

(4) *Exceptions requiring re-disclosure.* (i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under §1026.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under §1026.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

(d) *Consumer's right to cancel.* The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by §1026.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

(e) *Self-certification form.* For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

(f) *Provision of information by preferred lenders.* A creditor that has a preferred lender arrangement with a covered educational institution shall provide to the covered educational institution the information required under

§1026.47(a)(1) through (5), for each type of private education loan that the lender plans to offer to consumers for students attending the covered educational institution for the period beginning July 1 of the current year and ending June 30 of the following year. The creditor shall provide the information annually by the later of the 1st day of April, or within 30 days after entering into, or learning the creditor is a party to, a preferred lender arrangement.

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

#### § 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.

(2) *Minimum periodic payments*—(i) *Reasonable method.* For purposes of paragraph (a)(1) of this section, a card issuer must use a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account.

(ii) *Safe harbor.* A card issuer complies with paragraph (a)(2)(i) of this section if it estimates required minimum periodic payments using the following method:

(A) The card issuer assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

(B) The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

(1) If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

(2) If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

(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 account holder who assumed liability at account opening agrees in writing to assume liability on the increase.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 25837, May 3, 2013]

#### § 1026.52 Limitations on fees.

(a) *Limitations during first year after account opening*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

(2) *Fees not subject to limitations.* Paragraph (a) of this section does not apply to:

(i) Late payment fees, over-the-limit fees, and returned-payment fees; or

(ii) Fees that the consumer is not required to pay with respect to the account.

(3) *Rule of construction.* Paragraph (a) of this section does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

(b) *Limitations on penalty fees.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with paragraphs (b)(1) and (b)(2) of this section.

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, a card issuer may impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan if the dollar amount of the fee is consistent with either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) *Fees based on costs.* A card issuer may impose a fee for violating the terms or other requirements of an account if the card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation. A card issuer must reevaluate this determination at least once every twelve months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer must begin imposing the lower fee within 45 days after completing the reevaluation. If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in §1026.9.

(ii) *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of an account if the

dollar amount of the fee does not exceed, as applicable:

(A) \$29

(B) \$40 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

(C) Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

(D) The amounts in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section will be adjusted annually by the Bureau to reflect changes in the Consumer Price Index.

(2) *Prohibited fees—(i) Fees that exceed dollar amount associated with violation—*

(A) *Generally.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation.

(B) *No dollar amount associated with violation.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of paragraph (b)(2)(i) of this section, there is no dollar amount associated with the following violations:

(1) Transactions that the card issuer declines to authorize;

(2) Account inactivity; and

(3) The closure or termination of an account.

(ii) *Multiple fees based on a single event or transaction.* A card issuer must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. A card issuer may, at its option, comply with this prohibition by

## Bur. of Consumer Financial Protection

## § 1026.55

imposing no more than one fee for violating the terms or other requirements of an account during a billing cycle.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 18797, Mar. 28, 2013; 78 FR 76035, Dec. 16, 2013; 79 FR 48017, Aug. 15, 2014; 80 FR 56898, Sept. 21, 2015; 81 FR 41421, June 27, 2016; 81 FR 84370, Nov. 22, 2016; 83 FR 43505, Aug. 27, 2018; 84 FR 37567, Aug. 1, 2019]

### § 1026.53 Allocation of payments.

(a) *General rule.* Except as provided in paragraph (b) of this section, when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Special rules*—(1) *Accounts with balances subject to deferred interest or similar program.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

(i) *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

(ii) *Consumer request.* The card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

(2) *Accounts with secured balances.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured,

the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.

### § 1026.54 Limitations on the imposition of finance charges.

(a) *Limitations on imposing finance charges as a result of the loss of a grace period*—(1) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on:

(i) Balances for days in billing cycles that precede the most recent billing cycle; or

(ii) Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

(2) *Definition of grace period.* For purposes of paragraph (a)(1) of this section, “grace period” has the same meaning as in § 1026.5(b)(2)(ii)(B)(3).

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under § 1026.12 or § 1026.13; or

(2) Adjustments to finance charges as a result of the return of a payment.

### § 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

(a) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Exceptions.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

(1) *Temporary rate, fee, or charge exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under

## § 1026.55

## 12 CFR Ch. X (1–1–21 Edition)

§ 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate, fee, or charge that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred prior to the period that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to § 1026.9(c), the card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate, fee, or charge that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred during the period that exceeds the increased annual percentage rate, fee, or charge disclosed pursuant to paragraph (b)(1)(i) of this section.

