also clarifies that a card issuer may prompt applicants, regardless of age, using only the term "income" and satisfy the ability-to-pay requirements of both § 1026.51(a) and (b). In such cases, additional verification of information provided in the application would not be required. In situations where a card issuer chooses not to prompt only for "income" on a common application, comment 51(a)(1)-9 provides guidance on combinations of terms that may be used to elicit the type of income information required under both ability-to-pay standards. Specifically, comment 51(a)(1)-9 provides as an example a scenario where the application form includes two line items, one prompting applicants for "personal income," and another prompting applicants for "available income." The Bureau believes that this combination of terms would not require additional information because the term "personal income" would appropriately prompt applicants under 21 for individual income as required by § 1026.51(b), while the term "available income" would prompt an applicant for financial information that may be considered under § 1026.51(a). Consistent with comment 51(a)(1)-5.i, comment 51(a)(1)-9 as adopted in the final rule clarifies that combined prompts containing terms identified in comments 51(a)(1)-5.i and 51(b)(1)(i)-2.i, when used in a manner consistent with the commentary, do not require additional information beyond what is provided by the consumer on the application.

Current obligations. As discussed above, the proposal would have revised § 1026.51(a)(1)(ii) to provide that 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. Reasonable policies and procedures to consider a consumer's 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. The proposal stated that it would be unreasonable for a card issuer not to review any information about a consumer's income or assets or current obligations, or to issue a credit card to a consumer who does not have any income or assets. As noted above, the Bureau also renumbered current comment 51(a)(1)-5 – which concerns "current obligations" – as comment 51(a)(1)-7 and solicited 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.

Several consumer groups indicated that if the Bureau is going to permit the payment of expenses by a household member to be considered as "income" for an applicant, then it should also establish a parallel requirement that issuers consider those *expenses* when determining an applicant's ability to pay. In other words, if payment of household expenses by another constitutes income, then those household expenses should be included in the analysis required by § 1026.51(a)(1)(ii). These commenters indicated that otherwise, an individual with high expenses, who receives help with those expenses from another person, would be deemed inaccurately to have sufficient income to pay the credit card debt. These commenters also indicated that § 1026.51(a)(1)(ii) also only appears to require consideration of credit obligations,

without explicit consideration of other non-debt expenses, such as food and utilities, and urged the Bureau to revise § 1026.51(a)(1)(ii) to provide explicitly that issuers must consider household expenses in the overall analysis of an applicant's ability to pay. These commenters suggested that a simple method of approximating household expenses for an applicant would be to use the Internal Revenue Service's Collection Financial Standards. Another commenter argued that the reasonable expectation of access standard would make it difficult to assess an applicant's creditworthiness because only the applicant's personal debt is required.

Based on careful review of the comments, the Bureau declines to add additional requirements for considering debt obligations. The Bureau believes that the current commentary provides card issuers the flexibility to obtain information regarding debt obligations directly from the consumer or in a consumer report and does not prohibit a card issuer from considering household expenses in evaluating a consumer's current obligations. The Bureau also believes it would be unduly burdensome to require card issuers to consider the debt obligations of a non-applicant because such information may generally not be available to the consumer at the time of applying for credit and to require such information may needlessly result in the denial of credit to otherwise creditworthy individuals or discourage consumers from applying at all. Accordingly, the final rule adopts comment 51(a)(1)-7 as proposed.

51(b) Rules Affecting Young Consumers

The Proposal

Section 1026.51(b) implements TILA section 127(c)(8) 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 proposed 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 a consumer under the age of 21 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 have removed the independence standard from the general ability-to-pay standard in § 1026.51(a), but proposed § 1026.51(b) would have continued to require that consumers under the age of 21 without a cosigner or similar party who is 21 years or older have an independent ability to pay, consistent with TILA section 127(c)(8). Accordingly, the Bureau proposed 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 proposed 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, consistent with proposed § 1026.51(a), which would have required that consumers who are 21 or older only have the ability to pay, rather than the independent ability to pay.

The Bureau also proposed several new comments that would have explained specifically how the independent ability-to-pay standard under § 1026.51(b)(1)(i) differs from the more general ability-to-pay standard in proposed § 1026.51(a). Proposed comment 51(b)(1)(i)-1 generally would have addressed sources of income and assets that an issuer may consider and would have made clear that under the independent ability-to-pay standard in § 1026.51(b)(1)(i) a card issuer may not consider income and assets to which the applicant has only a reasonable expectation of access as is permitted under the general ability-to-pay standard in proposed § 1026.51(a). For example, proposed comment 51(b)(1)(i)-1.i would have noted 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 have noted 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 generally would have provided interpretations on the sources of information on which a card issuer may rely for purposes of determining the consumer's current or reasonably expected income and assets under § 1026.51(b)(1)(i). For example, proposed comment 51(b)(1)(i)-2.i would have stated 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 also would have provided, 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 have needed to obtain additional information about an applicant's income (such as by contacting the applicant). In addition, proposed comment 51(b)(1)(i)-3 would have set forth four factual scenarios and would have explained how income would be treated in those scenarios pursuant to the independent ability-to-pay standard in § 1026.51(b)(1)(i).

Finally, the Bureau proposed 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). In the supplementary information to the proposal, the Bureau noted 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 accordingly would have stated 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).

In the supplementary information to the proposal, the Bureau noted that one consequence of the proposed rule would be that a spouse or partner who is 21 or older and does not work outside the home could rely on income to which that consumer has a reasonable expectation of

access. In many cases, spouses or partners who are 21 or older who do not work outside the home 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 have permitted an applicant who is under the age of 21 to rely on income or assets that are merely accessible. In the supplementary information to the proposal, the Bureau explained that it expects that in some cases, depending on the specific circumstances, non-working 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 TILA section 127(c)(8) applies to applicants who have not attained the age of 21. At the same time, the Bureau understood that the proposed rule may result in it being 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.

