Regulation Z
Open End / Credit Card

Indiana Bankers Association

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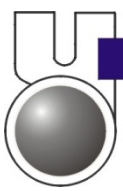

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Open End Credit - General Disclosure Requirements

Section 1: Form of Disclosures
12 C.F.R. § 1026.5(a)

General - 12 C.F.R § 1026.5(a)(1)

Regulatory Discussion

This section describes the form of disclosure requirements for open-credit credit and includes:

- clear and conspicuous standards;
- written and retainable disclosure requirements; and
- electronic disclosures subject to the E-Sign Act.

Regulatory Text

(a) **Form of disclosures**

(1) **General.**

(i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing, in a form that the consumer may keep, except that:

(A) The following disclosures need not be written: Disclosures under §1026.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under §1026.6(b)(2) and related disclosures of charges under §1026.9(c)(2)(iii)(B); disclosures under §1026.9(c)(2)(vi); disclosures under §1026.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under §1026.56(b)(1)(i).

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under §1026.60; home-equity disclosures under §1026.40(d); the alternative summary billing-rights statement under §1026.9(a)(2); the credit and charge card renewal disclosures required under §1026.9(e); and the payment requirements under §1026.10(b), except as provided in §1026.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other

applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§1026.60, 1026.40, and 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

Regulatory Commentary

5(a)(1) General

1. ***Clear and conspicuous standard.*** *The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under §1026.60, highlighted account-opening disclosures under §1026.6(b)(1), highlighted disclosure on checks that access a credit card under §1026.9(b)(3), highlighted change-in-terms disclosures under §1026.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under §1026.9(g)(3)(ii) must also be readily noticeable to the consumer.*

2. ***Clear and conspicuous - reasonably understandable form.*** *Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)-1.) Except where otherwise provided, the standard does not prohibit:*

   i. Pluralizing required terminology ("finance charge" and "annual percentage rate").

   ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

   iii. Sending promotional material with the required disclosures.

   iv. Using commonly accepted or readily understandable abbreviations (such as "mo." for "month" or "TX" for "Texas") in making any required disclosures.

   v. Using codes or symbols such as "APR" (for annual percentage rate), "FC" (for finance charge), or "Cr" (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

3. ***Clear and conspicuous - readily noticeable standard.*** *To meet the readily noticeable standard, disclosures for credit card applications and solicitations under §1026.60, highlighted account-opening disclosures under §1026.6(b)(1), highlighted disclosures on checks that access a credit card account under §1026.9(b)(3), highlighted change-in-terms disclosures under §1026.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under §1026.9(g)(3)(ii) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases under §§1026.60(b)(1) and 1026.6(b)(2)(i).)*

4. ***Integrated document.*** *The creditor may make both the account-opening disclosures (§1026.6) and the periodic-statement disclosures (§1026.7) on more than one page, and use*

both the front and the reverse sides, except where otherwise indicated, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

5. ***Disclosures covered.*** *Disclosures that must meet the "clear and conspicuous" standard include all required communications under this subpart. Therefore, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under §1026.9(d), and notices, such as the correction notice required to be sent to the consumer under §1026.13(e), must also be clear and conspicuous.*

Paragraph 5(a)(1)(ii)(A)

1. ***Electronic disclosures.*** *Disclosures that need not be provided in writing under §1026.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).*

Paragraph 5(a)(1)(iii)

1. ***Disclosures not subject to E-Sign Act.*** *See the commentary to §1026.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under §1026.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.*

Terminology - 12 C.F.R § 1026.5(a)(2)

Regulatory Discussion

This section describes consistent and conspicuous terminology requirements: specifically, use of the terms finance charge and annual percentage rate for home-equity plans; and, the terms penalty APR, required, and fixed when associated with disclosures required to be presented in a tabular format.

Regulatory Text

(2) **Terminology.**

(i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to §1026.40, the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under §1026.7(a)(4) and for advertisements under §1026.16.

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed,* or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

Regulatory Commentary

5(a)(2) Terminology

1. ***When disclosures must be more conspicuous****. For home-equity plans subject to §1026.40, the terms finance charge and annual percentage rate, when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in §1026.5(a)(2)(ii). At the creditor's option, finance charge and annual percentage rate may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:*

   i. In disclosing the annual percentage rate as required by §1026.6(a)(1)(ii), the term annual percentage rate is subject to the more conspicuous rule.

   ii. In disclosing the amount of the finance charge, required by §1026.7(a)(6)(i), the term finance charge is subject to the more conspicuous rule.

   iii. Although neither finance charge nor annual percentage rate need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of

the explanations required under §1026.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§1026.6(a)(1)(ii) and 1026.7(a)(7).

2. ***Making disclosures more conspicuous.*** *In disclosing the terms finance charge and annual percentage rate more conspicuously for home-equity plans subject to §1026.40, only the words finance charge and annual percentage rate should be accentuated. For example, if the term total finance charge is used, only finance charge should be emphasized. The disclosures may be made more conspicuous by, for example:*

   i. Capitalizing the words when other disclosures are printed in lower case.

   ii. Putting them in bold print or a contrasting color.

   iii. Underlining them.

   iv. Setting them off with asterisks.

   v. Printing them in larger type.

3. ***Disclosure of figures - exception to more conspicuous rule.*** *For home-equity plans subject to §1026.40, the terms annual percentage rate and finance charge need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).*

4. ***Consistent terminology.*** *Language used in disclosures required in this subpart must be close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.*

Specific Formats - 12 C.F.R § 1026.5(a)(3)

Regulatory Discussion

This section generally describes the specific format requirements and includes eight topics. There is no commentary. Further information is provided in the respective sections associated with these eight topics.

Regulatory Text

(3) **Specific formats.**

(i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of §1026.60(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of §1026.40(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of §1026.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of §1026.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of §1026.7(b)(12).

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of §1026.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of §1026.9(c)(2)(iv)(D).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of §1026.9(g)(3)(ii).

Regulatory Commentary

None.

Section 2: Time of Disclosures
12 C.F.R. § 1026.5(b)

Account Opening Disclosures - 12 C.F.R § 1026.5(b)(1)

Regulatory Discussion

This section describes the time of disclosure requirements for open-credit credit; beginning with *account-opening disclosures*. There are five categories:

i. General rules
ii. Charges imposed as part of an open-end (not home-secured) plan
iii. Telephone purchases
iv. Membership fees
v. Application fees

Regulatory Text

(b) **Time of disclosures**

(1) **Account-opening disclosures**

(i) **General rule.** The creditor shall furnish account-opening disclosures required by §1026.6 before the first transaction is made under the plan.

(ii) **Charges imposed as part of an open-end (not home-secured) plan.** Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under §1026.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of §1026.40.

(iii) **Telephone purchases.** Disclosures required by §1026.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject

the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by §1026.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) **Membership fees**

(A) **General.** In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under §1026.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in §1026.60(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) **Home-equity plans.** Creditors offering home-equity plans subject to the requirements of §1026.40 are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) **Application fees.** A creditor may collect an application fee excludable from the finance charge under §1026.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. *See* §1026.5(b)(1)(iv)(A).

Regulatory Commentary

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

5(b)(1)(i) General Rule

1. ***Disclosure before the first transaction.*** *When disclosures must be furnished "before the first transaction," account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:*

i. ***Purchases.*** *The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously. (See commentary to §1026.5(b)(1)(iii) below.)*

ii. ***Advances****. The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return*

the cash advance check to the creditor without obligation (for example, without paying finance charges).

2. ***Reactivation of suspended account.*** *If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.*

3. ***Reopening closed account.*** *If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.*

4. ***Converting closed-end to open-end credit.*** *If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under §1026.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to §1026.17 on converting open-end credit to closed-end credit.)*

5. ***Balance transfers.*** *A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required by §1026.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to §1026.60 that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not effect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of §1026.60 may establish procedures that comply with both §§1026.60 and 1026.6 in a single disclosure statement.*

6. ***Substitution or replacement of credit card accounts.***

   i. ***Generally.*** *When a card issuer substitutes or replaces an existing credit card account with another credit card account, the card issuer must either provide notice of the terms of the new account consistent with §1026.6(b) or provide notice of the changes in the terms of the existing account consistent with §1026.9(c)(2). Whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§1026.6(b) and 1026.9(c)(2) is determined in light of all the relevant facts and circumstances. For additional requirements and limitations related to the substitution or replacement of credit card accounts, see §§1026.12(a) and 1026.55(d) and comments 12(a)(1)-1 through -8, 12(a)(2)-1 through -9, 55(b)(3)-3, and 55(d)-1 through -3.*

ii. ***Relevant facts and circumstances.*** *Listed below are facts and circumstances that are relevant to whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§1026.6(b) and 1026.9(c)(2). When most of the facts and circumstances listed below are present, the substitution or replacement likely constitutes the opening of a new account for which §1026.6(b) disclosures are appropriate. When few of the facts and circumstances listed below are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which §1026.9(c)(2) disclosures are appropriate.*

A. *Whether the card issuer provides the consumer with a new credit card;*

B. *Whether the card issuer provides the consumer with a new account number;*

C. *Whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases);*

D. *Whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement (such as when a retail card is replaced with a cobranded general purpose credit card that can be used at a wider number of merchants);*

E. *Whether the card issuer implemented the substitution or replacement on an individualized basis (such as in response to a consumer's request); and*

F. *Whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card).*

iii. ***Replacement as a result of theft or unauthorized use.*** *Notwithstanding paragraphs i and ii above, a card issuer that replaces a credit card or provides a new account number because the consumer has reported the card stolen or because the account appears to have been used for unauthorized transactions is not required to provide a notice under §§1026.6(b) or 1026.9(c)(2) unless the card issuer has changed a term of the account that is subject to §§1026.6(b) or 1026.9(c)(2).*

5(b)(1)(ii) Charges Imposed as Part of an Open-End (Not Home-Secured) Plan

1. ***Disclosing charges before the fee is imposed.*** *Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under §1026.6(b)(2). (Charges imposed as part of an open-end (not home-secured plan) that are not specified under §1026.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to §1026.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner that a consumer would be likely to notice them. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials*

to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

5(b)(1)(iii) Telephone Purchases

1. ***Return policies.*** *In order for creditors to provide disclosures in accordance with the timing requirements of this paragraph, consumers must be permitted to return merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.*

5(b)(1)(iv) Membership Fees

1. ***Membership fees.*** *See §1026.60(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.*

2. ***Rejecting the plan.*** *If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under §1026.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.*

3. ***Using the account.*** *A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not "use" the account by activating the account. A consumer also does not "use" the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures). For example, the consumer does not "use" the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not "use" the account by paying an application fee excludable from the finance charge under §1026.4(c)(1) prior to receiving the account-opening disclosures.*

*4. **Home-equity plans.** Creditors offering home-equity plans subject to the requirements of §1026.40 are subject to the requirements of §1026.40(h) regarding the collection of fees.*

Periodic Statements - 12 C.F.R § 1026.5(b)(2)

Regulatory Discussion

This section continues to describe the time of disclosure requirements for open-credit credit; the second item is *periodic statements*. There are two categories:

i. Statement required
ii. Timing requirements, further categorized as:
   A. Credit card accounts under an open-end (not home-secured) consumer credit plan
   B. Open-end consumer credit plans

Regulatory Text

(2) **Periodic statements**

(i) **Statement required.** The creditor shall mail or deliver a periodic statement as required by §1026.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate Federal law.

(ii) **Timing requirements**

(A) **Credit card accounts under an open-end (not home-secured) consumer credit plan.** For credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(1) Periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to §1026.7(b)(11)(i)(A); and

(2) The card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

(B) **Open-end consumer credit plans.** For accounts under an open-end consumer credit plan, a creditor must adopt reasonable procedures designed to ensure that:

(1) If a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 21 days prior to the date on which the grace period expires; and

(ii) The creditor does not impose finance charges as a result of the loss of the grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(2) Regardless of whether a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in order to avoid being treated as late for any purpose; and

(ii) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 days after mailing or delivery of the periodic statement.

(3) For purposes of paragraph (b)(2)(ii)(B) of this section, "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

Regulatory Commentary

5(b)(2) Periodic Statements

5(b)(2)(i) Statement Required

1. ***Periodic statements not required.*** *Periodic statements need not be sent in the following cases:*

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1 - so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (See §1026.13(a)(7).)

2. ***Termination of draw privileges.*** *When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under §1026.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.*

3. ***Uncollectible accounts.*** *An account is deemed uncollectible for purposes of §1026.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.*

4. ***Instituting collection proceedings.*** *Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.*

5(b)(2)(ii) Timing Requirements

1. ***Mailing or delivery of periodic statements.*** *A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of §1026.5(b)(2)(ii). A creditor complies with §1026.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day or 14-day period required by §1026.5(b)(2)(ii) when determining, as applicable, the payment due date for purposes of §1026.5(b)(2)(ii)(A), the date on which any grace period expires for purposes of §1026.5(b)(2)(ii)(B)(1), or the date after which the payment will be treated as late for purposes of §1026.5(b)(2)(ii)(B)(2). For example:*

   A. *If a creditor has adopted reasonable procedures designed to ensure that periodic statements for a credit card account under an open-end (not home-secured) consumer credit plan or an account under an open-end consumer credit plan that provides a grace period are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date for purposes of §1026.5(b)(2)(ii)(A) and the date on which any grace period expires for purposes of §1026.5(b)(2)(ii)(B)(1) must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in §1026.5(b)(2)(ii)(A) and (b)(2)(ii)(B)(1) on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.*

   B. *If a creditor has adopted reasonable procedures designed to ensure that periodic statements for an account under an open-end consumer credit plan that does not provide a grace period are mailed or delivered to consumers no later than five days after the closing date of the billing cycle, the date on which a payment must be received in order to avoid being treated as late for purposes of §1026.5(b)(2)(ii)(B)(2) must be no less than 19 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitation in §1026.5(b)(2)(ii)(B)(2) on treating a payment as late for any purpose applies for 19 days after the closing date of the billing cycle.*

2. ***Treating a payment as late for any purpose.*** *Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibitions in §1026.5(b)(2)(ii)(A)(2) and (b)(2)(B)(2)(ii) on treating a payment as late for any purpose apply only during the 21-day or 14-day period (as applicable) following mailing or delivery of the periodic statement stating the due date for that payment and only if the required minimum periodic payment is received within that period. For example:*

i. Assume that, for a credit card account under an open-end (not home-secured) consumer credit plan, a periodic statement mailed on April 4 states that a required minimum periodic payment of $50 is due on April 25. If the card issuer does not receive any payment on or before April 25, §1026.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

ii. Same facts as in paragraph i above. On April 20, the card issuer receives a payment of $30 and no additional payment is received on or before April 25. Section 1026.5(b)(2)(ii)(A)(2) does not prohibit the card issuer from treating the required minimum periodic payment as late.

iii. Same facts as in paragraph i above. On May 4, the card issuer has not received the $50 required minimum periodic payment that was due on April 25. The periodic statement mailed on May 4 states that a required minimum periodic payment of $150 is due on May 25. Section 1026.5(b)(2)(ii)(A)(2) does not permit the card issuer to treat the $150 required minimum periodic payment as late until April 26. However, the card issuer may continue to treat the $50 required minimum periodic payment as late during this period.

iv. Assume that, for an account under an open-end consumer credit plan that does not provide a grace period, a periodic statement mailed on September 10 states that a required minimum periodic payment of $100 is due on September 24. If the creditor does not receive any payment on or before September 24, §1026.5(b)(2)(ii)(B)(2)(ii) does not prohibit the creditor from treating the required minimum periodic payment as late.

3. ***Grace periods.***

i. ***Definition of grace period.*** *For purposes of §1026.5(b)(2)(ii)(B), "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of §1026.5(b)(2)(ii)(B). Similarly, a period following the payment due date during which a late payment fee will not be imposed is not a grace period for purposes of §1026.5(b)(2)(ii)(B). See comments 7(b)(11)-1, 7(b)(11)-2, and 54(a)(1)-2.*

ii. ***Applicability of §1026.5(b)(2)(ii)(B)(1).*** *Section 1026.5(b)(2)(ii)(B)(1) applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. Section 1026.5(b)(2)(ii)(B)(1) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with §1026.5(b)(2)(ii)(B) and §1026.54. See comment 54(a)(1)-1. Furthermore, the prohibition in §1026.5(b)(2)(ii)(B)(1)(ii) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.*

iii. ***Example.*** *Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At*

the end of the April billing cycle, the balance on the account is $500. The grace period applies to the $500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly, §1026.5(b)(2)(ii)(B)(1)(i) requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the $500 balance is mailed or delivered on or before May 4. Furthermore, §1026.5(b)(2)(ii)(B)(1)(ii) requires the creditor to have reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of the grace period if a $500 payment is received on or before May 25. However, if the creditor receives a payment of $300 on April 25, §1026.5(b)(2)(ii)(B)(1)(ii) would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to the extent permitted by §1026.54).

4. ***Application of §1026.5(b)(2)(ii) to charge card and charged-off accounts.***

   i. ***Charge card accounts.*** *For purposes of §1026.5(b)(2)(ii)(A)(1), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to §1026.7(b)(11)(i)(A). Because §1026.7(b)(11)(ii) provides that §1026.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts, §1026.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, §1026.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. A card issuer that complies with §1026.5(b)(2)(ii)(A) as discussed above with respect to a charge card account has also complied with §1026.5(b)(2)(ii)(B)(2). Section 1026.5(b)(2)(ii)(B)(1) does not apply to charge card accounts because, for purposes of §1026.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with §1026.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.*

   ii. ***Charged-off accounts.*** *For purposes of §1026.5(b)(2)(ii)(A)(1), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to §1026.7(b)(11)(i)(A). Because §1026.7(b)(11)(ii) provides that §1026.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, §1026.5(b)(2)(ii)(A)(1) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although §1026.5(b)(2)(ii)(A)(2) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, §1026.5(b)(2)(ii)(A)(2) does not prohibit a card issuer from continuing to treat prior payments as late during that period. See comment 5(b)(2)(ii)-2. Similarly, although §1026.5(b)(2)(ii)(B)(2) applies to open-end consumer credit accounts in these circumstances, §1026.5(b)(2)(ii)(B)(2)(ii) does not prohibit a creditor from continuing treating prior payments as late during the 14-day period following mailing or delivery of a periodic statement. Section 1026.5(b)(2)(ii)(B)(1) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.*

5. ***Consumer request to pick up periodic statements.*** *When a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. If the consumer wishes to pick up a statement, the statement must be made available in accordance with §1026.5(b)(2)(ii).*

6. ***Deferred interest and similar promotional programs.*** *See comment 7(b)-1.iv.*

Application and Solicitation Disclosures - 12 C.F.R § 1026.5(b)(3)

Regulatory Discussion

This section continues to describe the time of disclosure requirements for open-credit credit; the third item is *credit and charge card application and solicitations*. There is no commentary. Further information is provided in the respective section.

Regulatory Text

(3) **Credit and charge card application and solicitation disclosures.** The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of §1026.60.

Regulatory Commentary

None.

Home Equity Plans - 12 C.F.R § 1026.5(b)(4)

Regulatory Discussion

This section concludes the description of the time of disclosure requirements for open-credit credit; the fourth item is *home-equity plans*. There is no commentary. Further information is provided in the respective section.

Regulatory Text

(4) **Home-equity plans.** Disclosures for home-equity plans shall be made in accordance with the timing requirements of §1026.40(b).

Regulatory Commentary

None.

Section 3: Basis of Disclosures and Use of Estimates
12 C.F.R. § 1026.5(c)

Basis of Disclosures and Use of Estimates - 12 C.F.R § 1026.5(c)

Regulatory Discussion

This section describes the basis of disclosures and use of estimates for open-credit credit. The commentary includes discussion of the legal obligation and rules for providing estimates.

Regulatory Text

(c) **Basis of disclosures and use of estimates.** Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

Regulatory Commentary

5(c) Basis of Disclosures and Use of Estimates

1. ***Legal obligation.*** *The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.*

i. The legal obligation is determined by applicable state or other law.

ii. The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. ***Estimates - obtaining information.*** *Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional*

information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. ***Estimates - redisclosure.*** *If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.*

Section 4: Multiple Creditors / Multiple Consumers
12 C.F.R. § 1026.5(d)

Multiple Creditors / Multiple Consumers - 12 C.F.R. § 1026.5(d)

Regulatory Discussion

This section describes the disclosure requirements when there may be multiple creditors or multiple consumers for open-credit credit.

Regulatory Text

(d) **Multiple creditors; multiple consumers.** If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under §1026.15 is applicable, however, the disclosures required by §§1026.6 and 1026.15(b) shall be made to each consumer having the right to rescind.

Regulatory Commentary

5(d) Multiple Creditors; Multiple Consumers

1. ***Multiple creditors.*** *Under §1026.5(d):*

i. Creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. ***Multiple consumers.*** *Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under §1026.15.*

3. ***Card issuer and person extending credit not the same person.*** *Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan that is maintained by a person*

other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in §1026.60(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.

Section 5: Effect of Subsequent Events
12 C.F.R. § 1026.5(e)

Effect of Subsequent Events - 12 C.F.R. § 1026.5(e)

Regulatory Discussion

This section describes the requirements for re-disclosure for open-credit credit in the event a disclosure becomes inaccurate.

Regulatory Text

(e) **Effect of subsequent events.** If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this part, although new disclosures may be required under §1026.9(c).

Regulatory Commentary

5(e) Effect of Subsequent Events

1. ***Events causing inaccuracies****. Inaccuracies in disclosures are not violations if attributable to events occurring after disclosures are made. For example, when the consumer fails to fulfill a prior commitment to keep the collateral insured and the creditor then provides the coverage and charges the consumer for it, such a change does not make the original disclosures inaccurate. The creditor may, however, be required to provide a new disclosure(s) under §1026.9(c).*

2. ***Use of inserts.*** *When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:*

    i. *Should clearly refer to the disclosure provision it replaces.*

    ii. *Need not be physically attached or affixed to the basic disclosure statement.*

    iii. *May be used only until the supply of outdated forms is exhausted.*

Open End - Account Opening Disclosures – Other Loans

Section 1: Rules Affecting Open-End (not home-secured) Plans
12 C.F.R. § 1026.6(b)

Rules Affecting Open-End (not home-secured) Plans - 12 CFR § 1026.6(b)

Regulatory Discussion

The requirements of this document apply only to open-end plans other than home-equity plans.

Regulatory Text

(b) **Rules affecting open-end (not home-secured) plans.** The requirements of paragraph (b) of this section apply to plans other than home-equity plans subject to the requirements of §1026.40.

Regulatory Commentary

None.

Form of Disclosures / Tabular Format - 12 CFR § 1026.6(b)(1)

Regulatory Discussion

This section requires the account-opening disclosures for open-end (not home-secured) plans be provided in a tabular format. Highlighting of certain terms and the location of information within the table is also dictated by this section. Fees that either vary by state, or are based on a percentage, are also addressed in this section.

Terms required to be highlighted include:

- Any APR required to be disclosed
- Any introductory rate permitted, or required, to be disclosed
- Any rate that will apply after a premium initial rate expires permitted, or required, to be disclosed
- Any fee or percentage amounts or maximum limits on fee amounts disclosed as required

Regulatory Text

(1) **Form of disclosures; tabular format for open-end (not home-secured) plans.** Creditors must provide the account-opening disclosures specified in paragraph (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G-17 in appendix G.

(i) **Highlighting.** In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F), and any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii) 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 is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(ii) **Location.** Only the information required or permitted by paragraphs (b)(2)(i) through (v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (xiv) of this section shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(*2*), (b)(2)(i)(D)(*3*), (b)(2)(vi), and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) **Fees that vary by state.** Creditors that impose fees referred to in paragraphs (b)(2)(vii) through (b)(2)(xi) of this section that vary by state and that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table 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 the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. A creditor may not list fees for multiple states in the account-opening summary table.

(iv) **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.

Regulatory Commentary

None.

Required Disclosures for Account-Opening Table - 12 CFR § 1026.6(b)(2)

Regulatory Discussion

The account-opening disclosures for open-end (not home-secured) plans *must include, as applicable*, up to fifteen specific items. The commentary provides additional information on several, but not all, of the fifteen items, as follows:

- Item iii: Fixed Finance Charge; Minimum Interest Charge
- Item v: Grace Period
- Item vi: Balance Computation Method
- Item viii: Available Credit

Regulatory Text

(2) **Required disclosures for account-opening table for open-end (not home-secured) plans.** A creditor shall disclose the items in this section, to the extent applicable:

(i) **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: A penalty rate that may apply upon the occurrence of one or more specific events.

(A) **Variable-rate information.** If a rate disclosed under paragraph (b)(2)(i) of this section is a variable rate, the creditor 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 creditor 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 or decreases shall not be included in the table.

(B) **Discounted initial rates.** If the initial rate is an introductory rate, as that term is defined in §1026.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must

disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the creditor must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term "introductory" or "intro" in immediate proximity to the introductory rate.

(C) **Premium initial rate.** If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the creditor must disclose the premium initial rate pursuant to paragraph (b)(2)(i) of this section. Consistent with paragraph (b)(2)(i) of this section, the premium initial rate for purchases must be in at least 16-point type. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the creditor also discloses the time period during which the premium initial rate will remain in effect. If the creditor also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(D) **Penalty rates**

(1) **In general.** Except as provided in paragraph (b)(2)(i)(D)(2) and (b)(2)(i)(D)(3) 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 creditor must disclose pursuant to paragraph (b)(2)(i) of this section 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. If more than one penalty rate may apply, the creditor 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.

(2) **Introductory rates.** If the creditor discloses in the table an introductory rate, as that term is defined in §1026.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

(3) **Employee preferential rates.** If a creditor discloses in the table a preferential annual percentage rate for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party, such as executive officers, directors, or principal shareholders are eligible, the creditor 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.

(E) **Point of sale where APRs vary by state or based on creditworthiness.** Creditors imposing annual percentage rates that vary by state or based on the consumer's creditworthiness and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table:

(1) The specific annual percentage rate applicable to the consumer's account; or

(2) The range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

(F) **Credit card accounts under an open-end (not home-secured) consumer credit plan.** Notwithstanding paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section, for credit card accounts under an open-end (not home-secured) plan, issuers must disclose in the table:

(1) Any introductory rate as that term is defined in §1026.16(g)(2)(ii) that would apply to the account, consistent with the requirements of paragraph (b)(2)(i)(B) of this section, and

(2) Any rate that would apply upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(2)(i)(C) of this section.

(ii) **Fees for issuance or availability.**

(A) Any annual or other periodic fee that may be imposed for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(B) Any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee.

(iii) **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 the 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 creditor may, at its option, disclose in the table minimum interest charges below this threshold.

(iv) **Transaction charges.** Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

(v) **Grace period.** The date by which or the period within which any credit extended 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 creditor may disclose the range of days, the minimum number of days, or the average number of the 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 features on the account, the phrase "How to Avoid Paying Interest" shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase "Paying Interest" shall be used as the heading for the row describing this fact.

(vi) **Balance computation method.** The name of the balance computation method listed in §1026.60(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (b)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

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

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

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

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

(xi) **Returned-payment fee.** Any fee imposed by the creditor for a returned payment.

(xii) **Required insurance, debt cancellation or debt suspension coverage.**

(A) 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

(B) A cross reference to any additional information provided about the insurance or coverage, as applicable.

(xiii) **Available credit.** If a creditor requires fees for the issuance or availability of credit described in paragraph (b)(2)(ii) 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 plan, a creditor must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be

based on the minimum credit limit for the plan. However, the disclosure provided under this paragraph must be based on the actual initial credit limit provided on the account. In determining whether the 15 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, which 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 creditor 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. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(xiv) **Web site reference.** For issuers of credit cards that are not charge cards, 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.

(xv) **Billing error rights reference.** A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

Regulatory Commentary

6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans

6(b)(2)(iii) Fixed Finance Charge; Minimum Interest Charge

1. ***Example of brief statement.*** *See Samples G-17(B), G-17(C), and G-17(D) for guidance on how to provide a brief description of a minimum interest charge.*

6(b)(2)(v) Grace Period

1. ***Grace period.*** *Creditors must state any conditions on the applicability of the grace period. A creditor, however, may not disclose under §1026.6(b)(2)(v) the limitations on the imposition of finance charges as a result of a loss of a grace period in §1026.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, §1026.6(b)(2)(v) requires that the creditor disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month." However, other*

creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, §1026.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

2. ***No grace period.*** *Creditors may use the following language to describe that no grace period is offered, as applicable: "We will begin charging interest on [applicable transactions] on the transaction date."*

3. ***Grace period on some features.*** *Some creditors do not offer a grace period on cash advances and balance transfers, but offer a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, §1026.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack of a grace period for cash advances and balance transfers using the following language, or substantially similar language, as applicable: "Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date." However, other creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, §1026.6(a)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Also, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. In these circumstances, §1026.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate.*

6(b)(2)(vi) Balance Computation Method

1. ***Use of same balance computation method for all features.*** *In cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In this case, a creditor may use an appropriate name listed in §1026.60(g) (e.g., "average daily balance (including new purchases)") to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "average daily balance (including new purchases)" listed in §1026.60(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in §1026.60(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (e.g., "average daily balance (including new transactions)"), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account. See Samples G-17(B) and G-17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.*

2. ***Use of balance computation names in §1026.60(g) for balances other than purchases.*** *The names of the balance computation methods listed in §1026.60(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in §1026.60(g) to satisfy the requirements of §1026.6(b)(2)(vi) for features other than purchases, a creditor must revise the names listed in §1026.60(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in §1026.60(g)(i) to disclose it as "average daily balance (including new cash advances)" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in §1026.60(g)(ii) to disclose it as "average daily balance (excluding new cash advances)" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 6(b)(2)(vi)-1 for guidance on the use of one balance computation name when the same balance computation method is used for all features on the account.*

6(b)(2)(xiii) Available Credit

1. ***Right to reject the plan.*** *Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: "You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges."*

Disclosure of Charges Imposed - 12 CFR § 1026.6(b)(3)

Regulatory Discussion

This section requires the account-opening disclosures for open-end (not home-secured) plans *include, as applicable*, information on any additional charges that may be imposed. The circumstances under which the charge may be imposed, as well as the amount of the charge or an explanation of how the charge is determined must also be included.

Specifically for finance charges: the disclosure must include a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge.

The commentary provides additional information on the following items:

- When finance charges accrue
- Grace periods
- No finance charge imposed below certain balance
- Failure to use the plan as agreed; Examples of fees that affect the plan; Threshold test
- Fees for package of services

Regulatory Text

(3) **Disclosure of charges imposed as part of open-end (not home-secured) plans.** A creditor shall disclose, to the extent applicable:

(i) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under §1026.4(a) and §1026.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under §1026.4(e) disclosed as specified.

Regulatory Commentary

6(b)(3) Disclosure of Charges Imposed as Part of Open-End (Not Home-Secured) Plans

1. ***When finance charges accrue.*** *Creditors are not required to disclose a specific date when a cost that is a finance charge under §1026.4 will begin to accrue.*

2. ***Grace periods.*** *In disclosing in the account agreement or disclosure statement whether or not a grace period exists, the creditor need not use any particular descriptive phrase or term. However, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to §§1026.60(b)(5) and 1026.6(b)(2)(v) to satisfy a creditor's duty to provide consistent terminology under §1026.5(a)(2).*

3. ***No finance charge imposed below certain balance.*** *Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.*

Paragraph 6(b)(3)(ii)

1. ***Failure to use the plan as agreed.*** *Late payment fees, over-the-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.*

2. ***Examples of fees that affect the plan.*** *Examples of charges the payment, or nonpayment, of which affects the consumer's account are:*

   i. Access to the plan. Fees for using the card at the creditor's ATM to obtain a cash advance, fees to obtain additional cards including replacements for lost or stolen cards, fees to expedite delivery of cards or other credit devices, application and membership fees, and annual or other participation fees identified in §1026.4(c)(4).

   ii. Amount of credit extended. Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

   iii. Timing or method of billing or payment. Fees to pay by telephone or via the Internet.

3. ***Threshold test.*** *If the creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may at its option consider such charges as a cost imposed as part of the plan for purposes of the Truth in Lending Act.*

Paragraph 6(b)(3)(iii)(B)

1. ***Fees for package of services.*** *A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.*

Disclosure of Rates - 12 CFR § 1026.6(b)(4)

Regulatory Discussion

This section requires the account-opening disclosures for open-end (not home-secured) plans *include, as applicable*, information on rates, as follows:

- Periodic rates (expressed as both a periodic rate and APR) that may be used to calculate interest: including range of balances; type of transactions; and balance computation method
- Variable-rate accounts (tied to increases in an index or formula); items (A) through (H), below
- Rate changes (not due to index or formula); items (A) through (E), below

The commentary provides additional information on the following items:

- Range of Balances; Balance Computation Method
- Variable-Rate Accounts
- Rate Changes Not Due to Index or Formula

Regulatory Text

(4) **Disclosure of rates for open-end (not home-secured) plans.** A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) **Rates**. The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) **Range of balances.** The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) **Type of transaction.** The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) **Balance computation method.** An explanation of the method used to determine the balance to which the rate is applied.

(ii) **Variable-rate accounts.** For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(H) Creditors imposing annual percentage rates that vary according to an index that is not under the creditor's control that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by §1026.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.

(iii) **Rate changes not due to index or formula**. For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

Regulatory Commentary

6(b)(4) Disclosure of Rates for Open-End (Not Home-Secured) Plans

6(b)(4)(i)(B) Range of Balances

1. ***Range of balances.*** *Creditors are not required to disclose the range of balances:*

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $0-$500, and a 1% periodic interest rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

6(b)(4)(i)(D) Balance Computation Method

1. ***Explanation of balance computation method.*** *Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as "previous balance method" or the name of a balance computation method listed in §1026.60(g). (See Model Clauses G-1(A) in appendix G to part 1026. See §1026.6(b)(2)(vi) regarding balance computation descriptions in the account-opening summary.)*

2. ***Allocation of payments.*** *Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.*

6(b)(4)(ii) Variable-Rate Accounts

1. ***Variable-rate disclosures - coverage****.*

   i. Examples. Examples of open-end plans that permit the rate to change and are considered variable-rate plans include:

      A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

      B. Rate changes that are tied to Treasury bill rates.

      C. Rate changes that are tied to changes in the creditor's commercial lending rate.

   ii. Examples of open-end plans that permit the rate to change and are not considered variable-rate include:

      A. Rate changes that are invoked under a creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates).

      B. Rate changes that are triggered by a specific event such as an open-end credit plan in which the employee receives a lower rate contingent upon employment, and the rate increases upon termination of employment.

2. ***Variable-rate plan - circumstances for increase.***

   i. The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase:

      A. "The Treasury bill rate increases."

      B. "The Federal Reserve discount rate increases."

   ii. Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example:

      A. "An increase will take effect on the day that the Treasury bill rate increases."

      B. "An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle."

3. ***Variable-rate plan - limitations on increase.*** *In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. Legal limits such as usury or rate ceilings under state or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:*

   i. "The rate on the plan will not exceed 25% annual percentage rate."

   ii. "Not more than ½ ; of 1% increase in the annual percentage rate per year will occur."

4. ***Variable-rate plan - effects of increase.*** *Examples of effects of rate increases that must be disclosed include:*

   i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

   ii. Any increase in the scheduled minimum periodic payment amount.

5. ***Discounted variable-rate plans.*** *In some variable-rate plans, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate is lower than the rate would be if it were calculated using the index or formula.*

   i. For example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the current Treasury bill rate is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

   ii. When creditors disclose in the account-opening disclosures an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect:

      A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

      B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

      C. The other variable-rate information required by §1026.6(b)(4)(ii).

6(b)(4)(iii) Rate Changes Not Due to Index or Formula

1. ***Events that cause the initial rate to change.***

   i. Changes based on expiration of time period. If the initial rate will change at the expiration of a time period, creditors that disclose the initial rate in the account-opening disclosure must identify the expiration date and the fact that the initial rate will end at that time.

ii. Changes based on specified contract terms. If the account agreement provides that the creditor may change the initial rate upon the occurrence of a specified event or events, the creditor must identify the events or events. Examples include the consumer not making the required minimum payment when due, or the termination of an employee preferred rate when the employment relationship is terminated.

2. ***Rate that will apply after initial rate changes.***

i. ***Increased margins.*** *If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.*

ii. ***Risk-based pricing.*** *In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating only the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as "until you make three timely payments," or if there is no limitation, the fact that the increased rate may remain indefinitely.*

3. ***Effect of rate change on balances.*** *Creditors must disclose information to consumers about the balance to which the new rate will apply and the balance to which the current rate at the time of the change will apply. Card issuers subject to §1026.55 may be subject to certain restrictions on the application of increased rates to certain balances.*

Additional Disclosures - 12 CFR § 1026.6(b)(5)

Regulatory Discussion

Finally, this section requires account-opening disclosures on open-end (not home-secured) plans, *as applicable*, providing information on (i) voluntary credit insurance, etc; (ii) security interests; and (iii) statement of billing rights.

The commentary provides additional information on each of these three items.

Regulatory Text

(5) **Additional disclosures for open-end (not home-secured) plans.** A creditor shall disclose, to the extent applicable:

(i) **Voluntary credit insurance, debt cancellation or debt suspension.** The disclosures in §§1026.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in §1026.4(b)(7) or (b)(10).

(ii) **Security interests.** The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(iii) **Statement of billing rights.** A statement that outlines the consumer's rights and the creditor's responsibilities under §§1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G-3(A) in appendix G to this part.

Regulatory Commentary

6(b)(5) Additional Disclosures for Open-End (Not Home-Secured) Plans

6(b)(5)(i) Voluntary Credit Insurance, Debt Cancellation or Debt Suspension

1. ***Timing.*** *Under §1026.4(d), disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge must be provided before the consumer agrees to the purchase of the insurance or coverage. Creditors comply with §1026.6(b)(5)(i) if they provide those disclosures in accordance with §1026.4(d). For example, if the disclosures required by §1026.4(d) are provided at application, creditors need not repeat those disclosures at account opening.*

6(b)(5)(ii) Security Interests

1. ***General.*** *Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.*

2. ***Identification of property.*** *Creditors sufficiently identify collateral by type by stating, for example, motor vehicle or household appliances. (Creditors should be aware, however, that the Federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)*

3. ***Spreader clause.*** *If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as "spreader" or "dragnet" clauses, or as "cross-collateralization" clauses.) The creditor need not specifically identify the collateral; a reminder such as "collateral securing other loans with us may also secure this loan" is sufficient. At the creditor's option, a more specific description of the property involved may be given.*

4. ***Additional collateral.*** *If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under §1026.9(c) at the time the security is taken. (See comment 6(b)(5)(ii)-2.)*

5. ***Collateral from third party.*** *Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.*

6(b)(5)(iii) Statement of Billing Rights

1. See the commentary to Model Forms G-3(A) and G-4(A).

Open End - Periodic Statements - Other Loans

Section 1: Rules Affecting Open End Not Home Secured Loans
12 C.F.R. § 1026.7(b)

Rules Affecting Open End Not Home Secured Loans - 12 CFR § 1026.7(b)

Regulatory Discussion

The requirements of this document ***apply only to periodic statement disclosures for open-end (not home-secured) plans***. There are 14 items required to be included on the periodic statement for open-end (not home-secured) plans; each item will be discussed individually throughout the remainder of this document.

The commentary to this section addresses "deferred interest" on plans that permit the consumer to avoid interest charges on purchases if the purchase balance is paid in full by a certain date.

Regulatory Text

(b) **Rules affecting open-end (not home-secured) plans.** The requirements of paragraph (b) of this section apply only to plans other than home-equity plans subject to the requirements of §1026.40.

Regulatory Commentary

7(b) Rules Affecting Open-End (Not Home-Secured) Plans

1. ***Deferred interest or similar transactions.*** *Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. "Deferred interest" has the same meaning as in §1026.16(h)(2) and associated commentary. The following provides guidance for a deferred interest or similar plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by July 31.*

   i. ***Annual percentage rates.*** *Under §1026.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred interest or similar feature, if the deferred interest balance is not paid by a certain date, July 31 in this example, interest charges applicable to the billing cycles between the date of purchase in January and July 31 may be imposed. Annual percentage rates that may apply to the deferred interest balance ($500 in this example) if the balance is not paid in full by July 31 must appear on periodic*

statements for the billing cycles between the date of purchase and July 31. However, if the consumer does not pay the deferred interest balance by July 31, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred interest balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and July 31.

ii. ***Balances subject to periodic rates.*** *Under §1026.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred interest balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and July 31 in this example. Periodic statements sent for those billing cycles should not include the deferred interest balance in the balance disclosed under §1026.7(b)(5). This amount must be separately disclosed on periodic statements and identified by a term other than the term used to identify the balance disclosed under §1026.7(b)(5) (such as "deferred interest balance"). During any billing cycle in which an interest charge on the deferred interest balance is debited to the account, the balance disclosed under §1026.7(b)(5) should include the deferred interest balance for that billing cycle.*

iii. ***Amount of interest charge.*** *Under §1026.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred interest purchases, the creditor may impose interest from the date of purchase if the deferred interest balance ($500 in this example) is not paid in full by July 31 in this example, but otherwise will not impose interest for billing cycles between the date of purchase and July 31. Periodic statements for billing cycles preceding July 31 in this example should not include in the interest charge disclosed under §1026.7(b)(6)(ii) the amounts a consumer may owe if the deferred interest balance is not paid in full by July 31. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. This amount must be separately disclosed on periodic statements and identified by a term other than "interest charge" (such as "contingent interest charge" or "deferred interest charge"). The interest charge on a deferred interest balance should be reflected on the periodic statement under §1026.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.*

iv. ***Due date to avoid obligation for finance charges under a deferred interest or similar program.*** *Section 1026.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction.*

Previous Balance - 12 CFR § 1026.7(b)(1)

Regulatory Discussion

The first item to be disclosed is the ***previous balance*** – the outstanding balance at the beginning of the billing cycle.

The commentary provides additional information on: credit balances; multi-featured plans; and accrued finance charges allocated from payments.

Regulatory Text

(1) **Previous balance.** The account balance outstanding at the beginning of the billing cycle.

Regulatory Commentary

7(b)(1) Previous Balance

1. ***Credit balances.*** *If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.*

2. ***Multifeatured plans.*** *In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.*

3. ***Accrued finance charges allocated from payments.*** *Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.*

Identification of Transactions - 12 CFR § 1026.7(b)(2)

Regulatory Discussion

The second item to be disclosed is the ***identification of <u>each</u> transaction***.

The commentary provides additional information on: multi-featured plans; and ATM charges imposed by other institutions.

Regulatory Text

(2) **Identification of transactions.** An identification of each credit transaction in accordance with §1026.8

Regulatory Commentary

7(b)(2) Identification of Transactions

1. ***Multifeatured plans****. Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to §1026.7(b)(6), however, creditors must group all fees and all interest separately from transactions and may not disclose any fees or interest charges with transactions.*

2. ***Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems****. A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.*

Credits - 12 CFR § 1026.7(b)(3)

Regulatory Discussion

The third item to be disclosed is ***any credit (amount and date) to the account during the billing cycle***. Note: special treatment for providing the date.

The commentary provides additional information on: sufficiency of identification; date; and totals.

Regulatory Text

(3) **Credits.** Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

Regulatory Commentary

7(b)(3) Credits

*1. **Identification - sufficiency.** The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, etc.)—"credit" would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to §1026.13(e) and (f).) Credits may be*

distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

2. ***Date.*** *If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.*

3. ***Totals.*** *A total of amounts credited during the billing cycle is not required.*

Periodic Rates - 12 CFR § 1026.7(b)(4)

Regulatory Discussion

The fourth item to be disclosed is ***each periodic rate*** that may be used to compute the:

- interest charge expressed as an annual percentage rate – using the term *Annual Percentage Rate*; and
- range of balances to which it is applicable

Note: special requirements if:

- no interest charge is imposed if the outstanding balance is less than a certain amount;
- different periodic rates apply to different types of transactions;
- the plan is a variable-rate plan

Note: exception for promotional APRs

The commentary provides additional information on: whether or not periodic rates are actually applied; disclosure required only if imposition of periodic rate is possible; multiple rates – same transaction; fees; ranges of balances; and deferred interest transactions.

Regulatory Text

(4) **Periodic rates.**

(i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term *Annual Percentage Rate,* along with the range of balances to which it is applicable. If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) **Exception.** A promotional rate, as that term is defined in §1026.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

Regulatory Commentary

7(b)(4) Periodic Rates

1. ***Disclosure of periodic interest rates - whether or not actually applied.*** *Except as provided in §1026.7(b)(4)(ii), any periodic interest rate that may be used to compute finance charges, expressed as and labeled "Annual Percentage Rate," must be disclosed whether or not it is applied during the billing cycle. For example:*

   i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the annual percentage rate for each, even if the consumer only makes purchases on the account during the billing cycle.

   ii. If the annual percentage rate varies (such as when it is tied to a particular index), the creditor must disclose each annual percentage rate in effect during the cycle for which the statement was issued.

2. ***Disclosure of periodic interest rates required only if imposition possible.*** *With regard to the periodic interest rate disclosure (and its corresponding annual percentage rate), only rates that could have been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:*

   i. If the creditor is changing annual percentage rates effective during the next billing cycle (either because it is changing terms or because of a variable-rate plan), the annual percentage rates required to be disclosed under §1026.7(b)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage rate applied during May was 18%, but the creditor will increase the rate to 21% effective June 1, 18% is the only required disclosure under §1026.7(b)(4) for the periodic statement reflecting the May account activity.

   ii. If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

   iii. If annual percentage rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. ***Multiple rates - same transaction.*** *If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the interest charge consists of a monthly periodic interest rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), creditors must disclose the periodic interest rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to*

the credit life insurance component must be disclosed as a fee under §1026.7(b)(6)(iii).

4. ***Fees.*** *Creditors that identify fees in accordance with §1026.7(b)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.*

5. ***Ranges of balances.*** *See comment 6(b)(4)(i)(B)-1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.*

6. ***Deferred interest transactions.*** *See comment 7(b)-1.i.*

Balance on Which Finance Charge Computed - 12 CFR § 1026.7(b)(5)

Regulatory Discussion

The fifth item to be disclosed is:

- the amount of the balance to which a periodic rate was applied; and
- an explanation of how that balance was determined – using the term *Balance Subject to Interest Rate*.

The commentary provides additional information on: split rates applied to balance ranges; monthly rate on average daily balance; multi-featured plans; daily rate on daily balances; information to compute balance; non-deduction of credits; use of one balance computation method explanation when multiple balances disclosed; and use of balance computation names in §1026.60(g) for balances other than purchases

Regulatory Text

(5) **Balance on which finance charge computed.** The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate*. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in §1026.60(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in §1026.60(g), the creditor shall provide a brief explanation of the method used.

Regulatory Commentary

7(b)(5) Balance on Which Finance Charge Computed

1. ***Split rates applied to balance ranges.*** *If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (See comment 7(b)(5)-4.)*

2. ***Monthly rate on average daily balance.*** *Creditors may apply a monthly periodic rate to an average daily balance.*

3. ***Multifeatured plans.*** *In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comments 7(b)(5)-4 and 7(b)(4)-5.)*

4. ***Daily rate on daily balance.*** *If a finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which the interest charge was computed may be disclosed in any of the following ways for each feature:*

    i. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

        A. A balance for each day in the billing cycle.

        B. A balance for each day in the billing cycle on which the balance in the account changes.

        C. The sum of the daily balances during the billing cycle.

        D. The average daily balance during the billing cycle, in which case the creditor may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

    ii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

        A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. The creditor may, at its option, explain that interest is or may be determined by (1) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (2) multiplying each of the results by the applicable daily periodic rate, and (3) adding these products together.