(2) *Variable rate exception.* A card issuer may increase an annual percentage rate when:

(i) The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public; and

(ii) The increase in the annual percentage rate is due to an increase in the index.

(3) *Advance notice exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in § 1026.9(b), (c), or (g), provided that:

(i) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 1026.9(b), the card

issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice;

(ii) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to § 1026.9(c) or (g), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

(4) *Delinquency exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment, provided that:

(i) The card issuer must disclose in a clear and conspicuous manner in the notice of the increase pursuant to § 1026.9(c) or (g):

(A) A statement of the reason for the increase; and

(B) That the increased annual percentage rate, fee, or charge will cease to apply if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase; and

(ii) If the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to this exception to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days

## Bur. of Consumer Financial Protection

## § 1026.56

after provision of the §1026.9(c) or (g) notice.

(5) *Workout and temporary hardship arrangement exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the consumer's completion of a workout or temporary hardship arrangement or the consumer's failure to comply with the terms of such an arrangement, provided that:

(i) Prior to commencement of the arrangement (except as provided in §1026.9(c)(2)(v)(D)), the card issuer has provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

(ii) Upon the completion or failure of the arrangement, the card issuer must not apply to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement.

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (iii), or (xii) has been decreased pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, a card issuer may increase that annual percentage rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the decrease.

(c) *Treatment of protected balances—(1) Definition of protected balance.* For purposes of this paragraph, “protected balance” means the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of

transactions has been increased pursuant to paragraph (b)(3) of this section.

(2) *Repayment of protected balance.* The card issuer must not require repayment of the protected balance using a method that is less beneficial to the consumer than one of the following methods:

(i) The method of repayment for the account before the effective date of the increase;

(ii) An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

(iii) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

(d) *Continuing application.* This section continues to apply to a balance on a credit card account under an open-end (not home-secured) consumer credit plan after:

(1) The account is closed or acquired by another creditor; or

(2) The balance is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to §1026.40).

(e) *Promotional waivers or rebates of interest, fees, and other charges.* If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges required to be disclosed under §1026.6(b)(2)(ii), (iii), or (xii) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of this section.

### § 1026.56 Requirements for over-the-limit transactions.

(a) *Definition.* For purposes of this section, the term “over-the-limit transaction” means any extension of credit by a card issuer to complete a transaction that causes a consumer's credit card account balance to exceed the credit limit.

(b) *Opt-in requirement*—(1) *General*. A card issuer shall not assess a fee or charge on a consumer's credit card account under an open-end (not home-secured) consumer credit plan for an over-the-limit transaction unless the card issuer:

(i) Provides the consumer with an oral, written or electronic notice, segregated from all other information, describing the consumer's right to affirmatively consent, or opt in, to the card issuer's payment of an over-the-limit transaction;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the card issuer's payment of such transactions;

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically; and

(v) Provides the consumer notice in writing of the right to revoke that consent following the assessment of an over-the-limit fee or charge.

(2) *Completion of over-the-limit transactions without consumer consent*. Notwithstanding the absence of a consumer's affirmative consent under paragraph (b)(1)(iii) of this section, a card issuer may pay any over-the-limit transaction on a consumer's account provided that the card issuer does not impose any fee or charge on the account for paying that over-the-limit transaction.

(c) *Method of election*. A card issuer may permit a consumer to consent to the card issuer's payment of any over-the-limit transaction in writing, orally, or electronically, at the card issuer's option. The card issuer must also permit the consumer to revoke his or her consent using the same methods available to the consumer for providing consent.

(d) *Timing and placement of notices*—(1) *Initial notice*—(i) *General*. The notice required by paragraph (b)(1)(i) of this section shall be provided prior to the assessment of any over-the-limit fee or charge on a consumer's account.

(ii) *Oral or electronic consent*. If a consumer consents to the card issuer's

payment of any over-the-limit transaction by oral or electronic means, the card issuer must provide the notice required by paragraph (b)(1)(i) of this section immediately prior to obtaining that consent.

(2) *Confirmation of opt-in*. The notice required by paragraph (b)(1)(iv) of this section may be provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions.

(3) *Notice of right of revocation*. The notice required by paragraph (b)(1)(v) of this section shall be provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account.