In the supplementary information to the proposal, the Bureau noted that a prohibition on discrimination based on marital status is a long-standing and fundamental tenet of fair lending law and, given that TILA section 127(c)(8) 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 stated its belief that it would be inappropriate to apply the "reasonable expectation of access" income criterion to all applicants who are under 21. However, the Bureau also solicited comment on whether additional guidance was needed 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 was warranted, the Bureau solicited comment on how such guidance

could be provided in a manner consistent with TILA section 127(c)(8), ECOA, and Regulation B.[34]

Comments Received

In response to the proposal, several industry commenters urged the Bureau to revise existing § 1026.51(b)(1) to remove the independent ability-to-pay standard for consumers under 21 years of age, and instead apply the general ability-to-pay standard as proposed in § 1026.51(a) to all consumers. One industry commenter also stated that the decision to extend credit should be based on a card issuer's risk management standards and that the rule should not set forth an independent ability-to-pay standard for consumers under the age of 21. This commenter stated that many consumers under the age of 21 are married with families, jobs, and obligations that necessitate the availability of open-end credit. This commenter urged the Bureau to provide some flexibility for card issuers to apply the criterion for applicants that are 21 or older to applicants under the age of 21 who have a reasonable expectation of access to a household member's income. Another industry commenter urged the Bureau to permit card issuers to consider the use of all household income in the application process, and apply rules consistently across all ages, which the commenter stated would produce a more efficient and fair process that is easily understood and executed. This commenter also stated that such a rule would avoid the negative impact to those applicants under the age of 21 who have a partner or spouse by allowing them to report all household income. Another industry commenter requested that the Bureau amend § 1026.51(b)(1) to permit a card issuer to consider the shared income of a consumer who is younger than 21 and is legally married to a consumer 21 years or older.

In addition, several industry commenters and consumer groups requested that the Bureau consider several clarifying revisions to proposed commentary that would have interpreted

[34] 15 U.S.C. 1691 *et seq.*; 12 CFR part 1002.

§ 1026.51(b)(1). Also, several industry commenters urged the Bureau to state specifically that compliance with this final rule does not result in a violation of the Regulation B prohibition against age-based discrimination. These suggestions by commenters are discussed in more detail below.

The Final Rule

The final rule adopts § 1026.51(b)(1)(i) as proposed. As adopted, § 1026.51(b)(1)(i) continues to require that consumers under the age of 21 without a cosigner or similar party who is 21 years or older have an independent ability to pay, consistent with TILA section 127(c)(8).[35] As adopted, comment 51(b)(1)(i)-1.i notes 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 or assets of an applicant who is less than 21 years old under § 1026.51(b)(1)(i). Comment 51(b)(1)(i)-1.i also notes that under § 1026.51(b)(1)(i), a consumer's current or reasonably expected income may not include income to which the consumer only has a reasonable expectation of access. Comment 51(b)(1)(i)-1.ii clarifies the sources of income that may be considered as current or reasonably expected income and that current or reasonably expected income includes income regularly deposited into an account on which the consumer is an accountholder. Under comment 51(b)(1)(i)-1.iii, an applicant's current or reasonably expected income includes not only current or reasonably expected income earned by the applicant, but also income earned by a non-applicant where Federal or State statute or regulation grants the applicant an ownership interest in such income and assets (*e.g.*, joint ownership

[35] One industry commenter a requested that the Bureau specifically exempt secured credit cards from the independent ability-to-pay standard set forth in § 1026.51(b)(1)(i). The final rule does not exempt secured credit card accounts from the requirements of § 1026.51(b)(1)(i). The Bureau believes that adopting such an exemption is outside the scope of the changes considered as part of this rulemaking.

granted under State community property laws), or where the non-applicant's income is being deposited regularly into an account on which the applicant is an accountholder (*e.g.*, an individual deposit account or joint account). However, comment 51(b)(1)(i)-1.i notes that the card issuer may not consider under § 1026.51(b)(1)(i) income or assets to which an applicant, joint applicant, 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 without a current or expected ownership interest as discussed above.

The final rule also adopts § 1026.51(b)(1)(ii)(B) as proposed, which provides that where there is a cosigner, guarantor, or joint applicant who is 21 or older, such consumers who are 21 or older need only to have an ability to pay, consistent with § 1026.51(a) as adopted in the final rule, rather than an independent ability to pay under § 1026.51(b). In addition, as discussed in more detail below, the final rule revises § 1026.51(b)(2) to provide that, for credit card accounts that were opened by consumers under the age of 21 without a cosigner or similar party who is 21 years or older, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless, at the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments on the increased limit, consistent with § 1026.51(b)(1)(i), or a cosigner, guarantor or joint applicant who is at least 21 years old agrees in writing to assume liability for any debt incurred on the account, consistent with § 1026.51(b)(1)(ii).

As discussed above, the Bureau recognizes that one consequence of the final rule is that a spouse or partner age 21 or older who does not work outside the home could rely on income to which that consumer has a reasonable expectation of access. In many cases, spouses or partners who are 21 or older and do not work outside the home 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 final rule does not permit an applicant who is under 21 to rely on income or assets that are merely accessible. Instead, the final rule implements the independent ability-to-pay standard that TILA section 127(c)(8) applies to applicants who have not attained the age of 21. Thus, in some cases, depending on the specific circumstances, non-working spouses or partners under 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 this is the outcome compelled by the Credit Card Act.

As discussed in more detail below, the Bureau notes, however, that the final rule in comments 51(b)(1)(i)-1.iii and -3 provides that a card issuer is permitted to consider a non-applicant's income (or portion of that income) to be the applicant's current or reasonably expected income where a Federal or State statute or regulation either grants the applicant an ownership interest in such income (*e.g.*, joint ownership granted under State community property laws) or such income is being deposited regularly into an account on which the applicant is an accountholder *(e.g.*, an individual deposit account or joint account). These interpretations make clear that card issuers may rely on such income of non-working spouses or partners under the age of 21 to open a new credit card account.

As discussed above, one industry commenter requested that the Bureau amend § 1026.51(b)(1) to permit a card issuer to consider the shared income of a consumer under 21 who is legally married to a consumer 21 years or older, in obtaining credit. The Bureau does not believe it is appropriate to revise § 1026.51(b)(1) to permit certain married consumers under the age of 21 to rely on income or assets that are merely accessible, while requiring all consumers under the age of 21 who are not married to meet an independent ability-to-pay requirement. As

discussed above, the Bureau believes that a prohibition on discrimination based on marital status is a long-standing and fundamental tenet of fair lending law. And while TILA section 127(c)(8) imposes a more stringent independent ability-to-pay standard on applicants who are under 21 than on those who are 21 or older, it does not make the same distinction based on marital status. For that reason, the Bureau believes that it would be inappropriate to allow card issuers to employ the general ability-to-pay standard, which permits the consideration of income to which the applicant has a reasonable expectation of access, to certain applicants who are under 21 and married, while applying the independent ability-to-pay standard to all applicants who are under 21 and not married.