5. ***Information to compute balance.*** *In connection with disclosing the interest charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.*

6. ***Non-deduction of credits.*** *The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§1026.7(b)(3)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the interest charge.").*

7. ***Use of one balance computation method explanation when multiple balances disclosed.*** *Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)-1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method). In these cases, a creditor may use an appropriate name listed in §1026.60(g) (e.g., "average daily balance (including new purchases)") as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "average daily balance (including new purchases)" listed in §1026.60(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in §1026.60(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (e.g., "average daily balance (including new transactions)"), rather than simply referring to new purchases, when the same method is used to calculate the balances for all features of the account.*

8. ***Use of balance computation names in §1026.60(g) for balances other than purchases.*** *The names of the balance computation methods listed in §1026.60(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in §1026.60(g) to satisfy the requirements of §1026.7(b)(5) for features other than purchases, a creditor must revise the names listed in §1026.60(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in §1026.60(g)(i) to disclose it as "average daily balance (including new cash advances)" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in §1026.60(g)(ii) to disclose it as "average daily balance (excluding new cash advances)" when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. See comment 7(b)(5)-7 for guidance on the use of one balance computation method explanation or name when multiple balances are disclosed.*

Charges Imposed - 12 CFR § 1026.7(b)(6)

Regulatory Discussion

The sixth item to be disclosed is:

- the ***amount of any charges*** imposed as part of the plan.
- the ***amount of any finance charges*** attributable to periodic interest rates– using the term *Interest Charge*. Note additional requirements for disclosure and use of the terms *Interest Charged and Total Interest*.

The commentary provides additional information on: examples of charges; fees; total fees and interest charged for calendar year to date; minimum charge in lieu of interest; adjustments to year-to-date totals; acquired accounts; and account upgrades.

Regulatory Text

(6) **Charges imposed.**

(i) The amounts of any charges imposed as part of a plan as stated in §1026.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G-18(A) in appendix G to this part.

(ii) **Interest.** Finance charges attributable to periodic interest rates, using the term *Interest Charge,* must be grouped together under the heading *Interest Charged,* itemized and totaled by type of transaction, and a total of finance charges

attributable to periodic interest rates, using the term *Total Interest,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A) in appendix G to this part.

(iii) **Fees.** Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees,* identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees,* must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G-18(A) in appendix G to this part.

Regulatory Commentary

7(b)(6) Charges Imposed

1. ***Examples of charges.*** *See commentary to §1026.6(b)(3).*

2. ***Fees.*** *Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an "interest charge" and the credit insurance cost as a "fee."*

3. ***Total fees and interest charged for calendar year to date.***

i. Monthly statements. Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose calendar-year-to-date totals at the end of the calendar year by separately aggregating finance charges attributable to periodic interest rates and fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the separate year-to-date totals for interest charged and fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the separate year-to-date totals for interest charged and fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose calendar-year-to-date totals at the end of the calendar year by separately aggregating finance charges attributable to periodic interest rates and fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the separate year-to-date totals for interest charged and fees imposed from December 10, 2010, through December 9, 2011.

ii. ***Quarterly statements.*** *Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.*

4. ***Minimum charge in lieu of interest.*** *A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $1.50 would apply. In this case, the entire $1.50 would be disclosed as a fee; the periodic statement would reflect the $1.50 as a fee, and $0 in interest.*

5. ***Adjustments to year-to-date totals.*** *In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals, nor, if an adjustment is made, to provide an explanation about the reason for the adjustment. Such adjustments should not affect the total fees or interest charges imposed for the current statement period.*

6. ***Acquired accounts.*** *An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under §1026.7(b)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12.*

7. ***Account upgrades.*** *A creditor that upgrades, or otherwise changes, a consumer's plan to a different open-end credit plan must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the upgrade or change in the consumer's plan in the aggregate disclosures provided pursuant to §1026.7(b)(6) for the new plan. For example, assume a consumer has incurred $125 in fees for the calendar year to date for a retail credit card account, which is then replaced by a cobranded credit card account also issued by the creditor. In this case, the creditor must reflect the $125 in fees incurred prior to the replacement of the retail credit card account in the calendar year-to-date totals provided for the cobranded credit card account. Alternatively, the institution may provide two separate totals reflecting activity prior and subsequent to the plan upgrade or change.*

Change in Terms / Penalty Rates - 12 CFR § 1026.7(b)(7)

Regulatory Discussion

The seventh item to be disclosed, if applicable, is the ***change–in-terms and increase penalty rate summary***.

The commentary provides additional information on the location of the summary tables.

Regulatory Text

(7) **Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans.** Creditors that provide a change-in-terms notice required by §1026.9(c), or a rate increase notice required by §1026.9(g), on or with the periodic statement, must disclose the information in §1026.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or §1026.9(g)(3)(i) on the periodic statement in accordance with the format requirements in §1026.9(c)(2)(iv)(D), and §1026.9(g)(3)(ii). See Forms G-18(F) and G-18(G) in appendix G to this part.

Regulatory Commentary

7(b)(7) Change-in-Terms and Increased Penalty Rate Summary for Open-End (Not Home-Secured) Plan

1. ***Location of summary tables.*** *If a change-in-terms notice required by §1026.9(c)(2) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by §1026.9(g)(1) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of the statement.*

Grace Period - 12 CFR § 1026.7(b)(8)

Regulatory Discussion

The eighth item to be disclosed is the ***grace period*** – the date by which or the time period within which the new balance (or any portion thereof) must be paid to avoid additional finance charges.

Note: The creditor may, and without disclosure, provide a grace period and impose no finance charge if payment is received after the expiration of the grace period.

The commentary provides additional information on: use of terminology to describe the grace period; deferred interest transactions; and limitation on the imposition of finance charges.

Regulatory Text

(8) **Grace period.** The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

Regulatory Commentary

7(b)(8) Grace Period

1. ***Terminology.*** *In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. (See §1026.5(a)(2)(i).)*

2. ***Deferred interest transactions.*** *See comment 7(b)-1.iv.*

3. ***Limitation on the imposition of finance charges in §1026.54.*** *Section 1026.7(b)(8) does not require a card issuer to disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in §1026.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period.*

Address for Notice of Billing Errors - 12 CFR § 1026.7(b)(9)

Regulatory Discussion

The ninth item to be disclosed is the address to be used for notice of billing errors.

The commentary provides additional information on terminology and telephone number requirements.

Regulatory Text

(9) **Address for notice of billing errors.** The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by §1026.9(a)(2).

Regulatory Commentary

7(b)(9) Address for Notice of Billing Errors

1. ***Terminology.*** *The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.*

2. ***Telephone number.*** *A telephone number, email address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by email or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.*

Closing Date of Billing Cycle / New Balance - 12 CFR § 1026.7(b)(10)

Regulatory Discussion

The tenth item to be disclosed is the closing date of the billing cycle and the account balance outstanding on that date.

The commentary provides additional information on: credit balances; multi-featured plans; and accrued finance charges allocated from payments.

Regulatory Text

(10) **Closing date of billing cycle; new balance.** The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance with the format requirements of paragraph (b)(13) of this section.

Regulatory Commentary

7(b)(10) Closing Date of Billing Cycle; New Balance

1. ***Credit balances.*** *See comment 7(b)(1)-1.*

2. ***Multifeatured plans.*** *In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.*

3. ***Accrued finance charges allocated from payments.*** *Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.*

Due Date / Late Payment Costs - 12 CFR § 1026.7(b)(11)

Regulatory Discussion

The eleventh item to be disclosed is the due date for a payment and the amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of the late payment.

Note: exceptions for periodic statements provided: solely for charge card accounts; and for a charged-off account where payment of the entire account balance is due immediately.

The commentary provides additional information on: informal periods affecting late payments; assessment of late payment fees; fee or rate triggered by multiple events; range of late fees or penalty rates; penalty rate in effect; same day each month; change in due date; billing cycles longer than one month; and payment due date when the creditor does not accept or receive payments by mail.

Regulatory Text

(11) **Due date; late payment costs.**

(i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide on each periodic statement:

(A) The due date for a payment. The due date disclosed pursuant to this paragraph shall be the same day of the month for each billing cycle.

(B) The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and an indication that the fee imposed could be lower. If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.

(ii) **Exception.** The requirements of paragraph (b)(11)(i) of this section do not apply to the following:

(A) Periodic statements provided solely for charge card accounts; and

(B) Periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

Regulatory Commentary

7(b)(11) Due Date; Late Payment Costs

1. ***Informal periods affecting late payments.*** *Although the terms of the account agreement may provide that a card issuer may assess a late payment fee if a payment is not received by a certain date, the card issuer may have an informal policy or practice that delays the assessment of the late payment fee for payments received a brief period of time after the date upon which a card issuer has the contractual right to impose the fee. A card issuer must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal "courtesy period" as the due date under §1026.7(b)(11).*

2. ***Assessment of late payment fees.*** *Some state or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. In*

addition, a card issuer may be restricted by the terms of the account agreement from imposing a late payment fee until a payment is late for a certain number of days following a due date. For example, assume a payment is due on March 10 and the account agreement or state law provides that a late payment fee cannot be assessed before March 21. A card issuer must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when the card issuer is restricted by the account agreement or state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date (March 21 in this example). Consumers' rights under state law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the card issuer would disclose March 10 as the due date for purposes of §1026.7(b)(11), but could not, under state law, assess a late payment fee before March 21.

3. ***Fee or rate triggered by multiple events.*** *If a late payment fee or penalty rate is triggered after multiple events, such as two late payments in six months, the card issuer may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or penalty rate, such as after the consumer made one late payment in this example. For example, if a cardholder has already made one late payment, the disclosure must be on each statement for the following five billing cycles.*

4. ***Range of late fees or penalty rates.*** *A card issuer that imposes a range of late payment fees or rates on a credit card account under an open-end (not home-secured) consumer credit plan may state the highest fee or rate along with an indication lower fees or rates could be imposed. For example, a phrase indicating the late payment fee could be "up to $29" complies with this requirement.*

5. ***Penalty rate in effect.*** *If the highest penalty rate has previously been triggered on an account, the card issuer may, but is not required to, delete the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the card issuer may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments (if applicable).*

6. ***Same day each month.*** *The requirement that the due date be the same day each month means that the due date must generally be the same numerical date. For example, a consumer's due date could be the 25th of every month. In contrast, a due date that is the same relative date but not numerical date each month, such as the third Tuesday of the month, generally would not comply with this requirement. However, a consumer's due date may be the last day of each month, even though that date will not be the same numerical date. For example, if a consumer's due date is the last day of each month, it will fall on February 28th (or February 29th in a leap year) and on August 31st.*

7. ***Change in due date.*** *A creditor may adjust a consumer's due date from time to time provided that the new due date will be the same numerical date each month on an ongoing basis. For example, a creditor may choose to honor a consumer's request to change from a due date that is the 20th of each month to the 5th of each month, or may choose to change a consumer's due date from time to time for operational reasons. See comment 2(a)(4)-3 for guidance on transitional billing cycles.*

8. ***Billing cycles longer than one month.*** *The requirement that the due date be the same day each month does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of the month. For example, a creditor that establishes two-month billing cycles could send a consumer periodic statements disclosing due dates of January 25, March 25, and May 25.*

9. ***Payment due date when the creditor does not accept or receive payments by mail.*** *If the due date in a given month falls on a day on which the creditor does not receive or accept payments by mail and the creditor is required to treat a payment received the next business day as timely pursuant to §1026.10(d), the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, assume that the consumer's due date is the 4th of every month and the creditor does not accept or receive payments by mail on Thursday, July 4. Pursuant to §1026.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.*

Due Date / Late Payment Costs - 12 CFR § 1026.7(b)(12)

Regulatory Discussion

The twelfth item to be disclosed is ***the repayment disclosures***; which are categorized as follows:

- General, including items (A) through (F), below;
- Negative or no amortization, including items (A) through (E), below;
- Format requirements;
- Provision of information about credit counseling services, including items (A) through (B), below; and
- Exemptions, including items (A) through (C), below

The commentary provides additional information on:

- Payment repayment estimate disclosed on the periodic statement is three years or less
- No commentary
- No commentary
- Approved organizations; Information regarding approved organizations; Automated response systems or devices; Toll-free telephone number; Third parties; Web site address; and Advertising or marketing information
- Billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle

Regulatory Text

(12) **Repayment disclosures**

(i) **In general.** Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(A) The following statement with a bold heading: "Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;"

(B) The minimum payment repayment estimate, as described in appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in appendix M1 to this part. The minimum payment total cost estimate must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section; and

(F)

(1) Except as provided in paragraph (b)(12)(i)(F)(2) of this section, the following disclosures:

(i) The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option;

(ii) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(iii) The total cost estimate for repayment in 36 months, as described in appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option; and

(iv) The savings estimate for repayment in 36 months, as described in appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option.

(2) The requirements of paragraph (b)(12)(i)(F)(1) of this section do not apply to a periodic statement in any of the following circumstances:

(i) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

(ii) The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part, after rounding as set forth in paragraph (b)(12)(i)(F)(1)(i) of this section that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

(iii) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

(ii) **Negative or no amortization.** If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in appendix M1 of this part, a card issuer must provide the following disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: "Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month";

(B) The following statement: "If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner";

(C) The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the issuer's option;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

(iii) **Format requirements.** A card issuer must provide the disclosures required by paragraph (b)(12)(i) or (b)(12)(ii) of this section in accordance with the format requirements of paragraph (b)(13) of this section, and in a format substantially similar to Samples G-18(C)(1), G-18(C)(2) and G-18(C)(3) in appendix G to this part, as applicable.

(iv) **Provision of information about credit counseling services**

(A) **Required information.** To the extent available from the United States Trustee or a bankruptcy administrator, a card issuer must provide through the toll-free telephone number disclosed pursuant to paragraphs (b)(12)(i) or (b)(12)(ii) of this section the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer.

(B) **Updating required information.** At least annually, a card issuer must update the information provided pursuant to paragraph (b)(12)(iv)(A) of this section for consistency with the information available from the United States Trustee or a bankruptcy administrator.

(v) ***Exemptions.*** Paragraph (b)(12) of this section does not apply to:

(A) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(B) A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

(C) A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

Regulatory Commentary

7(b)(12) Repayment Disclosures

1. ***Rounding.*** *In disclosing on the periodic statement the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months under §1026.7(b)(12)(i) or (b)(12)(ii) as applicable, a card issuer, at its option, must either round these disclosures to the nearest whole dollar or to the nearest cent. Nonetheless, an issuer's rounding for all of these disclosures must be consistent. An issuer may round all of these disclosures to the nearest whole dollar when disclosing them on the periodic statement, or may round all of these disclosures to the nearest cent. An issuer may not, however, round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent.*

Paragraph 7(b)(12)(i)(F)

1. ***Payment repayment estimate disclosed on the periodic statement is three years or less.*** *Section 1026.7(b)(12)(i)(F)(2)(i) provides that a credit card issuer is not required to provide the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under §1026.7(b)(12)(i)(B) after rounding is 3 years or less. For example, if the minimum payment repayment estimate is 2 years 6 months to 3 years 5 months, issuers would be required under §1026.7(b)(12)(i)(B) to disclose that it would take 3 years to pay off the balance in full if making only the minimum payment. In these cases, an issuer would not be required to disclose the 36-month disclosures on the periodic statement because the minimum payment repayment estimate disclosed to the consumer on the periodic statement (after rounding) is 3 years or less.*

7(b)(12)(iv) Provision of Information About Credit Counseling Services

1. ***Approved organizations.*** *Section 1026.7(b)(12)(iv)(A) requires card issuers to provide information regarding at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer. A card issuer does not satisfy the requirements in §1026.7(b)(12)(iv)(A) by providing information regarding providers that have been approved pursuant to 11 U.S.C. 111(a)(2) to offer personal financial management courses.*

2. ***Information regarding approved organizations.***

   i. ***Provision of information obtained from United States Trustee or bankruptcy administrator.*** *A card issuer complies with the requirements of §1026.7(b)(12)(iv)(A) if, through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii), it provides the consumer with information obtained from the United States Trustee or a bankruptcy administrator, such as information obtained from the Web site operated by the United States Trustee. Section 1026.7(b)(12)(iv)(A) does not require a card issuer to provide information that is not available from the United States Trustee or a bankruptcy administrator. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, §1026.7(b)(12)(iv)(B) requires the card issuer to, at least annually, update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator.*

   ii. ***Provision of information consistent with request of approved organization.*** *If requested by an approved organization, a card issuer may at its option provide, in addition to the name of the organization obtained from the United States Trustee or a bankruptcy administrator, another name used by that organization through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii). In addition, if requested by an approved organization, a card issuer may at its option provide through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii) a street address, telephone number, or Web site address for the organization that is*

different than the street address, telephone number, or Web site address obtained from the United States Trustee or a bankruptcy administrator. However, if requested by an approved organization, a card issuer must not provide information regarding that organization through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii).

iii. ***Information regarding approved organizations that provide credit counseling services in a language other than English.*** *A card issuer may at its option provide through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii) information regarding approved organizations that provide credit counseling services in languages other than English. In the alternative, a card issuer may at its option state that such information is available from the Web site operated by the United States Trustee. Disclosing this Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)-2.iv.*

iv. ***Statements regarding approval by the United States Trustee or a bankruptcy administrator.*** *Section 1026.7(b)(12)(iv) does not require a card issuer to disclose through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii) that organizations have been approved by the United States Trustee or a bankruptcy administrator. However, if a card issuer chooses to make such a disclosure, §1026.7(b)(12)(iv) requires that the card issuer also disclose that:*

A. The United States Trustee or a bankruptcy administrator has determined that the organizations meet the minimum requirements for nonprofit pre-bankruptcy budget and credit counseling;

B. The organizations may provide other credit counseling services that have not been reviewed by the United States Trustee or a bankruptcy administrator; and

C. The United States Trustee or the bankruptcy administrator does not endorse or recommend any particular organization.

3. ***Automated response systems or devices.*** *At their option, card issuers may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the information required by §1026.7(b)(12)(iv) by inputting information using a touch-tone telephone or similar device.*

4. ***Toll-free telephone number.*** *A card issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by §1026.7(b)(12)(iv) is prominently disclosed to the consumer. For automated systems, the option to receive the information required by §1026.7(b)(12)(iv) is prominently disclosed to the consumer if it is listed as one of the options in the first menu of options given to the consumer, such as "Press or say '3' if you would like information about credit counseling services." If the automated system permits callers to select the language in which the call is conducted and in which information is provided, the menu to select the language may precede the menu with the option to receive information about accessing credit counseling services.*

5. ***Third parties.*** *At their option, card issuers may use a third party to establish and*

maintain a toll-free telephone number for use by the issuer to provide the information required by §1026.7(b)(12)(iv).

6. ***Web site address.*** *When making the repayment disclosures on the periodic statement pursuant to §1026.7(b)(12), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by §1026.7(b)(12)(iv), so long as the information provided on the Web site complies with §1026.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations. Disclosing this Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)-2.iv.*

7. ***Advertising or marketing information.*** *If a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by §1026.7(b)(12)(iv). Educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. Examples:*

   i. ***Toll-free telephone number.*** *As described in comment 7(b)(12)(iv)-4, an issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by §1026.7(b)(12)(iv) through that toll-free telephone number is prominently disclosed to the consumer. Once the consumer selects the option to receive the information required by §1026.7(b)(12)(iv), the issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the required information.*

   ii. ***Web page.*** *If the issuer discloses a link to a Web site address as part of the disclosures pursuant to comment 7(b)(12)(iv)-6, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the address prior to providing the information required by §1026.7(b)(12)(iv).*

7(b)(12)(v) Exemptions

1. ***Billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle.*** *Under §1026.7(b)(12)(v)(C), a card issuer is exempt from the repayment disclosure requirements set forth in §1026.7(b)(12) for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. For example, if the entire outstanding balance on an account for a particular billing cycle is $20 and the minimum payment is $20, an issuer would not need to comply with the repayment disclosure requirements for that particular billing cycle. In addition, this exemption would apply to a charged-off account where payment of the entire account balance is due immediately.*

Format Requirements - 12 CFR § 1026.7(b)(13)

Regulatory Discussion

The thirteenth item to be discussed is ***the format requirements*** for the following disclosures:

- The due date – shall be disclosed on the front of the first page of the periodic statement;
- The amount of the late payment fee and the APR(s) – shall be stated in close proximity to the due date; and
- The ending balance – shall be disclosed closely proximate to the minimum payment due.

The commentary provides additional information on combined deposit account and credit account statements.

Regulatory Text

(13) **Format requirements.** The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The amount of the late payment fee and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the disclosures required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, late payment fee and annual percentage rate, ending balance, minimum payment due, and disclosures required by paragraph (b)(12) of this section shall be grouped together. Sample G-18(D) in appendix G to this part sets forth an example of how these terms may be grouped.

Regulatory Commentary

7(b)(13) Format Requirements

1. ***Combined deposit account and credit account statements.*** *Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to §1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear.*

Deferred Interest or Similar Transactions - 12 CFR § 1026.7(b)(14)

Regulatory Discussion

The fourteenth, and final, item to be disclosed is the deferred interest period (or similar transactions).

Regulatory Text

(14) **Deferred interest or similar transactions.** For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G-18(H) in appendix G to this part.

Regulatory Commentary

None.

Open End - Identifying Transactions on Periodic Statements

Section 1: Sale Credit
12 C.F.R. § 1026.8(a)

Sale Credit - 12 C.F.R § 1026.8(a)

Regulatory Discussion

This section describes the requirements for identifying transactions on periodic statements for open-credit credit; beginning with ***sale credit.*** The commentary contains a definition of "sale credit" and greater detail on seven items to be included.

Regulatory Text

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable:

(a) **Sale credit.**

(1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification of the property or services purchased, for creditors and sellers that are the same or related; or

(ii) The seller's name; and the city and state or foreign country where the transaction took place. The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order.

(2) Creditors need not comply with paragraph (a)(1) of this section if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement.

Regulatory Commentary

8(a) Sale Credit

1. ***Sale credit.*** *The term "sale credit" refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8(b)-1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. "Sale credit" includes:*

i. The purchase of funds-transfer services (such as a wire transfer) from an intermediary.

ii. The purchase of services from the card issuer or creditor. For the purchase of services that are costs imposed as part of the plan under §1026.6(b)(3), card issuers and creditors comply with the requirements for identifying transactions under this section by disclosing the fees in accordance with the requirements of §1026.7(b)(6). For the purchases of services that are not costs imposed as part of the plan, card issuers and creditors may, at their option, identify transactions under this section or in accordance with the requirements of §1026.7(b)(6).

2. ***Amount - transactions not billed in full.*** *If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by §1026.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.*

3. ***Date - when a transaction takes place.***

i. If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance.

ii. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums.

iii. For mail, Internet, or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone or via the Internet.

iv. In a foreign transaction, the debiting date may be considered the transaction date.

4. ***Date - sufficiency of description****.*

i. If the creditor discloses only the date of the transaction, the creditor need not identify it as the "transaction date." If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

ii. The month and day sufficiently identify the transaction date, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

5. ***Same or related persons.***

i. For purposes of identifying transactions, the term same or related persons refers to, for example:

A. Franchised or licensed sellers of a creditor's product or service.

B. Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

ii. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. ***Brief identification - sufficiency of description.*** *The "brief identification" provision in §1026.8(a)(1)(i) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:*

i. While item-by-item descriptions are not necessary, reasonable precision is required. For example, "merchandise," "miscellaneous," "second-hand goods," or "promotional items" would not suffice.

ii. A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, "jewelry," or "sporting goods."

iii. A number or symbol that is related to an identification list printed elsewhere on the statement that reasonably identifies the transaction with the creditor is sufficient.

7. ***Seller's name - sufficiency of description.*** *The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:*

i. A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.

ii. An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as "Inc.," "Co.," or "Ltd.," may always be omitted.

8. ***Location of transaction.***

i. If the seller has multiple stores or branches within a city, the creditor need not identify the specific branch at which the sale occurred.

ii. When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor may omit the address, or may provide some other identifying designation, such as "aboard plane," "ABC Airways Flight," "customer's home," "telephone order," "internet order" or "mail order."

Section 2: Non Sale Credit
12 C.F.R. § 1026.8(b)

Non Sale Credit - 12 C.F.R § 1026.8(b)

Regulatory Discussion

This section continues the description of the requirements for identifying transactions on periodic statements for open-credit credit; the second is ***nonsale credit***. The commentary contains a definition of "nonsale credit" and greater detail on three items to be included.

Regulatory Text

(b) **Nonsale credit.** For each credit transaction not involving the sale of property or services, the creditor must disclose a brief identification of the transaction; the amount of the transaction; and at least one of the following dates: The date of the transaction, the date the transaction was debited to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

Regulatory Commentary

8(b) Nonsale credit.

1. **Nonsale credit.** *The term "nonsale credit" refers to any form of loan credit including, for example:*

i. A cash advance.

ii. An advance on a credit plan that is accessed by overdrafts on a checking account.

iii. The use of a "supplemental credit device" in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

2. ***Amount - overdraft credit plans.*** *If credit is extended under an overdraft credit plan tied to a checking account or by means of a debit card tied to an overdraft credit plan:*

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily

basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

3. ***Date of transaction.*** *See comment 8(a)-4.*

4. ***Nonsale transaction - sufficiency of identification.*** *The creditor sufficiently identifies a nonsale transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.*

Section 3: Alternative Procedures / Consumer Inquiry
12 C.F.R. § 1026.8(c)

Alternative Procedures / Consumer Inquiry - 12 C.F.R § 1026.8(c)

Regulatory Discussion

This section concludes the description of the requirements for identifying transactions on periodic statements for open-credit credit; the third is *alternative creditor procedures; consumer inquiries for clarification or documentation*. There is no commentary.

Regulatory Text

(c) **Alternative creditor procedures; consumer inquiries for clarification or documentation.**

The following procedures apply to creditors that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with §1026.13(e):

(1) Failure to disclose the information required by paragraphs (a) and (b) of this section is not a failure to comply with the regulation, provided that the creditor also maintains procedures reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in §1026.2(a)(26), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.

Regulatory Commentary

None.

Open End Credit - Subsequent Disclosure Requirements

Section 1: Furnishing Statement of Billing Rights
12 C.F.R. § 1026.9(a)

Furnishing Statement of Billing Rights - 12 C.F.R § 1026.9(a)

Regulatory Discussion

This section describes the requirements for subsequent disclosures for open-end credit; beginning with *furnishing the statement of billing rights*. There are two options:

vi. Annual statement (the long form)
vii. Alternative summary statement (the short form)

Regulatory Text

(a) **Furnishing statement of billing rights**

(1) **Annual statement.** The creditor shall mail or deliver the billing rights statement required by §1026.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under §1026.5(b)(2) for any one billing cycle.

(2) **Alternative summary statement.** As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G-4 or Model Form G-4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of §1026.40 may use either Model Form, at their option.

Regulatory Commentary

9(a) Furnishing Statement of Billing Rights

9(a)(1) Annual Statement

1. ***General****. The creditor may provide the annual billing rights statement:*

i. By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

ii. By sending a copy to all of its accountholders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. ***Substantially similar.*** *See the commentary to Model Forms G-3 and G-3(A) in appendix G to part 1026.*

9(a)(2) Alternative Summary Statement

1. ***Changing from long-form to short form statement and vice versa.*** *If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.*

2. ***Substantially similar.*** *See the commentary to Model Forms G-4 and G-4(A) in appendix G to part 1026.*

Section 2: Disclosures for Access Devices / Additional Features
12 C.F.R. § 1026.9(b)

Disclosures for Supplemental Credit Access Devices and Additional Features - 12 CFR § 1026.9(b)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the second is *disclosures for supplemental credit access devices and additional features*. There are three components:

i. Within 30 days after mailing or delivering the account-opening disclosures.
ii. After 30 days after mailing or delivering the account-opening disclosures, with exceptions.
iii. The exceptions; checks that access a credit card account.

The commentary contains considerable explanation of these components.

Regulatory Text

(b) **Disclosures for supplemental credit access devices and additional features.**

(1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under §1026.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by §1026.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) **Checks that access a credit card account.**

(i) **Disclosures.** For open-end plans not subject to the requirements of §1026.40, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under §1026.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G-19 in appendix G to this part:

(A) If a promotional rate, as that term is defined in §1026.16(g)(2)(i) applies to the checks:

(1) The promotional rate and the time period during which the promotional rate will remain in effect;

(2) The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section; and

(3) The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date.

(B) If no promotional rate applies to the checks:

(1) The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(2) [Reserved]

(C) Any transaction fees applicable to the checks disclosed under §1026.6(b)(2)(iv); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase "How to Avoid Paying Interest on Check Transactions" shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase "Paying Interest" shall be used as the row heading.

(ii) **Accuracy.** The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are mailed or delivered. A variable annual percentage rate is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.

(iii) **Variable rates.** If any annual percentage rate required to be disclosed pursuant to paragraph (b)(3)(i) 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.

Regulatory Commentary

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

1. ***Credit access device - examples.*** *Credit access device includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.*

2. ***Credit account feature - examples.*** *A new credit account feature would include, for example:*

   i. The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves "devices").

   ii. The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

Paragraph 9(b)(2)

1. ***Different finance charge terms.*** *Except as provided in §1026.9(b)(3) for checks that access a credit card account, if the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new account-opening disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.*

9(b)(3)(i) Disclosures

1. ***Front of the page containing the checks.*** *The following would comply with the requirement that the tabular disclosures provided pursuant to §1026.9(b)(3) appear on the front of the page containing the checks:*

   i. Providing the tabular disclosure on the front of the first page on which checks appear, for an offer where checks are provided on multiple pages;

   ii. Providing the tabular disclosure on the front of a mini-book or accordion booklet

containing the checks; or

iii. Providing the tabular disclosure on the front of the solicitation letter, when the checks are printed on the front of the same page as the solicitation letter even if the checks can be separated by the consumer from the solicitation letter using perforations.

2. ***Combined disclosures for checks and other transactions subject to the same terms.*** *A card issuer may include in the tabular disclosure provided pursuant to §1026.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to §1026.9(b)(3)(i) for the checks that access a credit card account. However, a card issuer may not include in the table information regarding additional terms that are not required disclosures for checks that access a credit card account pursuant to §1026.9(b)(3).*

Paragraph 9(b)(3)(i)(D)

1. ***Grace period.*** *A creditor may not disclose under §1026.9(b)(3)(i)(D) the limitations on the imposition of finance charges as a result of a loss of a grace period in §1026.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on credit extended by the use of an access check under which interest will not be charged on the check transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, §1026.9(b)(3)(i)(D) requires that the creditor disclose the grace period using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on check transactions if you pay your entire balance by the due date each month." However, other creditors may offer a grace period on check transactions under which interest may be charged on check transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, §1026.9(b)(3)(i)(D) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: "We will begin charging interest on these checks on the transaction date."*

Section 3: Change in Terms
12 C.F.R. § 1026.9(c)

Rules Affecting Home Equity Plans - 12 C.F.R § 1026.9(c)(1)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the third is ***change in terms.*** There are two categories:

i. Rules affecting home equity plans (Omitted)
ii. Rules affecting open-end (not home-secured) plans

Rules Affecting Open End (Not Home Secured) Plans - 12 C.F.R § 1026.9(c)(2)

Regulatory Discussion

This section continues to describe the third requirement for subsequent disclosures for open-end credit; ***change in terms.*** There are two categories:

i. Rules affecting home equity plans
ii. Rules affecting open-end (not home-secured) plans

We continue with the rules affecting open-end (not home-secured) plans; for which there are six components:

i. Changes where written advance notice is required*****
ii. Significant changes in account terms
iii. Charges not covered; with commentary regarding*****
iv. Disclosure requirements*****:
    A. Significant changes in account terms
    B. Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan
    C. Charges resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan
    D. Format requirements:
    1) Tabular format
    2) Notice included with periodic statement
    3) Notice provided separately from periodic statement

v. Notice not required*****
vi. Reduction of the credit limit; there is no commentary

***Note**: there is significant commentary on components i (six comments), iii (one comment), iv (eleven comments), and v (thirteen comments) which is important to meeting the requirements.

Regulatory Text

(c) **Change in terms**

(2) **Rules affecting open-end (not home-secured) plans**

(i) **Changes where written advance notice is required**

(A) **General.** For plans other than home-equity plans subject to the requirements of §1026.40, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change as described in paragraph (c)(2)(i)(B) of this section; for such changes, notice must be given in accordance with the timing requirements of paragraph (c)(2)(i)(B) of this section. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(B) **Changes agreed to by the consumer.** A notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This paragraph (c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. The following are not considered agreements between the consumer and the creditor for purposes of this paragraph (c)(2)(i)(B): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and the consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features.

(ii) **Significant changes in account terms.** For purposes of this section, a "significant change in account terms" means a change to a term required to be disclosed under §1026.6(b)(1) and (b)(2), an increase in the required minimum

periodic payment, a change to a term required to be disclosed under §1026.6(b)(4), or the acquisition of a security interest.

(iii) **Charges not covered by §1026.6(b)(1) and (b)(2).** Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under §1026.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor must either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) **Disclosure requirements**

(A) **Significant changes in account terms.** If a creditor makes a significant change in account terms as described in paragraph (c)(2)(ii) of this section, the notice provided pursuant to paragraph (c)(2)(i) of this section must provide the following information:

(1) A summary of the changes made to terms required by §1026.6(b)(1) and (b)(2) or §1026.6(b)(4), a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

(2) A statement that changes are being made to the account;

(3) For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to §1026.9(c)(2)(iv)(B), a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(4) The date the changes will become effective;

(5) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

(6) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate;

(7) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms; and

(8) If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) **Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan**. In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under §1026.52(b)(1)(i) or an adjustment to the safe harbors in §1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

(1) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(2) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(3) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(C) **Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.** For a credit card account under an open-end (not home-secured) consumer credit plan:

(1) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in 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) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (c)(2)(i) of this section must state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor 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.

(2) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (c)(2)(i) of this section must also state the reason for the increase.

(D) **Format requirements**

(1) **Tabular format.** The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under §1026.6(b)(4) that is not required to be disclosed under §1026.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor), with headings and format substantially similar to any of the account-opening tables found in G-17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by §1026.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under §1026.6(b)(2).

(2) **Notice included with periodic statement.** If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs (c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C) of this section, and be substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(3) **Notice provided separately from periodic statement.** If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(1) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(1) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iv)(A)(1) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(2) through (c)(2)(iv)(A)(7) and, if applicable, paragraphs (c)(2)(iv)(A)(8), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this

section, substantially similar to the format shown in Sample G-20 or G-21 in appendix G to this part.

(v) **Notice not required.** For open-end plans (other than home equity plans subject to the requirements of §1026.40) a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

(B) When the change is an increase in an annual percentage rate or fee upon the expiration of a specified period of time, provided that:

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

(2) The disclosure of the length of the period and the annual percentage rate or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

(3) The annual percentage rate or fee that applies after that period does not exceed the rate or fee disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(1) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(1);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card or other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

(D) When the change is an increase in an annual percentage rate, a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(ix) or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that:

(1) The annual percentage rate or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such

increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(2) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

(vi) **Reduction of the credit limit.** For open-end plans that are not subject to the requirements of §1026.40, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

Regulatory Commentary

9(c) Change in Terms

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

1. ***Changes initially disclosed.*** *Except as provided in §1026.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially consistent with any applicable requirements, such as rate or fee increases upon expiration of a specific period of time that were disclosed in accordance with §1026.9(c)(2)(v)(B) or rate increases under a properly disclosed variable-rate plan in accordance with §1026.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase a rate or fee at its discretion.*

2. ***State law issues.*** *Some issues are not addressed by §1026.9(c)(2) because they are controlled by state or other applicable laws. These issues include the types of changes a creditor may make, to the extent otherwise permitted by this part.*

3. ***Change in billing cycle.*** *Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in §1026.9(c)(2)(i), unless an exception under §1026.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change. See also §1026.7(b)(11)(i)(A) regarding the general requirement that the payment due date for*

a credit card account under an open-end (not home-secured) consumer credit plan must be the same day each month.

4. ***Relationship to §1026.9(b).*** *If a creditor adds a feature to the account on the type of terms otherwise required to be disclosed under §1026.6, the creditor must satisfy: The requirement to provide the finance charge disclosures for the added feature under §1026.9(b); and any applicable requirement to provide a change-in-terms notice under §1026.9(c), including any advance notice that must be provided. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under §1026.9(b) as well as comply with the change-in-terms notice requirements under §1026.9(c), including providing notice of the change at least 45 days prior to the effective date of the change. Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice at least 45 days in advance of the effective date of the change. A creditor may provide a single notice under §1026.9(c) to satisfy the notice requirements of both paragraphs (b) and (c) of §1026.9. For checks that access a credit card account subject to the disclosure requirements in §1026.9(b)(3), a creditor is not subject to the notice requirements under §1026.9(c) even if the applicable rate or fee is higher than those previously disclosed for such checks. Thus, for example, the creditor need not wait 45 days before applying the new rate or fee for transactions made using such checks, but the creditor must make the required disclosures on or with the checks in accordance with §1026.9(b)(3).*

9(c)(2)(i) Changes Where Written Advance Notice is Required

1. ***Affected consumers.*** *Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to §1026.5(d) to determine the number of notices that must be given.*

2. ***Timing - effective date of change.*** *The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.*

3. ***Changes agreed to by the consumer.*** *See also comment 5(b)(1)(i)-6.*

4. ***Form of change-in-terms notice.*** *Except if §1026.9(c)(2)(iv) applies, a complete new set of the initial disclosures containing the changed term complies with §1026.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.*

5. ***Security interest change - form of notice.*** *A creditor must provide a description of any security interest it is acquiring under §1026.9(c)(2)(iv). A copy of the security agreement that describes the collateral securing the consumer's account may also be used as the*

notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. ***Examples.*** *See comment 55(a)-1 and 55(b)-3 for examples of how a card issuer that is subject to §1026.55 may comply with the timing requirements for notices required by §1026.9(c)(2)(i).*

9(c)(2)(iii) Charges not Covered by §1026.6(b)(1) and (b)(2)

1. ***Applicability.*** *Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under §1026.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under §1026.6(b)(1) and (b)(2), the creditor must either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of §1026.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (See the commentary under §1026.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under §1026.6(b)(3) but is not required to be disclosed in the account-opening summary table under §1026.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (See comment 5(b)(1)(ii)-1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)*

9(c)(2)(iv) Disclosure Requirements

1. ***Changing margin for calculating a variable rate.*** *If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in §1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.*

2. ***Changing index for calculating a variable rate.*** *If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in §1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.*

3. ***Changing from a variable rate to a non-variable rate.*** *If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under §1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under §1026.9(c) if the creditor provides the disclosures required by §1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under §1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under §1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with §1026.55(b)(4).*

4. ***Changing from a non-variable rate to a variable rate.*** *If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under §1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under §1026.9(c) if the creditor provides the disclosures required by §1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under §1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under §1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with §1026.55(b)(4). See comment 55(b)(2)-4 regarding the limitations in §1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.*

5. ***Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.*** *If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.*

6. ***Changes in fees.*** *If a creditor is changing part of how a fee that is disclosed in a tabular format under §1026.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of "Either $5 or 3% of the transaction amount, whichever is greater(Max: $100)," and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: "Either $10 or 3% of the transaction amount, whichever is greater (Max: $100)."*

7. ***Combining a notice described in §1026.9(c)(2)(iv) with a notice described in §1026.9(g)(3).*** *If a creditor is required to provide a notice described in §1026.9(c)(2)(iv) and a notice described in §1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.*

8. ***Content.*** *Sample G-20 contains an example of how to comply with the requirements in §1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G-21 contains an example of how to comply with the requirements in §1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with §1026.9(h).*

9. ***Clear and conspicuous standard.*** *See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under §1026.9(c)(2)(iv)(A)(1).*

10. ***Terminology.*** *See §1026.5(a)(2) for terminology requirements applicable to disclosures required under §1026.9(c)(2)(iv)(A)(1).*

11. ***Reasons for increase.***

    i. *In general. Section 1026.9(c)(2)(iv)(A)(8) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under §1026.9(c)(2)(iv)(A)(8) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to "a decline in your creditworthiness" or "a decline in your credit score." Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as "a change in market conditions." In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, §1026.9(c)(2)(iv)(A)(8) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.*

    ii. *Example. Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.*

9(c)(2)(v) Notice not Required

1. ***Changes not requiring notice.*** *The following are examples of changes that do not require a change-in-terms notice:*

i. A change in the consumer's credit limit except as otherwise required by §1026.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. ***Skip features.***

i. Skipped or reduced payments. If a credit program allows consumers to skip or reduce one or more payments during the year, no notice of the change in terms is required either prior to the reduction in payments or upon resumption of the higher payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original payment schedule, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the skip feature may also be used to notify the consumer of the resumption of the original payment schedule, either by stating explicitly when the higher resumes or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. Temporary reductions in interest rates or fees. If a credit program involves temporary reductions in an interest rate or fee, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate or fee if these features are disclosed in advance in accordance with the requirements of §1026.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate or fee, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate or fee must comply with the timing requirements of §1026.9(c)(2)(i) and the content and format requirements of §1026.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). See comment 55(b)-3 for guidance regarding the application of §1026.55 in these circumstances.

3. ***Changing from a variable rate to a non-variable rate.*** *See comment 9(c)(2)(iv)-3.*

4. ***Changing from a non-variable rate to a variable rate.*** *See comment 9(c)(2)(iv)-4.*

5. ***Temporary rate or fee reductions offered by telephone.*** *The timing requirements of §1026.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by §1026.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) or the imposition of a fee that will be in effect for a specified period of time (a temporary fee) if:*

i. The consumer accepts the offer of the temporary rate or temporary fee by telephone;

ii. The creditor permits the consumer to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by §1026.9(c)(2)(v)(B), except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee; and

iii. The disclosures required by §1026.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's account reinstated, if applicable, are disclosed to the consumer as part of the temporary rate or temporary fee offer.

6. ***First listing.*** *The disclosures required by §1026.9(c)(2)(v)(B)(1) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate or fee in the disclosure provided to the consumer. For purposes of §1026.9(c)(2)(v)(B), the first statement of the temporary rate or fee is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate or fee does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate or fee is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see §1026.16(g).*

7. ***Close proximity - point of sale.*** *Creditors providing the disclosures required by §1026.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate or fee that would apply after expiration of the period on a separate page or document from the temporary rate or fee and the length of the period, provided that the disclosure of the annual percentage rate or fee that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate or fee and length of the period.*

8. ***Disclosure of annual percentage rates.*** *If a rate disclosed pursuant to §1026.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state "After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate."*

9. ***Deferred interest or similar programs.*** *If the applicable conditions are met, the exception in §1026.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and §1026.9(c)(2)(v)(B), "deferred interest" has the same meaning as in §1026.16(h)(2) and associated commentary. For such programs, a creditor must disclose pursuant to §1026.9(c)(2)(v)(B)(1) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under §1026.9(c)(2)(v)(B)(1) include:*

i. "No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%."

ii. "No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%."

10. ***Relationship between §§1026.9(c)(2)(v)(B) and 1026.6(b).*** *A disclosure of the information described in §1026.9(c)(2)(v)(B)(1) provided in the account-opening table in accordance with §1026.6(b) complies with the requirements of §1026.9(c)(2)(v)(B)(2), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)-6.*

11. ***Disclosure of the terms of a workout or temporary hardship arrangement.*** *In order for the exception in §1026.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to §1026.9(c)(2)(v)(D)(2) must set forth:*

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(xi), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

12. ***Index not under creditor's control.*** *See comment 55(b)(2)-2 for guidance on when an index is deemed to be under a creditor's control.*

13. ***Temporary rates - relationship to §1026.59****.*

i. General. Section 1026.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, §1026.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by §1026.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by §1026.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. See §1026.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

ii. Example. A consumer opens a new credit card account under an open-end (not home-

secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with §1026.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under §1026.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with §1026.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

Section 4: Finance Charge Imposed at Time of Transaction
12 C.F.R. § 1026.9(d)

Finance Charge Imposed at Time of Transaction - 12 CFR § 1026.9(d)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the fourth is ***finance charge imposed at time of transaction.*** There are two categories:

i. Any person, other than the card issuer, who imposes a finance charge
ii. The card issuer

Regulatory Text

(d) **Finance charge imposed at time of transaction.**

(1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§1026.60, 1026.6 and 1026.7.

Regulatory Commentary

9(d) Finance Charge Imposed at Time of Transaction

1. ***Disclosure prior to imposition.*** *A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.*

Section 5: Disclosures upon Renewal of Credit Card

12 C.F.R. § 1026.9(e)

Disclosures upon Renewal of Credit Card - 12 C.F.R. § 1026.9(e)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the fifth is ***disclosures upon renewal of credit card or charge card.*** There are two categories:

i. Notice prior to renewal; with commentary regarding ten topics
ii. Notification on periodic statements; with commentary regarding two topics

Regulatory Text

(e) **Disclosures upon renewal of credit or charge card**

(1) **Notice prior to renewal.** A card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to §1026.60, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under §1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under §1026.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice shall contain the following information:

(i) The disclosures contained in §1026.60(b)(1) through (b)(7) that would apply if the account were renewed; and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

(2) **Notification on periodic statements.** The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

Regulatory Commentary

9(e) Disclosures Upon Renewal of Credit or Charge Card

1. ***Coverage.*** *This paragraph applies to credit and charge card accounts of the type subject to §1026.60. (See §1026.60(a)(5) and the accompanying commentary for discussion of the types of accounts subject to §1026.60.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account or if the card issuer has changed or amended any term of a cardholder's account required to be disclosed under §1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in §1026.60.*

2. ***Form.*** *The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.*

3. ***Terms at renewal.*** *Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).*

4. ***Variable rate.*** *If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date within the last 30 days before the disclosure is provided.*

5. ***Renewals more frequent than annual.*** *If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every 12 months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal-notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose the fact.*

6. ***Terminating credit availability.*** *Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee, if applicable. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.*

7. ***Timing of termination by cardholder.*** *When a card issuer provides notice under §1026.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account.*

8. ***Timing of notices.*** *A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.*

9. ***Prompt reversal of renewal fee upon termination.*** *In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.*

10. ***Disclosure of changes in terms required to be disclosed pursuant to §1026.6(b)(1) and (b)(2).*** *Clear and conspicuous disclosure of a changed term on a periodic statement provided to a consumer prior to renewal of the consumer's account constitutes prior disclosure of that term for purposes of §1026.9(e)(1). Card issuers should refer to §1026.9(c)(2) for additional timing, content, and formatting requirements that apply to certain changes in terms under that paragraph.*

9(e)(2) Notification on Periodic Statements

1. ***Combined disclosures.*** *If a single disclosure is used to comply with both §§1026.9(e) and 1026.7, the periodic statement must comply with the rules in §§1026.60 and 1026.7. For example, a description substantially similar to the heading describing the grace period required by §1026.60(b)(5) must be used and the name of the balance-calculation method must be identified (if listed in §1026.60(g)) to comply with the requirements of §1026.60. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that the disclosures relate to one another. All renewal disclosures must be provided to a cardholder at the same time.*

2. ***Preprinted notices on periodic statements.*** *A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.*

Section 6: Change in Credit Card Account Insurance Provider
12 C.F.R. § 1026.9(f)

Change in Credit Card Account Insurance Provider - 12 CFR § 1026.9(f)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the sixth is ***change in credit card account insurance provider.*** There are four categories; with commentary on five introductory topics:

i. Notice prior to change
ii. Notice when change in provider occurs
iii. Substantial decrease in coverage; with commentary regarding one topic
iv. Combined notification

Regulatory Text

(f) **Change in credit card account insurance provider**

(1) **Notice prior to change.** If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to §1026.60, the card issuer shall mail or deliver to the cardholder written notice of the change not less than 30 days before the change in provider occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) **Notice when change in provider occurs.** If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) **Substantial decrease in coverage.** For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) **Combined notification.** The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

Regulatory Commentary

9(f) Change in Credit Card Account Insurance Provider

1. ***Coverage.*** *This paragraph applies to credit card accounts of the type subject to §1026.60 if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to §1026.9(f) are the same as those subject to §1026.9(e); see comment 9(e)-1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance provider. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.*

2. ***No increase in rate or decrease in coverage.*** *The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged to the consumer and no decrease in coverage under the insurance policy.*

3. ***Form of notice.*** *If a substantial decrease in coverage will result from the change in provider, the card issuer either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (See the commentary to AppendixG-13 to part 1026.)*

4. ***Discontinuation of insurance.*** *In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.*

5. ***Mailing by third party.*** *Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.*

9(f)(3) Substantial Decrease in Coverage

1. ***Determination.*** *Whether a substantial decrease in coverage will result from the change in provider is determined by the two-part test in §1026.9(f)(3): First, whether the decrease is in a significant term of coverage; and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.*

Section 7: Rate Increase – Default or Penalty
12 C.F.R. § 1026.9(g)

Increase in Rates Due to Delinquency or Default or as a Penalty - 12 C.F.R. § 1026.9(g)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the seventh is increases in rate due to delinquency or default or as a penalty. There are four categories; with commentary on seven introductory topics:

i. Increases subject to this section

ii. Timing of written notice

iii. Disclosure requirements for rate increase

A. General

B. Rate increases resulting from failure to make minimum periodic payment within 60 days from due date

C. Format requirements

iv. Exceptions for decrease in credit limit; with commentary on one topic

Regulatory Text

(g) **Increase in rates due to delinquency or default or as a penalty**

(1) **Increases subject to this section**. For plans other than home-equity plans subject to the requirements of §1026.40, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) **Timing of written notice.** Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3)

(i) **Disclosure requirements for rate increases**

(A) **General.** If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(1) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

(2) The date on which the delinquency or default rate or penalty rate will apply;

(3) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(4) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;

(5) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(6) For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) **Rate increases resulting from failure to make minimum periodic payment within 60 days from due date.** For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to §1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (g)(1) of this section must also state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor 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.