(e) *Content*—(1) *Initial notice*. The notice required by paragraph (b)(1)(i) of this section shall include all applicable items in this paragraph (e)(1) and may not contain any information not specified in or otherwise permitted by this paragraph.

(i) *Fees*. The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;

(ii) *APRs*. Any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

(iii) *Disclosure of opt-in right*. An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

(2) *Subsequent notice*. The notice required by paragraph (b)(1)(v) of this section shall describe the consumer's right to revoke any consent provided under paragraph (b)(1)(iii) of this section, including the method(s) by which the consumer may revoke.

(3) *Safe harbor*. Use of Model Forms G–25(A) or G–25(B) of appendix G to this part, or substantially similar notices, constitutes compliance with the notice content requirements of paragraph (e) of this section.

(f) *Joint relationships*. If two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan,

the card issuer shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the card issuer shall treat a revocation of consent by any of the joint consumers as revocation of consent for that account.

(g) *Continuing right to opt in or revoke opt-in.* A consumer may affirmatively consent to the card issuer's payment of over-the-limit transactions at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. Similarly, the consumer may revoke the consent at any time in the manner described in the notice required by paragraph (b)(1)(v) of this section.

(h) *Duration of opt-in.* A consumer's affirmative consent to the card issuer's payment of over-the-limit transactions is effective until revoked by the consumer, or until the card issuer decides for any reason to cease paying over-the-limit transactions for the consumer.

(i) *Time to comply with revocation request.* A card issuer must comply with a consumer's revocation request as soon as reasonably practicable after the card issuer receives it.

(j) *Prohibited practices.* Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, a card issuer is prohibited from engaging in the following practices:

(1) *Fees or charges imposed per cycle—*  
 (i) *General rule.* A card issuer may not impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, except as provided in paragraph (j)(1)(ii) of this section, a card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

(ii) *Exception.* The prohibition in paragraph (j)(1)(i) of this section on imposing an over-the-limit fee or charge in more than three billing cycles for

the same over-the-limit transaction(s) does not apply if another over-the-limit transaction occurs during either of the last two billing cycles.

(2) *Failure to promptly replenish.* A card issuer may not impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment under §1026.10.

(3) *Conditioning.* A card issuer may not condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

(4) *Over-the-limit fees attributed to fees or interest.* A card issuer may not impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer to the consumer's account during that billing cycle. For purposes of this paragraph (j)(4), the relevant fees or interest charges are charges imposed as part of the plan under §1026.6(b)(3).

#### § 1026.57 Reporting and marketing rules for college student open-end credit.

(a) *Definitions—*(1) *College student credit card.* The term "college student credit card" as used in this section means a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

(2) *College student.* The term "college student" as used in this section means a consumer who is a full-time or part-time student of an institution of higher education.

(3) *Institution of higher education.* The term "institution of higher education" as used in this section has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002).

(4) *Affiliated organization.* The term "affiliated organization" as used in this section means an alumni organization or foundation affiliated with or related to an institution of higher education.

(5) *College credit card agreement.* The term "college credit card agreement"



as used in this section means any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution.

(b) *Public disclosure of agreements.* An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(c) *Prohibited inducements.* No card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made:

- (1) On the campus of an institution of higher education;
- (2) Near the campus of an institution of higher education; or
- (3) At an event sponsored by or related to an institution of higher education.

(d) *Annual report to the Bureau—(1) Requirement to report.* Any card issuer that was a party to one or more college credit card agreements in effect at any time during a calendar year must submit to the Bureau an annual report regarding those agreements in the form and manner prescribed by the Bureau.

(2) *Contents of report.* The annual report to the Bureau must include the following:

- (i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);
- (ii) A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;
- (iii) A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any

obligations or distribution of benefits between any such entities;

(iv) The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

(v) The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

(vi) The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

(3) *Timing of reports.* Except for the initial report described in this paragraph (d)(3), a card issuer must submit its annual report for each calendar year to the Bureau by the first business day on or after March 31 of the following calendar year.

**§ 1026.58 Internet posting of credit card agreements.**

(a) *Applicability.* The requirements of this section apply to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Definitions—(1) Agreement.* For purposes of this section, “agreement” or “credit card agreement” means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. “Agreement” or “credit card agreement” also includes the pricing information, as defined in § 1026.58(b)(7).