Independent ability-to-pay standard. As discussed above, the Bureau proposed several new comments that would have explained specifically how the independent ability-to-pay standard under § 1026.51(b)(1)(i) differs from the more general ability-to-pay standard in proposed § 1026.51(a). For example, proposed comment 51(b)(1)(i)-1.i would have provided that 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. In addition, proposed comment 51(b)(1)-1.i would have specified that 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. Proposed comment 51(b)(1)(i)-1.i also would have noted 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 have noted 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)-1.ii would have provided examples of current or reasonably expected income and assets.

The final rule adopts comment 51(b)(1)(i)-1.i and .ii substantively as proposed, except that provisions in comment 51(b)(1)(i)-1.i relating to credit limit increases have been moved to comment 51(b)(2)-2, as discussed in more detail below. Several consumer groups suggested that the Bureau should clarify that student loan proceeds are not an applicant's current or reasonably expected income for purposes of the independent ability-to-pay standard in § 1026.51(b)(1)(i). These commenters referenced news articles that indicated that students are reporting a college loan as income and some card issuers are accepting that claim. These commenters indicated that, at a minimum, the Bureau should exclude any student loan proceeds up to the amount of the consumer's college tuition from being considered the applicant's current or reasonably expected income.

Based on careful consideration of the commenters' concerns, the final rule clarifies in comment 51(b)(1)(i)-1.ii that proceeds from student loans may be treated as current or reasonably expected income, provided that the card issuer only considers the loan proceeds remaining after tuition and other expenses have been disbursed to the applicant's educational institution. The Bureau believes that many students, particularly those in graduate programs, rely on student loan proceeds to finance their living expenses. The Bureau notes that the current rule does not specifically exclude student loan proceeds from being considered an applicant's

current or reasonably expected income for purposes of the independent ability-to-pay standard in § 1026.51(b)(1)(i). And while the final rule permits consideration of certain student loan proceeds, § 1026.51(a)(1)(ii) also requires card issuers to establish and maintain reasonable written policies and procedures to consider a consumer's income or assets, and current debt. Thus, if a card issuer prompts a consumer to include, or otherwise has reason to know that a consumer has included, student loan proceeds as income on an application, it would be unreasonable for the card issuer not to exclude the portion of those proceeds that are unavailable to make payments on the account because they will be paid to the applicant's educational institution for tuition and other expenses.

Proposed comment 51(b)(1)(i)-1.iii would have explained that 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. Several industry commenters suggested that the Bureau revise proposed comment 51(b)(1)(i)-1.iii to refer specifically to community property laws as an example of a State statute or regulation that grants a consumer who is liable for debts incurred on the account an ownership interest in a non-applicant's income or assets.

The final rule adopts comment 51(b)(1)(i)-1.iii substantially as proposed with two clarifications. First, the final rule revises proposed comment 51(b)(1)(i)-1.iii to refer specifically to community property laws as discussed above. In addition, the final rule revises proposed comment 51(b)(1)(i)-1.iii to provide that a card issuer may consider a consumer's current or reasonably expected income to include any income of a person who is not liable for debts

incurred on the account that is being deposited regularly into an account on which the consumer is an accountholder. The Bureau believes that such income may be considered the consumer's current or reasonably expected income, even though it is not the consumer's individual wages, because the income is being deposited regularly into the consumer's own account. The Bureau believes that these interpretations are consistent with the independent ability-to-pay standard set forth in TILA section 127(c)(8) because, in these circumstances, the applicant has a current or reasonably expected ownership interest in the non-applicant's income. As discussed below, the final rule also revises the examples in comment 51(b)(1)(i)-3 to be consistent with the revisions to comment 51(b)(1)(i)-1.iii.

Proposed comment 51(b)(1)(i)-2 generally would have provided interpretations on the sources of information on which a card issuer may rely for purposes of determining the consumer's current or reasonably expected income and assets under § 1026.51(b)(1)(i). For example, proposed comment 51(b)(1)(i)-2.i would have stated 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 or assets. The proposed comment also would have provided, 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 have needed to obtain additional information about an applicant's income (such as by contacting the applicant).

As discussed in the section-by-section analysis for § 1026.51(a), several industry commenters urged the Bureau to clarify that credit card issuers may rely on an applicant's stated income without additional inquiry or verification in response to a request for "salary," "income,"

"assets," or other language requesting that the applicant provide information regarding current or reasonably expected income or assets. One commenter indicated that a consumer study conducted by it regarding the best way to ask consumers about income for purposes of the ability-to-pay determinations did not reveal a single most effective way to request income from applicants under 21 years of age, although a substantial number of consumer respondents found "personal income" and "individual income" to be clearest, but were confused by the meaning of the term "independent."

The final rule adopts comment 51(b)(1)(i)-2 as proposed with several revisions. The final rule revises proposed comment 51(b)(1)(i)-2.i to make clear that credit card issuers may rely on an applicant's stated income without further inquiry in response to a request for "salary," "income," "personal income," "individual income," "assets," or other language requesting that the applicant provide information regarding his or her current or reasonably expected income or assets. As proposed and adopted, comment 51(b)(1)(i)-2.i also provides that card issuers may not rely solely on information provided in response to a request for "household income." Nor may card issuers rely solely on information provided in response to a request for "available income," "accessible income," or other language prompting an applicant to provide income or assets to which the applicant only has a reasonable expectation of access. In those cases, the card issuer would need to obtain additional information about an applicant's current or reasonably expected income (such as by contacting the applicant). The final rule also revises proposed comment 51(b)(1)(i)-2.i to cross reference new comment 51(a)(1)-9, which clarifies that card issuers may use a single, common application form or process for all credit card applicants, regardless of age. See the section-by-section analysis of § 1026.51(a) for a discussion of comment 51(a)(1)-9.

As discussed in more detail in the section-by-section analysis of § 1026.51(a), several consumer groups indicated that card issuers should be required to obtain some verification of whatever income source is relied upon. For the same reasons discussed in more detail in the section-by-section analysis of § 1026.51(a), the final rule does not require that card issuers verify the income information provided by an applicant under 21 on an application form, except under the circumstances discussed in comment 51(b)(1)(i)-2.i.