(ii) **Format requirements.**

(A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this

section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) of this section.

(4) **Exception for decrease in credit limit.** A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, provided that:

(i) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(A) A statement that the credit limit on the account has been or will be decreased.

(B) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(C) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(i)(B) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(D) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period;

(E) A statement indicating to which balances the penalty rate may be applied; and

(F) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(ii) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph (g)(4)(i)(B) of this section.

(iii)

(A) If a notice provided pursuant to paragraph (g)(4)(i) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or

(B) If a notice required by paragraph (g)(4)(i) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(1) of this section.

Regulatory Commentary

9(g) Increase in Rates Due to Delinquency or Default or as a Penalty

1. ***Relationship between §1026.9(c) and (g) and §1026.55 - examples.*** *Card issuers subject to §1026.55 are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in §1026.55(b). See comments 55(a)-1 and 55(b)-3 and the commentary to §1026.55(b)(4) for examples that illustrate the relationship between the notice requirements of §1026.9(c) and (g) and §1026.55.*

2. ***Affected consumers.*** *If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to §1026.5(d) to determine the number of notices that must be given.*

3. ***Combining a notice described in §1026.9(g)(3) with a notice described in §1026.9(c)(2)(iv).*** *If a creditor is required to provide notices pursuant to both §1026.9(c)(2)(iv) and (g)(3) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.*

4. ***Content.*** *Sample G-22 contains an example of how to comply with the requirements in §1026.9(g)(3)(i) when the rate on a consumer's credit card account is being increased to a penalty rate as described in §1026.9(g)(1)(ii), based on a late payment that is not more than 60 days late. Sample G-23 contains an example of how to comply with the requirements in §1026.9(g)(3)(i) when the rate increase is triggered by a delinquency of more than 60 days.*

5. ***Clear and conspicuous standard.*** *See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to disclosures required under §1026.9(g).*

6. ***Terminology.*** *See §1026.5(a)(2) for terminology requirements applicable to disclosures required under §1026.9(g).*

7. ***Reasons for increase.*** *See comment 9(c)(2)(iv)-11 for guidance on disclosure of the reasons for a rate increase for a credit card account under an open-end (not home-secured) consumer credit plan.*

9(g)(4) Exception for Decrease in Credit Limit

1. ***The following illustrates the requirements of §1026.9(g)(4).*** *Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to §1026.9(g)(4) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in §1026.9(g)(1)(ii) would apply and the*

creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

Section 8: Rejection of Significant Changes
12 C.F.R. § 1026.9(h)

Consumer Rejection of Certain Significant Changes in Terms - 12 CFR § 1026.9(h)

Regulatory Discussion

This section continues to describe the requirements for subsequent disclosures for open-end credit; the eighth is ***consumer rejection of certain significant changes in terms.*** There are three categories:

i. Right to reject; with commentary on two topics
ii. Effect of rejection; with commentary on four topics
iii. Exceptions; with commentary providing examples

Regulatory Text

(h) **Consumer rejection of certain significant changes in terms**

(1) **Right to reject.** If paragraph (c)(2)(iv)(B) of this section requires disclosure of the consumer's right to reject a significant change to an account term, the consumer may reject that change by notifying the creditor of the rejection before the effective date of the change.

(2) **Effect of rejection.** If a creditor is notified of a rejection of a significant change to an account term as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in §1026.55(c)(2).

(3) ***Exception.*** Section 1026.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment.

Regulatory Commentary

9(h) Consumer Rejection of Certain Significant Changes in Terms

1. ***Circumstances in which §1026.9(h) does not apply.*** *Section 1026.9(h) applies when §1026.9(c)(2)(iv)(B) requires disclosure of the consumer's right to reject a significant change to an account term. Thus, for example, §1026.9(h) does not apply to changes to the terms of home equity plans subject to the requirements of §1026.40 that are accessible by a credit or charge card because §1026.9(c)(2) does not apply to such plans. Similarly, §1026.9(h) does not apply in the following circumstances because §1026.9(c)(2)(iv)(B) does not require disclosure of the right to reject in those circumstances: (i) An increase in the required minimum periodic payment; (ii) a change in an annual percentage rate applicable to a consumer's account (such as changing the margin or index for calculating a variable rate, changing from a variable rate to a non-variable rate, or changing from a non-variable rate to a variable rate); (iii) a change in the balance computation method necessary to comply with §1026.54; and (iv) when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.*

9(h)(1) Right To Reject

1. ***Reasonable requirements for submission of rejections.*** *A creditor may establish reasonable requirements for the submission of rejections pursuant to §1026.9(h)(1). For example:*

   i. It would be reasonable for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number.

   ii. It would be reasonable for a creditor to require that rejections be made only using the toll-free telephone number disclosed pursuant to §1026.9(c). It would also be reasonable for a creditor to designate additional channels for the submission of rejections (such as an address for rejections submitted by mail) so long as the creditor does not require that rejections be submitted through such additional channels.

   iii. It would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to §1026.9(c) and to treat the account as not subject to §1026.9(h) if a rejection is received on or after that date. It would not, however, be reasonable to require that rejections be submitted earlier than the day before the effective date. If a creditor is unable to process all rejections received before the effective date, the creditor may delay implementation of the change in terms until all rejections have been processed. In the alternative, the creditor could implement the change on the effective date and then, on any account for which a timely rejection was received, reverse the change and remove or credit any interest charges or fees imposed as a result of the change. For example, if the effective date for a change in terms is June 15 and the creditor cannot process all rejections received by telephone on June 14 until June 16, the creditor may delay imposition of the change until June 17. Alternatively, the creditor could implement the change for all affected accounts on June 15 and then, once all rejections have been processed, return any account for which a timely rejection was received to the prior terms and ensure that the account is not assessed any additional interest or fees as a result of the change or that the account is credited for such interest or fees.

2. ***Use of account following provision of notice.*** *A consumer does not waive or forfeit the right to reject a significant change in terms by using the account for transactions prior to*

the effective date of the change. Similarly, a consumer does not revoke a rejection by using the account for transactions after the rejection is received.

Paragraph 9(h)(2)(ii)

1. ***Termination or suspension of credit availability.*** *Section 1026.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability as a result of the consumer's rejection of a significant change in terms.*

2. ***Solely as a result of rejection.*** *A creditor is prohibited from imposing a fee or charge or treating an account as in default solely as a result of the consumer's rejection of a significant change in terms. For example, if credit availability is terminated or suspended as a result of the consumer's rejection of a significant change in terms, a creditor is prohibited from imposing a periodic fee that was not charged before the consumer rejected the change (such as a closed account fee). See also comment 55(d)-1. However, regardless of whether credit availability is terminated or suspended as a result of the consumer's rejection, a creditor is not prohibited from continuing to charge a periodic fee that was charged before the rejection. Similarly, a creditor that charged a fee for late payment before a change was rejected is not prohibited from charging that fee after rejection of the change.*

Paragraph 9(h)(2)(iii)

1. ***Relevant date for repayment methods.*** *Once a consumer has rejected a significant change in terms, §1026.9(h)(2)(iii) prohibits the creditor from requiring repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in §1026.55(c)(2). When applying the methods listed in §1026.55(c)(2) pursuant to §1026.9(h)(2)(iii), a creditor may utilize the date on which the creditor was notified of the rejection or a later date (such as the date on which the change would have gone into effect but for the rejection). For example, assume that on April 16 a creditor provides a notice pursuant to §1026.9(c) informing the consumer that the monthly maintenance fee for the account will increase effective June 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before June 1 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free number and exercises the right to reject. If the creditor chooses to establish a five-year amortization period for the balance on the account consistent with §1026.55(c)(2)(ii), that period may begin no earlier than the date on which the creditor was notified of the rejection (May 5). However, the creditor may also begin the amortization period on the date on which the change would have gone into effect but for the rejection (June 1).*

2. ***Balance on the account.***

   i. ***In general.*** *When applying the methods listed in §1026.55(c)(2) pursuant to §1026.9(h)(2)(iii), the provisions in §1026.55(c)(2) and the guidance in the commentary to §1026.55(c)(2) regarding protected balances also apply to a balance on the account subject to §1026.9(h)(2)(iii). If a creditor terminates or suspends credit availability based on a consumer's rejection of a significant change in terms, the balance on the account that is subject to §1026.9(h)(2)(iii) is the balance at the end of the day on which credit availability is terminated or suspended. However, if a creditor does not terminate*

or suspend credit availability based on the consumer's rejection, the balance on the account subject to §1026.9(h)(2)(iii) is the balance at the end of the day on which the creditor was notified of the rejection or, at the creditor's option, a later date.

ii. ***Example.*** *Assume that on June 16 a creditor provides a notice pursuant to §1026.9(c) informing the consumer that the annual fee for the account will increase effective August 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before August 1 but that, if the consumer does so, credit availability for the account will be terminated. On July 20, the account has a purchase balance of $1,000 and the consumer calls the toll-free number and exercises the right to reject. On July 22, a $200 purchase is charged to the account. If the creditor terminates credit availability on July 25 as a result of the rejection, the balance subject to the repayment limitations in §1026.9(h)(2)(iii) is the $1,200 purchase balance at the end of the day on July 25. However, if the creditor does not terminate credit availability as a result of the rejection, the balance subject to the repayment limitations in §1026.9(h)(2)(iii) is the $1,000 purchase balance at the end of the day on the date the creditor was notified of the rejection (July 20), although the creditor may, at its option, treat the $200 purchase as part of the balance subject to §1026.9(h)(2)(iii).*

9(h)(3) Exception

1. ***Examples.*** *Section 1026.9(h)(3) provides that §1026.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. The following examples illustrate the application of this exception:*

i. ***Account becomes more than 60 days delinquent before notice provided.*** *Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On June 20 of year two, the creditor has not received the required minimum periodic payments due on April 15, May 15, and June 15. On June 20, the creditor provides a notice pursuant to §1026.9(c) informing the consumer that a monthly maintenance fee of $10 will be charged beginning on August 4. However, §1026.9(c)(2)(iv)(B) does not require the creditor to notify the consumer of the right to reject because the creditor has not received the April 15 minimum payment within 60 days after the due date. Furthermore, the exception in §1026.9(h)(3) applies and the consumer may not reject the fee.*

ii. ***Account becomes more than 60 days delinquent after rejection.*** *Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On April 20 of year two, the creditor has not received the required minimum periodic payment due on April 15. On April 20, the creditor provides a notice pursuant to §1026.9(c) informing the consumer that an annual fee of $100 will be charged beginning on June 4. The notice further states that the consumer may reject the fee by calling a specified toll-free telephone number before June 4 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free telephone number and rejects the fee. Section 1026.9(h)(2)(i) prohibits the creditor from charging the $100 fee to the account. If, however, the creditor does not receive the minimum payments due on April 15 and May 15 by June 15, §1026.9(h)(3) permits the creditor to charge the $100 fee.*

The creditor must provide a second notice of the fee pursuant to §1026.9(c), but §1026.9(c)(2)(iv)(B) does not require the creditor to disclose the right to reject and §1026.9(h)(3) does not allow the consumer to reject the fee. Similarly, the restrictions in §1026.9(h)(2)(ii) and (iii) no longer apply.

Other Open End – Payments

Section 1: General Rule
12 C.F.R. § 1026.10(a)

General Rule - 12 CFR § 1026.10(a)

Regulatory Discussion

This section generally requires the creditor to credit payment to an account as of the date of receipt. The commentary provides additional information on posting payments as well as the meaning of "date of receipt." Exceptions to this rule are discussed in Section 2.

Regulatory Text

(a) **General rule.** A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

Regulatory Commentary

10(a) General Rule.

1. ***Crediting date.*** *Section 1026.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment as of the date of receipt.*

2. ***Date of receipt.*** *The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:*

   i. Payment by check is received when the creditor gets it, not when the funds are collected.

   ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

   iii. If the consumer elects to have payment made by a third party payor such as a financial institution, through a preauthorized payment or telephone bill-payment arrangement, payment is received when the creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under §1026.10(b).

   iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction

authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after 5 p.m. or any later cut-off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.

Section 2: Specific Requirements for Payments
12 C.F.R. § 1026.10(b)

Specific Requirements for Payments - 12 CFR § 1026.10(b)

Regulatory Discussion

There are three considerations in this section, as follows:

1. The **general rule** states the creditor may have "reasonable requirements" that enable most consumers to make conforming payments. Item (2), bellows, provides five examples of "reasonable requirements."

2. Item (3), below, states **in-person payments made on credit card accounts** prior to the close of business shall be considered received on the date on which the consumer makes the payment.

   NOTE: a cut-off time earlier than the close of business for such payments shall not be imposed.

3. Item (4), below, addresses **non-conforming payments**. In general, if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the payment shall be credited within five days of receipt.

   NOTE: Item (4)(ii), below, addresses *payment methods promoted by the creditor*. The commentary provides additional discussion and examples.

Regulatory Text

(b) **Specific requirements for payments**

(1) **General rule.** A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) **Examples of reasonable requirements for payments.** Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) **In-person payments on credit card accounts**

(i) **General.** Notwithstanding §1026.10(b), payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at a branch or office of a card issuer that is a financial institution prior to the close of business of that branch or office shall be considered received on the date on which the consumer makes the payment. A card issuer that is a financial institution shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. Notwithstanding §1026.10(b)(2)(ii), a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m.

(ii) **Financial institution.** For purposes of paragraph (b)(3) of this section, "financial institution" shall mean a bank, savings association, or credit union.

(4) **Nonconforming payments**

(i) **In general.** Except as provided in paragraph (b)(4)(ii) of this section, if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this §1026.10, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(ii) **Payment methods promoted by creditor.** If a creditor promotes a method for making payments, such payments shall be considered conforming payments in accordance with this paragraph (b) and shall be credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

Regulatory Commentary

10(b) Specific Requirements for Payments

1. ***Payment by electronic fund transfer.*** *A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. (See Section 913 of the Electronic Fund Transfer Act.)*

2. ***Payment methods promoted by creditor.*** *If a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor, to the extent permitted by §1026.10(b)(2)) are generally conforming payments for purposes of §1026.10(b). For example:*

i. If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via

the creditor's Web site prior to the creditor's specified cut-off time, if any, would generally be conforming payments for purposes of §1026.10(b).

ii. If a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of §1026.10(b).

iii. If a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of §1026.10(b).

iv. If a creditor promotes that payments may be made through an unaffiliated third party, such as by disclosing the Web site address of that third party on the periodic statement, payments made via that third party's Web site generally would be conforming payments for purposes of §1026.10(b). In contrast, if a customer service representative of the creditor confirms to a consumer that payments may be made via an unaffiliated third party, but the creditor does not otherwise promote that method of payment, §1026.10(b) permits the creditor to treat payments made via such third party as nonconforming payments in accordance with §1026.10(b)(4).

3. ***Acceptance of nonconforming payments.*** *If the creditor accepts a nonconforming payment (for example, payment mailed to a branch office, when the creditor had specified that payment be sent to a different location), finance charges may accrue for the period between receipt and crediting of payments.*

4. ***Implied guidelines for payments.*** *In the absence of specified requirements for making payments (see §1026.10(b)):*

   i. Payments may be made at any location where the creditor conducts business.

   ii. Payments may be made any time during the creditor's normal business hours.

   iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

5. ***Payments made at point of sale.*** *If a card issuer that is a financial institution issues a credit card under an open-end (not home-secured) consumer credit plan that can be used only for transactions with a particular merchant or merchants or a credit card that is cobranded with the name of a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the card issuer for purposes of §1026.10(b)(3).*

6. ***In-person payments on credit card accounts.*** *For purposes of §1026.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller at a bank branch. A payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of §1026.10(b)(3).*

7. ***In-person payments at affiliate of card issuer.*** *If an affiliate of a card issuer that is a financial institution shares a name with the card issuer, such as "ABC," and accepts in-person payments on the card issuer's credit card accounts, those payments are subject to the requirements of §1026.10(b)(3).*

Section 3: Adjustment of Account
12 C.F.R. § 1026.10(c)

Adjustment of Account. - 12 CFR § 1026.10(c)

Regulatory Discussion

In the event a creditor fails to credit a payment in time to avoid the imposition of finance or other charges, this section simply requires the creditor to adjust (credit) the account during the next billing cycle.

Regulatory Text

(c) **Adjustment of account.** If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

Regulatory Commentary

None.

Section 4: Crediting of Payments - Creditor Not Accepting Payments on Due Date
12 C.F.R. § 1026.10(d)

Crediting of payments - Creditor Not Accepting Payments on Due Date - 12 CFR § 1026.10(d)

Regulatory Discussion

In general, if a creditor does not *receive or accept payments by mail* on the due date (i.e., because the USPS does not deliver mail on that date), a payment received the next business day may not be treated as late.

NOTE: for payments *accepted or received other than by mail* on the next business day (i.e., electronic or telephone), the creditor is not required to treat that payment as timely – even if the creditor does not receive or accept mailed payments on the due date.

Regulatory Text

(d) **Crediting of payments when creditor does not receive or accept payments on due date**

(1) **General.** Except as provided in paragraph (d)(2) of this section, if a creditor does not receive or accept payments by mail on the due date for payments, the creditor may generally not treat a payment received the next business day as late for any purpose. For purposes of this paragraph (d), the "next business day" means the next day on which the creditor accepts or receives payments by mail.

(2) **Payments accepted or received other than by mail**. If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

Regulatory Commentary

10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

*1. **Example.** A day on which the creditor does not receive or accept payments by mail may occur, for example, if the U.S. Postal Service does not deliver mail on that date.*

2. ***Treating a payment as late for any purpose.*** *See comment 5(b)(2)(ii)-2 for guidance on treating a payment as late for any purpose. When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late.*

Section 5: Limitations on Fees
12 C.F.R. § 1026.10(e)

Limitations on Fees - 12 CFR § 1026.10(e)

Regulatory Discussion

A creditor is prohibited from imposing a separate fee to allow consumers to make a payment – unless such payment method involves an *expedited service with the assistance of a live representative or agent* of the creditor.

Regulatory Text

(e) **Limitations on fees related to method of payment.** For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. For purposes of paragraph (e) of this section, the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor.

Regulatory Commentary

10(e) Limitations on Fees Related to Method of Payment

1. ***Separate fee to allow consumers to make a payment.*** *For purposes of §1026.10(e), the term "separate fee" means a fee imposed on a consumer for making a payment to the consumer's account. A fee or other charge imposed if payment is made after the due date, such as a late fee or finance charge, is not a separate fee to allow consumers to make a payment for purposes of §1026.10(e).*
2. ***Expedited.*** *For purposes of §1026.10(e), the term "expedited" means crediting a payment the same day or, if the payment is received after any cut-off time established by the creditor, the next business day.*
3. ***Service by a customer service representative.*** *Service by a customer service representative of a creditor means any payment made to the consumer's account with the assistance of a live representative or agent of the creditor, including those made in person, on the telephone, or by electronic means. A customer service representative does not include automated means of making payment that do not involve a live representative or agent of the creditor, such as a voice response unit or interactive voice response system. Service by a customer service representative includes any payment transaction which involves the assistance of a live representative or agent of the creditor, even if an automated system is required for a portion of the transaction.*

4. ***Creditor.*** *For purposes of §1026.10(e), the term "creditor" includes a third party that collects, receives, or processes payments on behalf of a creditor. For example:*

   i. Assume that a creditor uses a service provider to receive, collect, or process on the creditor's behalf payments made through the creditor's Web site or made through an automated telephone payment service. In these circumstances, the service provider would be considered a creditor for purposes of paragraph (e).

   ii. Assume that a consumer pays a fee to a money transfer or payment service in order to transmit a payment to the creditor on the consumer's behalf. In these circumstances, the money transfer or payment service would not be considered a creditor for purposes of paragraph (e).

   iii. Assume that a consumer has a checking account at a depository institution. The consumer makes a payment to the creditor from the checking account using a bill payment service provided by the depository institution. In these circumstances, the depository institution would not be considered a creditor for purposes of paragraph (e).

Section 6: Changes by Card Issuer
12 C.F.R. § 1026.10(f)

Changes by Card Issuer - 12 CFR § 1026.10(f)

Regulatory Discussion

If a "*material change*" in the "*address for receiving payments*" or procedures for handling payments causes a "*material delay*" in the crediting of a payment during the 60-day period following the date on which such change took effect:

- a card issuer is prohibited from imposing any late fee or finance charge for a late payment on a credit card account during the 60-day period following the date on which the change took effect.

The commentary provides additional information on the terms "address for receiving payment," "material change," and "material delay," as well as a safe harbor and examples.

Regulatory Text

(f) **Changes by card issuer.** If a card issuer makes a material change in the address for receiving payments or procedures for handling payments, and such change causes a material delay in the crediting of a payment to the consumer's account during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account during the 60-day period following the date on which the change took effect.

Regulatory Commentary

10(f) Changes by Card Issuer

1. ***Address for receiving payment.*** *For purposes of §1026.10(f), "address for receiving payment" means a mailing address for receiving payment, such as a post office box, or the address of a branch or office at which payments on credit card accounts are accepted.*

2. ***Materiality.*** *For purposes of §1026.10(f), a "material change" means any change in the address for receiving payment or procedures for handling cardholder payments which causes a material delay in the crediting of a payment. "Material delay" means any delay in crediting payment to a consumer's account which would result in a late payment and the imposition of a late fee or finance charge. A delay in crediting a payment which does not result in a late fee or finance charge would be immaterial.*

3. ***Safe harbor.***

i. General. A card issuer may elect not to impose a late fee or finance charge on a consumer's account for the 60-day period following a change in address for receiving payment or procedures for handling cardholder payments which could reasonably be expected to cause a material delay in crediting of a payment to the consumer's account. For purposes of §1026.10(f), a late fee or finance charge is not imposed if the fee or charge is waived or removed, or an amount equal to the fee or charge is credited to the account.

ii. Retail location. For a material change in the address of a retail location or procedures for handling cardholder payments at a retail location, a card issuer may impose a late fee or finance charge on a consumer's account for a late payment during the 60-day period following the date on which the change took effect. However, if a card issuer is notified by a consumer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment that the late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect.

4. ***Examples.***

i. A card issuer changes the mailing address for receiving payments by mail from a five-digit postal zip code to a nine-digit postal zip code. A consumer mails a payment using the five-digit postal zip code. The change in mailing address is immaterial and it does not cause a delay. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account.

ii. A card issuer changes the mailing address for receiving payments by mail from one post office box number to another post office box number. For a 60-day period following the change, the card issuer continues to use both post office box numbers for the collection of payments received by mail. The change in mailing address would not cause a material delay in crediting a payment because payments would be received and credited at both addresses. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account during the 60-day period following the date on which the change took effect.

iii. Same facts as paragraph ii above, except the prior post office box number is no longer valid and mail sent to that address during the 60-day period following the change would be returned to sender. The change in mailing address is material and the change could cause a material delay in the crediting of a payment because a payment sent to the old address could be delayed past the due date. If, as a result, a consumer makes a late payment on the account during the 60-day period following the date on which the change took effect, a card issuer may not impose any late fee or finance charge for the late payment.

iv. A card issuer permanently closes a local branch office at which payments are accepted on credit card accounts. The permanent closing of the local branch office is a material change in address for receiving payment. Relying on the safe harbor, the card issuer elects not to impose a late fee or finance charge for the 60-day period following the local branch closing for late payments on consumer accounts which the issuer reasonably determines are associated with the local branch and which could reasonably be expected to have been caused by the branch closing.

v. A consumer has elected to make payments automatically to a credit card account, such as through a payroll deduction plan or a third party payor's preauthorized payment arrangement. A card issuer changes the procedures for handling such payments and as a result, a payment is delayed and not credited to the consumer's account before the due date. In these circumstances, a card issuer may not impose any late fee or finance charge during the 60-day period following the date on which the change took effect for a late payment on the account.

vi. A card issuer no longer accepts payments in person at a retail location as a conforming method of payment, which is a material change in the procedures for handling cardholder payment. In the 60-day period following the date on which the change took effect, a consumer attempts to make a payment in person at a retail location of a card issuer. As a result, the consumer makes a late payment and the issuer charges a late fee on the consumer's account. The consumer notifies the card issuer of the late fee for the late payment which was caused by the material change. In order to comply with §1026.10(f), the card issuer must waive or remove the late fee or finance charge, or credit the consumer's account in an amount equal to the late fee or finance charge.

5. ***Finance charge due to periodic interest rate.*** *When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute imposition of a finance charge for a late payment for purposes of §1026.10(f).*

Open End Credit - Credit Balances; Account Termination

Section 1: Credit Balances
12 C.F.R. § 1026.11(a)

Credit Balances - 12 CFR § 1026.11(a)

Regulatory Discussion

This section describes the three requirements for the treatment of credit balances for open-end credit. Any credit balance over $1 is subject to the regulation. The commentary provides further direction on: the timing and amount of the refund; written requests and standing orders; and, good faith effort.

Regulatory Text

(a) **Credit balances.** When a credit balance in excess of $1 is created on a credit account (through transmittal of funds to a creditor in excess of the total balance due on an account, through rebates of unearned finance charges or insurance premiums, or through amounts otherwise owed to or held for the benefit of the consumer), the creditor shall:

(1) Credit the amount of the credit balance to the consumer's account;

(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

(3) Make a good faith effort to refund to the consumer by cash, check, or money order, or credit to a deposit account of the consumer, any part of the credit balance remaining in the account for more than six months. No further action is required if the consumer's current location is not known to the creditor and cannot be traced through the consumer's last known address or telephone number.

Regulatory Commentary

11(a) Credit Balances

*1. **Timing of refund.** The creditor may also fulfill its obligations under §1026.11 by:*

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to receiving a written request (under §1026.11(a)(2)) from the consumer.

iii. Refunding any credit balance upon the consumer's oral or electronic request.

iv. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. ***Amount of refund.*** *The phrases any part of the remaining credit balance in §1026.11(a)(2) and any part of the credit balance remaining in the account in §1026.11(a)(3) mean the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.*

Paragraph 11(a)(2)

1. ***Written requests - standing orders.*** *The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.*

Paragraph 11(a)(3)

1. ***Good faith effort to refund.*** *The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.*

2. ***Good faith effort unsuccessful.*** *Section 1026.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.*

Section 2: Account Termination
12 C.F.R. § 1026.11(b)

Account Termination - 12 CFR § 1026.11(b)

Regulatory Discussion

This section describes **the** requirement for account termination for open-end credit. The account can be closed if it is inactive for 3 or more consecutive months. The commentary provides further direction on: the expiration date.

Regulatory Text

(b) **Account termination.**

(1) A creditor shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge.

(2) Nothing in paragraph (b)(1) of this section prohibits a creditor from terminating an account that is inactive for three or more consecutive months. An account is inactive for purposes of this paragraph if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.

Regulatory Commentary

11(b) Account Termination

Paragraph 11(b)(1)

1. ***Expiration date.*** *The credit agreement determines whether or not an open-end plan has a stated expiration (maturity) date. Creditors that offer accounts with no stated expiration date are prohibited from terminating those accounts solely because a consumer does not incur a finance charge, even if credit cards or other access devices associated with the account expire after a stated period. Creditors may still terminate such accounts for inactivity consistent with §1026.11(b)(2).*

Section 3: Timely Settlement of Estate Debts
12 C.F.R. § 1026.11(c)

Timely Settlement of Estate Debts - 12 CFR § 1026.11(c)

Regulatory Discussion

This section describes the three requirements for the timely settlement of estate debts for open-end credit, including:

1. General rules. The commentary provides details on:
   i. The definition of administrator
   ii. Examples of reasonable policies and procedures
2. Upon request by the estate administrator, providing the account balance. The commentary provides details on:
   i. Methods by which the administrator may request information
   ii. Methods by which the creditor may respond to the request
3. Limitations after receipt of request from the estate administrator. The commentary provides details on:
   i. Imposition of fees and interest charges, with examples
   ii. Application to joint accounts

Regulatory Text

(c) **Timely settlement of estate debts**

(1) **General rule.**

(i) **Reasonable policies and procedures required.** For credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must adopt reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner.

(ii) **Application to joint accounts**. Paragraph (c) of this section does not apply to the account of a deceased consumer if a joint accountholder remains on the account.

(2) **Timely statement of balance**

(i) **Requirement.** Upon request by the administrator of an estate, a card issuer must provide the administrator with the amount of the balance on a deceased consumer's account in a timely manner.

(ii) **Safe harbor.** For purposes of paragraph (c)(2)(i) of this section, providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

(3) **Limitations after receipt of request from administrator**

(i) **Limitation on fees and increases in annual percentage rates.** After receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, a card issuer must not impose any fees on the account (such as a late fee, annual fee, or over-the-limit fee) or increase any annual percentage rate, except as provided by §1026.55(b)(2).

(ii) **Limitation on trailing or residual interest.** A card issuer must waive or rebate any additional finance charge due to a periodic interest rate if payment in full of the balance disclosed pursuant to paragraph (c)(2) of this section is received within 30 days after disclosure.

Regulatory Commentary

11(c) Timely Settlement of Estate Debts

1. ***Administrator of an estate.*** *For purposes of §1026.11(c), the term "administrator" means an administrator, executor, or any personal representative of an estate who is authorized to act on behalf of the estate.*

2. ***Examples.*** *The following are examples of reasonable procedures that satisfy this rule:*

i. A card issuer may decline future transactions and terminate the account upon receiving reasonable notice of the consumer's death.

ii. A card issuer may credit the account for fees and charges imposed after the date of receiving reasonable notice of the consumer's death.

iii. A card issuer may waive the estate's liability for all charges made to the account after receiving reasonable notice of the consumer's death.

iv. A card issuer may authorize an agent to handle matters in accordance with the requirements of this rule.

v. A card issuer may require administrators of an estate to provide documentation indicating authority to act on behalf of the estate.

vi. A card issuer may establish or designate a department, business unit, or communication channel for administrators, such as a specific mailing address or toll-free number, to handle matters in accordance with the requirements of this rule.

vii. A card issuer may direct administrators, who call a general customer service toll-free number or who send correspondence by mail to an address for general correspondence, to an appropriate customer service representative, department, business unit, or communication channel to handle matters in accordance with the requirements of this rule.

2. **Request by an administrator of an estate.** *A card issuer may receive a request for the amount of the balance on a deceased consumer's account in writing or by telephone call from the administrator of an estate. If a request is made in writing, such as by mail, the request is received on the date the card issuer receives the correspondence.*

3. ***Timely statement of balance.*** *A card issuer must disclose the balance on a deceased consumer's account, upon request by the administrator of the decedent's estate. A card issuer may provide the amount, if any, by a written statement or by telephone. This does not preclude a card issuer from providing the balance amount to appropriate persons, other than the administrator, such as the spouse or a relative of the decedent, who indicate that they may pay any balance. This provision does not relieve card issuers of the requirements to provide a periodic statement, under §1026.5(b)(2). A periodic statement, under §1026.5(b)(2), may satisfy the requirements of §1026.11(c)(2), if provided within 30 days of receiving a request by an administrator of the estate.*

4. ***Imposition of fees and interest charges.*** *Section 1026.11(c)(3) does not prohibit a card issuer from imposing fees and finance charges due to a periodic interest rate based on balances for days that precede the date on which the card issuer receives a request pursuant to §1026.11(c)(2). For example, if the last day of the billing cycle is June 30 and the card issuer receives a request pursuant to §1026.11(c)(2) on June 25, the card issuer may charge interest that accrued prior to June 25.*

5. ***Example.*** *A card issuer receives a request from an administrator for the amount of the balance on a deceased consumer's account on March 1. The card issuer discloses to the administrator on March 25 that the balance is $1,000. If the card issuer receives payment in full of the $1,000 on April 24, the card issuer must waive or rebate any additional interest that accrued on the $1,000 balance between March 25 and April 24. If the card issuer receives a payment of $1,000 on April 25, the card issuer is not required to waive or rebate interest charges on the $1,000 balance in respect of the period between March 25 and April 25. If the card issuer receives a partial payment of $500 on April 24, the card issuer is not required to waive or rebate interest charges on the $1,000 balance in respect of the period between March 25 and April 25.*

6. ***Application to joint accounts.*** *A card issuer may impose fees and charges on an account of a deceased consumer if a joint accountholder remains on the account. If only an authorized user remains on the account of a deceased consumer, however, then a card issuer may not impose fees and charges.*

Open End Credit – Special Credit Card Provisions

Section 1: Introduction (Commentary)

Regulatory Discussion

This introductory commentary details the scope of this section as well as a definition of "accepted credit card."

Regulatory Text

None

Regulatory Commentary

1. ***Scope.*** *Sections 1026.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 1026.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§1026.1 and 1026.3.)*

2. ***Definition of "accepted credit card."*** *For purposes of this section, "accepted credit card" means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with §1026.12(a) becomes an accepted credit card when received by the cardholder.*

Section 2: Issuance of Credit Cards
12 C.F.R. § 1026.12(a)

Issuance of Credit Cards - 12 C.F.R. § 1026.12(a)

Regulatory Discussion

This section describes the two requirements for the issuance of credit cards for open-end credit. The commentary provides expanded coverage on both requirements: (1) in response to an oral or written request; and, (2) as a renewal of, or substitute for, an accepted card.

Regulatory Text

(a) **Issuance of credit cards.** Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except:

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.

Regulatory Commentary

12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

1. ***Explicit request.*** *A request or application for a card must be explicit. For example, a request for an overdraft plan tied to a checking account does not constitute an application for a credit card with overdraft checking features.*

2. ***Addition of credit features.*** *If the consumer has a non-credit card, the addition of credit features to the card (for example, the granting of overdraft privileges on a checking account when the consumer already has a check guarantee card) constitutes issuance of a credit card.*

3. ***Variance of card from request.*** *The request or application need not correspond exactly to the card that is issued. For example:*

   i. The name of the card requested may be different when issued.

   ii. The card may have features in addition to those reflected in the request or application.

4. ***Permissible form of request.*** *The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.*

5. ***Time of issuance.*** *A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.*

6. ***Persons to whom cards may be issued.*** *A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:*

   i. The additional cards may be imprinted in either A's name or in the names of B and C.

   ii. No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not cardholders as that term is defined in §1026.2 and used in §1026.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.

   iii. Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. ***Issuance of non-credit cards.***

   i. ***General.*** *Under §1026.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)-2 for examples of cards or devices that are and are not credit cards.) A non-credit card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card only upon the consumer's specific request.*

   ii. ***Examples.*** *A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by §1026.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.*

8. ***Unsolicited issuance of PINs.*** *A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point of sale terminals that require PINs.*

Paragraph 12(a)(2)

1. ***Renewal.*** *Renewal generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.*

2. ***Substitution - examples.*** *Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:*

   i. Changed its name.

   ii. Changed the name of the card.

   iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

   iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

   v. Changed the merchant base, provided that the new card is honored by at least one of the persons that honored the original card. However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive. A credit card cannot be issued in these circumstances without a request or application. For purposes of §1026.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for the prior 24 months. (See §1026.11(b)(2).)

3. ***Substitution - successor card issuer.*** *Substitution also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.*

4. ***Substitution - non-credit-card plan.*** *A credit card that replaces a retailer's open-end credit plan not involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.*

5. ***One-for-one rule.*** *An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.*

6. ***One-for-one rule - exceptions.*** *The regulation does not prohibit the card issuer from:*

   i. Replacing a debit/credit card with a credit card and another card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

   ii. Replacing an accepted card with more than one renewal or substitute card, provided that:

      A. No replacement card accesses any account not accessed by the accepted card;

      B. For terms and conditions required to be disclosed under §1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under §1026.9(c); and

      C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

7. ***Methods of terminating replaced card.*** *The card issuer need not physically retrieve the original card, provided the old card is voided in some way, for example:*

   i. The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.

   ii. The original card contained an expiration date.

   iii. The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. ***Incomplete replacement.*** *If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.*

9. ***Multiple entities.*** *Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)-7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.*

Section 3: Liability of Cardholder for Unauthorized Use
12 C.F.R. § 1026.12(b)

Liability of Cardholder for Unauthorized Use - 12 CFR § 1026.12(b)

Regulatory Discussion

This section describes the five requirements of the liability of cardholder for unauthorized use for open-end credit:

1) Definition of unauthorized use and limitation on amount. The commentary provides expanded coverage on:

   - Meaning of a cardholder; Imposing liability; Reasonable investigation; Checks that access a credit card account
   - Meaning of authority; Liability limits – dollar amounts; Implied or apparent authority, Credit card obtained through robbery or fraud

2) Conditions of liability. The commentary provides expanded coverage on:

   - Issuer's option not to comply
   - Disclosure of liability and means of notifying issuer; Meaning of "adequate notice."
   - Means of identifying cardholder or user; Identification by magnetic strip; Transactions not involving card

3) Notification to card issuer. The commentary provides expanded coverage on:

   - How notice must be provided; Who must provide notice

4) Effect of other applicable law or agreement. There is no commentary.

5) Business use of credit cards. The commentary provides expanded coverage on:

   - Agreement for higher liability for business use cards; Unauthorized use by employee

Regulatory Text

(b) **Liability of cardholder for unauthorized use**

(1)

(i) **Definition of unauthorized use.** For purposes of this section, the term "unauthorized use" means the use of a credit card by a person, other than the

cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

(ii) **Limitation on amount.** The liability of a cardholder for unauthorized use of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) **Conditions of liability.** A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) **Notification to card issuer.** Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) **Effect of other applicable law or agreement.** If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) **Business use of credit cards.** If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

Regulatory Commentary

12(b) Liability of Cardholder for Unauthorized Use

1. ***Meaning of cardholder.*** *For purposes of this provision, cardholder includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided*

to the corporation (as opposed to an employee user).

2. ***Imposing liability.*** *A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.*

3. ***Reasonable investigation.*** *If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:*

   i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

   ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

   iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

   iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

   v. Requesting documentation to assist in the verification of the claim.

   vi. Requiring a written, signed statement from the cardholder or authorized user. For example, the creditor may include a signature line on a billing rights form that the cardholder may send in to provide notice of the claim. However, a creditor may not require the cardholder to provide an affidavit or signed statement under penalty of perjury as part of a reasonable investigation.

   vii. Requesting a copy of a police report, if one was filed.

   viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

4. ***Checks that access a credit card account****. The liability provisions for unauthorized use under §1026.12(b)(1) only apply to transactions involving the use of a credit card, and not if an unauthorized transaction is made using a check accessing the credit card account. However, the billing error provisions in §1026.13 apply to both of these types of transactions.*

12(b)(1)(ii) Limitation on Amount

1. ***Meaning of authority.*** *Section 1026.12(b)(1)(i) defines unauthorized use in terms of whether the user has actual, implied, or apparent authority. Whether such authority exists must be determined under state or other applicable law.*

2. ***Liability limits - dollar amounts.*** *As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less.*

3. ***Implied or apparent authority.*** *If a cardholder furnishes a credit card and grants authority to make credit transactions to a person (such as a family member or coworker) who exceeds the authority given, the cardholder is liable for the transaction(s) unless the cardholder has notified the creditor that use of the credit card by that person is no longer authorized.*

4. ***Credit card obtained through robbery or fraud.*** *An unauthorized use includes, but is not limited to, a transaction initiated by a person who has obtained the credit card from the consumer, or otherwise initiated the transaction, through fraud or robbery.*

12(b)(2) Conditions of Liability

1. ***Issuer's option not to comply.*** *A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed in §1026.12(b)(2).*

Paragraph 12(b)(2)(ii)

1. ***Disclosure of liability and means of notifying issuer.*** *The disclosures referred to in §1026.12(b)(2)(ii) may be given, for example, with the initial disclosures under §1026.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.*

2. ***Meaning of "adequate notice."*** *For purposes of this provision, "adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.*

Paragraph 12(b)(2)(iii)

1. ***Means of identifying cardholder or user.*** *To fulfill the condition set forth in §1026.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, a signature, photograph, or fingerprint on the card or other biometric means, or electronic or mechanical confirmation.*

2. ***Identification by magnetic strip.*** *Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a "pool" or group card, issued to a corporation and signed by a corporate agent who will*

not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. ***Transactions not involving card.*** *The cardholder may not be held liable under §1026.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone or the Internet by a person without authority to do so, using a credit card account number by itself or with other information that appears on the card (for example, the card expiration date and a 3- or 4-digit cardholder identification number), no liability may be imposed on the cardholder.*

12(b)(3) Notification to Card Issuer

1. ***How notice must be provided.*** *Notice given in a normal business manner—for example, by mail, telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under §1026.12(b)(2)(ii).*

2. ***Who must provide notice.*** *Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the "pertinent information" which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.*

3. ***Relationship to §1026.13.*** *The liability protections afforded to cardholders in §1026.12 do not depend upon the cardholder's following the error resolution procedures in §1026.13. For example, the written notification and time limit requirements of §1026.13 do not affect the §1026.12 protections. (See also comment 12(b)-4.)*

12(b)(5) Business Use of Credit Cards

1. ***Agreement for higher liability for business use cards.*** *The card issuer may not rely on §1026.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.*

2. ***Unauthorized use by employee.*** *The protection afforded to an employee against liability for unauthorized use in excess of the limits set in §1026.12(b) applies only to unauthorized use by someone other than the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.*

Section 4: Right of Cardholder to Assert Claims or Defenses Against Card Issuer
12 C.F.R. § 1026.12(c)

Right of Cardholder to Assert Claims or Defenses Against Card Issuer - 12 CFR § 1026.12(c)

Regulatory Discussion

This section describes the three requirements of the cardholder to assert claims or defenses against the card issuer for open-end credit:

1) General rule. The commentary provides expanded coverage on:
   - Claims and defenses assertible; Transactions excluded; Method of calculating the amount of credit outstanding; Situations excluded and included
2) Adverse credit reports prohibited. The commentary provides expanded coverage on:
   - Scope of prohibition; Settlement of dispute
3) Limitations. The commentary provides expanded coverage on:
   - Resolution with merchant; Geographic limitation; Merchant honoring card

Regulatory Text

(c) **Right of cardholder to assert claims or defenses against card issuer**

(1) **General rule.** When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.

(2) **Adverse credit reports prohibited.** If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) **Limitations**

(i) **General.** The rights stated in paragraphs (c)(1) and (c)(2) of this section apply only

if:

(A) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(B) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.

(ii) **Exclusion.** The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer's products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

Regulatory Commentary

12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

1. ***Relationship to §1026.13****. The §1026.12(c) credit card "holder in due course" provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute "billing errors" under §1026.13, that section operates independently of §1026.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of §1026.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under §1026.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a "defense" and a billing error.*

2. ***Claims and defenses assertible.*** *Section 1026.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.*

3. ***Transactions excluded.*** *Section 1026.12(c) does not apply to the use of a check guarantee*

card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash-advance checks.

4. ***Method of calculating the amount of credit outstanding.*** *The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. However, when a consumer has asserted a claim or defense against a creditor pursuant to §1026.12(c), the creditor must apply any payment or other credit in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Accordingly, to determine the amount of credit outstanding for purposes of this section, payments and other credits must be applied first to amounts other than the disputed transaction.*

   i. For examples of how to comply with §§1026.12 and 1026.53 for credit card accounts under an open-end (not home-secured) consumer credit plan, see comment 53-3.

   ii. For other types of credit card accounts, creditors may, at their option, apply payments consistent with §1026.53 and comment 53-3. In the alternative, payments and other credits may be applied to: Late charges in the order of entry to the account; then to finance charges in the order of entry to the account; and then to any debits other than the transaction subject to the claim or defense in the order of entry to the account. In these circumstances, if more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

12(c)(1) General Rule

1. ***Situations excluded and included.*** *The consumer may assert claims or defenses only when the goods or services are "purchased with the credit card." This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:*

   i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve "property or services purchased with the credit card."

   ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to the credit extended on the overdraft line.)

   iii. Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). (See comment 12(c)-3.) A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

   iv. Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. (See comment 12(c)-3.) The debit card exemption applies whether the card accesses an asset account via point of sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an "access device" under Regulation E or is only a paper based debit card. If a card serves

both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

12(c)(2) Adverse Credit Reports Prohibited

1. ***Scope of prohibition.*** *Although an amount in dispute may not be reported as delinquent until the matter is resolved:*

   i. That amount may be reported as disputed.

   ii. Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for the delinquent and undisputed portion of the account.

2. ***Settlement of dispute.*** *A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. A reasonable investigation requires an independent assessment of the cardholder's claim based on information obtained from both the cardholder and the merchant, if possible. In conducting an investigation, the card issuer may request the cardholder's reasonable cooperation. The card issuer may not automatically consider a dispute settled if the cardholder fails or refuses to comply with a particular request. However, if the card issuer otherwise has no means of obtaining information necessary to resolve the dispute, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.*

12(c)(3) Limitations

Paragraph 12(c)(3)(i)(A)

1. ***Resolution with merchant.*** *The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings, and may instead file a claim for the property or service purchased with the credit card with the card issuer directly.*

Paragraph 12(c)(3)(i)(B)

1. ***Geographic limitation.*** *The question of where a transaction occurs (as in the case of mail, Internet, or telephone orders, for example) is to be determined under state or other applicable law.*

12(c)(3)(ii) Exclusion

1. ***Merchant honoring card.*** *The exceptions (stated in §1026.12(c)(3)(ii)) to the amount and geographic limitations in §1026.12(c)(3)(i)(B) do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.*

Section 5: Offsets by Card Issuer Prohibited
12 C.F.R. § 1026.12(d)

Offsets by Card Issuer Prohibited - 12 CFR § 1026.12(d)

Regulatory Discussion

This section describes the prohibition of offsets by the card issuer for open-end credit. The commentary provides expanded coverage on the following topics:

- Holds on accounts; Funds intended as deposits; Types of indebtedness; - overdraft accounts; When prohibition applies in case of termination of account
- Security interest – limitations; Security interest - after-acquired property; Court order
- Automatic payment plans - scope of exception; Automatic payment plans - additional exceptions

Regulatory Text

(d) **Offsets by card issuer prohibited.**

(1) A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) This paragraph does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) This paragraph does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in §1026.13(d)(1)).

Regulatory Commentary

12(d) Offsets by Card Issuer Prohibited

Paragraph 12(d)(1)

1. ***Holds on accounts.*** *"Freezing" or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the prohibition in §1026.12(d)(1), unless done in the context of one of the exceptions specified in §1026.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by placing a hold on the funds in order to comply with the court order.*

2. ***Funds intended as deposits.*** *If the consumer tenders funds as a deposit (to a checking account, for example), the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.*

3. ***Types of indebtedness; overdraft accounts.*** *The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.*

4. ***When prohibition applies in case of termination of account.*** *The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.*

Paragraph 12(d)(2)

1. ***Security interest - limitations.*** *In order to qualify for the exception stated in §1026.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under §1026.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in §1026.12(d)(2). For a security interest to qualify for the exception under §1026.12(d)(2) the following conditions must be met:*

   i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

      A. Separate signature or initials on the agreement indicating that a security interest is being given.

      B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

ii. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by §1026.12(d)(2).

