

~~proposes to use its authority under TILA Section 105(a) to provide that if a creditor describes a rate as “fixed,” but does not disclose a time period for which the rate will be fixed, the rate must not increase while the plan is open. Finally, TILA Section 127(m) states that a rate described as “fixed” may not change or vary for any reason. The Board believes, however, that it would be beneficial to consumers to permit a creditor to decrease a rate described as “fixed.” Accordingly, the Board proposes to use its authority under TILA Section 105(a) to provide that a rate described as “fixed” may not be increased.~~

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

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

In certain circumstances, a creditor may substitute or replace one credit card account with another credit card account. For example, if an existing cardholder requests additional features or benefits (such as rewards on purchases), the creditor may substitute or replace the existing credit card account with a new credit card account that provides those features or benefits. The Board also understands that creditors often charge higher annual percentage rates or annual fees to compensate for additional features and benefits. As discussed below, proposed § 226.55 and its commentary address the application of the general prohibitions on increasing annual percentage rates, fees, and charges during the first year after account opening and on applying increased rates to existing balances in these circumstances. See proposed § 226.55(d); proposed comments 55(b)(3)-3 and 55(d)-1 through -3.

In order to clarify the application of the disclosure requirements in §§ 226.6(b) and 226.9(c)(2) when one credit card account is substituted or replaced with another, the Board proposes to adopt comment 5(b)(1)(i)-6, which states that, 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 § 226.6(b) or provide notice of the changes in the terms of the existing account consistent with § 226.9(c)(2). The Board understands that, when an existing cardholder requests new features or benefits, disclosure of the new terms pursuant to § 226.6(b) may be preferable because the cardholder generally will not want to wait 45 days for the new terms to take effect (as would be the case if notice were provided pursuant to § 226.9(c)(2)). Thus, this comment is intended to provide card issuers with some flexibility regarding whether to treat the substitution or replacement as the opening of a new account (subject to § 226.6(b)) or a change in the terms of an existing account (subject to § 226.9(c)(2)).

However, the Board does not intend to permit card issuers to circumvent the disclosure requirements in § 226.9(c)(2) by treating a change in terms as the opening of a new account. Accordingly, the comment would further state that 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 §§ 226.6(b) and 226.9(c)(2) is determined in light of all the relevant facts and circumstances.

The comment provides the following list of relevant facts and circumstances:

(1) whether the card issuer provides the consumer with a new credit card; (2) whether the card issuer provides the consumer with a new account number; (3) whether the account

provides new features or benefits after the substitution or replacement (such as rewards on purchases); (4) whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement; (5) whether the card issuer implemented the substitution or replacement on an individualized basis; and (6) 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). The comment states that, when most of these facts and circumstances are present, the substitution or replacement likely constitutes the opening of a new account for which § 226.6(b) disclosures are appropriate. However, the comment also states that, when few of these facts and circumstances are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which § 226.9(c)(2) disclosures are appropriate.⁸

The Board solicits comment on whether additional facts and circumstances are relevant. The Board also solicits comment on alternative approaches to determining 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 §§ 226.6(b) and 226.9(c)(2).

~~**5(b)(2) Periodic Statements**~~

~~The Board is proposing to amend comment 5(b)(2)(ii) 2 in several respects in order to clarify the consequences of a failure to comply with the requirement in § 226.5(b)(2)(ii) that creditors adopt reasonable procedures designed to ensure that periodic statements for open-end credit plans are mailed or delivered at least 21 days~~

⁸ The comment also provides cross-references to other provisions in Regulation Z and its commentary that address the substitution or replacement of credit card accounts.

~~disclosures required by § 226.6 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 § 226.5a 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 § 226.5a may establish procedures that comply with both §§ 226.5a and 226.6 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 § 226.6(b) or provide notice of the changes in the terms of the existing account consistent with § 226.9(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 §§ 226.6(b) and 226.9(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 §§ 226.12(a) and 226.55(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 §§ 226.6(b) and 226.9(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 § 226.6(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 § 226.9(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;
- E. Whether the card issuer implemented the substitution or replacement on an individualized basis; 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).

~~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 § 226.6. 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 § 226.12(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 § 226.11(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 § 226.6, 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 § 226.9(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.