Proposed comment 51(b)(1)(i)-3 set forth four factual scenarios and explained how income would be treated in those scenarios pursuant to the independent ability-to-pay standard in § 1026.51(b)(1)(i). Specifically, proposed comment 51(b)(1)(i)-3.i provided that if a 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). Proposed comment 51(b)(1)(i)-3.ii discussed an example where 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. Proposed comment 51(b)(1)(i)-3.ii would have clarified that 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. Proposed comment 51(b)(1)(i)-3.iii discussed an example where 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. Proposed comment 51(b)(1)(i)-3 would have provided that under these circumstances a card 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. Proposed comment 51(b)(1)(i)-3.iv discussed an example where 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. Proposed comment 51(b)(1)(i)-3.iv would have provided that 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). The Bureau solicited comment on whether the examples set forth in proposed comment 51(b)(1)(i)-3 are appropriate, as well as on whether there are additional examples that should be included.

As discussed in more detail in the section-by-section analysis of § 1026.51(a), several industry commenters requested that the Bureau make several clarifying revisions to comment 51(b)(1)(i)-3, such as making clear that the examples apply in situations where spouses or partners do not reside in the same physical location (*e.g.*, military spouses, graduate students, elderly parents), and apply to "salary and other income" to address income that may come from a variety of sources such as Social Security benefits, veteran's benefits, retirement income, and investment income. One industry commenter also suggested that the proposed comment be revised to make clear that the examples in proposed comment 51(b)(1)(i)-3.i and .ii are examples of a consumer's current or reasonably expected income that may be considered by a card issuer in determining whether a consumer meets the independent ability-to-pay standard in § 1026.51(b)(1)(i).

The final rule adopts comment 51(b)(1)(i)-3 in substance as proposed, with several revisions to clarify the intent of the examples. As discussed above, the final rule revises

comment 51(b)(1)(i)-1.iii to provide that 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 current or reasonably expected 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 (*e.g.*, joint ownership granted under State community property laws), or such income is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or a joint account).

The final rule revises the examples in comment 51(b)(1)(i)-3 to be more consistent with comment 51(b)(1)(i)-1.iii as adopted in the final rule, and to address concerns raised by commenters. As adopted in the final rule, the examples in comment 51(b)(1)(i)-3 demonstrate the general interpretations set forth in comment 51(b)(1)(i)-1.iii that a card issuer is permitted to consider a non-applicant's income to be the applicant's current or reasonably expected income for purposes of the independent ability-to-pay standard in § 1026.51(b)(1)(i) if the applicant has a current or reasonably expected ownership interest in the non-applicant's income, or the income is being deposited regularly into an account on which the applicant is an accountholder. However, a card issuer is not permitted to consider the non-applicant's income to be the applicant's current or reasonably expected income for purposes of the independent ability-to-pay standard in § 1026.51(b)(1)(i) when the applicant has only a reasonable expectation of access to the income.

Specifically, as adopted in the final rule, comment 51(b)(1)(i)-3 provides several examples assuming that an applicant is not employed and the applicant is under the age of 21 so § 1026.51(b) applies. Comment 51(b)(1)(i)-3.i provides that if a non-applicant's salary or other

income is deposited regularly into a joint account shared with the applicant, a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the account to be the applicant's current or reasonably expected income for purposes of § 1026.51(b)(1)(i). This is because the non-applicant's income is being deposited regularly into an account on which the applicant is an accountholder.

Comment 51(b)(1)(i)-3.ii discusses an example where the non-applicant's salary or other income is deposited into an account to which the applicant does not have access, but the non-applicant regularly transfers a portion of that income into the applicant's individual deposit account. Comment 51(b)(1)(i)-3.ii provides that a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the applicant's individual deposit account to be the applicant's current or reasonably expected income for purposes of § 1026.51(b)(1)(i). Again, in this case, because the income is being deposited into an account on which the applicant is an accountholder, the card issuer is permitted to consider this income for purposes of the independent ability-to-pay standard under § 1026.51(b)(1)(i).

Comment 51(b)(i)-3.iii discusses an example where the non-applicant's salary or other income is deposited into an account to which the applicant does not have access; however, the non-applicant regularly uses that income to pay for the applicant's expenses. The comment provides that a card issuer is not permitted to consider the non-applicant's income that is used regularly to pay for the applicant's expenses as the applicant's current or reasonably expected income for purposes of § 1026.51(b)(1)(i), unless a Federal or State statute or regulation grants the applicant an ownership interest in such income. Although the applicant would have a reasonable expectation of access to the non-applicant's income that is being used regularly to pay for the applicant's expenses, the applicant does not have a reasonably expected ownership

interest in such income unless a Federal or State statute or regulation grants the applicant an ownership interest in such income (*e.g.*, joint ownership granted under State community property laws).

Comment 51(b)(1)(i)-3.iv discusses an example where the non-applicant's salary or income is deposited into an account to which the applicant does not have access, the non-applicant does not regularly use that income to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that income. The comment provides that the card issuer is not permitted to consider the non-applicant's income to be the applicant's current or reasonably expected income for purposes of § 1026.51(b)(1)(i). In this case, the applicant does not have a reasonably expected ownership interest in the non-applicant's income.

Credit limit increases for consumers who are under 21. Currently, § 1026.51(b)(2) addresses credit limit increases for young consumers. Specifically, § 1026.51(b)(2) prohibits credit line increases for accounts opened pursuant to § 1026.51(b)(1)(ii) unless the cosigner, guarantor, or joint accountholder liable on the account agrees in writing to accept liability for the line increase. Current comments 51(b)-1 and 51(b)(2)-1 provide clarification of this provision.