(2) *Amends.* For purposes of this section, an issuer “amends” an agreement if it makes a substantive change (an “amendment”) to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 1026.58(b)(7), is deemed to be substantive.

(3) *Business day.* For purposes of this section, “business day” means a day on which the creditor’s offices are open to

## Bur. of Consumer Financial Protection

## § 1026.58

the public for carrying on substantially all of its business functions.

(4) *Card issuer.* For purposes of this section, “card issuer” or “issuer” means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.

(5) *Offers.* For purposes of this section, an issuer “offers” or “offers to the public” an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement.

(6) *Open account.* For purposes of this section, an account is an “open account” or “open credit card account” if it is a credit card account under an open-end (not home-secured) consumer credit plan and either:

(i) The cardholder can obtain extensions of credit on the account; or

(ii) There is an outstanding balance on the account that has not been charged off. An account that has been suspended temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an “open account” or “open credit card account.”

(7) *Pricing information.* For purposes of this section, “pricing information” means the information listed in §1026.6(b)(2)(i) through (b)(2)(xii). Pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

(8) *Private label credit card account and private label credit card plan.* For purposes of this section:

(i) “private label credit card account” means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants; and

(ii) “private label credit card plan” means all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants.

(c) *Submission of agreements to Bureau—(1) Quarterly submissions.* A card issuer must make quarterly submissions to the Bureau, in the form and manner specified by the Bureau. Quar-

terly submissions must be sent to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Each submission must contain:

(i) Identifying information about the card issuer and the agreements submitted, including the issuer’s name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Bureau;

(iii) Any credit card agreement previously submitted to the Bureau that was amended during the preceding calendar quarter and that the card issuer offered to the public as of the last business day of the preceding calendar quarter, as described in §1026.58(c)(3); and

(iv) Notification regarding any credit card agreement previously submitted to the Bureau that the issuer is withdrawing, as described in §1026.58(c)(4), (c)(5), (c)(6), and (c)(7).

(2) [Reserved]

(3) *Amended agreements.* If a credit card agreement has been submitted to the Bureau, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. If a credit card agreement that previously has been submitted to the Bureau is amended and the card issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the card issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

(4) *Withdrawal of agreements.* If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the Bureau, the card issuer must notify the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the

§ 1026.58

12 CFR Ch. X (1-1-21 Edition)

calendar quarter in which the issuer ceased to offer the agreement.

(5) *De minimis exception.* (i) A card issuer is not required to submit any credit card agreements to the Bureau if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.

(ii) If an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify.

(iii) If a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Bureau until the issuer notifies the Bureau that the card issuer is withdrawing all agreements it previously submitted to the Bureau.

(6) *Private label credit card exception.* (i) A card issuer is not required to submit to the Bureau a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) Is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and

(B) Is not offered to the public other than for accounts under such a plan.

(ii) If an agreement that previously qualified for the private label credit card exception ceases to qualify, the card issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

(7) *Product testing exception.* (i) A card issuer is not required to submit to the Bureau a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 10,000 open accounts; and

(C) Is not offered to the public other than in connection with such a product test.

(ii) If an agreement that previously qualified for the product testing exception ceases to qualify, the card issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the product testing exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

(8) *Form and content of agreements submitted to the Bureau—*(i) *Form and content generally.* (A) Each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

(B) Agreements must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of §1026.58, and therefore are not required to be included in submissions to the Bureau:

(1) Disclosures required by state or Federal law, such as affiliate marketing notices, privacy policies, billing rights notices, or disclosures under the E-Sign Act;

(2) Solicitation materials;

(3) Periodic statements;

(4) Ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements;

(5) Offers for credit insurance or other optional products and other similar advertisements; and

(6) Documents that may be sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the

## Bur. of Consumer Financial Protection

## § 1026.58

card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Pricing information.* (A) Pricing information must be set forth in a single addendum to the agreement. The addendum must contain all of the pricing information, as defined by §1026.58(b)(7). The addendum may, but is not required to, contain any other information listed in §1026.6(b), provided that information is complete and accurate as of the applicable date under §1026.58. The addendum may not contain any other information.

(B) Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent).

(C) If a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

(iii) *Optional variable terms addendum.* Provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum.

(iv) *Integrated agreement.* Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). Changes in provisions or pricing information must be

integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

(d) *Posting of agreements offered to the public.* (1) Except as provided below, a card issuer must post and maintain on its publicly available Web site the credit card agreements that the issuer is required to submit to the Bureau under §1026.58(c). With respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may fulfill this requirement by posting and maintaining the agreement in accordance with the requirements of this section on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used.