2. ***Security interest - after-acquired property.*** *As used in §1026.12(d)(2), the term "security interest" does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest would constitute a permissible exception to the prohibition on offsets.*

3. ***Court order.*** *If the card issuer obtains a judgment against the cardholder, and if state and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.*

Paragraph 12(d)(3)

1. ***Automatic payment plans - scope of exception.*** *With regard to automatic debit plans under §1026.12(d)(3), the following rules apply:*

i. The cardholder's authorization must be in writing and signed or initialed by the cardholder.

ii. The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act), the fact that the option exists should be clearly indicated.

2. ***Automatic payment plans - additional exceptions.*** *The following practices are not prohibited by §1026.12(d)(1):*

i. Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

ii. Debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

Section 6: Prompt Notification of Returns and Crediting of Refunds
12 C.F.R. § 1026.12(e)

Prompt Notification of Returns and Crediting of Refunds - 12 CFR § 1026.12(e)

Regulatory Discussion

This section describes the requirements for prompt notification of returns and crediting of refunds for open-end credit. The commentary provides expanded coverage on the following topics:

- Normal channels
- Crediting account

Regulatory Text

(e) **Prompt notification of returns and crediting of refunds.**

(1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

Regulatory Commentary

12(e) Prompt Notification of Returns and Crediting of Refunds

Paragraph 12(e)(1)

1. ***Normal channels.*** *The term normal channels refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).*

Paragraph 12(e)(2)

1. ***Crediting account.*** *The card issuer need not actually post the refund to the consumer's account within three business days after receiving the credit statement, provided that it credits the account as of a date within that time period.*

Section 7: Discounts; Tie-In Arrangements
12 C.F.R. § 1026.12(f)

Discounts; Tie In Arrangements - 12 CFR § 1026.12(f)

Regulatory Discussion

This section describes the requirements for discounts/tie-in arrangements for open-end credit. There is no commentary.

Regulatory Text

(f) **Discounts; tie-in arrangements.** No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

Regulatory Commentary

None.

Section 8: Relation to EFTA and Regulation E
12 C.F.R. § 1026.12(g)

Relation to EFTA and Regulation E - 12 CFR § 1026.12(g)

Regulatory Discussion

This section describes the relation to the Electronic Fund Transfer Act (Regulation E). There is no commentary.

Regulatory Text

(g) **Relation to Electronic Fund Transfer Act and Regulation E.** For guidance on whether Regulation Z (12 CFR part 1026) or Regulation E (12 CFR part 1005) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 1005.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

Regulatory Commentary

None.

Credit Card – Ability to Pay

Section 1: General Rule
12 C.F.R. § 1026.51(a)

In General - 12 CFR § 1026.51(a)

Regulatory Discussion

In general, a card issuer must not open a credit card account for a consumer unless the consumer's ability to make the required minimum periodic payments has been considered.

When considering the consumer's ability to make the required minimum periodic payments, the card issuer must *establish and maintain reasonable written* policies and procedures including, but not necessarily limited, to:

- Treating any income and assets to which the consumer has a reasonable expectation of access;
- Limiting consideration of the consumer's income or assets to independent income and assets;
- Consideration of at least one of the following:
  - The ratio of debt obligations to income;
  - The ratio of debt obligations to assets;
  - The income the consumer will have after paying debt obligations

Note: 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.

The commentary provides additional information with respect to the consideration of ability to repay that includes the following nine topics:

1. Consideration of additional factors
2. Ability to pay as of application or consideration of increase
3. Credit line increase
4. Consideration of income and assets
5. Information regarding income and assets
6. Examples of considering income
7. Current obligations
8. Joint applicants and joint accountholders
9. Single application

Regulatory Text

(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.

Regulatory Commentary

51(a) General Rule

51(a)(1)(i) Consideration of Ability to Pay

1. ***Consideration of additional factors.*** *Section 1026.51(a) requires a card issuer to consider a consumer's ability to make the required minimum periodic payments under the terms of an account based on the consumer's income or assets and current obligations. The card issuer may also consider consumer reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 1002).*

2. ***Ability to pay as of application or consideration of increase.*** *A card issuer complies with §1026.51(a) if it bases its consideration of a consumer's ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.*

3. ***Credit line increase.*** *When a card issuer considers increasing the credit line on an existing account, §1026.51(a) applies whether the consideration is based upon a request of the consumer or is initiated by the card issuer.*

4. ***Consideration of income and assets****. For purposes of §1026.51(a):*

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

   ii. Current or reasonably expected income includes, for example, current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income include interest or dividends, retirement benefits, public assistance, alimony, child support, and separate maintenance payments. Proceeds from student loans may be considered as current or reasonably expected income only to the extent that those proceeds exceed the amount disbursed or owed to an educational institution for tuition and other

expenses. Current or reasonably expected income also includes income that is being deposited regularly into an account on which the consumer is an accountholder (e.g., an individual deposit account or joint account). Assets include, for example, savings accounts and investments.

iii. Consideration of the income or assets of authorized users, household members, or other persons who are not liable for debts incurred on the account does not satisfy the requirement to consider the consumer's current or reasonably expected income or assets, unless a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income and assets (e.g., joint ownership granted under State community property laws), such income is being deposited regularly into an account on which the consumer is an accountholder (e.g., an individual deposit account or a joint account), or the consumer has a reasonable expectation of access to such income or assets even though the consumer does not have a current or expected ownership interest in the income or assets. See comment 51(a)(1)-6 for examples of non-applicant income to which a consumer has a reasonable expectation of access.

5. ***Information regarding income and assets.*** *For purposes of §1026.51(a), a card issuer may consider the consumer's current or reasonably expected income and assets based on the following information:*

   i. Information provided by the consumer in connection with the account, including information provided by the consumer through the application process. For example, card issuers may rely without further inquiry on information provided by applicants in response to a request for "salary," "income," "assets," "available income," "accessible income," or other language requesting that the applicant provide information regarding current or reasonably expected income or assets or any income or assets to which the applicant has a reasonable expectation of access. However, card issuers may not rely solely on information provided in response to a request for "household income." In that case, the card issuer would need to obtain additional information about an applicant's current or reasonably expected income, including income and assets to which the applicant has a reasonable expectation of access (such as by contacting the applicant). See comments 51(a)(1)-4, -5, and -6 for additional guidance on determining the consumer's current or reasonably expected income under §1026.51(a)(1). See comment 51(a)(1)-9 for guidance regarding the use of a single, common application form or process for all credit card applicants, regardless of age.

   ii. Information provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules).

   iii. Information obtained through third parties (subject to any applicable information-sharing rules).

   iv. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets, including any income or assets to which the consumer has a reasonable expectation of access.

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

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

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

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

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

7. ***Current obligations.*** *A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.*

8. ***Joint applicants and joint accountholders.*** *With respect to the opening of a joint account for two or more consumers or a credit line increase on such an account, the card issuer may consider the collective ability of all persons who are or will be liable for debts incurred on the account to make the required payments.*

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

51(a)(2) Minimum Periodic Payments

1. ***Applicable minimum payment formula.*** *For purposes of estimating required minimum periodic payments under the safe harbor set forth in §1026.51(a)(2)(ii), if the account has or may have a promotional program, such as a deferred payment or similar program, where there is no applicable minimum payment formula during the promotional period, the issuer must estimate the required minimum periodic payment based on the minimum payment formula that will apply when the promotion ends.*

2. ***Interest rate for purchases.*** *For purposes of estimating required minimum periodic payments under the safe harbor set forth in §1026.51(a)(2)(ii), if the interest rate for purchases is or may be a promotional rate, the issuer must use the post-promotional rate to estimate interest charges.*

3. ***Mandatory fees.*** *For purposes of estimating required minimum periodic payments under the safe harbor set forth in §1026.51(a)(2)(ii), mandatory fees that must be assumed to be charged include those fees the card issuer knows the consumer will be required to pay under the terms of the account if the account is opened, such as an annual fee. If a mandatory fee is a promotional fee (as defined in §1026.16(g)), the issuer must use the post-promotional fee amount for purposes of §1026.51(a)(2)(ii).*

Section 2: Rules Affecting Young Consumers
12 C.F.R. § 1026.51(b)

Rules Affecting Young Consumers - 12 CFR § 1026.51(b)

Regulatory Discussion

This section addresses two specific rules for "young consumers" (those less than 21 years old):

1. **Applications**: *either one of two conditions* must be satisfied before a card issuer may open a credit card account for a young consumer:

    a. The young consumer has submitted a written application and the card issuer has financial information indicating the consumer has the independent ability to make the required minimum periodic payments; *or*
    b. The young consumer has submitted a written application and the card issuer has:
    c. A signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable or jointly liable with the consumer for any debt on the account; ***and***
    d. financial information indicating such cosigner, guarantor, or joint applicant has the independent ability to make the required minimum periodic payments

2. **Credit line increases**: similarly, *either one of two conditions* must be satisfied before a card issuer may increase the credit limit on a credit card account for a young consumer before they attain the age of 21 unless:

    a. In the case of a young consumer who was granted a credit card account based on their independent ability to make the required minimum periodic payments:
    b. At the time of the contemplated increase, the consumer has the independent ability to make the required minimum periodic payments on the increased limit; *or*
    c. A co-signer, guarantor, or joint applicant who is at least 21 years old agrees in writing to assume liability for any debt incurred on the account
    d. In the case of a young consumer who was granted a credit card account based on a cosigner, guarantor, or joint applicant:
    e. A cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase

The commentary provides additional information on these topics.

Regulatory Text

(b) **Rules affecting young consumers**

(1) **Applications from young consumers.** A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and the card issuer has:

(i) Financial information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account; or

(ii)

(A) A signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or jointly liable with the consumer for any debt on the account; and

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

(2) **Credit line increases for young consumers.**

(i) If a credit card account has been opened pursuant to paragraph (b)(1)(i) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless:

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

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

(ii) If a credit card account has been opened pursuant to paragraph (b)(1)(ii) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.

Regulatory Commentary

51(b) Rules Affecting Young Consumers

1. ***Age as of date of application or consideration of credit line increase.*** *Sections 1026.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under §1026.51(b)(1) or the date the credit line increase is requested by the consumer (or if no request has been made, the date the credit line increase is considered by the card issuer) under §1026.51(b)(2).*

2. ***Liability of cosigner, guarantor, or joint accountholder.*** *Sections 1026.51(b)(1)(ii) and (b)(2) require the signature or written consent of a cosigner, guarantor, or joint accountholder agreeing either to be secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or to be jointly liable with the consumer for any debt on the account. Sections 1026.51(b)(1)(ii) and (b)(2) do not prohibit a card issuer from also requiring the cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21, consistent with any agreement made between the parties.*

3. ***Authorized users exempt.*** *If a consumer who has not attained the age of 21 is being added to another person's account as an authorized user and has no liability for debts incurred on the account, §1026.51(b)(1) and (b)(2) do not apply.*

4. ***Electronic application.*** *Consistent with §1026.5(a)(1)(iii), an application may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.) in the circumstances set forth in §1026.60. The electronic submission of an application from a consumer or a consent to a credit line increase from a cosigner, guarantor, or joint accountholder to a card issuer would constitute a written application or consent for purposes of §1026.51(b) and would not be considered a consumer disclosure for purposes of the E-Sign Act.*

5. ***Current obligations****. A card issuer may consider the consumer's current obligations under §1026.51(b)(1) and (b)(2)(i) based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.*

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

7. ***Relation to Regulation B.*** *In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, card issuers must comply with the applicable rules in Regulation B (12 CFR part 1026). A card issuer does not violate Regulation B by complying with the requirements in §1026.51(b).*

51(b)(1) Applications from young consumers

Paragraph 51(b)(1)(i).

1. ***Consideration of income and assets for young consumers.*** *For purposes of §1026.51(b)(1)(i):*

   i. A card issuer may consider any current or reasonably expected income or assets of the

consumer or consumers who are applying for a new account or will be liable for debts incurred on that account, including a cosigner or guarantor. However, because §1026.51(b)(1)(i) requires that the consumer who has not attained the age of 21 have an independent ability to make the required minimum periodic payments, the card issuer may only consider the applicant's current or reasonably expected income or assets under §1026.51(b)(1)(i). The card issuer may not consider income or assets to which an applicant, joint applicant, cosigner, or guarantor, in each case who is under the age of 21 and is or will be liable for debts incurred on the account, has only a reasonable expectation of access.

ii. Current or reasonably expected income includes, for example, current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income include interest or dividends, retirement benefits, public assistance, alimony, child support, and separate maintenance payments. Proceeds from student loans may be considered as current or reasonably expected income only to the extent that those proceeds exceed the amount disbursed or owed to an educational institution for tuition and other expenses. Current or reasonably expected income includes income that is being deposited regularly into an account on which the consumer is an accountholder (e.g., an individual deposit account or a joint account). Assets include, for example, savings accounts and investments. Current or reasonably expected income and assets does not include income and assets to which the consumer only has a reasonable expectation of access.

iii. Consideration of the income and assets of authorized users, household members, or other persons who are not liable for debts incurred on the account does not satisfy the requirement to consider the consumer's current or reasonably expected income or assets, unless a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income or assets (e.g., joint ownership granted under State community property laws), or the income is being deposited regularly into an account on which the consumer is an accountholder (e.g., an individual deposit account or a joint account). See comment 51(b)(1)(i)-3 for examples of income that may be relied upon as a consumer's current or reasonably expected income.

2. ***Information regarding income and assets for young consumers.*** *For purposes of §1026.51(b)(1)(i), a card issuer may consider the consumer's current or reasonably expected income and assets based on the following information:*

i. Information provided by the consumer in connection with the account, including information provided by the consumer through the application process. For example, card issuers may rely without further inquiry on information provided by applicants in response to a request for "salary," "income," "personal income," "individual income," "assets," or other language requesting that the applicant provide information regarding his or her current or reasonably expected income or assets. However, card issuers may not rely solely on information provided in response to a request for "household income." Nor may they rely solely on information provided in response to a request for "available income," "accessible income," or other language requesting that the applicant provide any income or assets to which the applicant has a reasonable expectation of access. In such cases, the card issuer would need to obtain additional information about an

applicant's current or reasonably expected income (such as by contacting the applicant). See comments 51(b)(1)(i)-1, -2, and -3 for additional guidance on determining the consumer's current or reasonably expected income under §1026.51(b)(1)(i). See comment 51(a)(1)-9 for guidance regarding the use of a single, common application for all credit card applicants, regardless of age.

ii. Information provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules).

iii. Information obtained through third parties (subject to any applicable information-sharing rules).

iv. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

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

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

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

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

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

Paragraph 51(b)(1)(ii).

1. ***Financial information.*** *Information regarding income and assets that satisfies the requirements of §1026.51(a) also satisfies the requirements of §1026.51(b)(1)(ii)(B) and card issuers may rely on the guidance in comments 51(a)(1)-4, -5, and -6 for purposes of*

determining whether a cosigner, guarantor, or joint applicant who is at least 21 years old has the ability to make the required minimum periodic payments in accordance with §1026.51(b)(1)(ii)(B).

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

1. ***Credit line request by joint accountholder aged 21 or older.*** *The requirement under §1026.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to §1026.51(b)(1)(ii) must agree in writing to assume liability for the increase before a credit line is increased, does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old initiates the request for the increase.*

2. ***Independent ability-to-pay standard.*** *Under §1026.51(b)(2), if a credit card account has been opened pursuant to §1026.51(b)(1)(i), no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless, at the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments on the increased limit, consistent with §1026.51(b)(1)(i), or a cosigner, guarantor, or joint applicant who is at least 21 years old assumes liability for any debt incurred on the account, consistent with §1026.51(b)(1)(ii). Thus, when a card issuer is considering whether to increase the credit limit on an existing account, §1026.51(b)(2)(i)(A) requires that consumers who have not attained the age of 21 and do not have a cosigner, guarantor, or joint applicant who is 21 years or older must have an independent ability to make the required minimum periodic payments as of the time of the contemplated increase. Thus, the card issuer may not consider income or assets to which an accountholder, cosigner, or guarantor, in each case who is under the age of 21 and is or will be liable for debts incurred on the account, has only a reasonable expectation of access under §1026.51(b)(2)(i)(A). The card issuer, however, may consider income or assets to which an accountholder, cosigner, or guarantor, in each case who is age 21 or older and is or will be liable for debts incurred on the account, has a reasonable expectation of access under §1026.51(b)(2)(i)(B). Information regarding income and assets that satisfies the requirements of §1026.51(b)(1)(i) also satisfies the requirements of §1026.51(b)(2)(i)(A) and card issuers may rely on the guidance in the commentary to §1026.51(b)(1)(i) for purposes of determining whether an accountholder who is less than 21 years old has the independent ability to make the required minimum periodic payments in accordance with §1026.51(b)(2)(i)(A). Information regarding income and assets that satisfies the requirements of §1026.51(a) also satisfies the requirements of §1026.51(b)(2)(i)(B) and card issuers may rely on the guidance in comments 51(a)(1)-4, -5, and -6 for purposes of determining whether a cosigner, guarantor, or joint applicant who is at least 21 years old has the ability to make the required minimum periodic payments in accordance with §1026.51(b)(2)(i)(B).*

Credit Card - Limitations on Fees

Section 1: Limitations: Opening and First Year
12 C.F.R. § 1026.52(a)

Limitations During First Year After Account Opening - 12 CFR § 1026.52(a)

Regulatory Discussion

Now that a credit card has been issued, there are limits on the total amount of fees a consumer is required to pay during the first year after *account opening*.

- The total amount of fees must not exceed 25 percent of the credit limit in effect when the account is opened.
- An account is considered open no earlier than the date on which the account may first be used by the consumer to engage is transactions.

Certain fees are not subject to the 25 percent limitation:

- Late payment fees, over –the-limit fees, and returned payment fees
- Fees the consumer is not required to pay with respect to the account

Additional commentary is provided on each of these topics.

Regulatory Text

(a) ***Limitations prior to account opening and during first year after account opening***

(1) **General rule.** Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan 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.

Regulatory Commentary

52(a) Limitations during first year after account opening.

52(a)(1) General rule

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

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

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

2. ***Fees that exceed 25 percent limit.*** *A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with §1026.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in the example in comment 52(a)(1)-1.i above, the card issuer complies with §1026.52(a)(1) if the card issuer charged the $2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for $2.50 (plus any interest charges on that $2.50) at the end of the billing cycle.*

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

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

ii. ***Decreases in credit limit.*** *If a card issuer decreases the credit limit during the first year after the account is opened, §1026.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced. For example, assume that, at account opening on January 1, the credit limit for a credit card account is $1,000 and the consumer is required to pay $250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to $600. Section 1026.52(a)(1) requires the card issuer to waive or remove $100 in fees from the account or to credit the account for an amount equal to $100 within a reasonable amount of time but no later than August 31.*

4. ***Date on which account may first be used by consumer to engage in transactions.***

i. ***Methods of compliance.*** *For purposes of §1026.52(a)(1), 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. A card issuer may consider an account open for purposes of §1026.52(a)(1) on any of the following dates:*

A. The date the account is first used by the consumer for a transaction (such as when an account is established in connection with financing the purchase of goods or services).

B. The date the consumer complies with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of a new account (such as requiring the consumer to provide information that verifies his or her identity), provided that the account may be used for transactions on that date.

C. The date that is seven days after the card issuer mails or delivers to the consumer account-opening disclosures that comply with §1026.6, provided that the consumer may use the account for transactions after complying with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of the new account (such as requiring the consumer to provide information that verifies his or her identity). If a card issuer has reasonable procedures designed to ensure that account-opening disclosures that comply with §1026.6 are mailed or delivered to consumers no later than a certain number of

days after the card issuer establishes the account, the card issuer may add that number of days to the seven-day period for purposes of determining the date on which the account was opened.

ii. ***Examples.***

A. Assume that, on July 1 of year one, a credit card account under an open-end (not home-secured) consumer credit plan is established in connection with financing the purchase of goods or services and a $500 transaction is charged to the account by the consumer. The card issuer may consider the account open on July 1 of year one for purposes of §1026.52(a)(1). Accordingly, §1026.52(a)(1) ceases to apply to the account on July 1 of year two.

B. Assume that, on July 1 of year one, a card issuer approves a consumer's application for a credit card account under an open-end (not home-secured) consumer credit plan and establishes the account on its internal systems. On July 5, the card issuer mails or delivers to the consumer account-opening disclosures that comply with §1026.6. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 12 of year one for purposes of §1026.52(a)(1). Accordingly, §1026.52(a)(1) ceases to apply to the account on July 12 of year two.

C. Same facts as in paragraph B above except that the card issuer has adopted reasonable procedures designed to ensure that account-opening disclosures that comply with §1026.6 are mailed or delivered to consumers no later than three days after an account is established on its systems. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 11 of year one for purposes of §1026.52(a)(1). Accordingly, §1026.52(a)(1) ceases to apply to the account on July 11 of year two. However, if the consumer uses the account for a transaction or complies with the card issuer's reasonable procedures for preventing fraud or unauthorized use on July 8 of year one, the card issuer may, at its option, consider the account open on that date for purposes of §1026.52(a)(1) and §1026.52(a)(1) therefore ceases to apply to the account on July 8 of year two.

52(a)(2) Fees Not Subject to Limitations

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

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

ii. Fees for insurance described in §1026.4(b)(7) or debt cancellation or debt suspension

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

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

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

v. Fixed finance charges; and

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

2. ***Fees the consumer is not required to pay.*** *Section 1026.52(a)(2)(ii) provides that §1026.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, §1026.52(a) generally does not apply to fees for making an expedited payment (to the extent permitted by §1026.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.*

3. ***Security deposits.*** *A security deposit that is charged to a credit card account is a fee for purposes of §1026.52(a). In contrast, however, a security deposit is not subject to the 25 percent limit in §1026.52(a)(1) if it is not charged to the account. For example, §1026.52(a)(1) does not prohibit a card issuer from requiring a consumer to provide funds at account opening pledged as security for the account that exceed 25 percent of the credit limit at account opening so long as those funds are not obtained from the account.*

52(a)(3) Rule of Construction

1. ***Fees or charges otherwise prohibited by law.*** *Section 1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. For example, see 16 CFR 310.4(a)(4).*

Section 2: Limitations on Penalty Fees
12 C.F.R. § 1026.52(b)

Limitations on Penalty Fees - 12 CFR § 1026.52(b)

Regulatory Discussion

In general, fees for violating the terms or other requirements of a credit card account (penalty fees) may not be imposed unless the dollar amount of the fee is consistent with the following conditions:

- Fees based on cost. The card issuer must reevaluate the determination at least once every twelve months.
- Various safe harbors.

Certain fees are strictly prohibited:

- Fees that exceed dollar amount associated with violation
- Multiple fees based on a single event or transaction

The commentary provides additional information and examples on these topics.

Regulatory Text

(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) $27

(B) $38 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 imposing no more than one fee for violating the terms or other requirements of an account during a billing cycle.

Regulatory Commentary

52(b) Limitations on Penalty Fees

1. ***Fees for violating the account terms or other requirements.*** *For purposes of §1026.52(b), a fee includes any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates. Accordingly, for purposes of §1026.52(b), a fee does not include charges attributable to an increase in an annual percentage rate based on an act or omission that violates the terms or other requirements of an account.*

   i. ***The following are examples of fees that are subject to the limitations in §1026.52(b) or are prohibited by §1026.52(b):***

      A. Late payment fees and any other fees imposed by a card issuer if an account becomes delinquent or if a payment is not received by a particular date.

      B. Returned payment fees and any other fees imposed by a card issuer if a payment received via check, automated clearing house, or other payment method is returned.

      C. Any fee or charge for an over-the-limit transaction as defined in §1026.56(a), to the extent the imposition of such a fee or charge is permitted by §1026.56.

      D. Any fee imposed by a card issuer if payment on a check that accesses a credit card account is declined.

      E. Any fee or charge for a transaction that the card issuer declines to authorize. See §1026.52(b)(2)(i)(B).

      F. Any fee imposed by a card issuer based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). See §1026.52(b)(2)(i)(B).

      G. Any fee imposed by a card issuer based on the closure or termination of an account. See §1026.52(b)(2)(i)(B).

   ii. ***The following are examples of fees to which §1026.52(b) does not apply:***

      A. Balance transfer fees.

      B. Cash advance fees.

      C. Foreign transaction fees.

      D. Annual fees and other fees for the issuance or availability of credit described in §1026.60(b)(2), except to the extent that such fees are based on account inactivity. See §1026.52(b)(2)(i)(B).

      E. Fees for insurance described in §1026.4(b)(7) or debt cancellation or debt suspension coverage described in §1026.4(b)(10) written in connection with a credit transaction, provided that such fees are not imposed as a result of a violation of the account terms or other requirements of an account.

F. Fees for making an expedited payment (to the extent permitted by §1026.10(e)).

G. Fees for optional services (such as travel insurance).

H. Fees for reissuing a lost or stolen card.

2. ***Rounding to nearest whole dollar.*** *A card issuer may round any fee that complies with §1026.52(b) to the nearest whole dollar. For example, if §1026.52(b) permits a card issuer to impose a late payment fee of $21.50, the card issuer may round that amount up to the nearest whole dollar and impose a late payment fee of $22. However, if the late payment fee permitted by §1026.52(b) were $21.49, the card issuer would not be permitted to round that amount up to $22, although the card issuer could round that amount down and impose a late payment fee of $21.*

52(b)(1) General Rule

1. ***Relationship between §1026.52(b)(1)(i), (b)(1)(ii), and (b)(2).***

i. ***Relationship between §1026.52(b)(1)(i) and (b)(1)(ii).*** *A card issuer may impose a fee for violating the terms or other requirements of an account pursuant to either §1026.52(b)(1)(i) or (b)(1)(ii).*

A. A card issuer that complies with the safe harbors in §1026.52(b)(1)(ii) is not required to determine that its fees represent a reasonable proportion of the total costs incurred by the card issuer as a result of a type of violation under §1026.52(b)(1)(i).

B. A card issuer may impose a fee for one type of violation pursuant to §1026.52(b)(1)(i) and may impose a fee for a different type of violation pursuant to §1026.52(b)(1)(ii). For example, a card issuer may impose a late payment fee of $30 based on a cost determination pursuant to §1026.52(b)(1)(i) but impose returned payment and over-the-limit fees of $25 or $35 pursuant to the safe harbors in §1026.52(b)(1)(ii).

C. A card issuer that previously based the amount of a penalty fee for a particular type of violation on a cost determination pursuant to §1026.52(b)(1)(i) may begin to impose a penalty fee for that type of violation that is consistent with §1026.52(b)(1)(ii) at any time (subject to the notice requirements in §1026.9), provided that the first fee imposed pursuant to §1026.52(b)(1)(ii) is consistent with §1026.52(b)(1)(ii)(A). For example, assume that a late payment occurs on January 15 and that, based on a cost determination pursuant to §1026.52(b)(1)(i), the card issuer imposes a $30 late payment fee. Another late payment occurs on July 15. The card issuer may impose another $30 late payment fee pursuant to §1026.52(b)(1)(i) or may impose a $25 late payment fee pursuant to §1026.52(b)(1)(ii)(A). However, the card issuer may not impose a $35 late payment fee pursuant to §1026.52(b)(1)(ii)(B). If the card issuer imposes a $25 fee pursuant to §1026.52(b)(1)(ii)(A) for the July 15 late payment and another late payment occurs on September 15, the card issuer may impose a $35 fee for the September 15 late payment pursuant to §1026.52(b)(1)(ii)(B).

ii. ***Relationship between §1026.52(b)(1) and (b)(2).*** *Section 1026.52(b)(1) does not permit a card issuer to impose a fee that is inconsistent with the prohibitions in §1026.52(b)(2). For example, if §1026.52(b)(2)(i) prohibits the card issuer from*

imposing a late payment fee that exceeds $15, §1026.52(b)(1)(ii) does not permit the card issuer to impose a higher late payment fee.

52(b)(1)(i) Fees Based on Costs

1. ***Costs incurred as a result of violations.*** *Section 1026.52(b)(1)(i) does not require a card issuer to base a fee on the costs incurred as a result of a specific violation of the terms or other requirements of an account. Instead, for purposes of §1026.52(b)(1)(i), a card issuer must have determined that a fee for violating the terms or other requirements of an account represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. A card issuer may make a single determination for all of its credit card portfolios or may make separate determinations for each portfolio. The factors relevant to this determination include:*

   i. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (for example, a period of twelve months).

   ii. The costs incurred by the card issuer during that period as a result of those violations.

   iii. At the card issuer's option, the number of fees imposed by the card issuer as a result of those violations during that period that the card issuer reasonably estimates it will be unable to collect. See comment 52(b)(1)(i)-5.

   iv. At the card issuer's option, reasonable estimates for an upcoming period of changes in the number of violations of that type, the resulting costs, and the number of fees that the card issuer will be unable to collect. See illustrative examples in comments 52(b)(1)(i)-6 through -9.

2. ***Amounts excluded from cost analysis.*** *The following amounts are not costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of §1026.52(b)(1)(i):*

   i. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts).

   ii. Costs associated with evaluating whether consumers who have not violated the terms or other requirements of an account are likely to do so in the future (such as the costs associated with underwriting new accounts). However, once a violation of the terms or other requirements of an account has occurred, the costs associated with preventing additional violations for a reasonable period of time are costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of §1026.52(b)(1)(i).

3. ***Third party charges.*** *As a general matter, amounts charged to the card issuer by a third party as a result of a violation of the terms or other requirements of an account are costs incurred by the card issuer for purposes of §1026.52(b)(1)(i). For example, if a card issuer is charged a specific amount by a third party for each returned payment, that amount is a cost incurred by the card issuer as a result of returned payments. However, if the amount is charged to the card issuer by an affiliate or subsidiary of the card issuer, the card issuer must have determined that the charge represents a reasonable proportion of the costs incurred by the affiliate or subsidiary as a result of the type of violation. For example, if*

an affiliate of a card issuer provides collection services to the card issuer on delinquent accounts, the card issuer must have determined that the amounts charged to the card issuer by the affiliate for such services represent a reasonable proportion of the costs incurred by the affiliate as a result of late payments.

4. ***Amounts charged by other card issuers.*** *The fact that a card issuer's fees for violating the terms or other requirements of an account are comparable to fees assessed by other card issuers does not satisfy the requirements of §1026.52(b)(1)(i).*

5. ***Uncollected fees.*** *For purposes of §1026.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off by the card issuer, fees that have been discharged in bankruptcy, and fees that the card issuer is required to waive in order to comply with a legal requirement (such as a requirement imposed by 12 CFR Part 1026 or 50 U.S.C. app. 527). However, fees that the card issuer chooses not to impose or chooses not to collect (such as fees the card issuer chooses to waive at the request of the consumer or under a workout or temporary hardship arrangement) are not relevant for purposes of this determination. See illustrative examples in comments 52(b)(2)(i)-6 through -9.*

6. ***Late payment fees.***

   i. ***Costs incurred as a result of late payments.*** *For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements).*

   ii. ***Examples.***

      A. ***Late payment fee based on past delinquencies and costs.*** *Assume that, during year one, a card issuer experienced 1 million delinquencies and incurred $26 million in costs as a result of those delinquencies. For purposes of §1026.52(b)(1)(i), a $26 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.*

      B. ***Adjustment based on fees card issuer is unable to collect.*** *Same facts as above except that the card issuer imposed a late payment fee for each of the 1 million delinquencies experienced during year one but was unable to collect 25% of those fees (in other words, the card issuer was unable to collect 250,000 fees, leaving a total of 750,000 late payments for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(2)(i), a late payment fee of $35 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.*

      C. ***Adjustment based on reasonable estimate of future changes.*** *Same facts as paragraphs A and B above except the card issuer reasonably estimates that—based on past delinquency rates and other factors relevant to potential delinquency rates for year two—it will experience a 2% decrease in delinquencies during year two (in other words, 20,000 fewer delinquencies for a total of 980,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (25%) during year two as during year one (in other words, the card issuer will be*

unable to collect 245,000 fees, leaving a total of 735,000 late payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of delinquencies and other factors relevant to potential costs for year two—it will experience a 5% increase in costs during year two (in other words, $1.3 million in additional costs for a total of $27.3 million). For purposes of §1026.52(b)(1)(i), a $37 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

7. ***Returned payment fees.***

i. ***Costs incurred as a result of returned payments.*** *For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of returned payments include:*

A. Costs associated with processing returned payments and reconciling the card issuer's systems and accounts to reflect returned payments;

B. Costs associated with investigating potential fraud with respect to returned payments; and

C. Costs associated with notifying the consumer of the returned payment and arranging for a new payment.

ii. Examples.

A. ***Returned payment fee based on past returns and costs.*** *Assume that, during year one, a card issuer experienced 150,000 returned payments and incurred $3.1 million in costs as a result of those returned payments. For purposes of §1026.52(b)(1)(i), a $21 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.*

B. ***Adjustment based on fees card issuer is unable to collect.*** *Same facts as above except that the card issuer imposed a returned payment fee for each of the 150,000 returned payments experienced during year one but was unable to collect 15% of those fees (in other words, the card issuer was unable to collect 22,500 fees, leaving a total of 127,500 returned payments for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(2)(i), a returned payment fee of $24 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.*

C. ***Adjustment based on reasonable estimate of future changes.*** *Same facts as paragraphs A and B above except the card issuer reasonably estimates that—based on past returned payment rates and other factors relevant to potential returned payment rates for year two—it will experience a 2% increase in returned payments during year two (in other words, 3,000 additional returned payments for a total of 153,000). The card issuer also reasonably estimates that it will be unable to collect 25% of returned payment fees during year two (in other words, the card issuer will be unable to collect 38,250 fees, leaving a total of 114,750 returned payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of returned*

payments and other factors relevant to potential costs for year two—it will experience a 1% decrease in costs during year two (in other words, a $31,000 reduction in costs for a total of $3.069 million). For purposes of §1026.52(b)(1)(i), a $27 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

8. ***Over-the-limit fees.***

i. ***Costs incurred as a result of over-the-limit transactions.*** *For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of over-the-limit transactions include:*

A. *Costs associated with determining whether to authorize over-the-limit transactions; and*

B. *Costs associated with notifying the consumer that the credit limit has been exceeded and arranging for payments to reduce the balance below the credit limit.*

ii. ***Costs not incurred as a result of over-the-limit transactions.*** *For purposes of §1026.52(b)(1)(i), costs associated with obtaining the affirmative consent of consumers to the card issuer's payment of transactions that exceed the credit limit consistent with §1026.56 are not costs incurred by a card issuer as a result of over-the-limit transactions.*

iii. ***Examples.***

A. ***Over-the-limit fee based on past fees and costs.*** *Assume that, during year one, a card issuer authorized 600,000 over-the-limit transactions and incurred $4.5 million in costs as a result of those over-the-limit transactions. However, because of the affirmative consent requirements in §1026.56, the card issuer was only permitted to impose 200,000 over-the-limit fees during year one. For purposes of §1026.52(b)(1)(i), a $23 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.*

B. ***Adjustment based on fees card issuer is unable to collect.*** *Same facts as above except that the card issuer was unable to collect 30% of the 200,000 over-the-limit fees imposed during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(2)(i), an over-the-limit fee of $32 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.*

C. ***Adjustment based on reasonable estimate of future changes.*** *Same facts as paragraphs A and B above except the card issuer reasonably estimates that—based on past over-the-limit transaction rates, the percentages of over-the-limit transactions that resulted in an over-the-limit fee in the past (consistent with §1026.56), and factors relevant to potential changes in those rates and percentages for year two—it will authorize approximately the same number of over-the-limit transactions during year two (600,000) and impose approximately the same*

number of over-the-limit fees (200,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (30%) during year two as during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of over-the-limit transactions and other factors relevant to potential costs for year two—it will experience a 6% decrease in costs during year two (in other words, a $270,000 reduction in costs for a total of $4.23 million). For purposes of §1026.52(b)(1)(i), a $30 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

9. **Declined access check fees.**

i. ***Costs incurred as a result of declined access checks.*** *For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of declining payment on a check that accesses a credit card account include:*

A. Costs associated with determining whether to decline payment on access checks;

B. Costs associated with processing declined access checks and reconciling the card issuer's systems and accounts to reflect declined access checks;

C. Costs associated with investigating potential fraud with respect to declined access checks; and

D. Costs associated with notifying the consumer and the merchant or other party that accepted the access check that payment on the check has been declined.

ii. ***Example.*** *Assume that, during year one, a card issuer declined 100,000 access checks and incurred $2 million in costs as a result of those declined checks. The card issuer imposed a fee for each declined access check but was unable to collect 10% of those fees (in other words, the card issuer was unable to collect 10,000 fees, leaving a total of 90,000 declined access checks for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(1)(i), a $22 declined access check fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of declined access checks during year two.*

52(b)(1)(ii) Safe harbors

1. ***Multiple violations of same type.***

i. ***Same billing cycle or next six billing cycles.*** *A card issuer cannot impose a fee for a violation pursuant to §1026.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to §1026.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to §1026.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to §1026.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles. A fee has been imposed for purposes of §1026.52(b)(1)(ii) even if the card issuer waives or rebates all or part of the fee.*

A. ***Late payments.*** *For purposes of §1026.52(b)(1)(ii), a late payment occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of this part and the terms or other requirements of the account.*

B. ***Returned payments.*** *For purposes of §1026.52(b)(1)(ii), a returned payment occurs during the billing cycle in which the payment is returned to the card issuer.*

C. ***Transactions that exceed the credit limit.*** *For purposes of §1026.52(b)(1)(ii), a transaction that exceeds the credit limit for an account occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer.*

D. ***Declined access checks.*** *For purposes of §1026.52(b)(1)(ii), a check that accesses a credit card account is declined during the billing cycle in which the card issuer declines payment on the check.*

ii. ***Relationship to §§1026.52(b)(2)(ii) and 1026.56(j)(1).*** *If multiple violations are based on the same event or transaction such that §1026.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of §1026.52(b)(1)(ii). Furthermore, consistent with §1026.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of §1026.52(b)(1)(ii). However, §1026.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by §1026.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by §1026.56(j)(1) may be imposed pursuant to §1026.52(b)(1)(ii)(B). See comment 52(b)(2)(ii)-1.*

iii. ***Examples.*** *The following examples illustrate the application of §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are not charge card accounts. For purposes of these examples, assume that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.*

A. ***Violations of same type (late payments).*** *A required minimum periodic payment of $50 is due on March 25. On March 26, a late payment has occurred because no payment has been received. Accordingly, consistent with §1026.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on March 26. In order for the card issuer to impose a $35 late payment fee pursuant to §1026.52(b)(1)(ii)(B), a second late payment must occur during the April, May, June, July, August, or September billing cycles.*

1. ***The card issuer does not receive any payment during the March billing cycle****. A required minimum periodic payment of $100 is due on April 25. On April 20, the card issuer receives a $50 payment. No further payment is received during the April billing cycle. Accordingly, consistent with §1026.52(b)(1)(ii)(B), the card issuer may impose a $35 late payment fee on April 26. Furthermore, the card issuer may impose a $35 late payment fee for any late payment that occurs during the May, June, July, August, September, or October billing cycles.*

2. *Same facts as in paragraph A above. On March 30, the card issuer receives a $50 payment and the required minimum periodic payments for the April, May, June, July, August, and September billing cycles are received on or before the payment due date. A required minimum periodic payment of $60 is due on October 25. On October 26, a late payment has occurred because the required minimum periodic payment due on October 25 has not been received. However, because this late payment did not occur during the six billing cycles following the March billing cycle, §1026.52(b)(1)(ii) only permits the card issuer to impose a late payment fee of $25.*

B. ***Violations of different types (late payment and over the credit limit).*** *The credit limit for an account is $1,000. Consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. A required minimum periodic payment of $30 is due on August 25. On August 26, a late payment has occurred because no payment has been received. Accordingly, consistent with §1026.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on August 26. On August 30, the card issuer receives a $30 payment. On September 10, a transaction causes the account balance to increase to $1,150, which exceeds the account's $1,000 credit limit. On September 11, a second transaction increases the account balance to $1,350. On September 23, the card issuer receives the $50 required minimum periodic payment due on September 25, which reduces the account balance to $1,300. On September 30, the card issuer imposes a $25 over-the-limit fee, consistent with §1026.52(b)(1)(ii)(A). On October 26, a late payment has occurred because the $60 required minimum periodic payment due on October 25 has not been received. Accordingly, consistent with §1026.52(b)(1)(ii)(B), the card issuer imposes a $35 late payment fee on October 26.*

C. ***Violations of different types (late payment and returned payment).*** *A required minimum periodic payment of $50 is due on July 25. On July 26, a late payment has occurred because no payment has been received. Accordingly, consistent with §1026.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on July 26. On July 30, the card issuer receives a $50 payment. A required minimum periodic payment of $50 is due on August 25. On August 24, a $50 payment is received. On August 27, the $50 payment is returned to the card issuer for insufficient funds. In these circumstances, §1026.52(b)(2)(ii) permits the card issuer to impose either a late payment fee or a returned payment fee but not both because the late payment and the returned payment result from the same event or transaction. Accordingly, for purposes of §1026.52(b)(1)(ii), the event or transaction constitutes a single violation. However, if the card issuer imposes a late payment fee, §1026.52(b)(1)(ii)(B) permits the issuer to impose a fee of $35 because the late payment occurred during the six billing cycles following the July billing cycle. In contrast, if the card issuer imposes a returned payment fee, the amount of the fee may be no more than $25 pursuant to §1026.52(b)(1)(ii)(A).*

2. ***Adjustments based on Consumer Price Index.*** *For purposes of §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B), the Bureau shall calculate each year price level adjusted amounts 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 amounts in §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has risen by a whole dollar, those*

amounts will be increased by $1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has decreased by a whole dollar, those amounts will be decreased by $1.00. The Bureau will publish adjustments to the amounts in §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B).

i. ***Historical thresholds.***

A. [Omitted]

B. [Omitted]

C. [Omitted]

D. [Omitted]

E. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under §1026.52(b)(1)(ii)(A) and $38 under §1026.52(b)(1)(ii)(B), through December 31, 2017. [Note: Commentary has not been updated for 2018.]

3. ***Delinquent balance for charge card accounts.*** *Section 1026.52(b)(1)(ii)(C) provides that, when a charge card issuer that requires payment of outstanding balances in full at the end of each billing cycle has not received the required payment for two or more consecutive billing cycles, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. For purposes of §1026.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to §1026.52(b)(1)(ii)(C). Consistent with §1026.52(b)(2)(ii), a charge card issuer that imposes a fee pursuant to §1026.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to §1026.52(b)(1)(ii)(B) with respect to the same late payment. The following examples illustrate the application of §1026.52(b)(1)(ii)(C):*

i. Assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. At the end of the June billing cycle, the account has a balance of $1,000. On July 5, the card issuer provides a periodic statement disclosing the $1,000 balance consistent with §1026.7. During the July billing cycle, the account is used for $300 in transactions, increasing the balance to $1,300. At the end of the July billing cycle, no payment has been received and the card issuer imposes a $25 late payment fee consistent with §1026.52(b)(1)(ii)(A). On August 5, the card issuer provides a periodic statement disclosing the $1,325 balance consistent with §1026.7. During the August billing cycle, the account is used for $200 in transactions, increasing the balance to $1,525. At the end of the August billing cycle, no payment has been received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $40, which is 3% of the $1,325 balance that was due at the end of the August billing cycle. Section 1026.52(b)(1)(ii)(C) does not permit the card issuer to include the $200 in transactions that occurred during the August billing cycle.

ii. Same facts as above except that, on August 25, a $100 payment is received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $37, which is 3% of the unpaid portion of the $1,325 balance that was due at the end of the August billing cycle ($1,225).

iii. Same facts as in paragraph A above except that, on August 25, a $200 payment is received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $34, which is 3% of the unpaid portion of the $1,325 balance that was due at the end of the August billing cycle ($1,125). In the alternative, the card issuer may impose a late payment fee of $35 consistent with §1026.52(b)(1)(ii)(B). However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees.

52(b)(2) Prohibited fees

*1. **Relationship to §1026.52(b)(1).** A card issuer does not comply with §1026.52(b) if it imposes a fee that is inconsistent with the prohibitions in §1026.52(b)(2). Thus, the prohibitions in §1026.52(b)(2) apply even if a fee is consistent with §1026.52(b)(1)(i) or (b)(1)(ii). For example, even if a card issuer has determined for purposes of §1026.52(b)(1)(i) that a $27 fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of a particular type of violation, §1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $27. Similarly, even if §1026.52(b)(1)(ii) permits a card issuer to impose a $25 fee, §1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $25.*

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

*1. **Late payment fees.** For purposes of §1026.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Thus, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that required minimum periodic payment. For example:*

i. Assume that a $15 required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on September 25 ($15). Thus, under §1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

ii. Same facts as above except that, on September 25, the card issuer receives a $10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the late payment is the full amount of the required minimum periodic payment due on September 25 ($15), rather than the unpaid portion of that payment ($5). Thus, under §1026.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

iii. Assume that a $15 required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is $50. On November 5, the card issuer imposes a late payment fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on October 28 ($15), rather than the amount of the required minimum periodic payment due on November 28 ($50). Thus, under §1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

2. ***Returned payment fees.*** *For purposes of §1026.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer. Thus, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and §1026.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:*

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on March 25. The card issuer receives a check for $100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)). Furthermore, §1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. See comment 52(b)(2)(ii)-1.

ii. Same facts as above except that the card issuer receives the $100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $30. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15), rather than the amount of the required minimum periodic payment due on April 25 ($30). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)). Furthermore, §1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. See comment 52(b)(2)(ii)-1.

iii. Same facts as paragraph i above except that, on March 28, the card issuer presents the $100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on August 25. The card issuer receives a check for $15 on August 23, which is not returned. The card issuer receives a check for $50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 1026.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of §1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on August 25 ($15). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

3. ***Over-the-limit fees.*** *For purposes of §1026.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed. Thus, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit fee that exceeds that amount. Nothing in §1026.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with §1026.56. The following examples illustrate the application of §1026.52(b)(2)(i)(A) to over-the-limit fees:*

i. Assume that the billing cycles for a credit card account with a credit limit of $5,000 begin on the first day of the month and end on the last day of the month. Assume also that, consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a $4,950 balance. On March 6, a $60 transaction is charged to the account, increasing the balance to $5,010. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

ii. Same facts as above except that, on March 26, the card issuer receives a payment of $20, reducing the balance below the credit limit to $4,995. Nevertheless, for purposes of §1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, consistent with §1026.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of $15.

4. ***Declined access check fees.*** *For purposes of §1026.52(b)(2)(i), the dollar amount associated with declining payment on a check that accesses a credit card account is the amount of the check. Thus, when a check that accesses a credit card account is declined, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a $50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check ($50). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee*

that exceeds $50. However, the amount of this fee must also comply with §1026.52(b)(1)(i) or (b)(1)(ii).

5. ***Inactivity fees.*** *Section 1026.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a fee with respect to a credit card account under an open-end (not home-secured) consumer credit plan based on inactivity on that account (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, §1026.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a $50 fee when a credit card account under an open-end (not home-secured) consumer credit plan is not used for at least $2,000 in purchases over the course of a year. Similarly, §1026.52(b)(2)(i)(B)(2) prohibits a card issuer from imposing a $50 annual fee on all accounts of a particular type but waiving the fee on any account that is used for at least $2,000 in purchases over the course of a year if the card issuer promotes the waiver or rebate of the annual fee for purposes of §1026.55(e). However, if the card issuer does not promote the waiver or rebate of the annual fee for purposes of §1026.55(e), §1026.52(b)(2)(i)(B)(2) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).*

6. ***Closed account fees****. Section 1026.52(b)(2)(i)(B)(3) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, §1026.52(b)(2)(i)(B)(3) prohibits a card issuer from:*

   i. Imposing a one-time fee to consumers who close their accounts.

   ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. See also comment 55(d)-1.

   iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

52(b)(2)(ii) Multiple Fees Based on a Single Event or Transaction

1. ***Single event or transaction.*** *Section 1026.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. If §1026.56(j)(1) permits a card issuer to impose fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction, those fees are not based on a single event or transaction for purposes of §1026.52(b)(2)(ii). The following examples illustrate the application of §1026.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.*

   i. Assume that the required minimum periodic payment due on March 25 is $20. On March 26, the card issuer has not received any payment and imposes a late payment fee. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i), the card issuer may impose a $20

late payment fee on March 26. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the $20 minimum payment has not been received by a subsequent date (such as March 31).

A. On April 3, the card issuer provides a periodic statement disclosing that a $70 required minimum periodic payment is due on April 25. This minimum payment includes the $20 minimum payment due on March 25 and the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Section 1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee based on the consumer's failure to make the $70 required minimum periodic payment on or before April 25. Accordingly, consistent with §1026.52(b)(1)(ii)(B) and (b)(2)(i), the card issuer may impose a $35 late payment fee on April 26.

B. On April 3, the card issuer provides a periodic statement disclosing that a $20 required minimum periodic payment is due on April 25. This minimum payment does not include the $20 minimum payment due on March 25 or the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Because the card issuer has received the required minimum periodic payment due on April 25 and because §1026.52(b)(2)(ii) prohibits the card issuer from imposing a second late payment fee based on the consumer's failure to make the $20 minimum payment due on March 25, the card issuer cannot impose a late payment fee in these circumstances.

ii. Assume that the required minimum periodic payment due on March 25 is $30.

A. On March 25, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 27. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

B. Same facts as paragraph ii.A above except that that card issuer receives the $50 check on March 27 and the check is returned for insufficient funds on March 29. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. If no payment is received on or before the next payment due date (April 25), §1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee.

iii. Assume that the required minimum periodic payment due on July 25 is $30. On July 10, the card issuer receives a $50 payment, which is not returned. On July 20, the card issuer receives a $100 payment, which is returned for insufficient funds on July 24. Consistent with §1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. Nothing in §1026.52(b)(2)(ii) prohibits the imposition of this fee.

iv. Assume that the credit limit for an account is $1,000 and that, consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the balance on the account is $970 and the card issuer has not received the $35 required minimum periodic payment due on March 25. On that same date (March 31), a $70 transaction is charged to the account, which increases the balance to $1,040. Consistent with §1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 and an over-the-limit fee of $25. Section 1026.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions. No additional transactions are charged to the account during the March, April, or May billing cycles. If the account balance remains more than $35 above the credit limit on April 26, the card issuer may impose an over-the-limit fee of $35 pursuant to §1026.52(b)(1)(ii)(B), to the extent consistent with §1026.56(j)(1). Furthermore, if the account balance remains more than $35 above the credit limit on May 26, the card issuer may again impose an over-the-limit fee of $35 pursuant to §1026.52(b)(1)(ii)(B), to the extent consistent with §1026.56(j)(1). Thereafter, §1026.56(j)(1) does not permit the card issuer to impose additional over-the-limit fees unless another over-the-limit transaction occurs. However, if an over-the-limit transaction occurs during the six billing cycles following the May billing cycle, the card issuer may impose an over-the-limit fee of $35 pursuant to §1026.52(b)(1)(ii)(B).

v. Assume that the credit limit for an account is $5,000 and that, consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On July 23, the balance on the account is $4,950. On July 24, the card issuer receives the $100 required minimum periodic payment due on July 25, reducing the balance to $4,850. On July 26, a $75 transaction is charged to the account, which increases the balance to $4,925. On July 27, the $100 payment is returned for insufficient funds, increasing the balance to $5,025. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25 or an over-the-limit fee of $25. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vi. Assume that the required minimum periodic payment due on March 25 is $50. On March 20, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 22. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. On March 25, the card issuer receives a second check for $50, but the check is returned for insufficient funds on March 27. Consistent with §§1026.52(b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $35. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vii. Assume that the required minimum periodic payment due on February 25 is $100. On February 25, the card issuer receives a check for $100. On March 3, the card issuer provides a periodic statement disclosing that a $120 required minimum periodic payment is due on March 25. On March 4, the $100 check is returned to the card issuer for insufficient funds. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25 with

respect to the $100 payment. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. On March 20, the card issuer receives a $120 check, which is not returned. No additional payments are received during the March billing cycle. Because the card issuer has received the required minimum periodic payment due on March 25 and because §1026.52(b)(2)(ii) prohibits the card issuer from imposing a second fee based on the $100 payment that was returned for insufficient funds, the card issuer cannot impose a late payment fee in these circumstances.

Open End – Allocation of Payments

Section 1: General Rule
12 C.F.R. § 1026.53(a)

General Rule - 12 C.F.R § 1026.53(a)

Regulatory Discussion

When a consumer makes a payment in excess of the required minimum periodic payment, the excess amount of the payment must be allocated first to the balance with the highest APR and any remaining portion to the other balances in descending order based on the APR.

The commentary provides additional information on the following topics:

1. Required minimum periodic payment
2. Applicable rates and balances
3. Claims or defenses under §1026.12(c) and billing error disputes under §1026.13
4. Balances with the same rate
5. Examples

Regulatory Text

(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.

Regulatory Commentary

Section 1026.53 - Allocation of Payments

1. ***Required minimum periodic payment.*** *Section 1026.53 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the card issuer. Section 1026.53 does not limit or otherwise address the card issuer's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A card issuer may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in §1026.53 to the extent consistent with other applicable law or regulatory guidance.*

2. ***Applicable rates and balances.*** *Section 1026.53 permits a card issuer to allocate an amount paid by the consumer in excess of the required minimum periodic payment based*

on the annual percentage rates and balances on the day the preceding billing cycle ends, on the day the payment is credited to the account, or on any day in between those two dates. The day used by the card issuer to determine the applicable annual percentage rates and balances for purposes of §1026.53 generally must be consistent from billing cycle to billing cycle, although the card issuer may adjust this day from time to time. For example:

i. Assume that the billing cycles for a credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends (March 31), the account has a purchase balance of $500 at a promotional annual percentage rate of 5% and another purchase balance of $200 at a non-promotional annual percentage rate of 15%. On April 5, a $100 purchase to which the 15% rate applies is charged to the account. On April 15, the promotional rate expires and §1026.55(b)(1) permits the card issuer to increase the rate that applies to the $500 balance from 5% to 18%. On April 25, the card issuer credits to the account $400 paid by the consumer in excess of the required minimum periodic payment. If the card issuer's practice is to allocate payments based on the rates and balances on the last day of the prior billing cycle, the card issuer would allocate the $400 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and then allocate the remaining $200 to the $500 balance to which the 5% rate applied on March 31. In the alternative, if the card issuer's practice is to allocate payments based on the rates and balances on the day a payment is credited to the account, the card issuer would allocate the $400 payment to the $500 balance to which the 18% rate applied on April 25.

ii. Same facts as above except that, on April 25, the card issuer credits to the account $750 paid by the consumer in excess of the required minimum periodic payment. If the card issuer's practice is to allocate payments based on the rates and balances on the last day of the prior billing cycle, the card issuer would allocate the $750 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and the $500 balance to which the 5% rate applied on March 31 and then allocate the remaining $50 to the $100 purchase made on April 5. In the alternative, if the card issuer's practice is to allocate payments based on the rates and balances on the day a payment is credited to the account, the card issuer would allocate the $750 payment to pay in full the $500 balance to which the 18% rate applied on April 25 and then allocate the remaining $250 to the $300 balance to which the 15% rate applied on April 25.

3. ***Claims or defenses under §1026.12(c) and billing error disputes under §1026.13.*** *When a consumer has asserted a claim or defense against the card issuer pursuant to §1026.12(c) or alleged a billing error under §1026.13, the card issuer must apply the consumer's payment in a manner that avoids or minimizes any reduction in the amount subject to that claim, defense, or dispute. For example:*

i. Assume that a credit card account has a $500 cash advance balance at an annual percentage rate of 25% and a $1,000 purchase balance at an annual percentage rate of 17%. Assume also that $200 of the cash advance balance is subject to a claim or defense under §1026.12(c) or a billing error dispute under §1026.13. If the consumer pays $900 in excess of the required minimum periodic payment, the card issuer must allocate $300 of the excess payment to pay in full the portion of the cash advance balance that is not subject to the claim, defense, or dispute and then allocate the remaining $600 to the $1,000 purchase balance.

ii. Same facts as above except that the consumer pays $1,400 in excess of the required minimum periodic payment. The card issuer must allocate $1,300 of the excess payment to pay in full the $300 cash advance balance that is not subject to the claim, defense, or dispute and the $1,000 purchase balance. If there are no new transactions or other amounts to which the remaining $100 can be allocated, the card issuer may apply that amount to the $200 cash advance balance that is subject to the claim, defense, or dispute. However, if the card issuer subsequently determines that a billing error occurred as asserted by the consumer, the card issuer must credit the account for the disputed amount and any related finance or other charges and send a correction notice consistent with §1026.13(e).

4. ***Balances with the same rate.*** *When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, §1026.53 generally does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a card issuer may treat the balances with the same rate as a single balance or separate balances. See example in comment 53-5.iv. However, when a balance on a credit card account 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, that balance must be treated as a balance with an annual percentage rate of zero for purposes of §1026.53 during that period of time. For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of §1026.53 until July 1. In addition, unless the card issuer allocates amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer pursuant to §1026.53(b)(1)(ii), §1026.53(b)(1)(i) requires the card issuer to apply any excess payments first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). See example in comment 53-5.v.*

5. ***Examples.*** *For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to the balances discussed (unless otherwise stated).*

i. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. Under §1026.53(a), the card issuer must allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

ii. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. Under §1026.53(a), the card issuer must allocate the entire $400 to the cash advance balance.

iii. Assume that a credit card account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of

18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to §1026.55. If the consumer pays $500 in excess of the required minimum periodic payment, §1026.53(a) requires the card issuer to allocate $100 to pay off the cash advance balance, $300 to pay off the purchase balance, and $100 to the protected balance.

iv. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. Under §1026.53(a), the card issuer must allocate $500 to pay off the cash advance balance and allocate the remaining $300 among the purchase balance and the transferred balance in the manner the card issuer deems appropriate.

v. Assume that on January 1 a consumer uses a credit card account to make a $1,200 purchase subject to a deferred interest program under which interest accrues at an annual percentage rate of 15% but the consumer will not be obligated to pay that interest if the balance is paid in full on or before June 30. The billing cycles for this account begin on the first day of the month and end on the last day of the month. Each month from January through June, the consumer uses the account to make $200 in purchases that are not subject to the deferred interest program but are subject to the 15% rate.

A. Each month from February through June, the consumer pays $400 in excess of the required minimum periodic payment on the payment due date, which is the twenty-fifth of the month. Any interest that accrues on the purchases not subject to the deferred interest program is paid by the required minimum periodic payment. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to §1026.53(b)(1)(ii). Thus, §1026.53(b)(1)(i) requires the card issuer to allocate the $400 excess payments received on February 25, March 25, and April 25 consistent with §1026.53(a). In other words, the card issuer must allocate those payments as follows: $200 to pay off the balance not subject to the deferred interest program (which is subject to the 15% rate) and the remaining $200 to the deferred interest balance (which is treated as a balance with a rate of zero). However, §1026.53(b)(1)(i) requires the card issuer to allocate the entire $400 excess payment received on May 25 to the deferred interest balance. Similarly, §1026.53(b)(1)(i) requires the card issuer to allocate the $400 excess payment received on June 25 as follows: $200 to the deferred interest balance (which pays that balance in full) and the remaining $200 to the balance not subject to the deferred interest program.

B. Same facts as above, except that the card issuer does accept requests from consumers regarding the allocation of excess payments pursuant to §1026.53(b)(1)(ii). In addition, on April 25, the card issuer receives an excess payment of $800, which the consumer requests be allocated to pay off the $800 balance subject to the deferred interest program. Section 1026.53(b)(1)(ii) permits the card issuer to allocate the $800 excess payment in the manner requested by the consumer.

Section 2: Special Rules
12 C.F.R. § 1026.53(b)

Special Rules - 12 C.F.R § 1026.53(b)

Regulatory Discussion

There are two special rules:

- Accounts with balances subject to deferred interest or similar program
- Commentary is provided on the following topics:
  - Deferred interest and similar programs
  - Expiration of deferred interest or similar program during billing cycle
  - Consumer requests
- Accounts with secured balances

Regulatory Text

(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.

Regulatory Commentary

53(b) Special Rules

1. ***Deferred interest and similar programs.*** *Section 1026.53(b)(1) applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of §1026.53(b)(1), "deferred interest" has the same meaning as in §1026.16(h)(2) and associated commentary. Section 1026.53(b)(1) applies regardless of whether the consumer is required to make payments with respect to that balance during the specified period. However, a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of §1026.53(b)(1). Similarly, a temporary annual percentage rate of zero percent that applies for a specified period of time consistent with §1026.55(b)(1) is not a deferred interest or similar program for purposes of §1026.53(b)(1) unless the consumer may be obligated to pay interest that accrues during the period if a balance is not paid in full prior to expiration of the period.*

2. ***Expiration of deferred interest or similar program during billing cycle.*** *For purposes of §1026.53(b)(1)(i), a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. For example, assume that a credit card account has a balance subject to a deferred interest program that expires on June 15. Assume also that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payment is due on the twenty-fifth day of the month. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to §1026.53(b)(1)(ii). Because the expiration date for the deferred interest program (June 15) precedes the due date in the June billing cycle (June 25), §1026.53(b)(1)(i) requires the card issuer to allocate first to the deferred interest balance any amount paid by the consumer in excess of the required minimum periodic payment during the April and May billing cycles (as well as any amount paid by the consumer before June 15). However, if the deferred interest program expired on June 25 or on June 30 (or on any day in between), §1026.53(b)(1)(i) would apply only to the May and June billing cycles.*

3. ***Consumer requests.***

    i. ***Generally.*** *Section 1026.53(b) does not require a card issuer to allocate amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer, provided that the card issuer instead allocates such amounts consistent with §1026.53(a) or (b)(1)(i), as applicable. For example, a card issuer may decline consumer requests regarding payment allocation as a general matter or may decline such requests when a consumer does not comply with requirements set by the card issuer (such as submitting the request in writing or submitting the request prior to or contemporaneously with submission of the payment), provided that amounts paid by the consumer in excess of the required minimum periodic payment are allocated consistent with §1026.53(a) or (b)(1)(i), as applicable. Similarly, a card issuer that accepts requests pursuant to §1026.53(b)(1)(ii) or (b)(2) must allocate amounts paid by a consumer in excess of the required minimum periodic payment consistent with §1026.53(a) or (b)(1)(i), as applicable, if the consumer does not*

submit a request. Furthermore, a card issuer that accepts requests pursuant to §1026.53(b)(1)(ii) or (b)(2) must allocate consistent with §1026.53(a) or (b)(1)(i), as applicable, if the consumer submits a request with which the card issuer cannot comply (such as a request that contains a mathematical error), unless the consumer submits an additional request with which the card issuer can comply.

ii. ***Examples of consumer requests that satisfy §1026.53(b)(1)(ii) or (b)(2)****. A consumer has made a request for purposes of §1026.53(b)(1)(ii) or (b)(2) if:*

A. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account or the period of time that a balance on the account is secured.

B. The consumer completes and submits to the card issuer a form or payment coupon provided by the card issuer for the purpose of requesting that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account or the period of time that a balance on the account is secured.

C. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment that the card issuer has previously allocated consistent with §1026.53(a) or (b)(1)(i), as applicable, instead be allocated in a different manner.

iii. ***Examples of consumer requests that do not satisfy §1026.53(b)(1)(ii) or (b)(2).*** *A consumer has not made a request for purposes of §1026.53(b)(1)(ii) or (b)(2) if:*

A. The terms and conditions of the account agreement contain preprinted language stating that by applying to open an account, by using that account for transactions subject to a deferred interest or similar program, or by using the account to purchase property in which the card issuer holds a security interest the consumer requests that payments be allocated in a particular manner.

B. The card issuer's online application contains a preselected check box indicating that the consumer requests that payments be allocated in a particular manner and the consumer does not deselect the box.

C. The payment coupon provided by the card issuer contains preprinted language or a preselected check box stating that by submitting a payment the consumer requests that the payment be allocated in a particular manner.

D. The card issuer requires a consumer to accept a particular payment allocation method as a condition of using a deferred interest or similar program, purchasing property in which the card issuer holds a security interest, making a payment, or receiving account services or features.

Open End - Limitations on the Imposition of Finance Charges

Section 1: Limitations on Imposing Finance Charges as a Result of the Loss of a Grace Period
12 C.F.R. § 1026.54(a)

Limitations on Imposing Finance Charges as a Result of the Loss of a Grace Period - 12 C.F.R § 1026.54(a)

Regulatory Discussion

A card issuer must not impose finance charges as a result of the loss of a grace period if those finance charges are based on either of two circumstances.

The commentary provides additional information on the following topics:

1. Eligibility for grace period
2. Definition of grace period
3. Relationship to payment allocation requirements in §1026.53
4. Prohibition on two-cycle balance computation method
5. Prohibition on imposing finance charges on amounts paid within grace period
6. Examples

Regulatory Text

(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*).

Regulatory Commentary

54(a) Limitations on imposing finance charges as a result of the loss of a grace period

54(a)(1) General Rule

1. ***Eligibility for grace period.*** *Section 1026.54 prohibits the imposition of finance charges as a result of the loss of a grace period in certain specified circumstances. Section 1026.54 does not require the card issuer to provide a grace period. Furthermore, §1026.54 does not prohibit the card issuer from placing limitations and conditions on a grace period (such as limiting application of the grace period to certain types of transactions or conditioning eligibility for the grace period on certain transactions being paid in full by a particular date), provided that such limitations and conditions are consistent with §1026.5(b)(2)(ii)(B) and §1026.54. Finally, §1026.54 does not limit the imposition of finance charges with respect to a transaction when the consumer is not eligible for a grace period on that transaction at the end of the billing cycle in which the transaction occurred. For example:*

   i. *Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. Assume also that, for purchases made during the current billing cycle (for purposes of this example, the June billing cycle), the grace period applies from the date of the purchase until the payment due date in the following billing cycle (July 25), subject to two conditions. First, the purchase balance at the end of the preceding billing cycle (the May billing cycle) must have been paid in full by the payment due date in the current billing cycle (June 25). Second, the purchase balance at the end of the current billing cycle (the June billing cycle) must be paid in full by the following payment due date (July 25). Finally, assume that the consumer was eligible for a grace period at the start of the June billing cycle (in other words, assume that the purchase balance for the April billing cycle was paid in full by May 25).*

      A. *If the consumer pays the purchase balance for the May billing cycle in full by June 25, then at the end of the June billing cycle the consumer is eligible for a grace period with respect to purchases made during that billing cycle. Therefore, §1026.54 limits the imposition of finance charges with respect to purchases made during the June billing cycle if the consumer does not pay the purchase balance for the June billing cycle in full by July 25. Specifically, §1026.54(a)(1)(i) prohibits the card issuer from imposing finance charges based on the purchase balance at the end of the June billing cycle for days that precede the July billing cycle. Furthermore, §1026.54(a)(1)(ii) prohibits the card issuer from imposing finance charges based on any portion of the balance at the end of the June billing cycle that was paid on or before July 25.*

      B. *If the consumer does not pay the purchase balance for the May billing cycle in full by June 25, then the consumer is not eligible for a grace period with respect to purchases made during the June billing cycle at the end of that cycle. Therefore, §1026.54 does not limit the imposition of finance charges with respect to purchases made during the June billing cycle regardless of whether the consumer pays the purchase balance for the June billing cycle in full by July 25.*

   ii. *Same facts as above except that the card issuer places only one condition on the provision of a grace period for purchases made during the current billing cycle (the June billing cycle): that the purchase balance at the end of the current billing cycle (the June billing cycle) be paid in full by the following payment due date (July 25). In these circumstances,*

§1026.54 applies to the same extent as discussed in paragraphs i.A and i.B above regardless of whether the purchase balance for the April billing cycle was paid in full by May 25.

2. ***Definition of grace period.*** *For purposes of §§1026.5(b)(2)(ii)(B) and 1026.54, a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. The following are not grace periods for purposes of §1026.54:*

   i. ***Deferred interest and similar programs.*** *A deferred interest or similar promotional program under which a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of §1026.54. Thus, §1026.54 does not prohibit the card issuer from charging accrued interest to an account upon expiration of a deferred interest or similar program if the balance was not paid in full prior to expiration (to the extent consistent with §1026.55 and other applicable law and regulatory guidance).*

   ii. ***Waivers or rebates of interest.*** *As a general matter, a card issuer has not provided a grace period with respect to transactions for purposes of §1026.54 if, on an individualized basis (such as in response to a consumer's request), the card issuer waives or rebates finance charges that have accrued on transactions. In addition, when a balance at the end of the preceding billing cycle is paid in full on or before the payment due date in the current billing cycle, a card issuer that waives or rebates trailing or residual interest accrued on that balance or any other transactions during the current billing cycle has not provided a grace period with respect to that balance or any other transactions for purposes of §1026.54. However, if the terms of the account provide that all interest accrued on transactions will be waived or rebated if the balance for those transactions at the end of the billing cycle during which the transactions occurred is paid in full by the following payment due date, the card issuer is providing a grace period with respect to those transactions for purposes of §1026.54. For example:*

      A. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. On March 31, the balance on the account is $1,000 and the consumer is not eligible for a grace period with respect to that balance because the balance at the end of the prior billing cycle was not paid in full on March 25. On April 15, the consumer uses the account for a $500 purchase. On April 25, the card issuer receives a payment of $1,000. On May 3, the card issuer mails or delivers a periodic statement reflecting trailing or residual interest that accrued on the $1,000 balance from April 1 through April 24 as well as interest that accrued on the $500 purchase from April 15 through April 30. On May 10, the consumer requests that the trailing or residual interest charges be waived and the card issuer complies. By waiving these interest charges, the card issuer has not provided a grace period with respect to the $1,000 balance or the $500 purchase.

      B. Same facts as in paragraph ii.A above except that the terms of the account state that trailing or residual interest will be waived in these circumstances or it is the card issuer's practice to waive trailing or residual interest in these circumstances. By waiving these interest charges, the card issuer has not provided a grace period with respect to the $1,000 balance or the $500 purchase.

C. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. Assume also that, for purchases made during the current billing cycle (for purposes of this example, the June billing cycle), the terms of the account provide that interest accrued on those purchases from the date of the purchase until the payment due date in the following billing cycle (July 25) will be waived or rebated, subject to two conditions. First, the purchase balance at the end of the preceding billing cycle (the May billing cycle) must have been paid in full by the payment due date in the current billing cycle (June 25). Second, the purchase balance at the end of the current billing cycle (the June billing cycle) must be paid in full by the following payment due date (July 25). Under these circumstances, the card issuer is providing a grace period on purchases for purposes of §1026.54. Therefore, assuming that the consumer was eligible for this grace period at the start of the June billing cycle (in other words, assuming that the purchase balance for the April billing cycle was paid in full by May 25) and assuming that the consumer pays the purchase balance for the May billing cycle in full by June 25, §1026.54 applies to the imposition of finance charges with respect to purchases made during the June billing cycle. Specifically, §1026.54(a)(1)(i) prohibits the card issuer from imposing finance charges based on the purchase balance at the end of the June billing cycle for days that precede the July billing cycle. Furthermore, §1026.54(a)(1)(ii) prohibits the card issuer from imposing finance charges based on any portion of the balance at the end of the June billing cycle that was paid on or before July 25.

3. ***Relationship to payment allocation requirements in §1026.53.*** *Card issuers must comply with the payment allocation requirements in §1026.53 even if doing so will result in the loss of a grace period.*

4. ***Prohibition on two-cycle balance computation method.*** *When a consumer ceases to be eligible for a grace period, §1026.54(a)(1)(i) prohibits the card issuer from computing the finance charge using the two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or 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. The second balance is for the preceding billing cycle.*

5. ***Prohibition on imposing finance charges on amounts paid within grace period.*** *When a balance on a credit card account is eligible for a grace period and the card issuer receives payment for some but not all of that balance prior to the expiration of the grace period, §1026.54(a)(1)(ii) prohibits the card issuer from imposing finance charges on the portion of the balance paid. Card issuers are not required to use a particular method to comply with §1026.54(a)(1)(ii). However, when §1026.54(a)(1)(ii) applies, a card issuer is in compliance if, for example, it applies the consumer's payment to the balance subject to the grace period at the end of the preceding billing cycle (in a manner consistent with the payment allocation requirements in §1026.53) and then calculates interest charges based on the amount of the balance that remains unpaid.*

6. ***Examples.*** *Assume that the annual percentage rate for purchases on a credit card account is 15%. The billing cycle starts on the first day of the month and ends on the last day of the*

month. The payment due date for the account is the twenty-fifth day of the month. For purchases made during the current billing cycle, the card issuer provides a grace period from the date of the purchase until the payment due date in the following billing cycle, provided that the purchase balance at the end of the current billing cycle is paid in full by the following payment due date. For purposes of this example, assume that none of the required minimum periodic payment is allocated to the balances discussed. During the March billing cycle, the following transactions are charged to the account: A $100 purchase on March 10, a $200 purchase on March 15, and a $300 purchase on March 20. On March 25, the purchase balance for the February billing cycle is paid in full. Thus, for purposes of §1026.54, the consumer is eligible for a grace period on the March purchases. At the end of the March billing cycle (March 31), the consumer's total purchase balance is $600 and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25).

i. On April 10, a $150 purchase is charged to the account. On April 25, the card issuer receives $500 in excess of the required minimum periodic payment. Section 1026.54(a)(1)(i) prohibits the card issuer from reaching back and charging interest on any of the March transactions from the date of the transaction through the end of the March billing cycle (March 31). In these circumstances, the card issuer may comply with §1026.54(a)(1)(ii) by applying the $500 excess payment to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($100) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30). In addition, the card issuer may charge interest on the $150 purchase from the date of the transaction (April 10) through the end of the April billing cycle (April 31).

ii. Same facts as in paragraph 6 above except that, on March 18, a $250 cash advance is charged to the account at an annual percentage rate of 25%. The card issuer's grace period does not apply to cash advances, but the card issuer does provide a grace period on the March purchases because the purchase balance for the February billing cycle is paid in full on March 25. On April 25, the card issuer receives $600 in excess of the required minimum periodic payment. As required by §1026.53, the card issuer allocates the $600 excess payment first to the balance with the highest annual percentage rate (the $250 cash advance balance). Although §1026.54(a)(1)(i) prohibits the card issuer from charging interest on the March purchases based on days in the March billing cycle, the card issuer may charge interest on the $250 cash advance from the date of the transaction (March 18) through April 24. In these circumstances, the card issuer may comply with §1026.54(a)(1)(ii) by applying the remainder of the excess payment ($350) to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($250) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30).

iii. Same facts as in paragraph 6 above except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore is not eligible for a grace period on the March purchases. Under these circumstances, §1026.54 does not apply and the card issuer may charge interest from the date of each transaction through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 25).

Section 2: Exceptions
12 C.F.R. § 1026.54(b)

Exceptions - 12 C.F.R § 1026.54(b)

Regulatory Discussion

There are two exceptions to which the limitations on the imposition of finance charges do not apply.

Regulatory Text

(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.

Regulatory Commentary

None.

Credit Cards - Limitations on Increasing APRs, Fees, and Charges

Section 1: General Rule
12 C.F.R. § 1026.55(a)

General Rule - 12 C.F.R § 1026.55(a)

Regulatory Discussion

This section appears to be straightforward; however, the commentary on the General Rule, as well as the exceptions discussed in Section 2, present some complexity.

- A card issuer must not increase an APR or a fee or charge required to be disclosed under§1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii).

The commentary provides additional information on the following topics:

1. Increase in rate, fee, or charge
   a. Account-opening disclosure of non-variable rate for six months, then variable rate
      i. Change-in-terms rate increase for new transactions after first year
      ii. Account becomes more than 60 days delinquent during first year
   b. Account-opening disclosure of non-variable rate for six months, then increased non-variable rate for six months, then variable rate; change-in-terms rate increase for new transactions after first year
   c. Change-in-terms rate increase for new transactions after first year; penalty rate increase after first year
      i. Account does not become more than 60 days delinquent
      ii. Account becomes more than 60 days delinquent after provision of §1026.9(g) notice
2. Relationship to grace period

Regulatory Text

(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.

Regulatory Commentary

55(a) General Rule

1. ***Increase in rate, fee, or charge.*** *Section 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any 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 unless specifically permitted by one of the exceptions in §1026.55(b). Except as specifically provided in §1026.55(b), this prohibition applies even if the circumstances under which an increase will occur are disclosed in advance. The following examples illustrate the general application of §1026.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in §1026.55(b) are provided in the commentary to those exceptions.

i. ***Account-opening disclosure of non-variable rate for six months, then variable rate.*** *Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The card issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. Furthermore, the card issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. Finally, the card issuer discloses that, to the extent consistent with §1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer makes a late payment. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.*

A. ***Change-in-terms rate increase for new transactions after first year.*** *On January 15 of year one, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the card issuer may adjust the variable rate that applies to the $500 cash advance consistent with changes in the index (pursuant to §1026.55(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the creditor on May 28. At this time, the card issuer is prohibited by §1026.55 from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to §1026.55(b)(1)). Because no other increases in rate were disclosed at account opening, the card issuer may not subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance (except due to increases in the index pursuant to §1026.55(b)(2)). On November 16, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On December 15, the consumer makes a $100 purchase. On January 1 of year two, the card issuer may increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to §1026.55(b)(3)). However, §1026.55(b)(3)(ii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to the $2,000 purchase balance. Furthermore, although the $100 purchase occurred more than 14 days after provision of the §1026.9(c) notice, §1026.55(b)(3)(iii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to that purchase because it occurred during the first year after account*

opening. On January 15 of year two, the consumer makes a $300 purchase. The card issuer may apply the variable rate determined using the 12-point margin to the $300 purchase.

B. ***Account becomes more than 60 days delinquent during first year.*** *Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the card issuer until July 30 of year one. Because the card issuer received the required minimum periodic payment more than 60 days after the payment due date, §1026.55(b)(4) permits the card issuer to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, §1026.55(b)(4)(i) requires the card issuer to first comply with the notice requirements in §1026.9(g). Thus, if the card issuer provided a §1026.9(g) notice on July 25 stating that all rates on the account would be increased to the 30% penalty rate, the card issuer could apply that rate beginning on September 8 to all balances and to future transactions.*

ii. ***Account-opening disclosure of non-variable rate for six months, then increased non-variable rate for six months, then variable rate; change-in-terms rate increase for new transactions after first year.*** *Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index not under the card issuer's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15 of year one, the consumer uses the account to make a $1,500 purchase. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $1,500 purchase at the previously-disclosed 10% non-variable rate (pursuant to §1026.55(b)(1)). On September 15, the consumer uses the account for a $700 purchase. On November 16, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the card issuer may begin accruing interest on the $2,200 purchase balance at the previously-disclosed variable rate determined using a 5-point margin (pursuant to §1026.55(b)(1)). Section 1026.55 does not permit the card issuer to apply the variable rate determined using the 8-point margin to the $2,200 purchase balance. Furthermore, §1026.55 does not permit the card issuer to subsequently increase the variable rate determined using the 5-point margin that applies to the $2,200 purchase balance (except due to increases in the index pursuant to §1026.55(b)(2)). The card issuer may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to §1026.55(b)(3)).*

iii. ***Change-in-terms rate increase for new transactions after first year; penalty rate increase after first year.*** *Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the card issuer's control. The card issuer also discloses that, to the extent*

consistent with §1026.55 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of $1,000. On May 31, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 15 (calculated by using the same index and an increased margin of 8 percentage points). On June 14, the consumer makes a $500 purchase. On June 15, the consumer makes a $200 purchase. On July 1, the card issuer has not received the payment due on June 15 and provides the consumer with a notice pursuant to §1026.9(g) stating that the 28% penalty rate will apply as of August 15 to all transactions made on or after July 16 and that, if the consumer becomes more than 60 days late, the penalty rate will apply to all balances on the account. On July 17, the consumer makes a $300 purchase.

A. ***Account does not become more than 60 days delinquent.*** *The payment due on June 15 of year two is received on July 2. On July 16, §1026.55(b)(3)(ii) permits the card issuer to apply the variable rate determined using the 8-point margin disclosed in the §1026.9(c) notice to the $200 purchase made on June 15 but does not permit the card issuer to apply this rate to the $1,500 purchase balance. On August 15, §1026.55(b)(3)(ii) permits the card issuer to apply the 28% penalty rate disclosed at account opening and in the §1026.9(g) notice to the $300 purchase made on July 17 but does not permit the card issuer to apply this rate to the $1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the $200 purchase (which remains at the variable rate determined using the 8-point margin).*

B. ***Account becomes more than 60 days delinquent after provision of §1026.9(g) notice.*** *Same facts as above except the payment due on June 15 of year two has not been received by August 15. Section 1026.55(b)(4) permits the card issuer to apply the 28% penalty rate to the $1,500 purchase balance and the $200 purchase because it has not received the June 15 payment within 60 days after the due date. However, in order to do so, §1026.55(b)(4)(i) requires the card issuer to first provide an additional notice pursuant to §1026.9(g). This notice must be sent no earlier than August 15, which is the first day the account became more than 60 days' delinquent. If the notice is sent on August 15, the card issuer may begin accruing interest on the $1,500 purchase balance and the $200 purchase at the 28% penalty rate beginning on September 29.*

2. ***Relationship to grace period.*** *Nothing in §1026.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with §1026.5(b)(2)(ii)(B) and §1026.54. In addition, a card issuer has not reduced an annual percentage rate on a credit card account for purposes of §1026.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a $500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of §1026.55.*

Section 2: Exceptions
12 C.F.R. § 1026.55(b)

Exceptions - 12 C.F.R § 1026.55(b)

Regulatory Discussion

There are six exceptions to which the limitations on increasing APR, fees, and charges do not apply. It is important to understand a card issuer may increase an APR, fee, or charge even if that increase would not be permitted under a different exception. Each exception is discussed individually within this section. The six exceptions are as follows:

1. Temporary rate, fee, or charge
2. Variable rate
3. Advance notice
4. Delinquency
5. Workout and temporary hardship arrangement
6. Servicemembers Civil Relief Act

The regulatory commentary below offers general information relative to the exceptions and includes the following topics:

1. Exceptions not mutually exclusive
2. Relationship between exceptions in §1026.55(b) and notice requirements in §1026.9
    i. 14-day rule in §1026.55(b)(3)(ii)
    ii. Mid-cycle increases; application of balance computation methods
    iii. Mid-cycle increases; delayed implementation of increase
3. Application of a lower rate, fee, or charge
    i. Application of lower rate during first year
        A. Temporary rate returns to standard rate at expiration
        B. Penalty rate increase
    ii. Application of lower rate at end of first year
        A. Notice of extension of existing temporary rate provided consistent with §1026.55(b)(1)(i)
        B. Notice of new temporary rate provided consistent with §1026.55(b)(1)(i)
        C. No notice provided
    iii. Application of lower rate after first year
        A. Effect of 14-day period
        B. Penalty rate increase
        C. Application of lower temporary rate during specified period
4. Date on which transaction occurred
5. Category of transactions

Regulatory Text

(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.

Regulatory Commentary

55(b) Exceptions

1. ***Exceptions not mutually exclusive.*** *A card issuer generally 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 §1026.55(b) even if that increase would not be permitted under a different exception. For example, although a card issuer cannot increase an annual percentage rate pursuant to §1026.55(b)(1) unless that rate is provided for a specified period of at least six months, the card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with §1026.55(b)(2). Similarly, although §1026.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to §1026.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date. However, if §1026.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to §1026.55(b)(5) or (b)(6) upon completion or failure of the arrangement or once 50 U.S.C. app. 527 or the similar Federal or state statute or regulation no longer applies. For example, assume that, on January 1, the annual percentage rate that applies to a $1,000 balance is increased from 12% to 30% pursuant to §1026.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with §1026.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the workout or temporary hardship arrangement, the card issuer may not increase the 12% rate that applies to any remaining portion of the $1,000 balance pursuant to §1026.55(b)(5).*

2. ***Relationship between exceptions in §1026.55(b) and notice requirements in §1026.9.*** *Nothing in §1026.55 alters the requirements in §1026.9(c) and (g) that creditors provide written notice at least 45 days prior to the effective date of certain increases in annual percentage rates, fees, and charges.*

    i. ***14-day rule in §1026.55(b)(3)(ii).*** *Although §1026.55(b)(3)(ii) permits a card issuer that discloses an increased rate pursuant to §1026.9(c) or (g) to apply that rate to transactions that occur more than 14 days after provision of the notice, the card issuer cannot begin to accrue interest at the increased rate until that increase goes into effect, consistent with §1026.9(c) or (g). For example, if on May 1 a card issuer provides a notice pursuant to §1026.9(c) stating that a rate will increase from 15% to 18% on June*

15, §1026.55(b)(3)(ii) permits the card issuer to apply the 18% rate to transactions that occur on or after May 16. However, neither §1026.55 nor §1026.9(c) permits the card issuer to begin accruing interest at the 18% rate on those transactions until June 15. See additional examples in comment 55(b)(3)-4.

ii. ***Mid-cycle increases; application of balance computation methods.*** *Once an increased rate has gone into effect, the card issuer cannot calculate interest charges based on that increased rate for days prior to the effective date. Assume that, in the example in paragraph i above, the billing cycles for the account begin on the first day of the month and end on the last day of the month. If, for example, the card issuer uses the average daily balance computation method, it cannot apply the 18% rate to the average daily balance for the entire June billing cycle because that rate did not become effective until June 15. However, the card issuer could apply the 15% rate to the average daily balance from June 1 through June 14 and the 18% rate to the average daily balance from June 15 through June 30. Similarly, if the card issuer that uses the daily balance computation method, it could apply the 15% rate to the daily balance for each day from June 1 through June 14 and the 18% rate to the daily balance for each day from June 15 through June 30.*

iii. ***Mid-cycle increases; delayed implementation of increase.*** *If §1026.55(b) and §1026.9(b), (c), or (g) permit a card issuer to apply an increased annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge. Thus, in the example in paragraphs i and ii above, the card issuer could delay application of the 18% rate until the start of the next billing cycle (April 1) without relinquishing its ability to apply that rate under §1026.55(b)(3). Similarly, assume that, at account opening on January 1, a card issuer discloses that a non-variable annual percentage rate of 10% will apply to purchases for six months and a non-variable rate of 15% will apply thereafter. The first day of each billing cycle for the account is the fifteenth of the month. If the six-month period expires on July 1, the card issuer may delay application of the 15% rate until the start of the next billing cycle (July 15) without relinquishing its ability to apply that rate under §1026.55(b)(1).*

3. ***Application of a lower rate, fee, or charge.*** *Nothing in §1026.55 prohibits a card issuer from lowering 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). However, a card issuer that does so cannot subsequently increase the rate, fee, or charge unless permitted by one of the exceptions in §1026.55(b). The following examples illustrate the application of the rule:*

i. ***Application of lower rate during first year.*** *Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% will apply to purchases. The card issuer also discloses that, to the extent consistent with §1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.*

A. ***Temporary rate returns to standard rate at expiration.*** *On September 30 of year one, the account has a purchase balance of $1,400 at the 15% rate. On October 1, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from October 1 through March 31 of year two) and that, beginning on April 1 of year two, the rate for purchases will increase to the 15% non-variable rate disclosed at account opening. The card issuer does not apply the 5% rate to the $1,400 purchase balance. On October 14 of year one, the consumer makes a $300 purchase at the 5% rate. On January 15 of year two, the consumer makes a $150 purchase at the 5% rate. On April 1 of year two, the card issuer may begin accruing interest on the $300 purchase and the $150 purchase at 15% as disclosed in the §1026.9(c) notice (pursuant to §1026.55(b)(1)).*

B. ***Penalty rate increase.*** *Same facts as above except that the required minimum periodic payment due on November 10 of year one is not received until November 15. Section 1026.55 does not permit the card issuer to increase any annual percentage rate on the account at this time. The card issuer may apply the 30% penalty rate to new transactions beginning on April 1 of year two pursuant to §1026.55(b)(3) by providing a §1026.9(g) notice informing the consumer of this increase no later than February 14 of year two. The card issuer may not, however, apply the 30% penalty rate to the $1,400 purchase balance as of September 30 of year one, the $300 purchase on October 15 of year one, or the $150 purchase on January 15 of year two.*

ii. ***Application of lower rate at end of first year.*** *Assume that, at account opening on January 1 of year one, a card issuer discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the card issuer will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On December 31 of year one, the account has a purchase balance of $3,000.*

A. ***Notice of extension of existing temporary rate provided consistent with §1026.55(b)(1)(i).*** *On December 15 of year one, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the existing 15% rate will continue to apply until July 1 of year two. The notice further states that, on July 1 of year two, the variable rate disclosed at account opening will apply. On July 1 of year two, §1026.55(b)(1) permits the card issuer to apply that variable rate to any remaining portion of the $3,000 balance and to new transactions.*

B. ***Notice of new temporary rate provided consistent with §1026.55(b)(1)(i).*** *On December 15 of year one, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two that is lower than the variable rate disclosed at account opening. The new variable rate is calculated using the same index and a reduced margin of 8 percentage points. The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, §1026.55(b)(1) permits the card issuer to increase the margin used to determine the variable rate that applies to new purchases to 10 percentage points and to apply that rate to any remaining portion of the $3,000 purchase balance.*

C. ***No notice provided.*** *Same facts as in paragraph ii.B above except that the card issuer does not send a notice on December 15 of year one. Instead, on January 1 of year two, the card issuer lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the $3,000 purchase balance and to new purchases. Section 1026.9 does not require advance notice in these circumstances. However, unless the account becomes more than 60 days' delinquent, §1026.55 does not permit the card issuer to subsequently increase the rate that applies to the $3,000 purchase balance except due to increases in the index (pursuant to §1026.55(b)(2)).*

iii. ***Application of lower rate after first year.*** *Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 10% will apply to purchases for one year, after which that rate will increase to a non-variable rate of 15%. The card issuer also discloses that, to the extent consistent with §1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.*

A. ***Effect of 14-day period.*** *On June 30 of year two, the account has a purchase balance of $1,000 at the 15% rate. On July 1, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a non-variable rate of 17%. On July 15 of year two, the consumer makes a $200 purchase. On July 16, the consumer makes a $100 purchase. On January 1 of year three, the card issuer may begin accruing interest on the $100 purchase at 17% (pursuant to §1026.55(b)(1)). However, §1026.55(b)(1)(ii)(B) does not permit the card issuer to apply the 17% rate to the $200 purchase because that transaction occurred within 14 days after provision of the §1026.9(c) notice. Instead, the card issuer may apply the 15% rate that applied to purchases prior to provision of the §1026.9(c) notice. In addition, if the card issuer applied the 5% rate to the $1,000 purchase balance, §1026.55(b)(ii)(A) would not permit the card issuer to increase the rate that applies to that balance on January 1 of year three to a rate that is higher than 15% that previously applied to the balance.*

B. ***Penalty rate increase.*** *Same facts as above except that the required minimum periodic payment due on August 25 is received on August 30. At this time, §1026.55 does not permit the card issuer to increase the annual percentage rates that apply to the $1,000 purchase balance, the $200 purchase, or the $100 purchase. Instead, those rates can only be increased as discussed in paragraph iii.A above. However, if the card issuer provides a notice pursuant to §1026.9(c) or (g) on September 1, §1026.55(b)(3) permits the card issuer to apply an increased rate (such as the 17% purchase rate or the 30% penalty rate) to transactions that occur on or after September 16 beginning on October 16.*

C. ***Application of lower temporary rate during specified period.*** *Same facts as in paragraph iii above. On June 30 of year two, the account has a purchase balance of $1,000 at the 15% non-variable rate. On July 1, the card issuer provides a notice*

pursuant to §1026.9(c) informing the consumer that the rate for the $1,000 balance and new purchases will decrease to a non-variable rate of 12% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On August 15 of year two, the consumer makes a $500 purchase. On October 1, the card issuer provides another notice pursuant to §1026.9(c) informing the consumer that the rate for the $1,000 balance, the $500 purchase, and new purchases will decrease to a non-variable rate of 5% for six months (from October 1 of year two through March 31 of year three) and that, beginning on April 1 of year three, the rate for purchases will increase to a variable rate that is currently 23% and is determined by adding a margin of 13 percentage points to the previously-disclosed index. On November 15 of year two, the consumer makes a $300 purchase. On April 1 of year three, §1026.55 permits the card issuer to begin accruing interest using the following rates for any remaining portion of the following balances: The 15% non-variable rate for the $1,000 balance; the variable rate determined using the 10-point margin for the $500 purchase; and the variable rate determined using the 13-point margin for the $300 purchase.

4. ***Date on which transaction occurred.*** *When a transaction occurred for purposes of §1026.55 is generally determined by the date of the transaction. However, if a transaction that occurred within 14 days after provision of a §1026.9(c) or (g) notice is not charged to the account prior to the effective date of the change or increase, the card issuer may treat the transaction as occurring more than 14 days after provision of the notice for purposes of §1026.55. See example in comment 55(b)(3)-4.iii.B. In addition, when a merchant places a "hold" on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of §1026.55 is the date on which the card issuer receives the actual transaction amount from the merchant. See example in comment 55(b)(3)-4.iii.A.*

5. ***Category of transactions.*** *For purposes of §1026.55, a "category of transactions" is a type or group of transactions to which an annual percentage rate applies that is different than the annual percentage rate that applies to other transactions. Similarly, a type or group of transactions is a "category of transactions" for purposes of §1026.55 if a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) applies to those transactions that is different than the fee or charge that applies to other transactions. For example, purchase transactions, cash advance transactions, and balance transfer transactions are separate categories of transactions for purposes of §1026.55 if a card issuer applies different annual percentage rates to each. Furthermore, if, for example, the card issuer applies different annual percentage rates to different types of purchase transactions (such as one rate for purchases of gasoline or purchases over $100 and a different rate for all other purchases), each type constitutes a separate category of transactions for purposes of §1026.55.*

Temporary Rate, Fee, or Charge Exception - 12 C.F.R § 1026.55(b)(1)

Regulatory Discussion

The first of the six exceptions generally allows the card issuer to increase an APR, fee or charge upon the expiration of a specified period of six months or longer; subject to two conditions:

- Prior to commencement of the period, disclosure in writing; and
- Upon expiration of the specified period, three additional requirements; (ii) (A) through (C) below

The commentary provides additional information on the following five topics:

1. Relationship to §1026.9(c)(2)(v)(B)
2. Period of six months or longer
3. Deferred interest and similar promotional programs
4. Contingent or discretionary increases
5. Application of increased fees and charges

Regulatory Text

(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 §1026.6(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.