Section 1026.51(b)(2) does not expressly address credit limit increases for accounts opened under § 1026.51(b)(1)(i) (*i.e.*, those based on the underage consumer's independent ability to pay). However, in proposed comment 51(b)(1)(i)-1.i, the Bureau clarified that "when a card issuer is considering whether to increase the credit limit on an existing account, 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" 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." To remove any doubt that the independent ability-to-pay standard applies to credit line increases for accounts opened pursuant to § 1026.51(b)(1)(i), the final rule amends § 1026.51(b)(2) to provide in § 1026.51(b)(2)(i) that where a credit card account has been opened pursuant to § 1026.51(b)(1)(i), no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the consumer has an independent ability to make the required minimum periodic payments on the increased limit, consistent with § 1026.51(b)(1)(i), or a cosigner or similar party who is 21 or older agrees in writing to assume liability for any debt incurred on the account, consistent with § 1026.51(b)(1)(ii). The final rule clarifies that a card issuer may not consider income or assets to which an accountholder, cosigner, or guarantor who is under 21 and assumes liability for debts incurred on the account only has a reasonable expectation of access, but may consider income or assets to which the same category of individuals who have attained the age of 21 have a reasonable expectation of access. The final rule moves commentary on these credit limit increases from proposed comment 51(b)(1)(i)-1.i to comment 51(b)(2)-2. In addition, comment 51(b)(2)-2 provides that information regarding income and assets that satisfies the requirements of § 1026.51(b)(1)(i) also satisfies the requirements of § 1026.51(b)(2)(i)(A) and card issuers may rely on the guidance in the commentary to § 1026.51(b)(1)(i) for purposes of determining whether an accountholder who is less than 21 years old has the independent ability to make the required minimum periodic payments in accordance with § 1026.51(b)(2)(i)(A). Comment 51(b)(2)-2 further provides that information regarding income and assets that satisfies the requirements of § 1026.51(a) also satisfies the requirements of § 1026.51(b)(2)(i)(B) and card issuers may rely on the guidance in the commentary to § 1026.51(a)(1) for purposes of

determining whether an accountholder who is 21 or older has the ability to make the required minimum periodic payments in accordance with § 1026.51(b)(2)(i)(B). The final rule also redesignates current § 1026.51(b)(2) as § 1026.51(b)(2)(ii).

Pursuant to its authority under TILA section 105(a) and Section 2 of the Credit Card Act, the Bureau believes that it is necessary to clarify the applicability of the independent ability-to-pay standard to credit limit increases on accounts that were opened by consumers under the age of 21 without a cosigner or similar party who is 21 years or older, and where the consumers are still under the age of 21 at the time the credit limit increase is being considered, to prevent circumvention of the rules in § 1026.51(b)(1)(i). For example, if the ability-to-pay standard in § 1026.51(a)(1), as adopted in the final rule, applied to such credit limit increases, a card issuer could collect information about "accessible income" from the consumer who is younger than 21 years of age at application. While the card issuer could not rely on that income in meeting the independent ability-to-pay standard under § 1026.51(b)(1)(i) to open the credit card account for such consumer, the card issuer could consider this "accessible income" after account opening pursuant to § 1026.51(a)(1) and increase the credit limit on the account, even if the consumer remained under the age of 21 at the time. To prevent this type of circumvention, the final rule makes clear in § 1026.51(b)(2)(i)(A) that the independent ability-to-pay standard applies to credit limit increases on accounts that were opened by consumers under the age of 21 without a cosigner or similar party who is 21 years or older, and where the consumers are still under the age of 21 at the time the credit limit increase is being considered.

Current obligations. Existing comment 51(a)(1)-5 provides that 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. The Bureau proposed to renumber current comment 51(a)(1)-5 as comment 51(a)(1)-7. Several industry commenters indicated that the interpretations in proposed comment 51(a)(1)-7 also should apply to the consideration of the consumer's current obligations for purposes of § 1026.51(b)(1). The final rule adds comment 51(b)-5 to provide the same interpretations for considering the consumer's current obligations for purposes of § 1026.51(b)(1) and (2)(i), as adopted in comment 51(a)(1)-7.

Joint applicants or joint accountholders. Existing comment 51(a)(1)-6 provides that 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. The Bureau proposed to renumber current comment 51(a)(1)-6 as comment 51(a)(1)-8. Several industry commenters indicated that the same interpretations in proposed comment 51(a)(1)-8 also should apply to the consideration of joint applications or joint accounts under § 1026.51(b)(1). Accordingly, the final rule adds comment 51(b)-6 to clarify that, with respect to the opening of a joint account for two or more consumers under § 1026.51(b)(1) or a credit line increase on such an account under § 1026.51(b)(2)(i), 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. New comment 51(b)-6 also would cross-reference the commentary to § 1026.51(b)(1)(i) and § 1026.51(b)(2) for information on income and assets that may be considered for joint applicants, joint accountholders, cosigners, or guarantors who are under the age of 21, and the commentary to § 1026.51(b)(1)(ii) for information on income and assets that may be considered for joint applicants, joint accountholders, cosigners, or guarantors who are at least 21 years old.

Cosigner, guarantor, or joint applicant who is 21 or older. 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, under the final rule, 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). As proposed, the final rule amends existing comment 51(b)(1)-2 and redesignates it as comment 51(b)(1)(ii)-1. As adopted, comment 51(b)(1)(ii)-1 states 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).

ECOA and Regulation B

As discussed above, a number of commenters requested that the Bureau clarify in the final rule that a card issuer's compliance with the amended ability-to-pay requirements does not violate ECOA and Regulation B. These commenters were concerned that absent an explicit safe harbor, card issuers would be subject to claims of potential violations of ECOA's and Regulation B's prohibition against discrimination based on age, sex, and marital status.

Several industry commenters requested that the Bureau clarify in the regulation or commentary, or at a minimum, the supplementary information to the final rule, that compliance with the stricter ability-to-pay requirement for consumers under the age of 21 does not give rise to age discrimination by an issuer under ECOA or Regulation B, since TILA section 127(c)(8), as implemented by § 1026.51(b), requires the distinction. To minimize the risk of potential claims of age-based discrimination, a few industry commenters urged the Bureau to apply the

reasonable expectation of access criterion to all consumers, regardless of age. In addition, some commenters were concerned that the business decision to apply the independent ability-to-pay criterion to consumers age 21 or older may give rise to claims of potential discrimination based on sex. One commenter was concerned that the reasonable expectation of access criterion creates a potentially discriminatory practice based on marital status.