(2) Except as provided in §1026.58(d), agreements posted pursuant to §1026.58(d) must conform to the form and content requirements for agreements submitted to the Bureau specified in §1026.58(c)(8).

(3) Agreements posted pursuant to §1026.58(d) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible by the public and must be accessible without submission of personally identifiable information.

(4) The card issuer must update the agreements posted on its Web site pursuant to §1026.58(d) at least as frequently as the quarterly schedule required for submission of agreements to the Bureau under §1026.58(c). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

(e) *Agreements for all open accounts—* (1) *Availability of individual cardholder's agreement.* With respect to any open credit card account, a card issuer must either:

(i) Post and maintain the cardholder's agreement on its Web site; or

## § 1026.58

## 12 CFR Ch. X (1–1–21 Edition)

(ii) Promptly provide a copy of the cardholder's agreement to the cardholder upon the cardholder's request. If the card issuer makes an agreement available upon request, the issuer must provide the cardholder with the ability to request a copy of the agreement both by using the issuer's Web site (such as by clicking on a clearly identified box to make the request) and by calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to purpose. The card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.

(2) *Special rule for issuers without interactive Web sites.* An issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts, instead of complying with §1026.58(e)(1), may make agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line, the number for which is displayed on the issuer's Web site and clearly identified as to purpose or included on each periodic statement sent to the cardholder and clearly identified as to purpose. The issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.

(3) *Form and content of agreements.* (i) Except as provided in §1026.58(e), agreements posted on the card issuer's Web site pursuant to §1026.58(e)(1)(i) or made available upon the cardholder's request pursuant to §1026.58(e)(1)(ii) or (e)(2) must conform to the form and content requirements for agreements submitted to the Bureau specified in §1026.58(c)(8).

(ii) If the card issuer posts an agreement on its Web site or otherwise provides an agreement to a cardholder electronically under §1026.58(e), the agreement may be posted or provided in any electronic format that is readily usable by the general public and must

be placed in a location that is prominent and readily accessible to the cardholder.

(iii) Agreements posted or otherwise provided pursuant to §1026.58(e) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to §1026.58(e) must set forth the specific provisions and pricing information applicable to the particular cardholder. Provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to:

(A) The date on which the agreement is posted on the card issuer's Web site under §1026.58(e)(1)(i); or

(B) The date the cardholder's request is received under §1026.58(e)(1)(ii) or (e)(2).

(v) Agreements provided upon cardholder request pursuant to §1026.58(e)(1)(ii) or (e)(2) may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

(f) *E-Sign Act requirements.* Card issuers may provide credit card agreements in electronic form under §1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(g) *Temporary suspension of agreement submission requirement—(1) Quarterly submissions.* The quarterly submission requirement in paragraph (c) of this section is suspended for the submissions that would otherwise be due to the Bureau by the first business day on or after April 30, 2015; July 31, 2015; October 31, 2015; and January 31, 2016.

(2) *Posting of agreements offered to the public.* Nothing in paragraph (g)(1) of this section shall affect the agreement posting requirements in paragraph (d) of this section.

[76 FR 79772, Dec. 22, 2011, as amended at 80 FR 21158, Apr. 17, 2015]

**§ 1026.59 Reevaluation of rate increases.**

(a) *General rule*—(1) *Evaluation of increased rate.* If a card issuer increases an annual percentage rate that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to §1026.9(c)(2) or (g), the card issuer must:

(i) Evaluate the factors described in paragraph (d) of this section; and

(ii) Based on its review of such factors, reduce the annual percentage rate applicable to the consumer's account, as appropriate.

(2) *Rate reductions*—(i) *Timing.* If a card issuer is required to reduce the rate applicable to an account pursuant to paragraph (a)(1) of this section, the card issuer must reduce the rate not later than 45 days after completion of the evaluation described in paragraph (a)(1).

(ii) *Applicability of rate reduction.* Any reduction in an annual percentage rate required pursuant to paragraph (a)(1) of this section shall apply to:

(A) Any outstanding balances to which the increased rate described in paragraph (a)(1) of this section has been applied; and

(B) New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

(b) *Policies and procedures.* A card issuer must have reasonable written policies and procedures in place to conduct the review described in paragraph (a) of this section.