Regulatory Commentary

55(b)(1) Temporary rate, fee, or charge exception

1. ***Relationship to §1026.9(c)(2)(v)(B).*** *A card issuer that has complied with the disclosure requirements in §1026.9(c)(2)(v)(B) has also complied with the disclosure requirements in §1026.55(b)(1)(i).*

2. ***Period of six months or longer.*** *A temporary annual percentage rate, fee, or charge must apply for a specified period of six months or longer before a card issuer can increase that rate, fee, or charge pursuant to §1026.55(b)(1). The specified period must expire no less than six months after the date on which the card issuer provides the consumer with the disclosures required by §1026.55(b)(1)(i) or, if later, the date on which the account can be used for transactions to which the temporary rate, fee, or charge applies. Section 1026.55(b)(1) does not prohibit a card issuer from limiting the application of a temporary annual percentage rate, fee, or charge to a particular category of transactions (such as to balance transfers or to purchases over $100). However, in circumstances where the card issuer limits application of the temporary rate, fee, or charge to a single transaction, the specified period must expire no less than six months after the date on which that transaction occurred. The following examples illustrate the application of §1026.55(b)(1):*

   i. Assume that on January 1 a card issuer offers a consumer a 5% annual percentage rate on purchases made during the months of January through June. A 15% rate will apply thereafter. On February 15, a $500 purchase is charged to the account. On June 15, a $200 purchase is charged to the account. On July 1, the card issuer may begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase (pursuant to §1026.55(b)(1)).

   ii. Same facts as above except that on January 1 the card issuer offered the 5% rate on purchases beginning in the month of February. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase until August 1.

   iii. Assume that on October 31 of year one the annual percentage rate for purchases is 17%. On November 1, the card issuer offers the consumer a 0% rate for six months on purchases made during the months of November and December. The 17% rate will apply thereafter. On November 15, a $500 purchase is charged to the account. On December 15, a $300 purchase is charged to the account. On January 15 of year two, a $150 purchase is charged to the account. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 17% rate on the $500 purchase and the $300 purchase until May 1 of year two. However, the card issuer may accrue interest at the 17% rate on the $150 purchase beginning on January 15 of year two.

   iv. Assume that on June 1 of year one a card issuer offers a consumer a 0% annual percentage rate for six months on the purchase of an appliance. An 18% rate will apply

thereafter. On September 1, a $5,000 transaction is charged to the account for the purchase of an appliance. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 18% rate on the $5,000 transaction until March 1 of year two.

v. Assume that on May 31 of year one the annual percentage rate for purchases is 15%. On June 1, the card issuer offers the consumer a 5% rate for six months on a balance transfer of at least $1,000. The 15% rate will apply thereafter. On June 15, a $3,000 balance is transferred to the account. On July 15, a $200 purchase is charged to the account. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the $3,000 transferred balance until December 15. However, the card issuer may accrue interest at the 15% rate on the $200 purchase beginning on July 15.

vi. Same facts as in paragraph v above except that the card issuer offers the 5% rate for six months on all balance transfers of at least $1,000 during the month of June and a $2,000 balance is transferred to the account on June 30 (in addition to the $3,000 balance transfer on June 15). Because the 5% rate is not limited to a particular transaction, §1026.55(b)(1) permits the card issuer to begin accruing interest on the $3,000 and $2,000 transferred balances on December 1.

vii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $0 until January 1 of year two, when the fee will increase to $50. On January 1 of year two, the card issuer may impose the $50 annual fee. However, the issuer must also comply with the notice requirements in §1026.9(e).

viii. Assume that a card issuer discloses at account opening on January 1 of year one that the monthly maintenance fee for the account is $0 until July 1 of year one, when the fee will increase to $10. Beginning on July 1 of year one, the card issuer may impose the $10 monthly maintenance fee (to the extent consistent with §1026.52(a)).

3. ***Deferred interest and similar promotional programs.***

i. ***Application of §1026.55.*** *The general prohibition in §1026.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. However, the exception in §1026.55(b)(1) also applies to these programs, provided that the specified period is six months or longer and that, prior to the commencement of the period, the card issuer discloses the length of the period and the rate at which interest will accrue on the balance subject to the deferred interest or similar program if that balance is not paid in full prior to expiration of the period. See comment 9(c)(2)(v)-9. For purposes of §1026.55, "deferred interest" has the same meaning as in §1026.16(h)(2) and associated commentary.*

ii. ***Examples.***

A. ***Deferred interest offer at account opening.*** *Assume that, at account opening on January 1 of year one, the card issuer discloses the following with respect to a deferred interest program: "No interest on purchases made in January of year one if paid in full by December 31 of year one. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 20%." On*

January 15 of year one, the consumer makes a purchase of $2,000. No other transactions are made on the account. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on April 1 is not received until April 10. Section 1026.55 does not permit the card issuer to charge to the account interest that has accrued on the $2,000 purchase at this time. Furthermore, if the consumer pays the $2,000 purchase in full on or before December 31 of year one, §1026.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. If, however, the $2,000 purchase has not been paid in full by January 1 of year two, §1026.55(b)(1) permits the card issuer to charge to the account the interest accrued on that purchase at the 20% rate during year one (to the extent consistent with other applicable law).

B. ***Deferred interest offer after account opening.*** *Assume that a card issuer discloses at account opening on January 1 of year one that the rate that applies to purchases is a variable annual percentage rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. The card issuer also discloses that, to the extent consistent with §1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the first of the month. On June 30 of year two, the consumer uses the account for a $1,000 purchase in response to an offer of a deferred interest program. Under the terms of this program, interest on the purchase will accrue at the variable rate for purchases but the consumer will not be obligated to pay that interest if the purchase is paid in full by December 31 of year three. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on September 1 of year two is not received until September 6. Section 1026.55 does not permit the card issuer to charge to the account interest that has accrued on the $1,000 purchase at this time. Furthermore, if the consumer pays the $1,000 purchase in full on or before December 31 of year three, §1026.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. On December 31 of year three, the $1,000 purchase has been paid in full. Under these circumstances, the card issuer may not charge any interest accrued on the $1,000 purchase.*

C. ***Application of §1026.55(b)(4) to deferred interest programs.*** *Same facts as in paragraph ii.B above except that, on November 2 of year two, the card issuer has not received the required minimum periodic payments due on September 1, October 1, or November 1 of year two and sends a §1026.9(c) or (g) notice stating that interest accrued on the $1,000 purchase since June 30 of year two will be charged to the account on December 17 of year two and thereafter interest will be charged on the $1,000 purchase consistent with the variable rate for purchases. On December 17 of year two, §1026.55(b)(4) permits the card issuer to charge to the account interest accrued on the $1,000 purchase since June 30 of year two and §1026.55(b)(3) permits the card issuer to begin charging interest on the $1,000 purchase consistent with the variable rate for purchases. However, if the card issuer receives the required minimum periodic payments due on January 1, February 1, March 1, April 1, May 1, and June 1 of year three, §1026.55(b)(4)(ii) requires the*

card issuer to cease charging the account for interest on the $1,000 purchase no later than the first day of the next billing cycle. See comment 55(b)(4)-3.iii. However, §1026.55(b)(4)(ii) does not require the card issuer to waive or credit the account for interest accrued on the $1,000 purchase since June 30 of year two. If the $1,000 purchase is paid in full on December 31 of year three, the card issuer is not permitted to charge to the account interest accrued on the $1,000 purchase after June 1 of year three.

4. ***Contingent or discretionary increases.*** *Section 1026.55(b)(1) permits a card issuer to increase a temporary annual percentage rate, fee, or charge upon the expiration of a specified period of time. However, §1026.55(b)(1) does not permit a card issuer to apply an increased rate, fee, or charge that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The following examples illustrate rate increases that are not permitted by §1026.55:*

   i. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a $2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 1026.55 does not permit the card issuer to apply the 30% penalty rate to the $2,000 purchase balance. However, pursuant to §1026.55(b)(3), the card issuer could provide a §1026.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

   ii. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least $200 in purchases each billing cycle. On July 1, the consumer transfers a balance of $4,000 to the account. During the October billing cycle, the consumer uses the account for $150 in purchases. Section 1026.55 does not permit the card issuer to apply the 18% rate to the $4,000 transferred balance or the $150 in purchases. However, pursuant to §1026.55(b)(3), the card issuer could provide a §1026.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

   iii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $10 but may be increased to $50 if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. The payment due on July 15 is not received until July 23. Section 1026.55 does not permit the card issuer to impose the $50 annual fee at this time. Furthermore, §1026.55(b)(3) does not permit the card issuer to increase the $10 annual fee during the first year after account opening. However, §1026.55(b)(3) does permit the card issuer to impose the $50 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with §1026.9(c) and the consumer does not reject that increase pursuant to §1026.9(h).

iv. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for a credit card account under an open-end (not home-secured) consumer credit plan is $0 but may be increased to $100 if the consumer's balance in a deposit account provided by the card issuer or its affiliate or subsidiary falls below $5,000. On June 1 of year one, the balance on the deposit account is $4,500. Section 1026.55 does not permit the card issuer to impose the $100 annual fee at this time. Furthermore, §1026.55(b)(3) does not permit the card issuer to increase the $0 annual fee during the first year after account opening. However, §1026.55(b)(3) does permit the card issuer to impose the $100 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with §1026.9(c) and the consumer does not reject that increase pursuant to §1026.9(h).

*5. **Application of increased fees and charges.** Section 1026.55(b)(1)(ii) limits the ability of a card issuer to apply an increased fee or charge to certain transactions. However, to the extent consistent with §1026.55(b)(3), (c), and (d), a card issuer generally is not prohibited from increasing a fee or charge that applies to the account as a whole. See comments 55(c)(1)-3 and 55(d)-1.*

Variable Rate Exception - 12 C.F.R § 1026.55(b)(2)

Regulatory Discussion

The second of the six exceptions generally allows the card issuer to increase an APR; subject to two conditions:

- The APR varies according to an index that is not under the card issuer's **c**ontrol; and
- The increase in the APR is due to an increase in the index

The commentary provides additional information on the following six topics:

1. Increases due to increase in index
2. Index not under card issuer's control
3. Publicly available
4. Changing a non-variable rate to a variable rate
5. Changing a variable rate to a non-variable rate
6. Substitution of index

Regulatory Text

(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.

Regulatory Commentary

55(b)(2) Variable rate exception

1. ***Increases due to increase in index.*** *Section 1026.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, from time to time, a card issuer may change the day on which index values are measured to determine changes to the rate.*

2. ***Index not under card issuer's control.*** *A card issuer may increase a variable annual percentage rate pursuant to §1026.55(b)(2) only if the increase is based on an index or indices outside the card issuer's control. For purposes of §1026.55(b)(2), an index is under the card issuer's control if:*

   i. The index is the card issuer's own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the card issuer's own prime rate is one of several rates used to establish the published rate.

   ii. The variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. A card issuer is permitted, however, to establish a fixed maximum rate that does not permit the variable rate to increase consistent with increases in an index. For example, assume that, under the terms of an account, a variable rate will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index. When the account is opened, the index is 10% and therefore the variable rate is 15%. If the terms of the account provide that the variable rate will not decrease below 15% even if the index decreases below 10%, the card issuer cannot increase that rate pursuant to §1026.55(b)(2). However, §1026.55(b)(2) does not prohibit the card issuer from providing in the terms of the account that the variable rate will not increase above a certain amount (such as 20%).

   iii. The variable rate can be calculated based on any index value during a period of time (such as the 90 days preceding the last day of a billing cycle). A card issuer is permitted, however, to provide in the terms of the account that the variable rate will be calculated based on the average index value during a specified period. In the alternative, the card issuer is permitted to provide in the terms of the account that the variable rate will be calculated based on the index value on a specific day (such as the last day of a billing cycle). For example, assume that the terms of an account provide that a variable rate will be adjusted at the beginning of each quarter by adding a margin of 7 percentage points to a publicly-available index. At account opening at the beginning of the first

quarter, the variable rate is 17% (based on an index value of 10%). During the first quarter, the index varies between 9.8% and 10.5% with an average value of 10.1%. On the last day of the first quarter, the index value is 10.2%. At the beginning of the second quarter, §1026.55(b)(2) does not permit the card issuer to increase the variable rate to 17.5% based on the first quarter's maximum index value of 10.5%. However, if the terms of the account provide that the variable rate will be calculated based on the average index value during the prior quarter, §1026.55(b)(2) permits the card issuer to increase the variable rate to 17.1% (based on the average index value of 10.1% during the first quarter). In the alternative, if the terms of the account provide that the variable rate will be calculated based on the index value on the last day of the prior quarter, §1026.55(b)(2) permits the card issuer to increase the variable rate to 17.2% (based on the index value of 10.2% on the last day of the first quarter).

3. ***Publicly available.*** *The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the account.*

4. ***Changing a non-variable rate to a variable rate.*** *Section 1026.55 generally prohibits a card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable rate to the extent permitted by one of the exceptions in §1026.55(b). For example, §1026.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, §1026.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in §1026.9(b), (c) or (g)).*

5. ***Changing a variable rate to a non-variable rate.*** *Nothing in §1026.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by §1026.9(c). For example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to §1026.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.*

6. ***Substitution of index.*** *A card issuer may change the index and margin used to determine the annual percentage rate under §1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.*

Advance Notice Exception - 12 C.F.R § 1026.55(b)(3)

Regulatory Discussion

The third of the six exceptions generally allows the card issuer to increase an APR or a fee or charge after complying with certain notice requirements; subject to three conditions:

- Pursuant to §1026.9(b), the card issuer must not apply that APR, fee, or charge to transactions that occurred prior to provision of the notice;
- Pursuant to §1026.9(c) or (g), the card issuer must not apply that APR, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and
- This exception does not permit a card issuer to increase an APR or a fee or charge during the first year after the account is opened while the account is closed, or while the consumer is not permitted to use the account for new transactions

The commentary provides additional information on the following seven topics:

1. Relationship to §1026.9(h)
2. Notice provided pursuant to §1026.9(b) and (c)
3. Account opening
4. Examples
5. Application of increased fees and charges
6. Delayed implementation of increase
7. Date on which account may first be used by consumer to engage in transactions

Regulatory Text

(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.

Regulatory Commentary

55(b)(3) Advance notice exception

1. ***Relationship to §1026.9(h).*** *A card issuer may not increase a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to §1026.55(b)(3) if the consumer has rejected the increased fee or charge pursuant to §1026.9(h).*

2. ***Notice provided pursuant to §1026.9(b) and (c).*** *If an increased annual percentage rate, fee, or charge is disclosed pursuant to both §1026.9(b) and (c), that rate, fee, or charge may only be applied to transactions that occur more than 14 days after provision of the §1026.9(c) notice as provided in §1026.55(b)(3)(ii).*

3. ***Account opening****.*

   i. ***Multiple accounts with same card issuer.*** *When a consumer has a credit card account with a card issuer and the consumer opens a new credit card account with the same card issuer (or its affiliate or subsidiary), the opening of the new account constitutes the opening of a credit card account for purposes of §1026.55(b)(3)(iii) if, more than 30 days after the new account is opened, the consumer has the option to obtain additional extensions of credit on each account. For example, assume that, on January 1 of year one, a consumer opens a credit card account with a card issuer. On July 1 of year one, the consumer opens a second credit card account with that card issuer. On July 15, a $1,000 balance is transferred from the first account to the second account. The opening of the second account constitutes the opening of a credit card account for purposes of §1026.55(b)(3)(iii) so long as, on August 1, the consumer has the option to engage in transactions using either account. Under these circumstances, the card issuer could 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 the second account pursuant to §1026.55(b)(3) until July 1 of year two (which is one year after the second account was opened).*

   ii. ***Substitution, replacement or consolidation.***

      A. *Generally. A credit card account has not been opened for purposes of §1026.55(b)(3)(iii) when a credit card account issued by a card issuer is substituted, replaced, or consolidated with another credit card account issued by the same card issuer (or its affiliate or subsidiary). Circumstances in which a credit card account has not been opened for purposes of §1026.55(b)(3)(iii) include when:*

         1. *A retail credit card account is replaced with a cobranded general purpose credit card account that can be used at a wider number of merchants;*

         2. *A credit card account is replaced with another credit card account offering different features;*

3. A credit card account is consolidated or combined with one or more other credit card accounts into a single credit card account; or

4. A credit card account acquired through merger or acquisition is replaced with a credit card account issued by the acquiring card issuer.

*B. **Limitation.** A card issuer that replaces or consolidates a credit card account with another credit card account issued by the card issuer (or its affiliate or subsidiary) may 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) in a manner otherwise prohibited by §1026.55. For example, assume that, on January 1 of year one, a consumer opens a credit card account with an annual percentage rate of 15% for purchases. On July 1 of year one, the account is replaced with a credit card account that offers different features (such as rewards on purchases). Under these circumstances, §1026.55(b)(3)(iii) prohibits the card issuer from increasing the annual percentage rate for new purchases to a rate that is higher than 15% pursuant to §1026.55(b)(3) until January 1 of year two (which is one year after the first account was opened).*

*4. **Examples.***

*i. **Change-in-terms rate increase; temporary rate increase; 14-day period.** Assume that an account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15%. On March 15, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 18% on May 1. The notice further states that the 18% rate will apply for six months (until November 1) and that thereafter the card issuer will apply a variable rate that is currently 22% and is determined by adding a margin of 12 percentage points to a publicly-available index that is not under the card issuer's control. The fourteenth day after provision of the notice is March 29 and, on that date, the consumer makes a $200 purchase. On March 30, the consumer makes a $1,000 purchase. On May 1, the card issuer may begin accruing interest at 18% on the $1,000 purchase made on March 30 (pursuant to §1026.55(b)(3)). Section 1026.55(b)(3)(ii) does not permit the card issuer to apply the 18% rate to the $2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days after the provision of the §1026.9(c) notice. After six months (November 2), the card issuer may begin accruing interest on any remaining portion of the $1,000 purchase at the previously-disclosed variable rate determined using the 12-point margin (pursuant to §1026.55(b)(1) and (b)(3)).*

*ii. **Checks that access an account.** Assume that a card issuer discloses at account opening on January 1 of year one that the annual percentage rate that applies to cash advances is a variable rate that is currently 24% and will be adjusted quarterly by adding a margin of 14 percentage points to a publicly available index not under the card issuer's control. On July 1 of year two, the card issuer provides checks that access the account and, pursuant to §1026.9(b)(3)(i)(A), discloses that a promotional rate of 15% will apply to credit extended by use of the checks until January 1 of year three, after which the cash advance rate determined using the 14-point margin will apply. On July 9 of year two, the consumer uses one of the checks to pay for a $500 transaction.*

Beginning on January 1 of year three, the card issuer may apply the cash advance rate determined using the 14-point margin to any remaining portion of the $500 transaction (pursuant to §1026.55(b)(1) and (b)(3)).

iii. ***Hold on available credit; 14-day period.*** *Assume that an account is opened on January 1 of year one. On September 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 17%. On September 15, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 20% on October 30. The fourteenth day after provision of the notice is September 29. On September 28, the consumer uses the credit card to check into a hotel and the hotel obtains authorization for a $1,000 hold on the account to ensure there is adequate available credit to cover the anticipated cost of the stay.*

A. *The consumer checks out of the hotel on October 2. The actual cost of the stay is $1,100 because of additional incidental costs. On October 2, the hotel charges the $1,100 transaction to the account. For purposes of §1026.55(b)(3), the transaction occurred on October 2. Therefore, on October 30, §1026.55(b)(3) permits the card issuer to apply the 20% rate to new purchases and to the $1,100 transaction. However, §1026.55(b)(3)(ii) does not permit the card issuer to apply the 20% rate to any remaining portion of the $2,000 purchase balance.*

B. *Same facts as above except that the consumer checks out of the hotel on September 29. The actual cost of the stay is $250, but the hotel does not charge this amount to the account until November 1. For purposes of §1026.55(b)(3), the card issuer may treat the transaction as occurring more than 14 days after provision of the §1026.9(c) notice (i.e., after September 29). Accordingly, the card issuer may apply the 20% rate to the $250 transaction.*

5. ***Application of increased fees and charges.*** *See comment 55(c)(1)-3.*

6. ***Delayed implementation of increase.*** *Section 1026.55(b)(3)(iii) does not prohibit a card issuer from notifying a consumer of an increase in an annual percentage rate, fee, or charge consistent with §1026.9(b), (c), or (g). However, §1026.55(b)(3)(iii) does prohibit application of an increased rate, fee, or charge 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. If §1026.9(b), (c), or (g) permits a card issuer to apply an increased rate, fee, or charge on a particular date and the account is closed on that date or the card issuer does not permit the consumer to use the account for new transactions on that date, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge (assuming the increase is otherwise consistent with §1026.55). See examples in comment 55(b)-2.iii. However, if the account is closed or the card issuer does not permit the consumer to use the account for new transactions on the first day of the following billing cycle, then the card issuer must provide a new notice of the increased rate, fee, or charge consistent with §1026.9(b), (c), or (g).*

7. ***Date on which account may first be used by consumer to engage in transactions.*** *For purposes of §1026.55(b)(3)(iii), 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. An*

account is considered open for purposes of §1026.55(b)(3)(iii) on any date that the card issuer may consider the account open for purposes of §1026.52(a)(1). See comment 52(a)(1)-4.

Delinquency Exception - 12 C.F.R § 1026.55(b)(4)

Regulatory Discussion

The fourth of the six exceptions generally allows the card issuer to increase an APR or a fee or charge due to the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment; subject to two conditions:

- Pursuant to §1026.9(c) or (g), the card issuer must disclose the increase in the notice; **and**
- If the card issuer receives six consecutive required minimum periodic payments on or before the payment due date, the card issuer must reduce any APR, fee, or charge increased that occurred prior to or within 14 days after provision of the §1026.9(c) or (g) notice

The commentary provides additional information on the following three topics:

1. Receipt of required minimum periodic payment within 60 days of due date
2. Relationship to §1026.9(g)(3)(i)(B)
3. Reduction in rate pursuant to §1026.55(b)(4)(ii)

Regulatory Text

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

Regulatory Commentary

55(b)(4) Delinquency exception

1. ***Receipt of required minimum periodic payment within 60 days of due date.*** *Section 1026.55(b)(4) applies when a card issuer has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. In order to satisfy this condition, a card issuer that requires monthly minimum payments generally must not have received two consecutive required minimum periodic payments. Whether a required minimum periodic payment has been received for purposes of §1026.55(b)(4) depends on whether the amount received is equal to or more than the first outstanding required minimum periodic payment. For example, assume that the required minimum periodic payments for a credit card account are due on the fifteenth day of the month. On May 13, the card issuer has not received the $50 required minimum periodic payment due on March 15 or the $150 required minimum periodic payment due on April 15. The sixtieth day after the March 15 payment due date is May 14. If the card issuer receives a $50 payment on May 14, §1026.55(b)(4) does not apply because the payment is equal to the required minimum periodic payment due on March 15 and therefore the account is not more than 60 days delinquent. However, if the card issuer instead received a $40 payment on May 14, §1026.55(b)(4) would apply beginning on May 15 because the payment is less than the required minimum periodic payment due on March 15. Furthermore, if the card issuer received the $50 payment on May 15, §1026.55(b)(4) would apply because the card issuer did not receive the required minimum periodic payment due on March 15 within 60 days after the due date for that payment.*

2. ***Relationship to §1026.9(g)(3)(i)(B).*** *A card issuer that has complied with the disclosure requirements in §1026.9(g)(3)(i)(B) has also complied with the disclosure requirements in §1026.55(b)(4)(i).*

3. ***Reduction in rate pursuant to §1026.55(b)(4)(ii).*** *Section 1026.55(b)(4)(ii) provides that, 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 §1026.55(b)(4) 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 after provision of the §1026.9(c) or (g) notice.*

   i. ***Six consecutive payments immediately following effective date of increase.*** *Section 1026.55(b)(4)(ii) does not apply if the card issuer does not receive six consecutive required minimum periodic payments on or before the payment due date beginning with the payment due immediately following the effective date of the increase, even if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date.*

ii. ***Rate, fee, or charge that does not exceed rate, fee, or charge that applied before increase.*** *Although §1026.55(b)(4)(ii) requires the card issuer to reduce an annual percentage rate, fee, or charge increased pursuant to §1026.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge consistent with any of the other exceptions in §1026.55(b). For example, if a temporary rate applied prior to the §1026.55(b)(4) increase and the temporary rate expired before a reduction in rate pursuant to §1026.55(b)(4)(ii), the card issuer may apply an increased rate to the extent consistent with §1026.55(b)(1). Similarly, if a variable rate applied prior to the §1026.55(b)(4) increase, the card issuer may apply any increase in that variable rate to the extent consistent with §1026.55(b)(2).*

iii. ***Delayed implementation of reduction.*** *If §1026.55(b)(4)(ii) requires a card issuer to reduce an annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the reduced rate, fee, or charge until the first day of the following billing cycle.*

iv. ***Examples.*** *The following examples illustrate the application of §1026.55(b)(4)(ii):*

A. *Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payments are due on the fifteenth day of the month. Assume also that the account has a $5,000 purchase balance to which a non-variable annual percentage rate of 15% applies. On May 16 of year one, the card issuer has not received the required minimum periodic payments due on the fifteenth day of March, April, or May and sends a §1026.9(c) or (g) notice stating that the annual percentage rate applicable to the $5,000 balance and to new transactions will increase to 28% effective July 1. On July 1, §1026.55(b)(4) permits the card issuer to apply the 28% rate to the $5,000 balance and to new transactions. The card issuer receives the required minimum periodic payments due on the fifteenth day of July, August, September, October, November, and December. On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 15%. The card issuer is not required to reduce the rate that applies to any transactions that occurred on or after May 31 (which is the fifteenth day after provision of the §1026.9(c) or (g) notice).*

B. *Same facts as paragraph iv.A above except that the 15% rate that applied to the $5,000 balance prior to the §1026.55(b)(4) increase was scheduled to increase to 20% on August 1 of year one (pursuant to §1026.55(b)(1)). On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 20%.*

C. *Same facts as paragraph iv.A above except that the 15% rate that applied to the $5,000 balance prior to the §1026.55(b)(4) increase was scheduled to increase to 20% on March 1 of year two (pursuant to §1026.55(b)(1)). On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 15%.*

D. *Same facts as paragraph iv.A above except that the 15% rate that applied to the $5,000 balance prior to the §1026.55(b)(4) increase was a variable rate that was determined*

by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control (consistent with §1026.55(b)(2)). On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to the variable rate determined using the 10-point margin.

E. For an example of the application of §1026.55(b)(4)(ii) to deferred interest or similar programs, see comment 55(b)(1)-3.ii.C.

Workout/Temporary Hardship Exception - 12 C.F.R § 1026.55(b)(5)

Regulatory Discussion

The fifth of the six exceptions generally allows the card issuer to increase an APR or a fee or charge due to the consumer's completion of workout or temporary hardship arrangement or the consumer's failure to comply with such arrangement; subject to two conditions:

- Prior to the commencement of the arrangement, the card issuer provided the consumer with a written disclosure; **and**
- Upon completion or failure of the arrangement, the card issuer must not apply an APR, fee, or charge that exceeds the APR, fee or charge that applied to those transactions prior to the commencement of the arrangement

The commentary provides additional information on the following four topics:

1. Scope of exception
2. Relationship to §1026.9(c)(2)(v)(D)
3. Rate, fee, or charge that does not exceed rate, fee, or charge that applied before workout or temporary hardship arrangement
4. Examples

Regulatory Text

(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.

Regulatory Commentary

55(b)(5) Workout and temporary hardship arrangement exception

1. ***Scope of exception.*** *Nothing in §1026.55(b)(5) permits a card issuer to alter the requirements of §1026.55 pursuant to a workout or temporary hardship arrangement. For example, a card issuer cannot 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 a workout or temporary hardship arrangement unless otherwise permitted by §1026.55. In addition, a card issuer cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under §1026.55(c).*

2. ***Relationship to §1026.9(c)(2)(v)(D).*** *A card issuer that has complied with the disclosure requirements in §1026.9(c)(2)(v)(D) has also complied with the disclosure requirements in §1026.55(b)(5)(i). See comment 9(c)(2)(v)-10. Thus, although the disclosures required by §1026.55(b)(5)(i) must generally be provided in writing prior to commencement of the arrangement, a card issuer may comply with §1026.55(b)(5)(i) by complying with §1026.9(c)(2)(v)(D), which states that the disclosure of the terms of the arrangement may be made orally by telephone, provided that the card issuer mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.*

3. ***Rate, fee, or charge that does not exceed rate, fee, or charge that applied before workout or temporary hardship arrangement.*** *Upon the completion or failure of a workout or temporary hardship arrangement, §1026.55(b)(5)(ii) prohibits the card issuer from applying 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. However, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge upon completion or failure of the arrangement, to the extent consistent with any of the other exceptions in §1026.55(b). For example, if a temporary rate applied prior to the arrangement and that rate expired during the arrangement, the card issuer may apply an increased rate upon completion or failure of the arrangement to the extent consistent with §1026.55(b)(1). Similarly, if a variable rate applied prior to the arrangement, the card issuer may apply any increase in that variable rate upon completion or failure of the arrangement to the extent consistent with §1026.55(b)(2).*

4. ***Examples.***

   i. *Assume that an account is subject to a $50 annual fee and that, consistent with §1026.55(b)(4), the margin used to determine a variable annual percentage rate that applies to a $5,000 balance is increased from 5 percentage points to 15 percentage*

points. Assume also that the card issuer and the consumer subsequently agree to a workout arrangement that reduces the annual fee to $0 and reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, §1026.55(b)(5) permits the card issuer to increase the annual fee to $50 and increase the margin for the variable rate that applies to the $5,000 balance up to 15 percentage points.

ii. Assume that a consumer fails to make four consecutive monthly minimum payments totaling $480 on a consumer credit card account with a balance of $6,000 and that, consistent with §1026.55(b)(4), the annual percentage rate that applies to that balance is increased from a non-variable rate of 15% to a non-variable penalty rate of 30%. Assume also that the card issuer and the consumer subsequently agree to a temporary hardship arrangement that reduces all rates on the account to 0% on the condition that the consumer pay an amount by the payment due date each month that is sufficient to cure the $480 delinquency within six months. If the consumer pays the agreed-upon amount by the payment due date during the six-month period and cures the delinquency, §1026.55(b)(5) permits the card issuer to increase the rate that applies to any remaining portion of the $6,000 balance to 15% or any other rate up to the 30% penalty rate.

Servicemembers Civil Relief Act Exception - 12 C.F.R § 1026.55(b)(6)

Regulatory Discussion

The sixth, and final, exception generally allows the card issuer to increase an APR, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies, provided the card issuer must not apply to any transactions that occurred prior to the decrease an APR, fee, or charge that exceeds the APR, fee, or charge that applied to those transactions prior to the decrease

The commentary provides additional information on the following three topics:

1. Rate, fee, or charge that does not exceed rate, fee, or charge that applied before decrease
2. Decreases in rates, fees, and charges to amounts consistent with 50 U.S.C. app. 527 or similar statute or regulation
3. Example

Regulatory Text

(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.

Regulatory Commentary

55(b)(6) Servicemembers Civil Relief Act exception

1. ***Rate, fee, or charge that does not exceed rate, fee, or charge that applied before decrease.*** *When a rate or a fee or charge subject to §1026.55 has been decreased pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, §1026.55(b)(6) permits the card issuer to increase the rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies. However, §1026.55(b)(6) prohibits the card issuer from applying to any transactions that occurred prior to the decrease a rate, fee, or charge that exceeds the rate, fee, or charge that applied to those transactions prior to the decrease (except to the extent permitted by one of the other exceptions in §1026.55(b)). For example, if a temporary rate applied prior to a decrease in rate pursuant to 50 U.S.C. app. 527 and the temporary rate expired during the period that 50 U.S.C. app. 527 applied to the account, the card issuer may apply an increased rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with §1026.55(b)(1). Similarly, if a variable rate applied prior to a decrease in rate pursuant to 50 U.S.C. app. 527, the card issuer may apply any increase in that variable rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with §1026.55(b)(2).*

2. ***Decreases in rates, fees, and charges to amounts consistent with 50 U.S.C. app. 527 or similar statute or regulation.*** *If a card issuer deceases an annual percentage rate or a fee or charge subject to §1026.55 pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation and if the card issuer also decreases other rates, fees, or charges (such as the rate that applies to new transactions) to amounts that are consistent with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, the card issuer may increase those rates, fees, and charges consistent with §1026.55(b)(6).*

3. ***Example.*** *Assume that on December 31 of year one the annual percentage rate that applies to a $5,000 balance on a credit card account is a variable rate that is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the card issuer's control. The account is also subject to a monthly maintenance fee of $10. On January 1 of year two, the card issuer reduces the rate that applies to the $5,000 balance to a non-variable rate of 6% and ceases to impose the $10 monthly maintenance fee and other fees (including late payment fees) pursuant to 50 U.S.C. app. 527. The card issuer also decreases the rate that applies to new transactions to 6%. During year two, the consumer uses the account for $1,000 in new transactions. On January 1 of year three, 50 U.S.C. app. 527 ceases to apply and the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that on February 15 of year three the variable rate determined using the 10-point margin will apply to any remaining portion of the $5,000 balance and to any remaining portion of the $1,000 balance. The notice also states that the $10 monthly maintenance fee and other fees (including late payment fees) will resume on February 15 of year three. Consistent with §1026.9(c)(2)(iv)(B), the card issuer is not required to provide*

a right to reject in these circumstances. On February 15 of year three, §1026.55(b)(6) permits the card issuer to begin accruing interest on any remaining portion of the $5,000 and $1,000 balances at the variable rate determined using the 10-point margin and to resume imposing the $10 monthly maintenance fee and other fees (including late payment fees).

Section 3: Treatment of Protected Balances
12 C.F.R. § 1026.55(c)

Treatment of Protected Balances - 12 C.F.R § 1026.55(c)

Regulatory Discussion

This section provides a definition of the term "protected balance" as well as the three acceptable repayment methods of a protected balance.

The commentary provides additional information relative to definition as well as the payment methods.

Regulatory Text

(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.

Regulatory Commentary

55(c) Treatment of protected balances

55(c)(1) Definition of protected balance

1. ***Example of protected balance.*** *Assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable annual percentage rate of 12% and that, on*

March 16, the card issuer sends a notice pursuant to §1026.9(c) informing the consumer that the annual percentage rate for new purchases will increase to a non-variable rate of 15% on May 1. The fourteenth day after provision of the notice is March 29. On March 29, the consumer makes a $100 purchase. On March 30, the consumer makes a $150 purchase. On May 1, §1026.55(b)(3)(ii) permits the card issuer to begin accruing interest at 15% on the $150 purchase made on March 30 but does not permit the card issuer to apply that 15% rate to the $1,100 purchase balance as of March 29. Accordingly, the protected balance for purposes of §1026.55(c) is the $1,100 purchase balance as of March 29. The $150 purchase made on March 30 is not part of the protected balance.

2. ***First year after account opening.*** *Section 1026.55(c) applies to amounts owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge cannot be applied after the rate, fee, or charge for that category of transactions has been increased pursuant to §1026.55(b)(3). Because §1026.55(b)(3)(iii) 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), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, §1026.55(c) does not apply to balances during the first year after account opening.*

3. ***Increased fees and charges.*** *Except as provided in §1026.55(b)(3)(iii), §1026.55(b)(3) permits a card issuer to increase 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) or (c), provided that the increased fee or charge is not applied to a protected balance. To the extent consistent with §1026.55(b)(3)(iii), a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, after the first year following account opening, a card issuer generally may add or increase an annual or a monthly maintenance fee for an account after complying with the notice requirements in §1026.9(c), including notifying the consumer of the right to reject the new or increased fee under §1026.9(h). However, except as otherwise provided in §1026.55(b), an increased fee or charge cannot be applied to an account while the account is closed or while the card issuer does not permit the consumer to use the account for new transactions. See §1026.55(b)(3)(iii); see also §§1026.52(b)(2)(i)(B)(3) and 1026.55(d)(1). Furthermore, if the consumer rejects an increase in a fee or charge pursuant to §1026.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. See §1026.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)-2.*

4. ***Changing balance computation method.*** *Nothing in §1026.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected balances.*

55(c)(2) Repayment of protected balance

1. ***No less beneficial to the consumer.*** *A card issuer may provide a method of repaying the protected balance that is different from the methods listed in §1026.55(c)(2) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account before the effective date of the increase. Similarly, a method is no less beneficial*

to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with §1026.55(c)(2)(iii). For example:

i. If at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20 (whichever is greater), the card issuer may require the consumer to make a minimum payment of $20 even if doing so would pay off the balance in less than five years or constitute more than 2% of the balance plus fees and interest charges.

ii. A card issuer could increase the percentage of the balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the balance in less than five years.

iii. A card issuer could require the consumer to make a required minimum periodic payment that amortizes the balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the date on which the increased annual percentage rate, fee, or charge became effective.

Paragraph 55(c)(2)(ii)

1. ***Amortization period starting from effective date of increase.*** *Section 1026.55(c)(2)(ii) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate or fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) became effective. A card issuer is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of payments by the consumer in excess of that minimum payment consistent with §1026.53 or any other practice permitted by these rules and other applicable law.*

2. ***Amortization when applicable rate is variable.*** *If the annual percentage rate that applies to the protected balance varies with an index, the card issuer may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the creditor may increase the required minimum periodic payment to include the additional interest charges.*

Paragraph 55(c)(2)(iii)

1. ***Portion of required minimum periodic payment on other balances.*** *Section 1026.55(c)(2)(iii) addresses the portion of the required minimum periodic payment based on the protected balance. Section 1026.55(c)(2)(iii) does not limit or otherwise address the card issuer's ability to determine the portion of the required minimum periodic payment based on other balances on the account or the card issuer's ability to apply that portion of the minimum payment to the balances on the account.*

2. ***Example.*** *Assume that the method used by a card issuer to calculate the required minimum periodic payment for a credit card account requires the consumer to pay either the total of fees and accrued interest charges plus 2% of the total amount owed or $50, whichever is greater. Assume also that the account has a purchase balance of $2,000 at an annual percentage rate of 15% and a cash advance balance of $500 at an annual percentage rate of 20% and that the card issuer increases the rate for purchases to 18% but does not increase the rate for cash advances. Under §1026.55(c)(2)(iii), the card issuer may require the consumer to pay fees and interest plus 4% of the $2,000 purchase balance. Section 1026.55(c)(2)(iii) does not limit the card issuer's ability to increase the portion of the required minimum periodic payment that is based on the cash advance balance.*

Section 4: Continuing Application
12 C.F.R. § 1026.55(d)

Continuing Application - 12 C.F.R § 1026.55(d)

Regulatory Discussion

The requirements in the previous sections 1 through 3 will apply in the event a credit card account is either:

- closed;
- acquired by another credit; or
- the balance is transferred from one account to another account (issued by the same creditor, its affiliate or subsidiary)

The commentary provides additional information on each of these three events.

Regulatory Text

(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).

Regulatory Commentary

55(d) Continuing application

*1. **Closed accounts.** If a credit card account under an open-end (not home-secured) consumer credit plan with a balance is closed, §1026.55 continues to apply to that balance. For example, if a card issuer or a consumer closes a credit card account with a balance, §1026.55(d)(1) prohibits the card issuer from increasing the annual percentage rate that applies to that balance or imposing a periodic fee based solely on that balance that was not charged before the account was closed (such as a closed account fee) unless permitted by one of the exceptions in §1026.55(b).*

*2. **Acquired accounts.** If, through merger or acquisition (for example), a card issuer acquires*

a credit card account under an open-end (not home-secured) consumer credit plan with a balance, §1026.55 continues to apply to that balance. For example, if a credit card account has a $1,000 purchase balance with an annual percentage rate of 15% and the card issuer that acquires that account applies an 18% rate to purchases, §1026.55(d)(1) prohibits the card issuer from applying the 18% rate to the $1,000 balance unless permitted by one of the exceptions in §1026.55(b).

3. ***Balance transfers.***

i. ***Between accounts issued by the same creditor.*** *If a 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, §1026.55 continues to apply to that balance. For example, if a credit card account has a $2,000 purchase balance with an annual percentage rate of 15% and that balance is transferred to another credit card account issued by the same creditor that applies an 18% rate to purchases, §1026.55(d)(2) prohibits the creditor from applying the 18% rate to the $2,000 balance unless permitted by one of the exceptions in §1026.55(b). However, the creditor would not generally be prohibited from charging a new periodic fee (such as an annual fee) on the second account so long as the fee is not based solely on the $2,000 balance and the creditor has notified the consumer of the fee either by providing written notice 45 days before imposing the fee pursuant to §1026.9(c) or by providing account-opening disclosures pursuant to §1026.6(b). See also §1026.55(b)(3)(iii); comment 55(b)(3)-3; comment 5(b)(1)(i)-6. Additional circumstances in which a balance is considered transferred for purposes of §1026.55(d)(2) include when:*

A. A retail credit card account with a balance is replaced or substituted with a cobranded general purpose credit card account that can be used with a broader merchant base;

B. A credit card account with a balance is replaced or substituted with another credit card account offering different features;

C. A credit card account with a balance is consolidated or combined with one or more other credit card accounts into a single credit card account; and

D. A credit card account is replaced or substituted with a line of credit that can be accessed solely by an account number.

ii. ***Between accounts issued by different creditors.*** *If a balance is transferred to a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor from a credit card account issued by a different creditor or an institution that is not an affiliate or subsidiary of the creditor that issued the account to which the balance is transferred, §1026.55(d)(2) does not prohibit the creditor to which the balance is transferred from applying its account terms to that balance, provided that those terms comply with this part. For example, if a credit card account issued by creditor A has a $1,000 purchase balance at an annual percentage rate of 15% and the consumer transfers that balance to a credit card account with a purchase rate of 17% issued by creditor B, creditor B may apply the 17% rate to the $1,000 balance. However, creditor B may not subsequently increase the rate on that balance unless permitted by one of the exceptions in §1026.55(b).*

Section 5: Promotional Waivers and Rebates
12 C.F.R. § 1026.55(e)

Promotional Waivers and Rebates - 12 C.F.R § 1026.55(e)

Regulatory Discussion

Generally, a card issuer promotes a waiver or rebate if the card issuer discloses the waiver or rebate *in an advertisement* (as defined in §1026.2(a)(2)).

This section basically says:

- if a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges; and
- applies the waiver or rebate to a credit card account
- then any cessation of the waiver or rebate on that account constitutes an increase in an APR, fee, or charge.

The commentary provides supporting information.

Regulatory Text

(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.

Regulatory Commentary

55(e) Promotional waivers or rebates of interest, fees, and other charges

1. ***Generally.*** *Nothing in §1026.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, if a card issuer promotes and applies the waiver or rebate to an account, the card issuer cannot temporarily or permanently cease or terminate any portion of the waiver or rebate on that account unless permitted by one of the exceptions in §1026.55(b). For example:*

   i. A card issuer applies an annual percentage rate of 15% to balance transfers but promotes a program under which all of the interest accrued on transferred balances will be waived or rebated for one year. If, prior to the commencement of the one-year period, the card issuer discloses the length of the period and the annual percentage rate that will apply to transferred balances after expiration of that period consistent with

§1026.55(b)(1)(i), §1026.55(b)(1) permits the card issuer to begin imposing interest charges on transferred balances after one year. Furthermore, if, during the one-year period, a required minimum periodic payment is not received within 60 days of the payment due date, §1026.55(b)(4) permits the card issuer to begin imposing interest charges on transferred balances (after providing a notice consistent with §1026.9(g) and §1026.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, §1026.55 does not permit the card issuer to begin imposing interest charges on transferred balances until the expiration of the one-year period.

ii. A card issuer imposes a monthly maintenance fee of $10 but promotes a program under which the fee will be waived or rebated for the six months following account opening. If, prior to account opening, the card issuer discloses the length of the period and the monthly maintenance fee that will be imposed after expiration of that period consistent with §1026.55(b)(1)(i), §1026.55(b)(1) permits the card issuer to begin imposing the monthly maintenance fee six months after account opening. Furthermore, if, during the six-month period, a required minimum periodic payment is not received within 60 days of the payment due date, §1026.55(b)(4) permits the card issuer to begin imposing the monthly maintenance fee (after providing a notice consistent with §1026.9(c) and §1026.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, §1026.55 does not permit the card issuer to begin imposing the monthly maintenance fee until the expiration of the six-month period.

*2. **Promotion of waiver or rebate.** For purposes of §1026.55(e), a card issuer generally promotes a waiver or rebate if the card issuer discloses the waiver or rebate in an advertisement (as defined in §1026.2(a)(2)). See comment 2(a)(2)-1. In addition, a card issuer generally promotes a waiver or rebate for purposes of §1026.55(e) if the card issuer discloses the waiver or rebate in communications regarding existing accounts (such as communications regarding a promotion that encourages additional or different uses of an existing account). However, a card issuer does not promote a waiver or rebate for purposes of §1026.55(e) if the advertisement or communication relates to an inquiry or dispute about a specific charge or to interest, fees, or charges that have already been waived or rebated.*

*i. **Examples of promotional communications.** The following are examples of circumstances in which a card issuer is promoting a waiver or rebate for purposes of §1026.55(e):*

A. A card issuer discloses the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display, unless the disclosure relates to interest, fees, or charges that have already been waived.

B. A card issuer discloses the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet), unless the disclosure relates to interest, fees, or charges that have already been waived or rebated.

C. A card issuer discloses a waiver or rebate to individual consumers, such as by telephone, letter, or electronic communication, through direct mail literature, or on or with account statements, unless the disclosure relates to an inquiry or dispute about a specific charge or to interest, fees, or charges that have already been waived or rebated.

ii. ***Examples of non-promotional communications.*** *The following are examples of circumstances in which a card issuer is not promoting a waiver or rebate for purposes of §1026.55(e):*

A. *After a card issuer has waived or rebated interest, fees, or other charges subject to §1026.55 with respect to an account, the issuer discloses the waiver or rebate to the accountholder on the periodic statement or by telephone, letter, or electronic communication. However, if the card issuer also discloses prospective waivers or rebates in the same communication, the issuer is promoting a waiver or rebate for purposes of §1026.55(e).*

B. *A card issuer communicates with a consumer about a waiver or rebate of interest, fees, or other charges subject to §1026.55 in relation to an inquiry or dispute about a specific charge, including a dispute under §§1026.12 or 1026.13.*

C. *A card issuer waives or rebates interest, fees, or other charges subject to §1026.55 in order to comply with a legal requirement (such as the limitations in §1026.52(a)).*

D. *A card issuer discloses a grace period, as defined in §1026.5(b)(2)(ii)(3).*

E. *A card issuer provides a period after the payment due date during which interest, fees, or other charges subject to §1026.55 are waived or rebated even if a payment has not been received.*

F. *A card issuer provides benefits (such as rewards points or cash back on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing interest, fees, or other charges subject to §1026.55.*

3. ***Relationship of §1026.55(e) to grace period.*** *Section 1026.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in §1026.5(b)(2)(ii)(3).*

Open End - Requirements for Over-the-Limit Transactions

Section 1: Definition and Opt-In Requirements 12 C.F.R. § 1026.56(a) and 12 C.F.R. § 1026.56(b)

Definition - 12 CFR § 1026.56(a)

Regulatory Discussion

This section provides definition of the term "over-the-limit transaction."

Regulatory Text

(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.

Regulatory Commentary

None.

Opt-In Requirement - 12 CFR § 1026.56(b)

Regulatory Discussion

This section describes *five actions a card issuer must take before* an over-the-limit transaction fee is assessed, and includes:

1. Providing the consumer notice describing the right to affirmatively consent (the opt-in requirement) to the card issuer's payment of an over-the-limit transaction
2. Providing the consumer reasonable opportunity to opt-in
3. Obtaining the consumer's opt-in to the payment of such transactions
4. Providing the consumer confirmation of consumer's consent
5. Providing consumer notice – in writing – of the right to revoke the consent following assessment of an over-the-limit fee or charge

Note: in the absence of the consumer's opt-in to the payment of over-the-limit transactions, a card issuer may pay any over-the-limit transaction provided no fee or charge is imposed on

the account for paying that transaction.

The commentary provides important information on the following topics:

- Policy and practice of declining over-the-limit transactions
- Over-the-limit transactions not required to be authorized or paid
- Examples of reasonable opportunity to provide affirmative consent
- Separate consent required
- Written confirmation
- Examples of over-the-limit transactions paid without consumer consent
- Permissible fees or charges when a consumer has not consented

Regulatory Text

(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.

Regulatory Commentary

56(b) Opt-in requirement.

1. ***Policy and practice of declining over-the-limit transactions.*** *Section 1026.56(b)(1)(i)-(v), including the requirements to provide notice and obtain consumer consent, do not apply to any card issuer that has a policy and practice of declining to pay any over-the-limit transactions for the consumer's credit card account when the card issuer has a reasonable belief that completing a transaction will cause the consumer to exceed the consumer's credit limit for that account. For example, if a card issuer only authorizes those transactions which, at the time of authorization, would not cause the consumer to exceed a credit limit, it is not subject to the requirement to provide consumers notice and an opportunity to affirmatively consent to the card issuer's payment of over-the-limit transactions. However, if an over-the-limit transaction is paid without the consumer providing affirmative consent, the card issuer may not charge a fee for paying the transaction.*

2. ***Over-the-limit transactions not required to be authorized or paid.*** *Section 1026.56 does not require a card issuer to authorize or pay an over-the-limit transaction even if the consumer has affirmatively consented to the card issuer's over-the-limit service.*

3. ***Examples of reasonable opportunity to provide affirmative consent.*** *A card issuer provides a reasonable opportunity for the consumer to provide affirmative consent to the card issuer's payment of over-the-limit transactions when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A card issuer provides such reasonable methods if:*

   i. On the application. The card issuer provides the notice on the application form that the consumer can fill out to request the service as part of the application;

   ii. By mail. The card issuer provides a form with the account-opening disclosures or the periodic statement for the consumer to fill out and mail to affirmatively request the service;

   iii. By telephone. The card issuer provides a readily available telephone line that consumers may call to provide affirmative consent.

   iv. By electronic means. The card issuer provides an electronic means for the consumer to affirmatively consent. For example, a card issuer could provide a form that can be accessed and processed at its Web site, where the consumer can check a box to opt in and confirm that choice by clicking on a button that affirms the consumer's consent.

