Federal Deposit Insurance Corporation
Division of Depositor and Consumer Protection

FDIC Newsletter: ECOA - Understanding Age-Based Discrimination in Credit Card Lending

This article provides useful information relating to the Truth in Lending Act (TILA) credit card rules affecting young consumers, as well as the anti-discrimination provisions of the Equal Credit Opportunity Act (ECOA).

The Credit Card Act Changes the Truth in Lending Requirements

The Credit Card Accountability Responsibility and Disclosure Act (Credit CARD Act) is a federal statute passed in 2009 that changed certain TILA requirements. Previously, the credit card provisions in TILA mostly involved disclosure requirements, but the Credit CARD Act introduced new requirements that changed how lenders consider credit card applicants. For example, Regulation Z, which implements TILA, now includes rules for making credit card loans to consumers less than 21 years of age (or “young consumers”). In general, a card issuer cannot issue a card to a young consumer unless the consumer has submitted information showing an independent ability to make the minimum payments.

How Age-Based Truth in Lending Requirements Intersect with Fair Lending Compliance

Some questions have arisen about how TILA rules involving young consumers interact with the fair lending requirements of ECOA. While financial institutions should implement underwriting policies that consider the TILA provisions relating to applicants that are less than 21 years of age, these policies should not provide age-based restrictions that violate fair lending rules under ECOA. Specifically, ECOA prohibits a creditor from discriminating against an applicant in any aspect of a credit transaction on the basis of age.

The commentary to Regulation Z notes that when considering a credit card application from a consumer who is less than 21 years old, creditors must also comply with the applicable rules in Regulation B, which implements ECOA. Under Regulation B, if an applicant qualifies under the creditor’s standards of creditworthiness, a lender cannot require the signature of an additional person who is not a joint applicant, except under specified circumstances. Commentary on Regulation B clarifies that if an applicant does not qualify independently, a creditor’s guidelines for eligibility of guarantors or cosigners may restrict the applicant’s choice of additional parties but may not discriminate on a prohibited basis. Regulation B does not provide grounds for requiring that applicants below a certain age have a parent or a guardian serve as a guarantor or cosigner.

While the commentary on Regulation Z states that a card issuer would not violate Regulation B if complying with age-related TILA requirements, lenders should consider whether any age-based restrictions truly are required by TILA. For example, TILA does not prohibit consumers between the ages of 18 and 21 from applying for credit card loans. That is, the TILA requirements relating to young consumers do not provide a basis for refusing credit to a qualified applicant solely on the basis of age (assuming the applicant is of legal age to contract).

How to Reduce Fair Lending Risk Related to Credit Cards.

A strong compliance management system (CMS) can help ensure compliance with all aspects of credit card requirements, including those related to TILA and ECOA. Banks seeking to strengthen their CMS may want to consider the following questions:

- Do the bank’s written policies and procedures clearly outline the difference between the TILA requirements and those relating to fair lending?
- Does the bank’s training address both TILA requirements and fair lending laws and regulations, including a review of any applicable state laws relating to age requirements?
- Do the bank’s credit card-related loan policies and procedures address TILA and fair lending requirements?
- Do the bank’s policies and procedures ensure co-signers are only required if the individual applicant cannot prove their individual ability to repay and not unnecessarily restrict which parties can serve as cosigners when required?
- Do the bank’s monitoring and audit procedures ensure credit card marketing and underwriting practices align with regulatory requirements and the bank’s loan policy?

Monitoring and audit controls can help determine whether credit card practices are consistent with the bank’s written policies and statutory and regulatory requirements, as well as identify areas where the bank’s CMS could be strengthened.