As stated above, the Bureau believes that TILA section 127(c)(8) requires the distinction in ability-to-pay requirements between consumers under the age of 21 and consumers age 21 or older. The Bureau agrees that a card issuer would not be in violation of ECOA or Regulation B merely by not considering income to which a consumer under the age of 21 only has a reasonable expectation of access (as it is prohibited from doing under TILA section 127(c)(8) as implemented by § 1026.51(b)), even though the card issuer may consider that income to be the consumer's income for consumers who are 21 or older. Accordingly, the final rule revises comment 51(b)(1)-1 to clarify that a card issuer would not violate Regulation B by virtue of complying with § 1026.51(b). The final rule also redesignates current comment 51(b)(1)-1 as comment 51(b)-7 and current comment 51(b)(1)-2 as comment 51(b)(1)-1 for organizational purposes.

As noted above, one trade association expressed concern that issuers who decide to use only the independent ability-to-pay criterion for applicants age 21 or older might risk violating ECOA and Regulation B – on the theory that doing so would disadvantage non-working spouses, who are likely to be predominantly female, while another industry commenter expressed concern that application of the reasonable expectation of access criterion may result in potential ECOA and Regulation B violations based on marital status. As discussed above, the final rule permits card issuers the flexibility to consider a consumer's ability to pay using the reasonable

expectation of access criterion adopted in the final rule or instead using the independent ability-to-pay criterion. The Bureau recognizes that, depending on their business models, some card issuers may decide to use the independent ability-to-pay criterion. The Bureau understands that card issuers regularly make decisions about their tolerance for repayment risk and that such decisions are a proper and entirely appropriate consideration in crafting underwriting decisions. The final rule specifically provides flexibility on this point. The Bureau expects that card issuers will give careful consideration to how to use the discretion allowed under the rule's flexible approach, in light of the issuers' loss experiences, risk appetites, and other pertinent factors, including the potential effect of the decision on an ECOA protected class. The Bureau does not expect that issuers will necessarily have conducted a quantitative analysis in support of those decisions, but that they will be able to explain the reasoning that went into their decisions and the effects of those decisions. The Bureau is committed to engaging with stakeholders as they implement the new rule.

V. Effective Date

This rule is effective on the date of publication in the Federal Register.[36] Covered parties may begin to comply with the final rule as of the effective date, but no later than six months from the effective date.

The Bureau believes that the flexible effective date adopted in the final rule appropriately balances the needs of industry to determine their preferred method for meeting ability-to-pay requirements for consumers 21 or older with the goal of providing consumers the benefits of greater access to credit as soon as practical. The Bureau believes the flexible effective date

[36] Although the proposal did not expressly solicit comment on an appropriate implementation period, one industry member submitted comment on this issue. This commenter expressed concern that the new requirements would impose an onerous regulatory burden on affected parties, particularly credit unions and urged the Bureau to delay the effective date of any changes to Regulation Z, but did not indicate a specific timeframe for implementation of the final rule.

provided in the final rule is appropriate for several reasons. First, based on comments received in response to the proposed rule, the Bureau expects that certain card issuers will continue with existing practices and, thus, will not require additional time to change or update their systems, application materials, or policies. Second, it recognizes that many card issuers may wish to apply the less restrictive ability-to-pay standard set forth in § 1026.51(a) as soon as possible. Finally, the Bureau recognizes that the flexibility afforded to issuers by § 1026.51(a) may require some card issuers to review their existing systems, policies, and practices to determine which of the permissible underwriting criteria – reasonable expectation of access or independent income or assets – meets their business needs. The Bureau believes that, in such instances, six months is an adequate amount of time.

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

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts,[37] 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 Bureau also requested comments on the potential benefits, costs, and impacts of the proposal.

The final rule amends § 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.

[37] 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.

The final rule allows 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 opening credit card accounts or increasing credit limits for consumers 21 or older based on income or assets to which the applicant has a reasonable expectation of access. As one industry commenter noted, the ability-to-pay requirement is not the only underwriting standard used by card issuers and may not be evaluated until other underwriting criteria have been analyzed. In considering the costs and benefits of the final rule, the Bureau notes that the final rule does not require that card issuers in opening a credit card account, or increasing the credit line on such an account, for a consumer who is 21 years or older to consider income to which that consumer has only a reasonable expectation of access, but permits card issuers to do so. Issuers, therefore, are not required to make any changes in their practices as a result of the final rule.

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 certain consumer and issuer behaviors could lead to situations where consumers enter into credit contracts that are harmful to their own financial situation, it is unlikely that preventing creditors from extending credit in such situations would prevent many such cases, while it may prevent many mutually beneficial transactions. For the proposal, the Bureau did 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. In the proposal, the Bureau sought data on the prevalence of such applications and evidence

regarding the performance of such loans, but did not receive specific data regarding default rates from commenters.

As noted in the section-by-section analysis, the Bureau received comments from several entities who expressed concern about the potential risks associated with applying the reasonable expectation of access standard to consumers 21 or older. For example, some industry commenters argued that the reasonable expectation of access standard presents material risks to the underwriting process, while others expressed concern that card issuers relying on the standard would have difficulty evaluating whether the applicant truly has the means to repay a debt, and as a result, would inevitably make poor decisions. As noted above, however, the Bureau did not receive supporting data in the record to substantiate claims that the new standard may result in riskier underwriting and, thus, greater incidence of default. In any event, the final rule does not mandate that card issuers base their consideration of an applicant's ability pay on the reasonable expectation of access criterion. As an alternative, card issuers retain the option of evaluating an applicant's independent income or assets in considering the applicant's ability to pay. The Bureau believes that because credit cards are generally unsecured, card issuers will be motivated to carefully review the risk factors associated with the income sources provided by consumers and other information available to them regarding a consumer's creditworthiness. Moreover, the final rule includes in the official commentary examples of when it would be reasonable or unreasonable for an issuer to consider the income or assets of an individual to whose income the applicant claims to have a reasonable expectation of access.

Finally, the final 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 final rule have a unique impact on rural consumers.

VII. 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.[38] 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.[39]

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.[40] 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.[41]

The Bureau did not conduct an IRFA for the November 2012 Proposal 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 covered persons because if the Bureau adopted the proposal as written, all methods of compliance under current law would remain available to small entities. The undersigned therefore certified that the proposed rule would not have a significant economic impact on a

[38] 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.
[39] 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.*
[40] 5 U.S.C. 603-605.
[41] 5 U.S.C. 609.

substantial number of small entities. The Bureau received one comment regarding the impact of the proposed rule on small entities. An industry commenter urged the Bureau to require card issuers that rely on income models to demonstrate over time that the issuer has seen substantially the same results with modeled income and actual income. The commenter also requested that smaller card issuers be given additional time and flexibility to develop income models and be allowed to use models developed by other entities.