(c) *Timing.* A card issuer that is subject to paragraph (a) of this section must conduct the review described in paragraph (a)(1) of this section not less frequently than once every six months after the rate increase.

(d) *Factors*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, a card issuer must review either:

(i) The factors on which the increase in an annual percentage rate was originally based; or

(ii) The factors that the card issuer currently considers when determining

the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

(2) *Rate increases imposed between January 1, 2009 and February 21, 2010.* For rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors described in paragraph (d)(1)(ii) when conducting the first two reviews required under paragraph (a) of this section, unless the rate increase subject to paragraph (a) of this section was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

(e) *Rate increases due to delinquency.* If an issuer increases a rate applicable to a consumer's account pursuant to §1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, the issuer is not required to perform the review described in paragraph (a) of this section prior to the sixth payment due date after the effective date of the increase. However, if the annual percentage rate applicable to the consumer's account is not reduced pursuant to §1026.55(b)(4)(ii), the card issuer must perform the review described in paragraph (a) of this section. The first such review must occur no later than six months after the sixth payment due following the effective date of the rate increase.

(f) *Termination of obligation to review factors.* The obligation to review factors described in paragraph (a) and (d) of this section ceases to apply:

(1) If the issuer reduces the annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

(2) If the issuer reduces the annual percentage rate to a rate that is lower

than the rate described in paragraph (f)(1) of this section.

(g) *Acquired accounts*—(1) *General*. Except as provided in paragraph (g)(2) of this section, this section applies to credit card accounts that have been acquired by the card issuer from another card issuer. A card issuer that complies with this section by reviewing the factors described in paragraph (d)(1)(i) must review the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase.

(2) *Review of acquired portfolio*. If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts:

(i) Except as provided in paragraph (g)(2)(iii), the card issuer is required to conduct reviews described in paragraph (a) of this section only for rate increases that are imposed as a result of its review under this paragraph. See §§ 1026.9 and 1026.55 for additional requirements regarding rate increases on acquired accounts.

(ii) Except as provided in paragraph (g)(2)(iii) of this section, the card issuer is not required to conduct reviews in accordance with paragraph (a) of this section for any rate increases made prior to the card issuer's acquisition of such accounts.

(iii) If as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of paragraph (a) of this section apply.

(h) *Exceptions*—(1) *Servicemembers Civil Relief Act exception*. The requirements of this section do not apply to increases in an annual percentage rate that was previously decreased pursuant to 50 U.S.C. app. 527, provided that such a rate increase is made in accordance with § 1026.55(b)(6).

(2) *Charged off accounts*. The requirements of this section do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions.

### § 1026.60 Credit and charge card applications and solicitations.

(a) *General rules*. The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation*. For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A “firm offer of credit” as defined in section 603(1) of the Fair Credit Reporting Act (15 U.S.C. 1681a(1)) for a credit or charge card is a solicitation for purposes of this section.

(2) *Form of disclosures; tabular format*. (i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–10 in appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraphs (b)(1)(iv)(B), (b)(1)(iv)(C) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section, any rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that

## Bur. of Consumer Financial Protection

## § 1026.60

is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) *Fees that vary by state.* Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer's option, disclose in the table required by paragraph (a)(2)(i) of this section: The specific fee applicable to the consumer's account; or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer's account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of §1026.40;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers except for a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card as defined in §1026.61;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1), or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section. With respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in §1026.61, a charge card issuer also shall disclose the applicable items in paragraphs (b)(3), (13), and (14) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by §1026.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the



card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.

(ii) *Discounted initial rate.* If the initial rate is an introductory rate, as that term is defined in §1026.16(g)(2)(ii), the card issuer must disclose in the table the introductory rate, the time period during which the introductory rate will remain in effect, and must use the term “introductory” or “intro” in immediate proximity to the introductory rate. The card issuer also must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c)(2), (d)(3), or (e)(4) of this section, as applicable.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section and the time period during which the premium initial rate will remain in effect. Consistent with paragraph (b)(1) of this section, the premium initial rate for purchases must be in at least 16-point type. The issuer must also disclose in the table the rate that will apply after the premium initial rate expires, in at least 16-point type.

