

~~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 § 226.55(b).~~

Section 226.56—Requirements for over-the-limit transactions

56(b) Opt-in requirement.

1. Policy and practice of declining over-the-limit transactions. Section 226.56(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 226.56 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 § 226.56(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 § 226.56(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 226.56(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 226.56(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 226.56(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.

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 226.56(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.

56(d) Timing and placement of notices.

1. Contemporaneous notice for oral or electronic consent. Under § 226.56(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 § 226.56(e)(1) prior to and as part of the process of obtaining the consumer's consent.

56(e) Content.

1. Varying fee amounts. If the amount of an over-the-limit fee may vary, such as based on the amount of the over-the-limit transaction, the card issuer may indicate that the consumer may be assessed a fee "up to" the maximum 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.

56(f) Joint relationships.

1. Authorized users. Section 226.56(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.

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 226.56(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.

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.

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 226.56(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, § 226.56(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 226.56(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 226.56(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 \$1000. 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 \$1300. If the card issuer would have offered the credit card with the \$1300 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 § 226.56(j)(3). Section 226.56(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 \$1300 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 § 226.56(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 226.56(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 § 226.6(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 226.56(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 § 226.5(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 § 226.6(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, § 226.56(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 § 226.6(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 § 226.56(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, § 226.56(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.

~~Section 226.57 Reporting and marketing rules for college student open end credit.~~

~~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 226.57(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~~