4. ***Separate consent required.*** *A consumer's affirmative consent, or opt-in, to a card issuer's payment of over-the-limit transactions must be obtained separately from other consents or acknowledgments obtained by the card issuer. For example, a consumer's signature on a credit application to request a credit card would not by itself sufficiently evidence the consumer's consent to the card issuer's payment of over-the-limit transactions. However, a card issuer may obtain a consumer's affirmative consent by providing a blank signature line or a check box on the application that the consumer can sign or select to request the over-the-limit service, provided that the signature line or check box is used solely for purposes of evidencing the choice and not for any other purpose, such as to also obtain consumer consents for other account services or features or to receive disclosures electronically.*

5. ***Written confirmation.*** *A card issuer may comply with the requirement in §1026.56(b)(1)(iv) to provide written confirmation of the consumer's decision to*

affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions by providing the consumer a copy of the consumer's completed opt-in form or by sending a letter or notice to the consumer acknowledging that the consumer has elected to opt into the card issuer's service. A card issuer may also satisfy the written confirmation requirement by providing the confirmation on the first periodic statement sent after the consumer has opted in. For example, a card issuer could provide a written notice consistent with §1026.56(e)(2) on the periodic statement. A card issuer may not, however, assess any over-the-limit fees or charges on the consumer's credit card account unless and until the card issuer has sent the written confirmation. Thus, if a card issuer elects to provide written confirmation on the first periodic statement after the consumer has opted in, it would not be permitted to assess any over-the-limit fees or charges until the next statement cycle.

56(b)(2) Completion of over-the-limit transactions without consumer consent

1. ***Examples of over-the-limit transactions paid without consumer consent.*** *Section 1026.56(b)(2) provides that a card issuer may pay an over-the-limit transaction even if the consumer has not provided affirmative consent, so long as the card issuer does not impose a fee or charge for paying the transaction. The prohibition on imposing fees for paying an over-the-limit transaction applies even in circumstances where the card issuer is unable to avoid paying a transaction that exceeds the consumer's credit limit.*

   i. ***Transactions not submitted for authorization.*** *A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer purchases a $3 cup of coffee using his credit card. Because of the small dollar amount of the transaction, the merchant does not submit the transaction to the card issuer for authorization. The transaction causes the consumer to exceed the credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.*

   ii. ***Settlement amount exceeds authorization amount.*** *A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer uses his credit card at a pay-at-the-pump fuel dispenser to purchase $50 of fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by requesting an authorization hold of $1. The subsequent $50 transaction amount causes the consumer to exceed his credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.*

   iii. ***Intervening charges.*** *A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer makes a $50 purchase using his credit card. However, before the $50 transaction is charged to the consumer's account, a separate recurring charge is posted to the account. The $50 purchase then causes the consumer to exceed his credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.*

2. ***Permissible fees or charges when a consumer has not consented.*** *Section 1026.56(b)(2) does not preclude a card issuer from assessing fees or charges other than over-the-limit fees when an over-the-limit transaction is completed. For example, if a consumer has not opted in, the card issuer may assess a balance transfer fee in connection with a balance transfer, provided such a fee is assessed whether or not the transfer exceeds the credit limit. Section 1026.56(b)(2) does not limit the card issuer's ability to debit the consumer's account for the amount of the over-the-limit transaction if the card issuer is permitted to do so under applicable law. The card issuer may also assess interest charges in connection with the over-the-limit transaction.*

Section 2: Method of Election
12 C.F.R. § 1026.56(c)

Method of Election - 12 CFR § 1026.56(c)

Regulatory Discussion

This section simply states the card issuer may *permit the consumer to consent* (opt-in) to the payment of any over-the-limit transaction, *or revoke the consent*, in writing, orally, or electronically.

Regulatory Text

(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.

Regulatory Commentary

56(c) Method of election

1. ***Card issuer-determined methods.*** *A card issuer may determine the means available to consumers to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions. For example, a card issuer may decide to obtain consents in writing, electronically, or orally, or through some combination of these methods. Section 1026.56(c) further requires, however, that such methods must be made equally available for consumers to revoke a prior consent. Thus, for example, if a card issuer allows a consumer to consent in writing or electronically, it must also allow the consumer to revoke that consent in writing or electronically.*

2. ***Electronic requests.*** *A consumer consent or revocation request submitted electronically is not considered a consumer disclosure for purposes of the E-Sign Act.*

Section 3: Timing and Placement of Notices
12 C.F.R. § 1026.56(d)

Timing and Placement of Notices - 12 CFR § 1026.56(d)

Regulatory Discussion

There are three timing and placement requirements for the notice and confirmation actions previously discussed under Section 1.

1. Relative to the initial notice:
   - Generally, the initial notice shall be provided prior to the assessment of any fee or charge.
   - Note: for any consent received orally or electronically, the initial notice must be provided immediately prior to obtaining that consent.
2. Relative to the confirmation of the opt-in: this notice may be provided no later than the first periodic statement sent after the consumer's consent
3. Relative to the right of revocation notice: this notice shall be provided on the *front of any page of each periodic statement that reflects an assessment* of an over-the-limit fee or charge

Regulatory Text

(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.

Regulatory Commentary

56(d) Timing and placement of notices

1. ***Contemporaneous notice for oral or electronic consent.*** *Under §1026.56(d)(1)(ii), if a card issuer seeks to obtain consent from the consumer orally or by electronic means, the card issuer must provide a notice containing the disclosures in §1026.56(e)(1) prior to and as part of the process of obtaining the consumer's consent.*

Section 4: Content of Notices
12 C.F.R. § 1026.56(e)

Content of Notices - 12 CFR § 1026.56(e)

Regulatory Discussion

This section describes the content requirements of the initial notice (fees, APRs, opt-in right) and of the right to revoke notice. Safe harbor is granted for the use of the model forms included in the regulation.

Regulatory Text

(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.

Regulatory Commentary

56(e) Content

*1. **Amount of over-the-limit fee.** See Model Forms G-25(A) and G-25(B) for guidance on how to disclose the amount of the over-the-limit fee.*

2. ***Notice content***. *In describing the consumer's right to affirmatively consent to a card issuer's payment of over-the-limit transactions, the card issuer may explain that any transactions that exceed the consumer's credit limit will be declined if the consumer does not consent to the service. In addition, the card issuer should explain that even if a consumer consents, the payment of over-the-limit transactions is at the discretion of the card issuer. For example, the card issuer may indicate that it may decline a transaction for any reason, such as if the consumer is past due or significantly over the limit. The card issuer may also disclose the consumer's right to revoke consent.*

Section 5: Joint Relationships
12 C.F.R. § 1026.56(f)

Joint Relationships - 12 CFR § 1026.56(f)

Regulatory Discussion

This section simply states the card issuer shall treat either the consent (opt-in), or revocation of consent, by any of the joint consumers is applicable to that account.

Regulatory Text

(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.

Regulatory Commentary

56(f) Joint relationships

1. ***Authorized users.*** *Section 1026.56(f) does not permit a card issuer to treat a request to opt in to or to revoke a prior request for the card issuer's payment of over-the-limit transactions from an authorized user that is not jointly liable on a credit card account as a consent or revocation request for that account.*

Section 6: Continuing Right to Opt-In or Revoke Opt-Out 12 C.F.R. § 1026.56(g)

Continuing Right to Opt-In or Revoke Opt-Out - 12 CFR § 1026.56(g)

Regulatory Discussion

This section simply states the consumer maintains the opportunity to either consent (opt-in) or revoke the consent at any time. See the commentary for information on fees or charges assessed prior to the revocation.

Regulatory Text

(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.

Regulatory Commentary

56(g) Continuing right to opt in or revoke opt-in

1. ***Fees or charges for over-the-limit transactions incurred prior to revocation.*** *Section 1026.56(g) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the card issuer to waive or reverse any over-the-limit fees or charges assessed to the consumer's account for transactions that occurred prior to the card issuer's implementation of the consumer's revocation request. Nor does this requirement prevent the card issuer from assessing over-the-limit fees in subsequent cycles if the consumer's account balance continues to exceed the credit limit after the payment due date as a result of an over-the-limit transaction that occurred prior to the consumer's revocation of consent.*

Section 8: Duration of Opt-In & Time to Comply 12 C.F.R. § 1026.56(h) and 12 C.F.R. § 1026.56(i)

Duration of Opt-In - 12 CFR § 1026.56(h)

Regulatory Discussion

This section simply states the consumer's consent (opt-in) is effective until revoked by the consumer; or the card issuer decides to cease paying over-the-limit transactions for the consumer (i.e., due to changes in credit risk).

Regulatory Text

(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.

Regulatory Commentary

56(h) Duration of opt-in

1. ***Card issuer ability to stop paying over-the-limit transactions after consumer consent.*** *A card issuer may cease paying over-the-limit transactions for consumers that have previously opted in at any time and for any reason. For example, a card issuer may stop paying over-the-limit transactions for a consumer to respond to changes in the credit risk presented by the consumer.*

Time to Comply with Revocation Request - 12 CFR § 1026.56(i)

Regulatory Discussion

This section simply states the card issuer must request to a consumer's revocation request as soon as possible.

Regulatory Text

(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.

Regulatory Commentary

None.

Section 9: Prohibited Practices
12 C.F.R. § 1026.56(j)

Prohibited Practices - 12 CFR § 1026.56(j)

Regulatory Discussion

This section describes the four practices which are specifically prohibited

1. Generally, no more than one over-the-limit fee or charge per billing cycle
    - Except: no over-the-limit fee or charge for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance
    - This exception does not apply if another over-the-limit transaction occurs during either of the last two billing cycles
2. No over-the-limit fee or charge because the card issuer did not replenish available credit following crediting of the consumer's payment
3. May not condition the amount of the credit limit due to the card issuer assessing a fee or charge for over-the-limit transactions
4. No over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit because of fees or interest charged to the account during that billing cycle.

The commentary provides additional important information on these topics.

Regulatory Text

(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).

Regulatory Commentary

56(j) Prohibited practices

1. ***Periodic fees or charges.*** *A card issuer may charge an over-the-limit fee or charge only if the consumer has exceeded the credit limit during the billing cycle. Thus, a card issuer may not impose any recurring or periodic fees for paying over-the-limit transactions (for example, a monthly "over-the-limit protection" service fee), even if the consumer has affirmatively consented to or opted in to the service, unless the consumer has in fact exceeded the credit limit during that cycle.*

2. ***Examples of limits on fees or charges imposed per billing cycle.*** *Section 1026.56(j)(1) generally prohibits a card issuer from assessing a fee or charge due to the same over-the-limit transaction for more than three billing cycles. The following examples illustrate the prohibition.*

   i. Assume that a consumer has opted into a card issuer's payment of over-the-limit transactions. The consumer exceeds the credit limit during the December billing cycle and does not make sufficient payment to bring the account balance back under the limit for four consecutive cycles. The consumer does not engage in any additional transactions during this period. In this case, §1026.56(j)(1) would permit the card issuer to charge a maximum of three over-the-limit fees for the December over-the-limit transaction.

   ii. Assume the same facts as above except that the consumer makes sufficient payment to reduce his account balance by the payment due date during the February billing cycle. The card issuer may charge over-the-limit fees for the December and January billing cycles. However, because the consumer's account balance was below the credit limit by the payment due date for the February billing cycle, the card issuer may not charge an over-the-limit fee for the February billing cycle.

iii. Assume the same facts as in paragraph i, except that the consumer engages in another over-the-limit transaction during the February billing cycle. Because the consumer has obtained an additional extension of credit which causes the consumer to exceed his credit limit, the card issuer may charge over-the-limit fees for the December transaction on the January, February and March billing statements, and additional over-the-limit fees for the February transaction on the April and May billing statements. The card issuer may not charge an over-the-limit fee for each of the December and the February transactions on the March billing statement because it is prohibited from imposing more than one over-the-limit fee during a billing cycle.

3. ***Replenishment of credit line.*** *Section 1026.56(j)(2) does not prevent a card issuer from delaying replenishment of a consumer's available credit where appropriate, for example, where the card issuer may suspect fraud on the credit card account. However, a card issuer may not assess an over-the-limit fee or charge if the over-the-limit transaction is caused by the card issuer's decision not to promptly replenish the available credit after the consumer's payment is credited to the consumer's account.*

4. ***Examples of conditioning.*** *Section 1026.56(j)(3) prohibits a card issuer from conditioning or otherwise tying the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions where the card issuer assesses an over-the-limit fee for the transaction. The following examples illustrate the prohibition.*

   i. ***Amount of credit limit.*** *Assume that a card issuer offers a credit card with a credit limit of $1,000. The consumer is informed that if the consumer opts in to the payment of the card issuer's payment of over-the-limit transactions, the initial credit limit would be increased to $1,300. If the card issuer would have offered the credit card with the $1,300 credit limit but for the fact that the consumer did not consent to the card issuer's payment of over-the-limit transactions, the card issuer would not be in compliance with §1026.56(j)(3). Section 1026.56(j)(3) prohibits the card issuer from tying the consumer's opt-in to the card issuer's payment of over-the-limit transactions as a condition of obtaining the credit card with the $1,300 credit limit.*

   ii. ***Access to credit.*** *Assume the same facts as above, except that the card issuer declines the consumer's application altogether because the consumer has not affirmatively consented or opted in to the card issuer's payment of over-the-limit transactions. The card issuer is not in compliance with §1026.56(j)(3) because the card issuer has required the consumer's consent as a condition of obtaining credit.*

5. ***Over-the-limit fees caused by accrued fees or interest.*** *Section 1026.56(j)(4) prohibits a card issuer from imposing any over-the-limit fees or charges on a consumer's account if the consumer has exceeded the credit limit solely because charges imposed as part of the plan as described in §1026.6(b)(3) were charged to the consumer's account during the billing cycle. For example, a card issuer may not assess an over-the-limit fee or charge even if the credit limit was exceeded due to fees for services requested by the consumer if such fees would constitute charges imposed as part of the plan (such as fees for voluntary debt cancellation or suspension coverage). Section 1026.56(j)(4) does not, however, restrict card issuers from assessing over-the-limit fees or charges due to accrued finance charges or fees from prior cycles that have subsequently been added to the account balance. The following examples illustrate the prohibition.*

i. Assume that a consumer has opted in to a card issuer's payment of over-the-limit transactions. The consumer's account has a credit limit of $500. The billing cycles for the account begin on the first day of the month and end on the last day of the month. The account is not eligible for a grace period as defined in §1026.5(b)(2)(ii)(B)(3). On December 31, the only balance on the account is a purchase balance of $475. On that same date, $50 in fees charged as part of the plan under §1026.6(b)(3)(i) and interest charges are imposed on the account, increasing the total balance at the end of the December billing cycle to $525. Although the total balance exceeds the $500 credit limit, §1026.56(j)(4) prohibits the card issuer from imposing an over-the-limit fee or charge for the December billing cycle in these circumstances because the consumer's credit limit was exceeded solely because of the imposition of fees and interest charges during that cycle.

ii. Same facts as above except that, on December 31, the only balance on the account is a purchase balance of $400. On that same date, $50 in fees imposed as part of the plan under §1026.6(b)(3)(i), including interest charges, are imposed on the account, increasing the total balance at the end of the December billing cycle to $450. The consumer makes a $25 payment by the January payment due date and the remaining $25 in fees imposed as part of the plan in December is added to the outstanding balance. On January 25, an $80 purchase is charged to the account. At the close of the cycle on January 31, an additional $20 in fees imposed as part of the plan are imposed on the account, increasing the total balance to $525. Because §1026.56(j)(4) does not require the issuer to consider fees imposed as part of the plan for the prior cycle in determining whether an over-the-limit fee may be properly assessed for the current cycle, the issuer need not take into account the remaining $25 in fees and interest charges from the December cycle in determining whether fees imposed as part of the plan caused the consumer to exceed the credit limit during the January cycle. Thus, under these circumstances, §1026.56(j)(4) does not prohibit the card issuer from imposing an over-the-limit fee or charge for the January billing cycle because the $20 in fees imposed as part of the plan for the January billing cycle did not cause the consumer to exceed the credit limit during that cycle.

6. ***Additional restrictions on over-the-limit fees.*** *See §1026.52(b).*

Open End Credit - Reporting and Marketing Rules for College Students

Section 1: Definitions
12 C.F.R. § 1026.57(a)

Definitions - 12 CFR § 1026.57(a)

Regulatory Discussion

This section contains definitions and associated commentary of five terms relative to the reporting and marketing rules for college student open-end credit.

Regulatory Text

(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.

Regulatory Commentary

57(a) Definitions

57(a)(1) College student credit card

1. ***Definition.*** *The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards. A college student credit card includes a college affinity card within the meaning of TILA section*

127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card.

57(a)(5) College credit card agreement

1. ***Definition.*** *Section 1026.57(a)(5) defines "college credit card agreement" to include any business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the issuance of credit cards to full-time or part-time students. Business, marketing or promotional agreements may include a broad range of arrangements between a card issuer and an institution of higher education or affiliated organization, including arrangements that do not meet the criteria to be considered college affinity card agreements as discussed in TILA section 127(r)(1)(A). For example, TILA section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled (either full-time or part-time) at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement.*

Section 2: Public Disclosure of Agreements
12 C.F.R. § 1026.57(b)

Public Disclosure of Agreements - 12 CFR § 1026.57(b)

Regulatory Discussion

This section requires the institution of higher education to publicly disclose any contract or other agreement with a card issuer or creditor for the purpose of marketing a credit card.

Regulatory Text

(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.

Regulatory Commentary

57(b) Public disclosure of agreements

1. ***Public disclosure.*** *Section 1026.57(b) requires an institution of higher education to publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. Examples of publicly disclosing such contracts or agreements include, but are not limited to, posting such contracts or agreements on the institution's Web site or making such contracts or agreements available upon request, provided the procedures for requesting the documents are reasonable and free of cost to the requestor, and the requested contracts or agreements are provided within a reasonable time frame.*

2. ***Redaction prohibited.*** *An institution of higher education must publicly disclose any contract or other agreement made with a card issuer for the purpose of marketing a credit card in its entirety and may not redact any portion of such contract or agreement. Any clause existing in such contracts or agreements, providing for the confidentiality of any portion of the contract or agreement, would be invalid to the extent it restricts the ability of the institution of higher education to publicly disclose the contract or agreement in its entirety.*

Section 3: Prohibited Inducements
12 C.F.R. § 1026.57(c)

Prohibited Inducements - 12 CFR § 1026.57(c)

Regulatory Discussion

This section prohibits a card issuer from inducing a college student, with any tangible item, to apply for or open an open-end consumer credit plan either on or near the campus; or at an event sponsored by or related to an institution of higher education.

The commentary provides additional information on the following topics:

1. Tangible item clarified
2. Inducement clarified
3. Near campus clarified
4. Mailings included
5. Related event clarified
6. Reasonable procedures for determining if applicant is a student

Regulatory Text

(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.

Regulatory Commentary

57(c) Prohibited inducements

*1. **Tangible item clarified.** A tangible item includes any physical item, such as a gift card, a t-shirt, or a magazine subscription, that a card issuer or creditor offers to induce a college student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor. Tangible items do not include non-physical inducements such as discounts, rewards points, or promotional credit terms.*

2. ***Inducement clarified.*** *If a tangible item is offered to a person whether or not that person applies for or opens an open-end consumer credit plan, the tangible item has not been offered to induce the person to apply for or open the plan. For example, refreshments offered to a college student on campus that are not conditioned on whether the student has applied for or agreed to open an open-end consumer credit plan would not violate §1026.57(c).*

3. ***Near campus clarified.*** *A location that is within 1,000 feet of the border of the campus of an institution of higher education, as defined by the institution of higher education, is considered near the campus of an institution of higher education.*

4. ***Mailings included.*** *The prohibition in §1026.57(c) on offering a tangible item to a college student to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor applies to any solicitation or application mailed to a college student at an address on or near the campus of an institution of higher education.*

5. ***Related event clarified.*** *An event is related to an institution of higher education if the marketing of such event uses the name, emblem, mascot, or logo of an institution of higher education, or other words, pictures, symbols identified with an institution of higher education in a way that implies that the institution of higher education endorses or otherwise sponsors the event.*

6. ***Reasonable procedures for determining if applicant is a student.*** *Section 1026.57(c) applies solely to offering a tangible item to a college student. Therefore, a card issuer or creditor may offer any person who is not a college student a tangible item to induce such person to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, on campus, near campus, or at an event sponsored by or related to an institution of higher education. The card issuer or creditor must have reasonable procedures for determining whether an applicant is a college student before giving the applicant the tangible item. For example, a card issuer or creditor may ask whether the applicant is a college student as part of the application process. The card issuer or creditor may rely on the representations made by the applicant.*

Section 4: Annual Report to the Bureau
12 C.F.R. § 1026.57(d)

Annual Report to the Bureau - 12 CFR § 1026.57(d)

Regulatory Discussion

This section requires a card issuer to submit to the CFPB an annual report (by the first business day on or after March 31 of the following calendar year) regarding any credit card agreements in effect at any time during a calendar year. The annual report must include, as applicable, eight items of information.

Regulatory Text

(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.

Regulatory Commentary

57(d) Annual report to the Bureau

57(d)(2) Contents of report

1. ***Memorandum of understanding.*** *Section 1026.57(d)(2) requires that the report to the Bureau include, among other items, a copy of any memorandum of understanding between the card issuer and the institution (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." Such a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement. For example, a memorandum of understanding required to be included in the report would include a document that provides details on the dollar amounts of payments from the card issuer to the university, to supplement the original agreement which only provided for payments in general terms (e.g., as a percentage). A memorandum of understanding for these purposes would not include email (or other) messages that merely discuss matters such as the addresses to which payments should be sent or the names of contact persons for carrying out the agreement.*

Credit Card – Internet Posting of Credit Card Agreements

Section 1: Applicability and Definitions
12 C.F.R. § 1026.58(a) and 12 C.F.R. § 1026.58(b)

Applicability - 12 CFR § 1026.58(a)

Regulatory Discussion

The requirements of this section apply to any card issuer that issues consumer credit cards.

Regulatory Text

(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.

Regulatory Commentary

None.

Definitions - 12 CFR § 1026.58(b)

Regulatory Discussion

This section provides definitions of, and commentary on, eight important terms.

Regulatory Text

(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 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.

Regulatory Commentary

58(b) Definitions

58(b)(1) Agreement

1. ***Inclusion of pricing information.*** *For purposes of this section, a credit card agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This*

information is listed under the defined term "pricing information" in §1026.58(b)(7). For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in §1026.58(b)(7); instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of §1026.58.

2. ***Provisions contained in separate documents included.*** *A credit card agreement is defined as 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. An agreement therefore may consist of several documents that, taken together, define the legal obligation between the issuer and consumer. For example, provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract.*

58(b)(2) Amendments

1. ***Substantive changes.*** *A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 1026.58(b)(2) provides that any change in the pricing information, as defined in §1026.58(b)(7), is deemed to be substantive. Examples of other changes that generally would be considered substantive include:*

   i. Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement.

   ii. Addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee.

   iii. Changes that may affect the cost of credit to the consumer, such as changes in a provision describing how the minimum payment will be calculated.

   iv. Changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision.

   v. Changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

2. ***Non-substantive changes.*** *Changes that generally would not be considered substantive include, for example:*

   i. Correction of typographical errors that do not affect the meaning of any terms of the agreement.

   ii. Changes to the card issuer's corporate name, logo, or tagline.

   iii. Changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins.

iv. Changes to the name of the credit card to which the program applies.

v. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

vi. Adding, removing, or modifying a table of contents or index.

vii. Changes to titles, headings, section numbers, or captions.

58(b)(4) Card issuer

1. ***Card issuer clarified.*** *Section 1026.58(b)(4) provides that, for purposes of §1026.58, 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. For example, Bank X and Bank Y work together to issue credit cards. A consumer that obtains a credit card issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states "This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Credit Card." The card issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the card through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.*

2. ***Use of third-party service providers.*** *An institution that is the card issuer as defined in §1026.58(b)(4) has a legal obligation to comply with the requirements of §1026.58. However, a card issuer generally may use a third-party service provider to satisfy its obligations under §1026.58, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the institution with which it partners to issue credit cards to fulfill the requirements of §1026.58 on the issuer's behalf. For example, Retailer and Bank work together to issue credit cards. Under the §1026.58(b)(4) definition, Bank is the issuer of these credit cards for purposes of §1026.58. However, Retailer services the credit card accounts, including mailing account opening materials and periodic statements to cardholders. While Bank is responsible for ensuring compliance with §1026.58, Bank may arrange for Retailer (or another appropriate third-party service provider) to submit credit card agreements to the Bureau under §1026.58 on Bank's behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.*

3. ***Partner institution Web sites.***

   i. As explained in comments 58(d)-2 and 58(e)-3, if an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of §1026.58. Such a Web site is deemed to be maintained by the issuer for purposes of §1026.58 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party

Web site that may be deemed to be maintained by the issuer for purposes of §1026.58. For example, Retailer and Bank work together to issue credit cards. Under the §1026.58(b)(4) definition, Bank is the issuer of these credit cards for purposes of §1026.58. Bank does not have a Web site. However, cardholders can access information about their individual accounts, such as balance information and copies of statements, through a Web site maintained by Retailer. Retailer designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Retailer. Because cardholders can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of §1026.58. Bank therefore may comply with §1026.58(d) by ensuring that agreements offered to the public are posted on Retailer's Web site in accordance with §1026.58(d). Bank may comply with §1026.58(e) by ensuring that cardholders can request copies of their individual agreements through Retailer's Web site in accordance with §1026.58(e)(1). Bank need not create and maintain a Web site branded and held out to the public as belonging to Bank in order to comply with §§1026.58(d) and (e) as long as Bank ensures that Retailer's Web site complies with these sections.

ii. In addition, §1026.58(d)(1) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may comply with §1026.58(d) by posting the agreement 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. This rule is not conditioned on cardholders' ability to access account-specific information through the merchant's Web site.

58(b)(5) Offers

1. ***Cards offered to limited groups.*** *A card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, a card issuer may market affinity cards to students and alumni of a particular educational institution, or may solicit only high-net-worth individuals for a particular card; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for credit cards issued by a credit union are considered to be offered to the public even though such cards are available only to credit union members.*

2. ***Individualized agreements.*** *A card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.*

58(b)(6) Open account

1. ***Open account clarified.*** *The definition of open account includes a credit card account under an open-end (not home-secured) consumer credit plan if 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. Under this definition, an account that meets either of these criteria is considered to be open even if the account is inactive. Similarly, if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account is considered open.*

58(b)(8) Private Label Credit Card Account and Private Label Credit Card Plan

1. ***Private label credit card account.*** *The term 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. This term applies to any such credit card account, regardless of whether it is issued by the merchant or its affiliate or by an unaffiliated third party.*

2. ***Co-branded credit cards.*** *The term private label credit card account does not include accounts with so-called co-branded credit cards. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, accounts with such credit cards are not considered private label credit card accounts under §1026.58(b)(8).*

3. ***Affiliated group of merchants.*** *The term "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control. For example, the term would include franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among each other, by contract or otherwise, to accept a credit card bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, several local clothing retailers jointly agree to issue credit cards called the "Main Street Fashion Card" that can be used to make purchases only at those retailers. For purposes of this section, these retailers would be considered an affiliated group of merchants.*

4. ***Private label credit card plan.***

   i. *Which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular card issuer with credit cards usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. For example, a card issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The card issuer has two separate private label credit card plans, as defined by §1026.58(b)(8)—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.*

   ii. *The example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the card issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of*

the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The card issuer still has only two separate private label credit card plans, as defined by §1026.58(b)(8). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under §1026.58(b)(8), even though the accounts are subject to different terms.

Section 2: Submission of Agreements to CFPB
12 C.F.R. § 1026.58(c)

Submission of Agreements to CFPB - 12 CFR § 1026.58(c)

Regulatory Discussion

This section describes the requirements a card issuer must satisfy with respect to CFPB notifications; as follows:

- *Quarterly submissions* – must submit no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year.
- *Amended agreements* – must submit the entire amended agreement by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective
- *Withdrawal of agreements* – must notify the CFPB by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement
- *De minimis exception* – no submission of credit card agreements required if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter
- *Private label credit card exception* – see definition of "private label credit card" and "private label credit card plan"
- *Product testing exception* – no submission of credit card agreements required if the agreement is: offered as part of a product test to only a limited group for a limited time period; used for fewer than 10,000 open accounts; and not offered to the public
- *Form and content of agreements submitted* – requirements include: (i) general form and content; (ii) pricing information; (iii) optional variable terms addendum; and (iv) integrated agreement

The commentary provides additional significant information on these topics.

Regulatory Text

(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. Quarterly 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 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 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.

Regulatory Commentary

58(c) Submission of Agreements to Bureau

58(c)(1) Quarterly Submissions

1. ***Quarterly submission requirement.*** *Section 1026.58(c)(1) requires card issuers to send quarterly submissions 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. For example, a card issuer has already submitted three credit card agreements to the Bureau. On October 15, the card issuer stops offering agreement A. On November 20, the card issuer amends agreement B. On December 1, the issuer starts offering a new agreement D. The card issuer must submit to the Bureau no later than the first business day on or after January 31 (i) notification that the card issuer is withdrawing agreement A, because it is no longer offered to the public; (ii) the amended version of agreement B; and (iii) agreement D.*

2. ***No quarterly submission required.***

   i. Under §1026.58(c)(1), a card issuer is not required to make any submission to the Bureau at a particular quarterly submission deadline if, during the previous calendar quarter, the card issuer did not take any of the following actions:

      A. Offering a new credit card agreement that was not submitted to the Bureau previously.

      B. Amending an agreement previously submitted to the Bureau.

      C. Ceasing to offer an agreement previously submitted to the Bureau.

   ii. For example, a card issuer offers five agreements to the public as of September 30 and submits these to the Bureau by October 31, as required by §1026.58(c)(1). Between September 30 and December 31, the card issuer continues to offer all five of these agreements to the public without amending them and does not begin offering any new agreements. The card issuer is not required to make any submission to the Bureau by the following January 31.

3. ***Quarterly submission of complete set of updated agreements.*** *Section 1026.58(c)(1) permits a card issuer to submit to the Bureau on a quarterly basis a complete, updated set of the credit card agreements the card issuer offers to the public. For example, a card issuer offers agreements A, B, and C to the public as of March 31. The card issuer submits each of these agreements to the Bureau by April 30 as required by §1026.58(c)(1). On May 15, the card issuer amends agreement A, but does not make any changes to agreements B or C. As of June 30, the card issuer continues to offer amended agreement A and agreements B and C to the public. At the next quarterly submission deadline, July 31, the card issuer must submit the entire amended agreement A and is not required to make any submission with respect to agreements B and C. The card issuer may either: (i) Submit the entire amended agreement A and make no submission with respect to agreements B and C; or (ii) submit the entire amended agreement A and also resubmit agreements B and C. A card issuer may choose to resubmit to the Bureau all of the agreements it offered to the public as of a particular quarterly submission deadline even if the card issuer has not introduced any new agreements or amended any agreements since its last submission and continues to offer all previously submitted agreements.*

58(c)(3) Amended Agreements

1. ***No requirement to resubmit agreements not amended.*** *Under §1026.58(c)(3), 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. For example, a credit card issuer begins offering an agreement in October and submits the agreement to the Bureau the following January 31, as required by §1026.58(c)(1). As of March 31, the card issuer has not amended the agreement and is still offering the agreement to the public. The card issuer is not required to submit anything to the Bureau regarding that agreement by April 30.*

2. ***Submission of amended agreements.*** *If a card issuer amends a credit card agreement previously submitted to the Bureau, §1026.58(c)(3) requires the card issuer to submit the entire amended agreement to the Bureau. The issuer must submit the amended agreement to the Bureau by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. However, the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Bureau on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended for purposes of §1026.58(c)(3). On December 31, the last business day of the calendar quarter in which the change in the balance computation method became effective, the issuer still offers the agreement to the public as amended on November 15. The issuer must submit the entire amended agreement to the Bureau no later than January 31.*

3. ***Agreements amended but no longer offered to the public.*** *A card issuer should submit an amended agreement to the Bureau under §1026.58(c)(3) only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the amendment became effective. Agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau. For example, on December 31 a card issuer offers two agreements, Agreement A and Agreement B. The issuer submits these agreements to the Bureau by January 31 as required by §1026.58. On February 15, the issuer amends both Agreement A and Agreement B. On February 28, the issuer stops offering Agreement A to the public. On March 15, the issuer amends Agreement B a second time. As a result, on March 31, the last business day of the calendar quarter, the issuer offers to the public one agreement—Agreement B as amended on March 15. By the April 30 quarterly submission deadline, the issuer must (i) notify the Bureau that it is withdrawing Agreement A because Agreement A is no longer offered to the public; and (ii) submit to the Bureau Agreement B as amended on March 15. The issuer should not submit to the Bureau either Agreement A as amended on February 15 or the earlier version of Agreement B (as amended on February 15), as neither was offered to the public on March 31, the last business day of the calendar quarter.*

4. ***Change-in-terms notices not permissible.*** *Section 1026.58(c)(3) requires that if an agreement previously submitted to the Bureau is amended, the card issuer must submit the entire revised agreement to the Bureau. A card issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the addenda described in §1026.58(c)(8)), not provided as separate riders. For example, a*

card issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Bureau. The purchase APR for that agreement was included in the addendum of pricing information, as required by §1026.58(c)(8). The card issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the card issuer must revise the pricing information addendum to reflect the change in APR and submit to the Bureau the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

58(c)(4) Withdrawal of Agreements

1. ***Notice of withdrawal of agreement.*** *Section 1026.58(c)(4) requires a card issuer to notify the Bureau if any agreement previously submitted to the Bureau by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the card issuer ceased to offer the agreement. For example, on January 5 a card issuer stops offering to the public an agreement it previously submitted to the Bureau. The card issuer must notify the Bureau that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the card issuer stopped offering the agreement.*

58(c)(5) De Minimis Exception

1. ***Relationship to other exceptions.*** *The de minimis exception is distinct from the private label credit card exception under §1026.58(c)(6) and the product testing exception under §1026.58(c)(7). The de minimis exception provides that a card issuer with fewer than 10,000 open credit card accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the private label credit card exception or the product testing exception. In contrast, the private label credit card exception and the product testing exception provide that a card issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of credit card plans with fewer than 10,000 open accounts, regardless of the card issuer's total number of open accounts.*

2. ***De minimis exception.*** *Under §1026.58(c)(5), a card issuer is not required to submit any credit card agreements to the Bureau under §1026.58(c)(1) if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. For example, a card issuer offers five credit card agreements to the public as of September 30. However, the card issuer has only 2,000 open credit card accounts as of September 30. The card issuer is not required to submit any agreements to the Bureau by October 31 because the issuer qualifies for the de minimis exception.*

3. ***Date for determining whether card issuer qualifies clarified.*** *Whether a card issuer qualifies for the de minimis exception is determined as of the last business day of each calendar quarter. For example, as of December 31, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. As of January 30, the card issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the card issuer still offers three agreements, but has only 9,700 open accounts. Even though the card issuer had 10,100 open accounts at one time during the calendar quarter, the card issuer qualifies for*

the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The card issuer therefore is not required to submit any agreements to the Bureau under §1026.58(c)(1) by April 30.

4. ***Date for determining whether card issuer ceases to qualify clarified.*** *Whether a card issuer has ceased to qualify for the de minimis exception under §1026.58(c)(5) is determined as of the last business day of the calendar quarter, For example, as of June 30, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. The card issuer is not required to submit any agreements to the Bureau under §1026.58(c)(1) because the card issuer qualifies for the de minimis exception. As of July 15, the card issuer still offers the same three agreements, but now has 10,000 open accounts. The card issuer is not required to take any action at this time, because whether a card issuer qualifies for the de minimis exception under §1026.58(c)(5) is determined as of the last business day of the calendar quarter. As of September 30, the card issuer still offers the same three agreements and still has 10,000 open accounts. Because the card issuer had 10,000 open accounts as of September 30, the card issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Bureau by October 31, the next quarterly submission deadline.*

5. ***Option to withdraw agreements clarified.*** *Section 1026.58(c)(5) provides that 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 as required by §1026.58(c)(1) until the card issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. For example, a card issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The card issuer has submitted each of the three agreements to the Bureau as required under §1026.58(c)(1). As of March 31, the card issuer has only 9,999 open accounts. The card issuer has two options. First, the card issuer may notify the Bureau that the card issuer is withdrawing each of the three agreements it previously submitted. Once the card issuer has notified the Bureau, the card issuer is no longer required to make quarterly submissions to the Bureau under §1026.58(c)(1). Alternatively, the card issuer may choose not to notify the Bureau that it is withdrawing its agreements. In this case, the card issuer must continue making quarterly submissions to the Bureau as required by §1026.58(c)(1). The card issuer might choose not to withdraw its agreements if, for example, the card issuer believes that it likely will cease to qualify for the de minimis exception again in the near future.*

58(c)(6) Private Label Credit Card Exception

1. ***Private label credit card exception.***

   i. *Under §1026.58(c)(6)(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. For example, a card issuer offers to the public a credit card agreement offered solely for private label credit card accounts with credit cards that can be used only at Merchant A. The card issuer has 8,000 open accounts with such credit cards usable only at Merchant A. The card issuer is not required to*

submit this agreement to the Bureau under §1026.58(c)(1) because the agreement is offered for a private label credit card plan with fewer than 10,000 open accounts, and the credit card agreement is not offered to the public other than for accounts under that private label credit card plan.

ii. In contrast, assume the same card issuer also offers to the public a different credit card agreement that is offered solely for private label credit card accounts with credit cards usable only at Merchant B. The card issuer has 12,000 open accounts with such credit cards usable only at Merchant B. The private label credit card exception does not apply. Although this agreement is offered for a private label credit card plan (i.e., the 12,000 private label credit card accounts with credit cards usable only at Merchant B), and the agreement is not offered to the public other than for accounts under that private label credit card plan, the private label credit card plan has more than 10,000 open accounts. (The card issuer still is not required to submit to the Bureau the agreement offered in connection with credit cards usable only at Merchant A, as each agreement is evaluated separately under the private label credit card exception.)

2. ***Card issuers with small private label and other credit card plans.*** *Whether the private label credit card exception applies is determined on an agreement-by-agreement basis. Therefore, some agreements offered by a card issuer may qualify for the private label credit card exception even though the card issuer also offers other agreements that do not qualify, such as agreements offered for accounts with cards usable at multiple unaffiliated merchants or agreements offered for accounts under private label plans with 10,000 or more open accounts.*

3. ***De minimis exception distinguished.*** *The private label credit card exception under §1026.58(c)(6) is distinct from the de minimis exception under §1026.58(c)(5). The private label credit card exception exempts card issuers from submitting certain agreements to the Bureau regardless of the card issuer's overall size as measured by total number of open accounts. In contrast, the de minimis exception exempts a particular card issuer from submitting any credit card agreements to the Bureau if the card issuer has fewer than 10,000 total open accounts. For example, a card issuer offers to the public two credit card agreements. Agreement A is offered solely for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 5,000 open credit card accounts with such credit cards usable only at Merchant A. Agreement B is offered solely for credit card accounts with cards usable at multiple unaffiliated merchants that participate in a major payment network. The card issuer has 40,000 open credit card accounts with such payment network cards. The card issuer is not required to submit agreement A to the Bureau under §1026.58(c)(1) because agreement A qualifies for the private label credit card exception under §1026.58(c)(6). Agreement A is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (i.e., the 5,000 accounts with credit cards usable only at Merchant A) and is not otherwise offered to the public. The card issuer is required to submit agreement B to the Bureau under §1026.58(c)(1). The card issuer does not qualify for the de minimis exception under §1026.58(c)(5) because it has more than 10,000 open accounts, and agreement B does not qualify for the private label credit card exception under §1026.58(c)(6) because it is not offered solely for accounts under a private label credit card plan with fewer than 10,000 open accounts.*

4. ***Agreement otherwise offered to the public.***

   i. *An agreement qualifies for the private label exception only if it is offered for accounts under one or more private label credit card plans with fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. For example, a card issuer offers a single agreement to the public. The agreement is offered for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 9,000 such open accounts with credit cards usable only at Merchant A. The agreement also is offered for credit card accounts with credit cards usable at multiple unaffiliated merchants that participate in a major payment network. The agreement does not qualify for the private label credit card exception. The agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts. However, the agreement also is offered to the public for accounts that are not part of a private label credit card plan and therefore does not qualify for the private label credit card exception.*

   ii. *Similarly, an agreement does not qualify for the private label credit card exception if it is offered in connection with one private label credit card plan with fewer than 10,000 open accounts and one private label credit card plan with 10,000 or more open accounts. For example, a card issuer offers a single credit card agreement to the public. The agreement is offered for two types of accounts. The first type of account is a private label credit card account with a credit card usable only at Merchant A. The second type of account is a private label credit card account with a credit card usable only at Merchant B. The card issuer has 10,000 such open accounts with credit cards usable only at Merchant A and 5,000 such open accounts with credit cards usable only at Merchant B. The agreement does not qualify for the private label credit card exception. While the agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (i.e., the 5,000 open accounts with credit cards usable only at Merchant B), the agreement is also offered for accounts not under such a plan (i.e., the 10,000 open accounts with credit cards usable only at Merchant A).*

5. ***Agreement used for multiple small private label plans.*** *The private label exception applies even if the same agreement is used for more than one private label credit card plan with fewer than 10,000 open accounts. For example, a card issuer has 15,000 total open private label credit card accounts. Of these, 7,000 accounts have credit cards usable only at Merchant A, 5,000 accounts have credit cards usable only at Merchant B, and 3,000 accounts have credit cards usable only at Merchant C. The card issuer offers to the public a single credit card agreement that is offered for all three types of accounts and is not offered for any other type of account. The card issuer is not required to submit the agreement to the Bureau under §1026.58(c)(1). The agreement is used for three different private label credit card plans (i.e., the accounts with credit cards usable at Merchant A, the accounts with credit cards usable at Merchant B, and the accounts with credit cards usable at Merchant C), each of which has fewer than 10,000 open accounts, and the card issuer does not offer the agreement for any other type of account. The agreement therefore qualifies for the private label credit card exception under §1026.58(c)(6).*

6. ***Multiple agreements used for one private label credit card plan.*** *The private label credit card exception applies even if a card issuer offers more than one agreement in connection with a particular private label credit card plan. For example, a card issuer has 5,000 open private label credit card accounts with credit cards usable only at Merchant A.*

The card issuer offers to the public three different agreements each of which may be used in connection with private label credit card accounts with credit cards usable only at Merchant A. The agreements are not offered for any other type of credit card account. The card issuer is not required to submit any of the three agreements to the Bureau under §1026.58(c)(1) because each of the agreements is used for a private label credit card plan which has fewer than 10,000 open accounts and none of the three is offered to the public other than for accounts under such a plan.

58(c)(8) Form and content of agreements submitted to the Bureau

1. ***"As of" date clarified.*** *Agreements submitted to the Bureau must contain the provisions of the agreement and pricing information in effect as of the last business day of the preceding calendar quarter. For example, on June 1, a card issuer decides to decrease the purchase APR associated with one of the agreements it offers to the public. The change in the APR will become effective on August 1. If the card issuer submits the agreement to the Bureau on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower APR because that APR was not in effect on June 30, the last business day of the preceding calendar quarter.*

2. ***Pricing agreement addendum.*** *Pricing information must be set forth in the separate addendum described in §1026.58(c)(8)(ii)(A) even if it is also stated elsewhere in the agreement.*

3. ***Pricing agreement variations do not constitute separate agreements.*** *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 by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the pricing information do not constitute separate agreements for purposes of this section. For example, a card issuer offers two types of credit card accounts that differ only with respect to the purchase APR. The purchase APR for one type of account is 15 percent, while the purchase APR for the other type of account is 18 percent. The provisions of the agreement and pricing information for the two types of accounts are otherwise identical. The card issuer should not submit to the Bureau one agreement with a pricing information addendum listing a 15 percent purchase APR and another agreement with a pricing information addendum listing an 18 percent purchase APR. Instead, the card issuer should submit to the Bureau one agreement with a pricing information addendum listing possible purchase APRs of 15 or 18 percent.*

4. ***Optional variable terms addendum.*** *Examples of provisions that might be included in the variable terms addendum include a clause that is required by law to be included in credit card agreements in a particular state but not in other states (unless, for example, a clause is included in the agreement used for all cardholders under a heading such as "For State X Residents"), the name of the credit card plan to which the agreement applies (if this information is included in the agreement), or the name of a charitable organization to which donations will be made in connection with a particular card (if this information is included in the agreement).*

5. ***Integrated agreement requirement.*** *Card issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders. The only two addenda that may be submitted as part of an agreement are the pricing information*

addendum and optional variable terms addendum described in §1026.58(c)(8). Changes in provisions or pricing information must be integrated into the body of the agreement, pricing information addendum, or optional variable terms addendum described in §1026.58(c)(8). For example, it would be impermissible for a card issuer to submit to the Bureau an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and 2 addenda showing variations in pricing information. Instead, the card issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information.

Section 3: Posting of Agreements Offered to the Public

12 C.F.R. § 1026.58(d)

Posting of Agreements Offered to the Public - 12 CFR § 1026.58(d)

Regulatory Discussion

This section requires the card issuer to post and maintain on its Web site the credit card agreements that the issuer is required to submit to the CFPB per the requirements in Section 2, above. The Web site postings:

- Must conform to the form and content requirements previously discussed in Section 2, above
- May be posted in any electronic format readily usable by the general public
- Must be updated at least as frequently as the quarterly schedule required for submission to the CFPB

The commentary provides further guidance on the following topics:

1. Requirement applies only to agreements submitted to the Bureau
2. Card issuers that do not otherwise maintain Web sites
3. Private label credit card plans

Regulatory Text

(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.

Regulatory Commentary

58(d) Posting of Agreements Offered to the Public

1. ***Requirement applies only to agreements submitted to the Bureau.*** *Card issuers are only required to post and maintain on their publicly available Web site the credit card agreements that the card issuer must submit to the Bureau under §1026.58(c). If, for example, a card issuer is not required to submit any agreements to the Bureau because the card issuer qualifies for the de minimis exception under §1026.58(c)(5), the card issuer is not required to post and maintain any agreements on its Web site under §1026.58(d). Similarly, if a card issuer is not required to submit a specific agreement to the Bureau, such as an agreement that qualifies for the private label exception under §1026.58(c)(6), the card issuer is not required to post and maintain that agreement under §1026.58(d) (either on the card issuer's publicly available Web site or on the publicly available Web sites of merchants at which private label credit cards can be used). (The card issuer in both of these cases is still required to provide each individual cardholder with access to his or her specific credit card agreement under §1026.58(e) by posting and maintaining the agreement on the card issuer's Web site or by providing a copy of the agreement upon the cardholder's request.)*

2. ***Card issuers that do not otherwise maintain Web sites.*** *Unlike §1026.58(e), §1026.58(d) does not include a special rule for card issuers that do not otherwise maintain a Web site. If a card issuer is required to submit one or more agreements to the Bureau under §1026.58(c), that card issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in §1026.58(d)(1)). If an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of §1026.58. Such a third-party Web site is deemed to be maintained by the issuer for purposes of §1026.58(d) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide cardholders with access to account-specific information through a third-party Web site can comply with §1026.58(d) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with §1026.58(d). (In contrast, the §1026.58(d)(1) rule regarding agreements for private label credit cards is not*

conditioned on cardholders' ability to access account-specific information through the merchant's Web site.)