(iv) *Penalty rates—(A) In general.* Except as provided in paragraph (b)(1)(iv)(B) and (C) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to this paragraph (b)(1) the increased rate that may apply, a brief description of the event or events that may result in the increased rate,

and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in §1026.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(C) *Employee preferential rates.* If a card issuer discloses in the table a preferential annual percentage rate for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party, such as executive officers, directors, or principal shareholders are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.

(v) *Rates that depend on consumer’s creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer’s creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer’s creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer’s creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) *APRs that vary by state.* Issuers imposing annual percentage rates that vary by state may, at the issuer’s option, disclose in the table: the specific annual percentage rate applicable to the consumer’s account; or the range of

the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(2) *Fees for issuance or availability.* (i) Any annual or other periodic fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds \$1.00 that could be imposed during a billing cycle, and a brief description of the charge. The \$1.00 threshold amount shall be adjusted periodically by the Bureau to reflect changes in the Consumer Price Index. The Bureau shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by \$1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) *Transaction charges.* Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of

days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase "How to Avoid Paying Interest on Purchases" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(12) *Returned-payment fee.* Any fee imposed by the card issuer for a returned payment.

(13) *Required insurance, debt cancellation or debt suspension coverage.* (i) A fee for insurance described in §1026.4(b)(7) or debt cancellation or suspension coverage described in §1026.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) *Available credit.* If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) *Web site reference.* A reference to the Web site established by the Bureau and a statement that consumers may obtain on the Web site information about shopping for and using credit cards. Until January 1, 2013, issuers may substitute for this reference a reference to the Web site established by the Board of Governors of the Federal Reserve System.

(c) *Direct mail and electronic applications and solicitations—(1) General.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time

they are sent, in the case of disclosures sent to a consumer's email address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's email address, or viewed by the public, as applicable.

(d) *Telephone applications and solicitations—(1) Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with §1026.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) *Accuracy.* (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time

to time, but no less frequently than each calendar month).

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(3) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) *In-person applications and solicitations.* A card issuer shall disclose the information in paragraph (b) of this

section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(3) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

(4) *Daily balance.* For each day in the billing cycle, this balance is figured by taking the beginning balance each day, adding any new purchases, and subtracting any payment and credits.

[76 FR 79772, Dec. 22, 2011, as amended at 81 FR 84370, Nov. 22, 2016]

#### § 1026.61 Hybrid prepaid-credit cards.

(a) *Hybrid prepaid-credit card—(1) In general.* (i) Credit offered in connection with a prepaid account is subject to this section and this regulation as specified below.

(ii) For purposes of this regulation, except as provided in paragraph (a)(4)

of this section, a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in paragraph (a)(2)(i) of this section when it can access credit from that credit feature, or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in paragraph (a)(3) of this section when it can access credit from that credit feature. A hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to those credit features.

(iii) With respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in paragraph (a)(3) of this section, a prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of this regulation if the conditions set forth in paragraph (a)(4) of this section are met.

(2) *Prepaid card can access credit from a covered separate credit feature*—(i) *Covered separate credit feature.* (A) A separate credit feature that can be accessed by a hybrid prepaid-credit card as described in this paragraph (a)(2)(i) is defined as a covered separate credit feature. A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied:

(1) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and

(2) The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

(B) A separate credit feature that meets the conditions set forth in paragraph (a)(2)(i)(A) of this section is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to ob-

tain goods or services, obtain cash, or conduct person-to-person transfers.

(ii) *Non-covered separate credit feature.* A separate credit feature that does not meet the two conditions set forth in paragraph (a)(2)(i) of this section is defined as a non-covered separate credit feature. A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in paragraph (a)(2)(i) of this section. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it may be subject to this regulation depending on its own terms and conditions, independent of the connection to the prepaid account.

(3) *Prepaid card can access credit extended through a negative balance on the asset feature of the prepaid account*—(i) *In general.* Except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card when it is a single device that can be used from time to time to access credit extended through a negative balance on the asset feature of the prepaid account.

(ii) *Negative asset balances.* Notwithstanding paragraph (a)(3)(i) of this section with regard to coverage under this regulation, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates paragraph (b) of this section. A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card with respect to that credit as described in paragraph (a)(4) of this section.

(4) *Exception for credit extended through a negative balance.* A prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account and is not a credit card for purposes of this regulation with respect to that credit where:

(i) The prepaid card cannot access credit from a covered separate credit feature as described in paragraph

## Bur. of Consumer Financial Protection

## § 1026.61

(a)(2)(i) of this section that is offered by a prepaid account issuer or its affiliate; and

(ii) The prepaid card only can access credit extended through a negative balance on the asset feature of the prepaid account where both paragraphs (a)(4)(ii)(A) and (B) of this section are satisfied.