The Bureau reiterates its previous conclusion that it does not expect the final rule to impose costs on covered persons because all methods of compliance under current law will remain available to small entities. With respect to income models, the final rule makes no changes to the requirements for the use of income models and continues to permit card issuers to rely on empirically derived, demonstrably and statistically sound models to estimate a consumer's income or assets. Accordingly, the undersigned certifies that this final rule will not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

This final rule amends 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) and assigned OMB Control Number 3170-0015. Under the PRA and notwithstanding any other provisions of law, 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 in the November 2012 Proposal, the Bureau does not believe that this final rule will impose any new information collection requirements or

substantively or materially revise existing collections of information as contained in Regulation Z. The Bureau did not receive any comments regarding this determination.

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 amends Regulation Z, 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. 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 1026.51 is amended by revising paragraphs (a)(1), (b)(1), and (b)(2) 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 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 the consumer's ability to make the

required minimum payments under the terms of the account based on a consumer's income or assets and a consumer's current obligations. Reasonable policies and procedures include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, or limiting consideration of the consumer's income or assets to the consumer's independent income and assets. Reasonable policies and procedures also include 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 not to review any information about a consumer's income or assets and current obligations, or to issue a credit card to a consumer who does not have any 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; 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 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.* (i) If a credit card account has been opened pursuant to paragraph (b)(1)(i) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless:

(A) At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments on the increased limit consistent with paragraph (b)(1)(i) of this section; or

(B) A cosigner, guarantor, or joint applicant who is at least 21 years old agrees in writing to assume liability for any debt incurred on the account, consistent with paragraph (b)(1)(ii) of this section.

(ii) 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 accountholder 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; and

iii. New paragraphs 5, 6 and 9 are added.

B. Under subheading *51(b) Rules affecting young consumers*:

i. New paragraphs 5 and 6 are added and paragraph 1 under subheading *51(b)(1) Applications from young consumers* is revised and redesignated as paragraph 7;

ii. Under subheading *51(b)(1) Applications from young consumers*, paragraph 2 is deleted;

iii. Subheading *Paragraph 51(b)(1)(i)* and paragraphs 1 through 3 are added;

iv. Subheading *Paragraph 51(b)(1)(ii)* and paragraph 1 are added; and

v. Under subheading 51(b)(2) *Credit line increases for young consumers*, paragraph 2 is added.

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

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Section 1026.51—Ability to Pay

51(a) General rule.

51(a)(1)(i) Consideration of ability to pay.

1. *Consideration of additional factors.* Section 1026.51(a) requires a card issuer to consider a consumer's ability to make the required minimum periodic payments under the terms of an account based on the consumer's 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 consideration of a consumer's 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 or 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 or assets of the consumer or consumers who are accountholders, cosigners, or guarantors, and are liable for debts incurred on that account. In both of these circumstances, a card issuer may treat any income and assets to which an applicant, accountholder, joint applicant, cosigner, or guarantor who is or will be liable for debts incurred on the account has a reasonable expectation of access as the applicant's current or reasonably expected income – but is not required to do so. A card issuer may instead limit its consideration of a consumer's current or reasonably expected income or assets to the consumer's independent income or assets as discussed in comments 51(b)(1)(i)-1 and 51(b)(2)-2. Although these comments clarify the independent ability-to-pay requirement that governs applications from consumers under 21, they provide guidance regarding the use of "independent income and assets" as an underwriting criterion under § 1026.51(a). For example, comment 51(b)(1)(i)-1 explains that card issuers may not consider income or assets to which applicants under 21 have only a reasonable expectation of access. An issuer who chooses to comply with § 1026.51(a) by limiting its consideration to applicants' independent income and assets likewise would not

consider income or assets to which applicants 21 or older have only 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, and separate maintenance payments. Proceeds from student loans may be considered as current or reasonably expected income only to the extent that those proceeds exceed the amount disbursed or owed to an educational institution for tuition and other expenses. Current or reasonably expected income also includes income that is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or joint account). Assets include, for example, savings accounts and investments.

iii. Consideration of the income or 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 current or reasonably expected 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 (*e.g.*, joint ownership granted under State community property laws), such income is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or a joint account), or the consumer has a reasonable expectation of access to such income or assets even though the consumer does not have a current or expected ownership interest in the income or assets. See comment 51(a)(1)-6 for examples of non-applicant income to which a consumer has a reasonable expectation of access.

5. *Information regarding income and assets.* For purposes of § 1026.51(a), a card issuer may consider the consumer's current or reasonably expected 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 without further inquiry 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 or assets or any income 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." In that case, the card issuer would need to obtain additional information about an applicant's current or reasonably expected income, including income and assets to which the applicant has a reasonable expectation of access (such as by contacting the applicant). See comments 51(a)(1)-4, -5, and -6 for additional guidance on determining the consumer's current or reasonably expected income under § 1026.51(a)(1). See comment 51(a)(1)-9 for guidance regarding the use of a single, common application form or process for all credit card applicants, regardless of age.

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 or assets, including any income or assets to which the consumer has a reasonable expectation of access.

6. *Examples of considering income.* Assume that an applicant is not employed and that the applicant is age 21 or older so § 1026.51(b) does not apply.

i. If a non-applicant's salary or other income is deposited regularly into a joint account shared with the applicant, a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the account to be the applicant's current or reasonably expected income for purposes of § 1026.51(a).

ii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly transfers a portion of that income into the applicant's individual deposit account. A card issuer is permitted to consider the amount of the non-applicant's income that is being transferred regularly into the applicant's account to be the applicant's current or reasonably expected income for purposes of § 1026.51(a).

iii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly uses a portion of that income to pay for the applicant's expenses. A card issuer is permitted to consider the amount of the non-applicant's income that is used regularly to pay for the applicant's expenses to be the applicant's current or reasonably expected income for purposes of § 1026.51(a) because the applicant has a reasonable expectation of access to that income.

iv. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access, the non-applicant does not regularly use that income to pay for

the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that income. A card issuer is not permitted to consider the non-applicant's income as the applicant's current or reasonably expected income for purposes of § 1026.51(a) because the applicant does not have a reasonable expectation of access to the non-applicant's income.