3. ***Private label credit card plans.***

i. Section 1026.58(d) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, a card issuer may comply by posting and maintaining the agreement on the Web site of at least one of the merchants at which the cards issued under each private label credit card plan with 10,000 or more open accounts may be used. For example, a card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

ii. The card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1). (The card issuer has more than 10,000 open accounts, so the §1026.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (i.e., one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but both of these plans have more than 10,000 open accounts, so the §1026.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the §1026.58(c)(7) product test exception does not apply.)

iii. Because the card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under §1026.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with §1026.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of Merchant A and the publicly available Web site of at least one of Merchants B, C and D. It would not be sufficient for the card issuer to post the agreement on Merchant A's Web site alone because §1026.58(d) requires the card issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under each private label credit card plan may be used" (emphasis added).

iv. In contrast, assume that a card issuer has 100,000 open private label credit card accounts. Of these, 5,000 open accounts have credit cards usable only at Merchant A and 95,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

v. The card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1). (The card issuer has more than 10,000 open accounts, so the §1026.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label

credit card plans (i.e., one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but one of these plans has more than 10,000 open accounts, so the §1026.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the §1026.58(c)(7) product test exception does not apply.)

vi. *Because the card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under §1026.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with §1026.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of at least one of Merchants B, C and D. The card issuer is not required to post and maintain the agreement on the publicly available Web site of Merchant A because the card issuer's private label credit card plan consisting of accounts with cards usable only at Merchant A has fewer than 10,000 open accounts.*

Section 4: Agreements for all Open Accounts
12 C.F.R. § 1026.58(e)

Agreements for all Open Accounts - 12 CFR § 1026.58(e)

Regulatory Discussion

This section may, at first, seem confusing. To understand the requirements, the commentary on *Agreements for all Open Accounts* is important and is provided here:

> The requirement to provide access to credit card agreements under [this section] *applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the [CFPB]* pursuant to §1026.58(c) (or posted on the card issuer's Web site pursuant to §1026.58(d)). ***For example***, a card issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under §1026.58(c)(5)) would still be required to provide cardholders with access to their specific agreements under §1026.58(e). ***Similarly***, an agreement that is no longer offered to the public would not be required to be submitted to the Bureau under §1026.58(c), but would still need to be provided to the cardholder to whom it applies under §1026.58(e).

With that explanation, the requirements of this Section 4 are very similar to those in Sections 2 and 3, above.

The commentary provides additional information on these topics.

Regulatory Text

(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

(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.

Regulatory Commentary

58(e) Agreements for All Open Accounts

1. ***Requirement applies to all open accounts.*** *The requirement to provide access to credit card agreements under §1026.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Bureau pursuant to*

§1026.58(c) (or posted on the card issuer's Web site pursuant to §1026.58(d)). For example, a card issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under §1026.58(c)(5)) would still be required to provide cardholders with access to their specific agreements under §1026.58(e). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Bureau under §1026.58(c), but would still need to be provided to the cardholder to whom it applies under §1026.58(e).

2. ***Readily available telephone line.*** *Section 1026.58(e) provides that card issuers that provide copies of cardholder agreements upon request must provide the cardholder with the ability to request a copy of their agreement by calling a readily available telephone line. To satisfy the readily available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.*

3. ***Issuers without interactive Web sites.*** *Section 1026.58(e)(2) provides that a card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the card issuer's Web site. A card issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; a card issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the card issuer's Web site. An issuer is considered to maintain an interactive Web site for purposes of the §1026.58(e)(2) special rule if the issuer provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. Such a Web site is deemed to be maintained by the issuer for purposes of §1026.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual accounts through such a Web site is not permitted to comply with the special rule in §1026.58(e)(2). Instead, such an issuer must comply with §1026.58(e)(1).*

4. ***Deadline for providing requested agreements clarified.*** *Sections 1026.58(e)(1)(ii) and (e)(2) require that credit card agreements provided upon request must be sent to the cardholder or otherwise made available to the cardholder in electronic or paper form no later than 30 days after the cardholder's request is received. For example, if a card issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the card issuer must mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if a card issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the card issuer's Web site, the card issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. Section 1026.58(e)(3)(v) provides that a card issuer may provide cardholder agreements in either electronic or paper form regardless of the form of the cardholder's request.*

Section 5: E-Sign Requirements and Temporary Suspension

12 C.F.R. § 1026.58(f) and 12 C.F.R. § 1026.58(g)

E-Sign Requirements - 12 CFR § 1026.58(f)

Regulatory Discussion

This section simply states card issuers may provide credit card agreements in electronic form without providing, and obtaining, the consumer notice and consent required under the E-Sign Act.

Regulatory Text

(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.*).

Regulatory Commentary

None.

Temporary Suspension - 12 CFR § 1026.58(g)

Regulatory Discussion

This section provided a temporary suspension of the quarterly submissions to the CFPB that were due by the first business day on or after April 30, 2015; July 31, 2015; October 31, 2015; and January 31, 2016.

Regulatory Text

(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.

Regulatory Commentary

58(g) Temporary Suspension of Agreement Submission Requirement

1. ***Suspended quarterly submission requirement.*** *Pursuant to §1026.58(g)(1), card issuers are not required to make quarterly submissions to the Bureau, as otherwise required by §1026.58(c), for the submissions that would otherwise be due by the first business day on or after April 30, 2015; July 31, 2015; October 31, 2015; and January 31, 2016. Specifically, a card issuer is not required to submit information about the issuer and its agreements pursuant to §1026.58(c)(1)(i), new credit card agreements pursuant to §1026.58(c)(1)(ii), amended agreements pursuant to §1026.58(c)(1)(iii) and (c)(3), or notification of withdrawn agreements pursuant to §1026.58(c)(1)(iv) and (c)(4) through (7) for those four quarters.*

2. ***Resuming submission of credit card agreements to the Bureau.*** *Beginning with the submission due on the first business day on or after April 30, 2016, card issuers shall resume submitting credit card agreements on a quarterly basis to the Bureau pursuant to §1026.58(c). A card issuer shall submit agreements for the prior calendar quarter (that is, the calendar quarter ending March 31, 2016), as specified in §1026.58(c)(1)(ii) through (iv) and (c)(3) through (7), to the Bureau no later than the first business day on or after April 30, 2016.*

   i. Specifically, the submission due on the first business day on or after April 30, 2016 shall contain, as applicable:

      A. 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), pursuant to §1026.58(c)(1)(i);

      B. The credit card agreements that the card issuer offered to the public as of the last business day of the calendar quarter ending March 31, 2016 that the card issuer had not previously submitted to the Bureau as of the first business day on or after January 31, 2015, pursuant to §1026.58(c)(1)(ii);

      C. Any credit card agreement previously submitted to the Bureau that was amended since the last business day of the calendar quarter ending December 31, 2014 and that the card issuer offered to the public as of the last business day of the calendar quarter ending March 31, 2016, pursuant to §1026.58(c)(1)(iii) and (c)(3); and

      D. Notification regarding any credit card agreement previously submitted to the Bureau that the issuer is withdrawing, pursuant to §1026.58(c)(1)(iv) and (c)(4) through (7).

   ii. In lieu of the submission described in comment 58(g)-2.i.B through D, §1026.58(c)(1) permits a card issuer to submit to the Bureau a complete, updated set of the credit card agreements the card issuer offered to the public as of the calendar quarter ending March 31, 2016. See comment 58(c)(1)-3.

3. ***Continuing obligation to post agreements on a card issuer's own Web site.*** *Section 1026.58(d) requires a card issuer to 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). Pursuant to §1026.58(g)(2), during the temporary suspension period set forth in §1026.58(g)(1), a card issuer shall continue to post its agreements to its own publicly available Web site as required by §1026.58(d) using the agreements it would have otherwise submitted to the Bureau under §1026.58(c). For example, for purposes of §1026.58(d)(4), a card issuer must continue to update the agreements posted on its own Web site at least as frequently as the quarterly schedule required for submission of agreements to the Bureau set forth in §1026.58(c)(1), notwithstanding the temporary suspension of submission requirements in §1026.58(g)(1). Similarly, for purposes of §1026.58(d)(2), agreements posted by a card issuer on its own Web site must continue to conform to the form and content requirements set forth in §1026.58(c)(8).*

Open End - Reevaluation of Rate Increases

Section 1: In General
12 C.F.R. § 1026.59(a)

General Rule - 12 CFR § 1026.59(a)

Regulatory Discussion

The following sections address the requirements associated with re-evaluation of rate increases a card issuer may have applied to a consumer credit card account.

First, the general rule includes the following two requirements:

1) If the APR is increased based on the credit risk of the consumer, market conditions, or other factors, the card issuer must:
    i. Evaluate the factors described in Section 3, below; **and**
    ii. Based on the evaluation, reduce the APR, as appropriate
2) If the card issuer is required to reduce the APR:
    i. The rate must be reduced not later than 45 days after completion of the evaluation
    ii. Any reduction in the APR shall apply to: any outstanding balances to which the increased rate has been applies; and new transactions that occur after the effective date of the rate reduction that would have otherwise been subject to the increased rate

The commentary provides additional information on the following topics:

- Types of rate increases covered
- Rate increases actually imposed
- Change in type of rate: Change from non-variable rate to variable rate; Change from variable rate to non-variable rate
- Amount of rate decrease
- Applicability of reduced rate to new transactions

Regulatory Text

(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.

Regulatory Commentary

59(a) General Rule

59(a)(1) Evaluation of Increased Rate

1. ***Types of rate increases covered.*** *Section 1026.59(a) applies both to increases in annual percentage rates imposed on a consumer's account based on that consumer's credit risk or other circumstances specific to that consumer and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds.*

2. ***Rate increases actually imposed.*** *Under §1026.59(a), a card issuer must review changes in factors only if the increased rate is actually imposed on the consumer's account. For example, if a card issuer increases the penalty rate for a credit card account under an open-end (not home-secured) consumer credit plan and the consumer's account has no balances that are currently subject to the penalty rate, the card issuer is required to provide a notice pursuant to §1026.9(c) of the change in terms, but the requirements of §1026.59 do not apply. However, if the consumer's account later becomes subject to the penalty rate, the card issuer is required to provide a notice pursuant to §1026.9(g) and the requirements of §1026.59 begin to apply upon imposition of the penalty rate. Similarly, if a card issuer raises the cash advance rate applicable to a consumer's account but the consumer engages in no cash advance transactions to which that increased rate is applied, the card issuer is required to provide a notice pursuant to §1026.9(c) of the change in terms, but the requirements of §1026.59 do not apply. If the consumer subsequently engages in a cash advance transaction, the requirements of §1026.59 begin to apply at that time.*

3. ***Change in type of rate.***

i. ***Generally.*** *A change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate is not a rate increase for purposes of §1026.59, if the rate in effect immediately prior to the change in type of rate is equal to or greater than the rate in effect immediately after the change. For example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of §1026.59 at the time of the change. See §1026.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.*

ii. ***Change from non-variable rate to variable rate.*** *A change from a non-variable to a variable rate constitutes a rate increase for purposes of §1026.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to §1026.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate on January 1 of year 2 is not a rate increase for purposes of §1026.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the rate from 12% to 12.5% is a rate increase for purposes of §1026.59, and the card issuer must begin periodically conducting reviews of the account pursuant to §1026.59. The increase that must be evaluated for purposes of §1026.59 is the increase from a non-variable rate of 12% to a variable rate of 12.5%.*

iii. ***Change from variable rate to non-variable rate.*** *A change from a variable to a non-variable rate constitutes a rate increase for purposes of §1026.59 if the non-variable rate exceeds the variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to §1026.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is not a rate increase for purposes of §1026.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of §1026.59, and the card issuer must begin periodically conducting reviews of the account pursuant to §1026.59. The increase that must be evaluated for purposes of §1026.59 is the increase from a variable rate of 12.5% to a non-variable rate of 15%.*

4. ***Rate increases prior to effective date of rule.*** *Omitted.*

5. ***Amount of rate decrease.***

i. ***General.*** *Even in circumstances where a rate reduction is required, §1026.59 does not require that a card issuer decrease the rate that applies to a credit card account to the rate that was in effect prior to the rate increase subject to §1026.59(a). The amount of the rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under §1026.59(b) for consideration of factors described in §1026.59(a) and (d). For example, assume a consumer's rate on new purchases is increased from a variable rate of 15.99% to a variable rate of 23.99% based on the consumer's making a required minimum periodic payment five days late. The consumer makes all of the payments required on the account on time for the six months following the rate increase. Assume that the card issuer evaluates the account by reviewing the factors on which the increase in an annual percentage rate was originally based, in accordance with §1026.59(d)(1)(i). The card issuer is not required to decrease the consumer's rate to the 15.99% that applied prior to the rate increase. However, the card issuer's policies and procedures for performing the review required by §1026.59(a) must be reasonable, as required by §1026.59(b), and must take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.*

ii. ***Change in type of rate.*** *If the rate increase subject to §1026.59 involves a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate, §1026.59 does not require that the issuer reinstate the same type of rate that applied prior to the change. However, the amount of any rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under §1026.59(b) for consideration of factors described in §1026.59(a) and (d).*

59(a)(2) Rate Reductions

59(a)(2)(ii) Applicability of Rate Reduction

1. ***Applicability of reduced rate to new transactions.*** *Section 1026.59(a)(2)(ii) requires, in part, that any reduction in rate required pursuant to §1026.59(a)(1) must apply to new transactions that occur after the effective date of the rate reduction, if those transactions would otherwise have been subject to the increased rate described in §1026.59(a)(1). A credit card account may have multiple types of balances, for example, purchases, cash advances, and balance transfers, to which different rates apply. For example, assume a new credit card account opened on January 1 of year one has a rate applicable to purchases of 15% and a rate applicable to cash advances and balance transfers of 20%. Effective March 1 of year two, consistent with the limitations in §1026.55 and upon giving notice required by §1026.9(c)(2), the card issuer raises the rate applicable to new purchases to 18% based on market conditions. The only transaction in which the consumer engages in year two is a $1,000 purchase made on July 1. The rate for cash advances and balance transfers remains at 20%. Based on a subsequent review required by §1026.59(a)(1), the card issuer determines that the rate on purchases must be reduced to 16%. Section 1026.59(a)(2)(ii) requires that the 16% rate be applied to the $1,000 purchase made on July 1 and to all new purchases. The rate for new cash advances and balance transfers may remain at 20%, because there was no rate increase applicable to those types of transactions and, therefore, the requirements of §1026.59(a) do not apply.*

Section 2: Policies, Procedures, and Timing 12 C.F.R. § 1026.59(b) and 12 C.F.R. § 1026.59(c)

Policies and Procedures - 12 CFR § 1026.59(b)

Regulatory Discussion

This section simply state the card issuer must have written policies and procedures relative to the evaluation discussed in Section 1, above.

Regulatory Text

(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.

Regulatory Commentary

None.

Timing - 12 CFR § 1026.59(c)

Regulatory Discussion

This section requires a card issuer subject to the requirements in Section 1, above, *must conduct the evaluation not less frequently than once every six months* after the rate increase.

Regulatory Text

(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.

Regulatory Commentary

59(c) Timing

1. ***In general.*** *The issuer may review all of its accounts subject to §1026.59(a) at the same time once every six months, may review each account once each six months on a rolling*

basis based on the date on which the rate was increased for that account, or may otherwise review each account not less frequently than once every six months.

2. ***Example.*** *A card issuer increases the rates applicable to one half of its credit card accounts on June 1, 2011. The card issuer increases the rates applicable to the other half of its credit card accounts on September 1, 2011. The card issuer may review the rate increases for all of its credit card accounts on or before December 1, 2011, and at least every six months thereafter. In the alternative, the card issuer may first review the rate increases for the accounts that were repriced on June 1, 2011 on or before December 1, 2011, and may first review the rate increases for the accounts that were repriced on September 1, 2011 on or before March 1, 2012.*

3. ***Rate increases prior to effective date of rule.*** *Omitted.*

Section 3: Factors
12 C.F.R. § 1026.59(d)

Factors - 12 CFR - § 1026.59(d)

Regulatory Discussion

There are two factors which the card issuer must review. The commentary provides additional guidance on the following topics relative to the two factors:

1. Change in factors
2. Comparison of existing account to factors used for similar new accounts
3. Similar new credit card accounts
4. No similar new credit card accounts
5. Consideration of consumer's conduct on existing account

Regulatory Text

(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**. Omitted.

Regulatory Commentary

59(d) Factors

1. ***Change in factors.*** *A creditor that complies with §1026.59(a) by reviewing the factors it currently considers in determining the annual percentage rates applicable to similar new credit card accounts may change those factors from time to time. When a creditor changes the factors it considers in determining the annual percentage rates applicable to similar new credit card accounts from time to time, it may comply with §1026.59(a) by reviewing the set of factors it considered immediately prior to the change in factors for a brief transition period, or may consider the new factors. For example, a creditor changes the*

factors it uses to determine the rates applicable to similar new credit card accounts on January 1, 2012. The creditor reviews the rates applicable to its existing accounts that have been subject to a rate increase pursuant to §1026.59(a) on January 25, 2012. The creditor complies with §1026.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2011 when determining the rates applicable to similar new credit card accounts or the factors that it considers as of January 25, 2012. For purposes of compliance with §1026.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period.

2. ***Comparison of existing account to factors used for similar new accounts.*** *Under §1026.59(a), if a creditor evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a creditor imposes on similar new accounts. For example, a creditor may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of the LIBOR index. The account that the creditor is required to review pursuant to §1026.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a published prime rate. In performing the review required by §1026.59(a), the creditor may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the creditor need not base the variable rate for the existing account on the LIBOR index but may continue to use the published prime rate. Section 1026.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime rate and margin, be comparable to the rate, as determined by adding the margin and LIBOR, charged on a new account for which the factors are comparable.*

3. ***Similar new credit card accounts.*** *A card issuer complying with §1026.59(d)(1)(ii) is required to consider 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. For example, a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. In addition, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. However, §1026.59(d)(1)(ii) requires a card issuer to review the factors it considers when determining the rates for new credit card accounts with similar features that are offered for similar purposes.*

4. ***No similar new credit card accounts.*** *In some circumstances, a card issuer that complies with §1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer*

may no longer offer a product to new consumers with similar characteristics, such as the availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, §1026.59 requires that the card issuer nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with §1026.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, §1026.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

5. ***Consideration of consumer's conduct on existing account.*** *A card issuer that complies with §1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new applicants. For example, a consumer may have made a payment that is five days late on his or her account with the card issuer, but this information does not appear on the consumer report. The card issuer may consider this additional information in performing its review under §1026.59(a), but only to the extent and in the manner that it considers such information if a current cardholder applies for a new account with the issuer.*

6. ***Multiple rate increases between January 1, 2009 and February 21, 2010.*** *Omitted.*

Section 4: Rate Increases and Delinquency
12 C.F.R. § 1026.59(e)

Rate Increases and Delinquency - 12 CFR § 1026.59(e)

Regulatory Discussion

In the event the consumer has not made the required minimum periodic payment within 60 days after the due date, the card issuer is not required to perform the evaluation discussed in Section 1, above, prior to the sixth payment due after the effective date of the increase.

Note the special rule if the APR is not reduced pursuant to the requirements in §1026.55(b)(4)(ii), the card issuer must perform the review described in Section 1, above. The first such review must occur no later than six months after the sixth payment due following the effective date of the rate increase.

Regulatory Text

(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.

Regulatory Commentary

None.

Section 5: Termination of Obligation
12 C.F.R. § 1026.59(f)

Termination of Obligation - 12 CFR § 1026.59(f)

Regulatory Discussion

This section describes the two events that will eliminate the requirements in Sections 1 and 3, above; see the commentary for examples.

Regulatory Text

(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.

Regulatory Commentary

59(f) Termination of Obligation to Review Factors

1. ***Revocation of temporary rates.***

i. ***In general.*** *If an annual percentage rate is increased due to revocation of a temporary rate, §1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with §1026.9(c)(2)(v)(B), the review requirements in §1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of §1026.59(a) apply, §1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.*

ii. ***Examples.*** *Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012 and August 1, 2013 and*

discloses pursuant to §1026.9(c)(2)(v)(B) that on August 1, 2013 the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under §1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under §1026.59(a) at least once each six months during the period from September 1, 2012 to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013 even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013 indicates that a reduction to the original temporary rate of 10% is appropriate. Section 1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012 the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with §1026.59 on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. ***Example - relationship to §1026.59(a).*** *Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under §1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with §1026.59 on January 1, 2013 and July 1, 2013, based on the factors described in §1026.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with §1026.59(f), §1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.*

Section 6: Acquired Accounts
12 C.F.R. § 1026.59(g)

Acquired Accounts - 12 CFR § 1026.59(g)

Regulatory Discussion

This section describes the actions required in the event a card issuer acquires credit card accounts from another card issuer.

Regulatory Text

(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.

Regulatory Commentary

59(g) Acquired Accounts

59(g)(1) General

1. ***Relationship to §1026.59(d)(2) for rate increases imposed between January 1, 2009 and February 21, 2010.*** *Omitted.*

59(g)(2) Review of Acquired Portfolio

1. ***Example - general.*** *A card issuer acquires a portfolio of accounts that currently are subject to annual percentage rates of 12%, 15%, and 18%. Not later than six months after the acquisition of such accounts, the card issuer reviews all of these accounts in accordance with the factors that it currently uses in determining the rates applicable to similar new credit card accounts. As a result of that review, the card issuer decreases the rate on the accounts that are currently subject to a 12% annual percentage rate to 10%, leaves the rate applicable to the accounts currently subject to a 15% annual percentage rate at 15%, and increases the rate applicable to the accounts currently subject to a rate of 18% to 20%. Section 1026.59(g)(2) requires the card issuer to review, no less frequently than once every six months, the accounts for which the rate has been increased to 20%. The card issuer is not required to review the accounts subject to 10% and 15% rates pursuant to §1026.59(a), unless and until the card issuer makes a subsequent rate increase applicable to those accounts.*

2. ***Example - penalty rates.*** *A card issuer acquires a portfolio of accounts that currently are subject to standard annual percentage rates of 12% and 15%. In addition, several acquired accounts are subject to a penalty rate of 24%. Not later than six months after the acquisition of such accounts, the card issuer reviews all of these accounts in accordance with the factors that it currently uses in determining the rates applicable to similar new credit card accounts. As a result of that review, the card issuer leaves the standard rates applicable to the accounts at 12% and 15%, respectively. The card issuer decreases the rate applicable to the accounts currently at 24% to its penalty rate of 23%. Section 1026.59(g)(2) requires the card issuer to review, no less frequently than once every six months, the accounts that are subject to a penalty rate of 23%. The card issuer is not required to review the accounts subject to 12% and 15% rates pursuant to §1026.59(a), unless and until the card issuer makes a subsequent rate increase applicable to those accounts.*

Section 7: Exceptions
12 C.F.R. § 1026.59(h)

Exceptions - 12 CFR § 1026.59(h)

Regulatory Discussion

Finally, the requirements of Section 1 through 6, above, do not apply either to credit card accounts: subject to the Servicemembers Civil Relief Act; or that have been charged off in accordance with loan loss provisions.

Regulatory Text

(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.

Regulatory Commentary

None.

Open End - Credit and Charge Card Applications and Solicitations

Section 1: General Rules
12 C.F.R. § 1026.60(a)

Introductory Commentary

Regulatory Discussion

This opening commentary sets forth basic requirements for credit and charge card applications and solicitations, including format and a reminder of the clear and conspicuous standard.

Regulatory Text

None.

Regulatory Commentary

Section 1026.60—Credit and Charge Card Applications and Solicitations

1. ***General.*** *Section 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See §1026.60(a)(5) and (e)(2) for exceptions; see §1026.60(a)(1) and accompanying commentary for the definition of solicitation; see also §1026.2(a)(15) and accompanying commentary for the definition of charge card.)*

2. ***Substitution of account-opening summary table for the disclosures required by §1026.60.*** *In complying with §1026.60(c), (e)(1) or (f), a card issuer may provide the account-opening summary table described in §1026.6(b)(1) in lieu of the disclosures required by §1026.60, if the issuer provides the disclosures required by §1026.6 on or with the application or solicitation.*

3. ***Clear and conspicuous standard.*** *See comment 5(a)(1)-1 for the clear and conspicuous standard applicable to §1026.60 disclosures.*

General Rules - 12 C.F.R § 1026.60(a)

Regulatory Discussion

This section defines a solicitation, and discusses the ***form of the disclosures, including a tabular format, fees, and exceptions.***

Regulatory Text

(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(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) 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 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;

(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.

Regulatory Commentary

60(a) General Rules

60(a)(1) Definition of Solicitation

1. ***Invitations to apply.*** *A card issuer may contact a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of solicitation, nor is it covered by this section, unless the contact itself includes an application form in a direct mailing, electronic communication or "take-one"; an oral application in a telephone contact initiated by the card issuer; or an application in an in-person contact initiated by the card issuer.*

60(a)(2) Form of Disclosures; Tabular Format

1. ***Location of table.***

i. ***General.*** *Except for disclosures given electronically, disclosures in §1026.60(b) that are required to be provided in a table must be prominently located on or with the application or solicitation. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.*

ii. ***Electronic disclosures.*** *If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Card issuers have flexibility in satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples (whatever method is used, a card issuer need not confirm that the consumer has read the disclosures):*

A. *The disclosures could automatically appear on the screen when the application or reply form appears;*

B. *The disclosures could be located on the same Web page as the application or reply form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;*

C. *Card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or*

D. *The disclosures could be located on the same Web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply.*

2. ***Multiple accounts.*** *If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account.*

3. ***Information permitted in the table.*** *See the commentary to §1026.60(b), (d), and (e)(1) for guidance on additional information permitted in the table.*

4. ***Deletion of inapplicable disclosures.*** *Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no foreign transaction fee is imposed on the account, the heading Foreign transaction and disclosure may be deleted from the table or the disclosure form may contain the heading Foreign transaction and a disclosure showing none. There is an exception for the grace period disclosure; even if no grace period exists, that fact must be stated.*

5. ***Highlighting of annual percentage rates and fee amounts.***

i. ***In general.*** *See Samples G-10(B) and G-10(C) for guidance on providing the disclosures*

described in §1026.60(a)(2)(iv) in bold text. Other annual percentage rates or fee amounts disclosed in the table may not be in bold text. Samples G-10(B) and G-10(C) also provide guidance to issuers on how to disclose the rates and fees described in §1026.60(a)(2)(iv) in a clear and conspicuous manner, by including these rates and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically in the table.

ii. ***Maximum limits on fees.*** *Section 1026.60(a)(2)(iv) provides that any maximum limits on fee amounts must be disclosed in bold text. For example, assume that, consistent with §1026.52(b)(1)(ii), a card issuer's late payment fee will not exceed $35. The maximum limit of $35 for the late payment fee must be highlighted in bold. Similarly, assume an issuer will charge a cash advance fee of $5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed $100. The maximum limit of $100 for the cash advance fee must be highlighted in bold.*

iii. ***Periodic fees.*** *Section 1026.60(a)(2)(iv) provides that any periodic fee disclosed pursuant to §1026.60(b)(2) that is not an annualized amount must not be disclosed in bold. For example, if an issuer imposes a $10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis. In this example, the $10 fee disclosure would not be disclosed in bold, but the $120 annualized amount must be disclosed in bold. In addition, if an issuer must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.*

6. ***Form of disclosures.*** *Whether disclosures must be in electronic form depends upon the following:*

i. If a consumer accesses a credit card application or solicitation electronically (other than as described under ii. below), such as online at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the card issuer to provide applications or solicitations to consumers), the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery ("on or with") requirements of the regulation.

7. ***Terminology.*** *Section 1026.60(a)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in appendix G-10 to part 1026; but see §1026.5(a)(2) for terminology requirements applicable to §1026.60 disclosures.*

60(a)(4) Fees That Vary by State

1. ***Manner of disclosing range.*** *If the card issuer discloses a range of fees instead of*

disclosing the amount of the specific fee applicable to the consumer's account, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

60(a)(5) Exceptions

1. ***Noncoverage of consumer-initiated requests.*** *Applications provided to a consumer upon request are not covered by §1026.60, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under §1026.60. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, §1026.60 does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to §1026.60, specifically §1026.60(d). Likewise, if the card issuer initiates an in-person discussion with a consumer about opening a card account and contemporaneously takes an application, such applications are subject to §1026.60, specifically §1026.60(f).*

Section 2: Required Disclosures
12 C.F.R. § 1026.60(b)

Required Disclosures - 12 CFR § 1026.60(b)

Regulatory Discussion

This section discusses disclosures that are required when soliciting a credit card account. There are 15 enumerated and required disclosures, which can be found in the regulatory text below.

Regulatory Text

(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.

(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.

Regulatory Commentary

60(b) Required Disclosures

1. ***Tabular format.*** *Provisions in §1026.60(b) and its commentary provide that certain information must appear or is permitted to appear in a table. The tabular format is required for §1026.60(b) disclosures given pursuant to §1026.60(c), (d)(2), (e)(1) and (f). The tabular format does not apply to oral disclosures given pursuant to §1026.60(d)(1). (See §1026.60(a)(2).)*

2. ***Accuracy.*** *Rules concerning accuracy of the disclosures required by §1026.60(b), including variable rate disclosures, are stated in §1026.60(c)(2), (d)(3), and (e)(4), as applicable.*

60(b)(1) Annual Percentage Rate

1. ***Variable-rate accounts - definition.*** *For purposes of §1026.60(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to §1026.6(b)(4)(ii) for examples of variable-rate plans.)*

2. ***Variable-rate accounts – fact that rate varies and how the rate will be determined.*** *In describing how the applicable rate will be determined, the card issuer must identify in the table the type of index or formula used, such as the prime rate. In describing the index, the issuer may not include in the table details about the index. For example, if the issuer uses a prime rate, the issuer must disclose the rate as a "prime rate" and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. The issuer may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent) or the amount of the margin or spread added to the index or formula in setting the applicable rate. A card issuer may not disclose any applicable limitations on rate increases or decreases in the table, such as describing that the rate will not go below a certain rate or higher than a certain rate. (See Samples G-10(B) and G-10(C) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.)*

3. ***Discounted initial rates.***

   i. ***Immediate proximity.*** *If the term "introductory" is in the same phrase as the introductory rate, as that term is defined in §1026.16(g)(2)(ii), it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase "introductory balance transfer APR X percent" has used the word "introductory" within the same phrase as the rate. (See Sample G-10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)*

   ii. ***Subsequent changes in terms.*** *The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of §1026.9(c) and the limitations in §1026.55, does not, by itself, make that rate an introductory rate. For example, assume an issuer discloses an annual percentage rate for purchases of 12.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently increases the annual percentage rate for purchases to 15.99%, pursuant to a change-in-terms notice provided under §1026.9(c), the 12.99% is not an introductory rate.*

iii. ***More than one introductory rate.*** *If more than one introductory rate may apply to a particular balance in succeeding periods, the term "introductory" need only be used to describe the first introductory rate. For example, if an issuer offers a rate of 8.99% on purchases for six months, 10.99% on purchases for the following six months, and 14.99% on purchases after the first year, the term "introductory" need only be used to describe the 8.99% rate.*

4. ***Premium initial rates – subsequent changes in terms.*** *The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of §1026.9(c) and the limitations in §1026.55 (as applicable), does not, by itself, make that rate a premium initial rate. For example, assume an issuer discloses an annual percentage rate for purchases of 18.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently reduces the annual percentage rate for purchases to 15.99%, the 18.99% is not a premium initial rate. If the rate decrease is the result of a change from a non-variable rate to a variable rate or from a variable rate to a non-variable rate, see comments 9(c)(2)(v)-3 and 9(c)(2)(v)-4 for guidance on the notice requirements under §1026.9(c).*

5. ***Increased penalty rates.***

i. ***In general.*** *For rates that are not introductory rates or employee preferential rates, 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 the increased rate that would 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. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as "make a late payment." Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 60 days late, the issuer should describe this circumstance in the table as "make a late payment." An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (See Samples G-10(B) and G-10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the right to apply the increased rate to any balances indefinitely, to the extent permitted by §§1026.55(b)(4) and 1026.59, the issuer should disclose that the penalty rate may apply indefinitely. The card issuer may not disclose in the table any limitations imposed by §§1026.55(b)(4) and 1026.59 on the duration of increased rates. For example, if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, except to the extent that §§1026.55(b)(4) and 1026.59 apply, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments. (See Samples G-10(B) and G-10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail which the issuer should use to describe how long the increased rate will remain in effect.) A card issuer will be deemed*

to meet the standard to clearly and conspicuously disclose the information required by §1026.60(b)(1)(iv)(A) if the issuer uses the format shown in Samples G-10(B) and G-10(C) (in the row labeled "Penalty APR and When it Applies") to disclose this information.

ii. ***Introductory rates - general.*** *An issuer is required to disclose directly beneath the table the circumstances under which an introductory rate, as that term is defined in §1026.16(g)(2)(ii), may be revoked, and the rate that will apply after the revocation. This information about revocation of an introductory rate and the rate that will apply after revocation must be provided even if the rate that will apply after the introductory rate is revoked is the rate that would have applied at the end of the promotional period. In a variable-rate account, the rate that would have applied at the end of the promotional period is a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in §1026.60(c)(2) or (e)(4). In describing the rate that will apply after revocation of the introductory rate, if the rate that will apply after revocation of the introductory rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an introductory rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an introductory rate. (See Sample G-10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table.) The description of the circumstances in which an introductory rate could be revoked should be brief. For example, if an issuer may increase an introductory rate because the account is more than 60 days late, the issuer should describe this circumstance directly beneath the table as "make a late payment." In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a "penalty rate" as described in §1026.60(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. (See Sample G-10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by §1026.60(b)(1)(iv)(B) if the issuer uses the format shown in Sample G-10(C) to disclose this information.*

iii. ***Introductory rates - limitations on revocation.*** *Issuers that are disclosing an introductory rate are prohibited by §1026.55 from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for the payment. In making the required disclosure pursuant to §1026.60(b)(1)(iv)(B), issuers should describe this circumstance directly beneath the table as "make a late payment."*

iv. ***Employee preferential rates.*** *An issuer is required to disclose directly beneath the table the circumstances under which an employee preferential rate may be revoked, and*

the rate that will apply after the revocation. In describing the rate that will apply after revocation of the employee preferential rate, if the rate that will apply after revocation of the employee preferential rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an employee preferential rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an employee preferential rate. The description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee's employment relationship with the issuer or a third party, issuers may describe this circumstance as "if your employment with [issuer or third party] ends."

6. ***Rates that depend on consumer's creditworthiness.***

   i. ***In general.*** *The card issuer, at its option, may disclose the possible rates that may apply as either specific rates, or a range of rates. For example, if there are three possible rates that may apply (9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). The card issuer may not disclose only the lowest, highest or median rate that could apply. (See Samples G-10(B) and G-10(C) for guidance on how to disclose a range of rates.)*

   ii. ***Penalty rates.*** *If the rate is a penalty rate, as described in §1026.60(b)(1)(iv), 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. For example, if the penalty rate could be up to 28.99 percent, but the issuer may impose a penalty rate that is less than that rate depending on factors at the time the penalty rate is imposed, the issuer may disclose the penalty rate as "up to" 28.99 percent. The issuer also must include a statement that the penalty rate for which the consumer may qualify will depend on the consumer's creditworthiness, and other factors if applicable.*

   iii. ***Other factors.*** *Section 1026.60(b)(1)(v) applies even if other factors are used in combination with a consumer's creditworthiness to determine the rate for which a consumer may qualify at account opening. For example, §1026.60(b)(1)(v) would apply if the issuer considers the type of purchase the consumer is making at the time the consumer opens the account, in combination with the consumer's creditworthiness, to determine the rate for which the consumer may qualify at account opening. If other factors are considered, the issuer should amend the statement about creditworthiness, to indicate that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness and other factors. Nonetheless, §1026.60(b)(1)(v) does not apply if a consumer's creditworthiness is not one of the factors that will determine the rate for which the consumer may qualify at account opening (for example, if the rate is based solely on the type of purchase that the consumer is making at the time the consumer opens the account, or is based solely on whether the consumer has other banking relationships with the card issuer).*

7. ***Rate based on another rate on the account.*** *In some cases, one rate may be based on another rate on the account. For example, assume that a penalty rate as described in*

§1026.60(b)(1)(iv)(A) is determined by adding 5 percentage points to the current purchase rate, which is 10 percent. In this example, the card issuer in disclosing the penalty rate must disclose 15 percent as the current penalty rate. If the purchase rate is a variable rate, then the penalty rate also is a variable rate. In that case, the card issuer also must disclose the fact that the penalty rate may vary and how the rate is determined, such as "This APR may vary with the market based on the Prime Rate." In describing the penalty rate, the issuer shall not disclose in the table the amount of the margin or spread added to the current purchase rate to determine the penalty rate, such as describing that the penalty rate is determined by adding 5 percentage points to the purchase rate. (See §1026.60(b)(1)(i) and comment 60(b)(1)-2 for further guidance on describing a variable rate.)

8. ***Rates.*** *The only rates that shall be disclosed in the table are annual percentage rates determined under §1026.14(b). Periodic rates shall not be disclosed in the table.*

9. ***Deferred interest or similar transactions.*** *An issuer offering a deferred interest or similar plan, such as a promotional program that provides that a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, may not disclose a 0% rate as the rate applicable to deferred interest or similar transactions if there are any circumstances under which the consumer will be obligated for interest on such transactions for the deferred interest or similar period.*

60(b)(2) Fees for Issuance or Availability

1. ***Membership fees.*** *Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee shall not be disclosed in the table if membership results merely in eligibility to apply for an account.*

2. ***Enhancements.*** *Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) shall not be disclosed in the table if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, must be disclosed as a fee for issuance or availability. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) must be disclosed in the table as a fee for issuance or availability under §1026.60(b)(2). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards. (See the available credit disclosure in §1026.60(b)(14).)*

3. ***One-time fees.*** *Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership or participation fees, or an application fee that is excludable from the finance charge under §1026.4(c)(1). The following are examples of fees that shall not be disclosed in the table:*

   i. Fees for reissuing a lost or stolen card.

ii. Statement reproduction fees.

4. ***Waived or reduced fees.*** *If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be disclosed in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect in accordance with the requirements of §§1026.9(c)(2)(v)(B) and 1026.55(b)(1).*

5. ***Periodic fees and one-time fees.*** *A card issuer disclosing a periodic fee must disclose the amount of the fee, how frequently it will be imposed, and the annualized amount of the fee. A card issuer disclosing a non-periodic fee must disclose that the fee is a one-time fee. (See Sample G-10(C) for guidance on how to meet these requirements.)*

60(b)(3) Fixed Finance Charge; Minimum Interest Charge

1. ***Example of brief statement.*** *See Samples G-10(B) and G-10(C) for guidance on how to provide a brief description of a minimum interest charge.*

2. ***Adjustment of $1.00 threshold amount.*** *Consistent with §1026.60(b)(3), the Bureau will publish adjustments to the $1.00 threshold amount, as appropriate.*

60(b)(4) Transaction Charges

1. ***Charges imposed by person other than card issuer.*** *Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under §1026.9(d)(1).*

2. ***Foreign transaction fees.*** *A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G-10(B) and G-10(C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G-10(B) and G-10(C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.*

60(b)(5) Grace Period

1. ***How grace period disclosure is made.*** *The card issuer must state any conditions on the applicability of the grace period. An issuer, however, may not disclose under §1026.60(b)(5) the limitations on the imposition of finance charges as a result of a loss of a grace period in §1026.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. Some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, §1026.60(b)(5)*

requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: "Your due date is [at least] __ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month." However, other issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, §1026.60(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

2. ***No grace period.*** *The issuer may use the following language to describe that no grace period on any purchases is offered, as applicable: "We will begin charging interest on purchases on the transaction date."*

3. ***Grace period on some purchases.*** *If the issuer provides a grace period on some types of purchases but no grace period on others, the issuer may combine and revise the language in comments 60(b)(5)-1 and -2 as appropriate to describe to which types of purchases a grace period applies and to which types of purchases no grace period is offered.*

60(b)(6) Balance Computation Method

1. ***Form of disclosure.*** *In cases where the card issuer uses a balance computation method that is identified by name in §1026.60(g), the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in §1026.60(g), the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in §1026.60(g). The explanation need not be as detailed as that required for the disclosures under §1026.6(b)(4)(i)(D).*

2. ***Determining the method.*** *In determining which balance computation method to disclose for purchases, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases. The card issuer must not assume the existence of a purchase balance, however, in making other disclosures under §1026.60(b).*

60(b)(7) Statement on Charge Card Payments

1. ***Applicability and content.*** *The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, "Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement."*

60(b)(8) Cash Advance Fee

1. ***Content.*** *See Samples G-10(B) and G-10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee.*

2. ***Foreign cash advances.*** *Cash advance fees required to be disclosed under §1026.60(b)(8) include any charge imposed by the card issuer for cash advances in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)-4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G-10(B) and (C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G-10(B) and (C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.*

3. ***ATM fees.*** *An issuer is not required to disclose pursuant to §1026.60(b)(8) any charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.*

60(b)(9) Late Payment Fee

1. ***Applicability.*** *The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to §1026.4(c)(2) for additional guidance on late payment fees. See Samples G-10(B) and G-10(C) for guidance on how to disclose clearly and conspicuously the late payment fee.)*

60(b)(10) Over-the-Limit Fee

1. ***Applicability.*** *The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (See Samples G-10(B) and G-10(C) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.)*

60(b)(13) Required Insurance, Debt Cancellation or Debt Suspension Coverage

1. ***Content.*** *See Sample G-10(B) for guidance on how to comply with the requirements in §1026.60(b)(13).*

60(b)(14) Available Credit

1. ***Calculating available credit.*** *If the 15 percent threshold test is met, the issuer must disclose the available credit excluding optional fees, and the available credit including optional fees. In calculating the available credit to disclose in the table, the issuer must consider all fees for the issuance or availability of credit described in §1026.60(b)(2), and any security deposit, that will be imposed and charged to the account when the account is opened, such as one-time issuance and set-up fees. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (as applicable) if they are charged to the account on the first billing statement. In calculating the amount of the available credit including optional fees, if*

optional fees could be charged multiple times, the issuer shall assume that the optional fee is only imposed once. For example, if an issuer charges a fee for each additional card issued on the account, the issuer in calculating the amount of the available credit including optional fees may assume that the cardholder requests only one additional card. In disclosing the available credit, the issuer shall round down the available credit amount to the nearest whole dollar.

2. ***Content.*** *See Sample G-10(C) for guidance on how to provide the disclosure required by §1026.60(b)(14) clearly and conspicuously.*

60(b)(15) Web Site Reference

1. ***Content.*** *See Samples G-10(B) and G-10(C) for guidance on disclosing 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 card accounts.*

Section 3: Direct Mail & Electronic Solicitations
12 C.F.R. § 1026.60(c)

Direct Mail & Electronic Solicitations - 12 CFR § 1026.60(c)

Regulatory Discussion

This section discusses the requirements for direct mail and electronic applications and solicitations, especially regarding the issue of ***accuracy of the annual percentage rate.***

Regulatory Text

(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.

Regulatory Commentary

60(c) Direct Mail and Electronic Applications and Solicitations

1. ***Mailed publications.*** *Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to take-ones in §1026.60(e), rather than the direct mail requirements of §1026.60(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer "prescreens" a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a take-one (in racks in public locations, for example) and for direct mailings, if the card issuer complies with*

the requirements of §1026.60(c) even when the form is used as a take-one—that is, by presenting the required §1026.60 disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the §1026.60(e)(1)(ii) and (e)(1)(iii) disclosures are included; when used in a take-one, the disclosures must be accurate for as long as the take-one forms remain available to the public if the §1026.60(e)(1)(ii) and (e)(1)(iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

Section 4: Telephone Solicitations
12 C.F.R. § 1026.60(d)

Telephone Solicitations - 12 CFR § 1026.60(d)

Regulatory Discussion

This section discusses all information that must be disclosed in telephone applications and solicitations. Once again, accuracy is of primary importance, and the regulation sets standards to assure ***accuracy.***

Regulatory Text

(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).

Regulatory Commentary

60(d) Telephone Applications and Solicitations

1. Coverage.

i. This paragraph applies if:

A. A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a prescreened telephone solicitation).

B. The card issuer initiates the contact and at the same time takes application information over the telephone.

ii. This paragraph does not apply to:

A. Telephone applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

2. ***Right to reject the plan.*** *The right to reject the plan referenced in this paragraph is the same as the right to reject the plan described in §1026.5(b)(1)(iv). If an issuer substitutes the account-opening summary table described in §1026.6(b)(1) in lieu of the disclosures specified in §1026.60(d)(2)(ii), the disclosure specified in §1026.60(d)(2)(ii)(B) must appear in the table, if the issuer is required to do so pursuant to §1026.6(b)(2)(xiii). Otherwise, the disclosure specified in §1026.60(d)(2)(ii)(B) may appear either in or outside the table containing the required credit disclosures.*

3. ***Substituting account-opening table for alternative written disclosures.*** *An issuer may substitute the account-opening summary table described in §1026.6(b)(1) in lieu of the disclosures specified in §1026.60(d)(2)(ii).*

Section 5: General Public Solicitations
12 C.F.R. § 1026.60(e)

General Public Solicitations - 12 CFR § 1026.60(e)

Regulatory Discussion

This section discusses ***accuracy*** for "take one" types of solicitations.

Regulatory Text

(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.

Regulatory Commentary

60(e) Applications and Solicitations Made Available to General Public

1. ***Coverage.*** *Applications and solicitations made available to the general public include what are commonly referred to as take-one applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.*

2. ***In-person applications and solicitations.*** *In-person applications and solicitations initiated by a card issuer are subject to §1026.60(f), not §1026.60(e). (See §1026.60(f) and accompanying commentary for rules relating to in-person applications and solicitations.)*

3. ***Toll-free telephone number.*** *If a card issuer, in complying with any of the disclosure options of §1026.60(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.*

60(e)(1) Disclosure of Required Credit Information

1. ***Date of printing.*** *Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.*

2. ***Form of disclosures.*** *The disclosures specified in §1026.60(e)(1)(ii) and (e)(1)(iii) may appear either in or outside the table containing the required credit disclosures.*

60(e)(2) No Disclosure of Credit Information

1. ***When disclosure option available.*** *A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by §1026.60(b). Statements such as no annual fee, low interest rate, favorable rates, and low costs are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or application, if the card issuer chooses to use this option.*

60(e)(3) Prompt Response to Requests for Information

1. ***Prompt disclosure.*** *Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.*

2. ***Information disclosed.*** *When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with §1026.60(e)(1) and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only*

provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in §1026.60(e)(2) and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. ***Manner of response.*** *A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer must provide the information listed in §1026.60(e)(1). Information provided in writing need not be in a tabular format.*

Section 6: In Person Solicitations
12 C.F.R. § 1026.60(f)

In Person Solicitations - 12 CFR § 1026.60(f)

Regulatory Discussion

This section discusses ***accuracy*** in face to face solicitations.

Regulatory Text

(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.

Regulatory Commentary

60(f) In-Person Applications and Solicitations

1. ***Coverage.***

i. ***This paragraph applies if:***

A. An in-person conversation between a card issuer and a consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a preapproved in-person solicitation).

B. The card issuer initiates the contact and at the same time takes application information in person. For example, the following are covered:

1. A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation and submits an application.

2. An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively and submits an application.

ii. ***This paragraph does not apply to:***

A. In-person applications initiated by the consumer.

B. Situations where no card will be issued - because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides during the in-person conversation not to issue the card.

Section 7: Balance Computation Methods
12 C.F.R. § 1026.60(g)

Balance Computation Methods - 12 CFR § 1026.60(g)

Regulatory Discussion

This section discusses the impacts of the computation methods that are legal.

Regulatory Text

(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.

Regulatory Commentary

None.