(A) The prepaid account issuer has an established policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction, or declining to authorize any such transactions except in one or more of the following circumstances:

(1) The amount of the transaction will not cause the asset feature balance to become negative by more than \$10 at the time of the authorization; or

(2) In cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the amount of the transaction will not cause the asset feature balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

(B) The following fees or charges are not imposed on the asset feature of the prepaid account:

(1) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This paragraph does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the con-

sumer has accessed, or the amount of credit available;

(2) Any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or

(3) Any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

(C) A prepaid account issuer may still satisfy the exception in paragraph (a)(4) of this section even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in paragraph (a)(4)(ii)(B) of this section.

(5) *Definitions.* For purposes of this section and other provisions in the regulation that relate to hybrid prepaid-credit cards:

(i) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(ii) *Asset feature* means an asset account that is a prepaid account, or an asset subaccount of a prepaid account.

(iii) *Business partner* means a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate except as provided in paragraph (a)(5)(iii)(D) of this section.

(A) *Arrangement defined.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a separate credit feature or the person's affiliate has an arrangement with a prepaid account issuer or its affiliate if the circumstances in either paragraph (a)(5)(iii)(B) or (C) of this section are met.

(B) *Arrangement by agreement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the parties have an agreement that allows the prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(C) *Marketing arrangement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if:

(1) The parties have a business, marketing, or promotional agreement or other arrangement which provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or the separate credit feature offered by the person who can extend credit will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to encourage them to authorize the prepaid card to access the separate credit feature as described in paragraph (a)(5)(iii)(C)(2) of this section); and

(2) At the time of the marketing agreement or arrangement described in paragraph (a)(5)(iii)(C)(1) of this section, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement between the parties that the card can access the credit feature, as described in paragraph (a)(5)(iii)(B) of this section.

(D) *Exception for certain credit card account arrangements.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a credit card account is not a business

partner of a prepaid account issuer with which it has an arrangement as defined in paragraphs (a)(5)(iii)(A) through (C) of this section with regard to such credit card account if all of the following conditions are met:

(1) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(2) The prepaid account issuer and the card issuer do not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above. If the credit card account is linked to the prepaid account prior to April 1, 2019, or prior to the arrangement between the prepaid account issuer and the card issuer as described in paragraphs (a)(5)(iii)(A) through (C) of this section, the prepaid account issuer and the card issuer will be deemed to have satisfied this condition even if they have not received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described in this paragraph.

(3) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in paragraph (a)(5)(iii)(D)(2) of this section. If the credit card account is linked to the prepaid account prior to April 1, 2019, this condition only applies to the retention of the prepaid account and the credit card account on or after April 1, 2019.

(4) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid

card to the credit card account as described in paragraph (a)(5)(iii)(D)(2) of this section as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in paragraphs (a)(5)(iii)(A) through (C) of this section.

(5) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(2) of this section as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit accessed by the prepaid card from the credit card account as it applies to extensions of credit accessed by the traditional credit card. For purposes of this paragraph, "specified terms and conditions" means the terms and conditions required to be disclosed under §1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions.

(iv) *Credit feature* means a separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card.

(v) *Prepaid account* means a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3).

(vi) *Prepaid account issuer* means a financial institution as defined in Regulation E, 12 CFR 1005.2(i), with respect to a prepaid account.

(vii) *Prepaid card* means any card, code, or other device that can be used to access a prepaid account.

(viii) *Separate credit feature* means a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account.

(b) *Structure of credit features accessible by hybrid prepaid-credit cards.* With respect to a credit feature that is accessible by a hybrid prepaid-credit card, a card issuer shall not structure the credit feature as a negative balance on the asset feature of a prepaid account. A card issuer shall structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under §1026.61(a)(2)(i).

(c) *Timing requirement for credit card solicitation or application with respect to hybrid prepaid-credit cards.* (1) With respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered:

(i) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card;

(ii) Make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or

(iii) Allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

(2) For purposes of paragraph (c) of this section, the term *solicitation* has the meaning set forth in §1026.60(a)(1).

[81 FR 84370, Nov. 22, 2016, as amended at 83 FR 6439, Feb. 13, 2018]