7. *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. *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.

9. *Single application*. A card issuer may use a single, common application form or process for all credit card applicants, regardless of age. A card issuer may rely without further verification on income and asset information provided by applicants through such an application, so long as the application questions gather sufficient information to allow the card issuer to satisfy the requirements of both § 1026.51(a) and (b), depending on whether a particular applicant has reached the age of 21. For example, a card issuer might provide two separate line items on its application form, one prompting applicants to provide their "personal income," and the other prompting applicants for "available income." A card issuer might also prompt applicants, regardless of age, using only the term "income" and satisfy the requirements of both § 1026.51(a) and (b).

* * * * *

51(b) Rules affecting young consumers.

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5. *Current obligations.* A card issuer may consider the consumer's current obligations under § 1026.51(b)(1) and (2)(i) 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.

6. *Joint applicants or joint accountholders.* With respect to the opening of a joint account for two or more consumers under § 1026.51(b)(1) or a credit line increase on such an account under § 1026.51(b)(2)(i), 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. See commentary to § 1026.51(b)(1)(i) and (2) for information on income and assets that may be considered for joint applicants, joint accountholders, cosigners, or guarantors who are under the age of 21, and commentary to § 1026.51(b)(1)(ii) for information on income and assets that may be considered for joint applicants, joint accountholders, cosigners, or guarantors who are at least 21 years old.

7. *Relation to Regulation B.* In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, card issuers must comply with the applicable rules in Regulation B (12 CFR part 202). A card issuer does not violate Regulation B by complying with the requirements in § 1026.51(b).

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 or 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. 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 applicant's current or reasonably expected income or assets under § 1026.51(b)(1)(i). The card issuer may not consider income or assets to which an applicant, joint applicant, 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.

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, and separate maintenance payments. Proceeds from student loans may be considered as current or reasonably expected income only to the extent that those proceeds exceed the amount disbursed or owed to an educational institution for tuition and other expenses. Current or reasonably expected income includes income that is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or a joint account). Assets include, for example, savings accounts and investments. Current or reasonably expected income and assets

does not include income and assets to which the consumer only has a reasonable expectation of access.

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 current or reasonably expected 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 or assets (*e.g.*, joint ownership granted under State community property laws), or the income is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or a joint account). See comment 51(b)(1)(i)-3 for examples of income that may be relied upon as a consumer's current or reasonably expected income.

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 current or reasonably expected 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 without further inquiry on information provided by applicants in response to a request for "salary," "income," "personal income," "individual income," "assets," or other language requesting that the applicant provide information regarding his or her current or reasonably expected income or assets. However, card issuers may not rely solely on information provided in response to a request for "household income." Nor may they rely solely on information provided in response to a request for "available income," "accessible income," or other language requesting that the applicant provide any income or assets to which the applicant

has a reasonable expectation of access. In such cases, the card issuer would need to obtain additional information about an applicant's current or reasonably expected income (such as by contacting the applicant). See comments 51(b)(1)(i)-1, -2, and -3 for additional guidance on determining the consumer's current or reasonably expected income under § 1026.51(b)(1)(i). See comment 51(a)(1)-9 for guidance regarding the use of a single, common application for all credit card applicants, regardless of age.

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 or assets.

3. *Examples of considering income for young consumers.* Assume that an applicant is not employed and the applicant is under the age of 21 so § 1026.51(b) applies.

i. If a non-applicant's salary or other income is deposited regularly into a joint account shared with the applicant, a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the account to be the applicant's current or reasonably expected income for purposes of § 1026.51(b)(1)(i).

ii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly transfers a portion of that income into the applicant's individual deposit account. A card issuer is permitted to consider the amount of the non-applicant's income that is being transferred regularly into the applicant's

account to be the applicant's current or reasonably expected income for purposes of § 1026.51(b)(1)(i).

iii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly uses that income to pay for the applicant's expenses. A card issuer is not permitted to consider the non-applicant's income that is used regularly to pay for the applicant's expenses as the applicant's current or reasonably expected income for purposes of § 1026.51(b)(1)(i), unless a Federal or State statute or regulation grants the applicant an ownership interest in such income.

iv. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access, the non-applicant does not regularly use that income to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that income. The card issuer is not permitted to consider the non-applicant's income to be the applicant's current or reasonably expected 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).

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51(b)(2) Credit line increases for young consumers.

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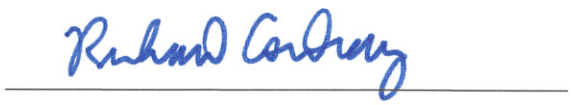
2. *Independent ability-to-pay standard*. Under § 1026.51(b)(2), if a credit card account has been opened pursuant to § 1026.51(b)(1)(i), no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless, at the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments on the increased limit, consistent with § 1026.51(b)(1)(i), or a cosigner, guarantor, or joint applicant who is at least 21 years old assumes liability for any debt incurred on the account, consistent with § 1026.51(b)(1)(ii). Thus, when a card issuer is considering whether to increase the credit limit on an existing account, § 1026.51(b)(2)(i)(A) requires that consumers who have not attained the age of 21 and do not have a cosigner, guarantor, or joint applicant who is 21 years or older must have an independent ability to make the required minimum periodic payments as of the time of the contemplated increase. Thus, the card issuer may not consider income or assets to which an 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)(2)(i)(A). The card issuer, however, may consider income or assets to which an accountholder, cosigner, or guarantor, in each case who is age 21 or older and is or will be liable for debts incurred on the account, has a reasonable expectation of access under § 1026.51(b)(2)(i)(B). Information regarding income and assets that satisfies the requirements of § 1026.51(b)(1)(i) also satisfies the requirements of § 1026.51(b)(2)(i)(A) and card issuers may rely on the guidance in the commentary to § 1026.51(b)(1)(i) for purposes of determining whether an accountholder who is less than 21 years old has the independent ability to make the required minimum periodic payments in accordance with § 1026.51(b)(2)(i)(A). Information regarding income and assets that satisfies the requirements of § 1026.51(a) also satisfies the requirements of § 1026.51(b)(2)(i)(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)(2)(i)(B).

[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED, "TRUTH IN LENDING (REGULATION Z)"]

Dated: April 29, 2013.



Richard Cordray,

Director, Bureau of Consumer Financial Protection.